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Contents

Federal Register

Vol. 79, No. 194

Tuesday, October 7, 2014

Alcohol, Tobacco, Firearms, and Explosives Bureau
PROPOSED RULES
Rules of Practice in Explosives License and Permit Proceedings (2007R–5P):
Revisions Reflecting Changes Consistent with the Homeland Security Act of 2002, 60391–60405
NOTICES
Commerce in Explosives; 2014 Annual List of Explosive Materials, 60496–60498

Appalachian States Low-Level Radioactive Waste Commission

NOTICES
Meetings:
Appalachian States Low-Level Radioactive Waste Commission, 60444

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 60469–60472
Charter Renewals:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 60472
Meetings:
Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health, 60472–60473
Advisory Committee on Immunization Practices, 60474
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 60472
Dose Reconstruction Reviews Subcommittee, Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health, 60473–60474

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 60444

Coast Guard
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 60481–60486
Recreational Boating Safety Grants for Nonprofit Organizations, 60486–60488

Commerce Department
See Economic Development Administration
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Defense Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reporting Executive Compensation and First-Tier Subcontract Awards, 60468–60469

Drug Enforcement Administration
NOTICES
Bulk Manufacturers of Controlled Substances; Applications:
Johnson Matthey, Inc., West Deptford, NJ, 60498
Noramco, Inc., Athens, GA, 60498–60499
Importers of Controlled Substances; Applications:
Alltech Associates, Inc., Deerfield, IL, 60502
Cerilliant Corp., Round Rock, TX, 60499–60500
Chattem Chemicals, Inc., Chattanooga, TN, 60501–60502
Meda Pharmaceuticals, Inc., Decatur, IL, 60501
R and D Systems, Inc., Minneapolis, MN, 60500–60501

Economic Development Administration
NOTICES
Performance Review Board Membership, 60444–60445

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
2015–16 National Teacher and Principal Survey Preliminary Activities, 60454–60455
Race to the Top Program Review Protocols, 60455–60456

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 60456–60458
Meetings:
Hydrogen and Fuel Cell Technical Advisory Committee, 60459

Energy Efficiency and Renewable Energy Office
NOTICES
Energy Efficiency Improvements in ANSI/ASHRAE/IES Standard 90.1–2013; Determinations:
Energy Standard for Buildings, Except Low-Rise Residential Buildings; Correction, 60459

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
California; Placer County Air Pollution Control District; Revisions, 60347–60349
MOVES2014 Motor Vehicle Emissions Model for SIPs and Transportation Conformity; Official Release, 60343–60347
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
California; Placer County Air Pollution Control District; Revisions, 60405

NOTICES
Proposed Exemptions under the Clean Water Act:
Bayou aux Carpes Site in Jefferson Parish, LA, 60464–60465

Executive Office of the President
See Presidential Documents

Federal Accounting Standards Advisory Board
NOTICES
Public-Private Partnerships:
Disclosure Requirements, 60465

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Helicopters, Inc. (Previously Eurocopter France) Helicopters, 60334–60337
Alexandria Aircraft LLC Airplanes, 60327–60329
Brantly International, Inc. Helicopters, 60339–60343
Empresa Brasileira de Aeronautica S. A. (EMBRAER) Airplanes, 60325–60327
Pacific Aerospace Limited Airplanes, 60329–60331, 60337–60338
The Boeing Company Airplanes, 60331–60334
Zodiac Seats France (formerly Sicma Aero Seat) Passenger Seat Assemblies, 60322–60324
Special Conditions:
Hawker Beechcraft, Model 400A Airplane, as Modified by Nextant Aerospace; Installed Rechargeable Lithium Batteries and Battery Systems, 60319–60322
PROPOSED RULES
Airworthiness Directives:
Beechcraft Corporation Airplanes, 60384–60389
PILATUS Aircraft Ltd. Airplanes, 60389–60391
NOTICES
Petitions for Exemptions; Summaries, 60572–60574

Federal Communications Commission
PROPOSED RULES
Petitions for Reconsideration of Action in Rulemaking Proceeding, 60406
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 60466–60467

Federal Energy Regulatory Commission
NOTICES
Applications:
Tennessee Gas Pipeline Co., LLC, 60459–60460
Combined Filings, 60460–60462
Filings:
Oncor Electric Delivery Co., LLC, 60462–60463
PJM Interconnection, LLC, 60462
Preliminary Permit Applications:
Belton Power, LLC, 60463
FFP Project 97, LLC, 60463–60464

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Suffolk County, NY, 60574

Federal Housing Finance Agency
PROPOSED RULES
Members of Federal Home Loan Banks, 60384

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 60467–60468

Federal Transit Administration
RULES
Emergency Relief Program, 60349–60365

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
Listing the Straight-Horned Markhor as Threatened With a Rule Under Section 4(d) of the ESA, 60365–60379
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Threatened Species Status for Black Pinesnake, 60406–60419
Threatened Species Status for West Coast Distinct Population Segment of Fisher, 60419–60443

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Guidance for Industry on User Fee Waivers, Reductions, and Refunds for Drug and Biological Products, 60476
Orphan Drugs; Common European Medicines Agency/Food and Drug Administration Application Form for Orphan Medicinal Product Designation, 60474–60476
Guidance:
Pathological Complete Response in Neoadjuvant Treatment of High-Risk Early-Stage Breast Cancer—Use as an Endpoint to Support Accelerated Approval, 60476–60477
Laboratory Site Tours Program, 60477–60478

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reporting Executive Compensation and First-Tier Subcontract Awards, 60468–60469

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
PROPOSED RULES
Supportive Housing and Services for the Elderly and Persons with Disabilities, 60590–60632
NOTICES
Funding Availability:
Community Development Block Grant Disaster Recovery Funds; Additional Waivers and Alternative Requirements, 60490–60492
Indian Housing Loan Guarantee Program Annual Premium, 60492–60494

Industry and Security Bureau
NOTICES
Denails of Export Privileges:
X-TREME Motors LLC; XTREME Outdoor Store; Tyson Preece; et al., 60445–60446
Performance Review Board Membership, 60446–60447

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 60452–60453
Certain Lined Paper Products from India, 60447–60448, 60450–60452
Narrow Woven Ribbons with Woven Selvedge from Taiwan, 60449–60450
Performance Review Board Membership, 60453–60454

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Standard Cell Libraries, Products Containing or Made Using the Same, Integrated Circuits Made Using the Same, etc, 60495–60496

Judicial Conference of the United States
NOTICES
Hearings of the Judicial Conference Advisory Committee on Rules of Civil Procedure; Cancellation, 60496

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration

Labor Department
See Occupational Safety and Health Administration
RULES
Establishing a Minimum Wage for Contractors, 60634–60733

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Bakersfield Field Office Caliente Resource Management Plan, and California Desert Conservation Area Plan, 60494–60495

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reporting Executive Compensation and First-Tier Subcontract Awards, 60468–60469

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts Advisory Panel, 60505

National Highway Traffic Safety Administration
NOTICES
Automotive Electronic Control Systems Safety and Security, 60574–60583

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Institute of Mental Health Data Repositories; Data Submission Request, Data Access and Use Certification, 60479
National Institute of Mental Health Database of Cognitive Training and Remediation Studies, 60478–60479
Meetings:
Center for Scientific Review, 60479–60480
National Heart, Lung, and Blood Institute, 60480–60481
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 60481
National Institute on Drug Abuse, 60481

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Snapper–Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 21, 60379–60381
Fisheries of the Exclusive Economic Zone Off Alaska:
Several Groundfish Species in the Bering Sea and Aleutian Islands Management Area, 60381–60382

National Science Foundation
NOTICES
Antarctic Conservation Act Permit Applications, 60505

National Telecommunications and Information Administration

NOTICES
Performance Review Board Membership, 60454

Nuclear Regulatory Commission
PROPOSED RULES
Fuel-Cladding Issues in Postulated Spent Fuel Pool Accidents, 60383–60384
NOTICES
Confirmatory Orders:
Chicago Bridge and Iron Co., 60506–60513
Environmental Assessments; Availability, etc.:
Dominion Energy Kewaunee, Kewaunee Power Station, 60513–60515
Facility Operating and Combined Licenses:
Applications and Amendments Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information, etc., 60515–60521
License Amendment Applications:
Entergy Nuclear Operations, Inc., Pilgrim Nuclear Power Station, 60521
Meetings; Sunshine Act, 60521

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Bloodborne Pathogens Standard, 60503–60505
Servicing Multi-Piece and Single Piece Rim Wheels, 60502–60503

Presidential Documents
PROCLAMATIONS
Special Observances:
National Manufacturing Day (Proc. 9184), 60735–60738

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 60522
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., BATS Y-Exchange, Inc., et al., 60522–60536
Chicago Mercantile Exchange Inc., 60563–60565
Consolidated Tape Association, 60536–60544, 60555–60556
Financial Industry Regulatory Authority, Inc., 60556–60560
International Securities Exchange, LLC, 60545–60547
NYSE Arca, Inc., 60547–60553
NYSE MKT, LLC, 60553–60555, 60560–60563

Small Business Administration
NOTICES
Disaster Declarations:
California, 60566
Entire United States and U.S. Territories; Military Reservist Economic Injury Disaster Loan, 60565–60566
Kentucky, 60566
License Surrenders of Small Business Investment Companies:
GreenLeaf Capital, LP, 60566–60567

State Department
NOTICES
Designations as Global Terrorists:
Abd al-Baset Azzouz; aka Abdelbassed Azouz, et al., 60568–60569
Abdessamad Fateh, a.k.a. Abu Hamza, 60568
Amru al-Absi, aka Abu al-Arthir. aka Abu al-Asir, 60567
Harakat Sham al-Islam, a.k.a. Haraket Sham al-Islam, et al., 60568
Jaish al-Muhajireen wal-Ansar; aka Katiba al-Muhajireen, et al., 60569
Maalim Salman; aka Mu'alim Salman, et al., 60567
Mohammed Abdel-Halim Hemaida Saleh, a.k.a. Muhammad Abd-al-Halim Humaydah, 60567
Muhannad al-Najdi; aka Ali Manahi, Ali al-Mahaydal, et al., 60568
Salim Benghalem, 60567–60568

Susquehanna River Basin Commission
NOTICES
Meetings:
Actions Taken September 4, 2014, 60569–60570

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
NOTICES
Rights and Protections Available under the Federal Antidiscrimination and Whistleblower Protection Laws, 60571–60572

Treasury Department
See United States Mint

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Electronic Payment Processing, 60488–60489
Sworn Statement of Refugee Applying for Admission to the United States, 60489–60490

United States Mint
NOTICES
Meetings:
Citizens Coinage Advisory Committee, 60583–60584

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Accelerated Payment Verification of Completion Letter, 60586–60587
Board of Veterans' Appeals Customer Satisfaction with Hearing Survey Card, 60585–60586
Change in Student Status, 60585
Justification for Regulation on Application for Fisher Houses and Other Temporary Lodging, 60587
Request for Change of Program or Place of Training, 60584–60585
VA Enrollment Certification, 60584
Yellow Ribbon Agreement, 60586
Meetings:
Advisory Committee on Disability Compensation, 60588

Separate Parts In This Issue

Part II
Housing and Urban Development Department, 60590–60632

Part III
Labor Department, 60634–60733

Part IV
Presidential Documents, 60735–60738

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.

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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:
9184 60737

10 CFR

Proposed Rules:
50 60383

12 CFR

Proposed Rules:
1263 60384

14 CFR
25 60319
39 (8 documents) 60322, 60325, 60327, 60329, 60331, 60334, 60337, 60339

Proposed Rules:
39 (2 documents) 60384, 60389

24 CFR

Proposed Rules:
891 60590
892 60590

27 CFR

Proposed Rules:
478 60391
555 60391
771 60391

29 CFR
10 60634

40 CFR
51 60343
52 60347
93 60343

Proposed Rules:
52 60405

47 CFR

Proposed Rules:
54 60406

49 CFR
602 60349

50 CFR
17 60365
622 60379
679 60381

Proposed Rules:
17 (2 documents) 60406

Rules and Regulations

Federal Register
Vol. 79, No. 194
Tuesday, October 7, 2014

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0706; Special Conditions No. 25–568–SC]

Special Conditions: Hawker Beechcraft, Model 400A Airplane, as Modified by Nextant Aerospace; Installed Rechargeable Lithium Batteries and Battery Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: These special conditions are issued for the Hawker Beechcraft Model No. 400A airplane as modified by Nextant Aerospace. This modification will have a novel or unusual design feature associated with an installed emergency power supply and standby attitude module that use rechargeable lithium batteries and battery systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 7, 2014. We must receive your comments by November 21, 2014.

ADDRESSES: Send comments identified by docket number FAA–2014–0706 using any of the following methods:

- Federal eRegulations Portal: Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
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Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On November 29, 2012, Nextant Aerospace applied for an amendment to supplemental type certificate (STC) ST10959SC to replace the existing nickel-cadmium standby power supplies with new rechargeable lithium battery emergency power supplies and to install a module that uses a rechargeable lithium battery for emergency power back-up on the Hawker Beechcraft Model 400A. The Model 400A is a mid-size, nine (9) passenger maximum business jet powered by two turbo fan engines.

The amendment to STC ST10959SC, Rockwell Collins Proline 21 Instrument Display System, includes the installation of Mid-Continent Instrument Co. MD302 Standby Instrument and TS835 Emergency Power Supplies. It also includes the installation of a Midcontinent MD302 Standby Attitude Module for emergency power back-up, all of which use rechargeable lithium batteries and battery systems.

Rechargeable lithium batteries are a novel or unusual design feature in transport category airplanes. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport category airplanes. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Nextant Aerospace must show that the Model 400A, as changed,

continues to meet the applicable provisions of the regulations incorporated by reference in STC ST10959SC or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the STC are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in STC ST10959SC are as follows:

The certification basis is 14 CFR part 25 effective February 1, 1965, as amended by 25–1 through 25–40, plus §§ 25.1335, 25.1351(d), 25.1353(c)(5), and 25.1447 at Amendment 25–41; §§ 25.29, 25.255, and 25.1353(c)(6) at Amendment 25–42; §§ 25.361(b) and 25.1329(h) at Amendment 25–46; 14 CFR part 36, effective December 1, 1969, as amended by 36–1 through 36–17; SFAR 27 effective February 1, 1974, as amended by 27–1 through 27–5; and Special Conditions No. 25–ANM–32 dated February 22, 1990, *High Altitude Operation,* and Special Conditions No. 25–ANM–33 dated June 18, 1990, *Lightning and Radio Frequency Energy Protection.*

In addition, if the regulations incorporated by reference do not provide adequate standards regarding the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Model 400A, as modified by STC ST10959SC, must also comply with the following section of part 25 as amended by Amendment 25–1 through 25–123: § 25.1353.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Hawker Beechcraft Model 400A because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a STC to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Hawker Beechcraft Model 400A, as modified by STC ST10959SC, must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under 14 CFR 21.101.

Novel or Unusual Design Features

The Hawker Beechcraft Model 400A will incorporate the following novel or unusual design features: A Mid-Continent TS835 Emergency Power Supply and MD302 Standby Attitude Module that use a rechargeable lithium batteries and battery systems. Rechargeable lithium batteries are a novel or unusual design feature in transport category airplanes for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion

The current regulations governing installation of batteries in large transport-category airplanes were derived from Civil Air Regulations (CAR) part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. The new battery requirements, § 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel-cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures that led to additional rulemaking affecting large transport category airplanes as well as small airplanes. On September 1, 1977, and March 1, 1978, the FAA issued § 25.1353(c)(5) and (c)(6), respectively, governing nickel-cadmium battery installations on large transport-category airplanes. At Amendment 25–123, effective December 10, 2007, the FAA issued a revised § 25.1353, which moved the battery requirements to § 25.1353(b)(1) through (b)(6).

The proposed use of rechargeable lithium batteries for equipment and systems on the Model 400A, modified by STC ST10959SC prompted the FAA to review the adequacy of these existing regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of rechargeable lithium batteries that could affect the safety of the airplane and its passengers and crew.

At present, commercial aviation has limited experience with use of rechargeable lithium batteries and battery systems in applications involving commercial aviation. However, other users of this technology, ranging from wireless telephone manufacturers to the electric-vehicle industry, have noted potential hazards with rechargeable lithium batteries. These problems include overcharging, over-discharging, and flammability of cell components.

1. Overcharging

In general, lithium batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (i.e., thermal runaway) than their nickel-cadmium or lead-acid counterparts. This condition is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway, due to overcharging, increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

2. Over-Discharging

Discharge of some types of lithium battery cells beyond a certain voltage (typically 2.4 volts), can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flightcrews as a means of checking battery status—a problem shared with nickel-cadmium batteries.

3. Flammability of Cell Components

Unlike nickel-cadmium and lead-acid batteries, some types of lithium batteries use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire, if there is a breach of the battery container.

These problems experienced by users of lithium batteries raise concern about the use of these batteries in commercial aviation. The intent of the special conditions is to establish appropriate airworthiness standards for lithium battery installations in the Hawker Beechcraft 400A and to ensure, as required by §§ 25.1309 and 25.601, that these batteries are not hazardous or unreliable.

Applicability

As discussed above, these special conditions are applicable to STC ST10959SC, which modifies the Hawker Beechcraft Model 400A airplane. Should Nextant Aerospace apply at a

later date to amend this STC to incorporate the same novel or unusual design feature, the special conditions would apply to that STC as well.

Conclusion

This action affects only certain novel or unusual design features on one airplane model. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification date for the modification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Hawker Beechcraft Model 400A airplanes modified by Nextant Aerospace.

Installed Rechargeable Lithium Batteries and Battery Systems

These special conditions require that (1) All characteristics of the rechargeable lithium batteries and battery installation, that could affect safe operation of the Hawker Beechcraft 400A airplanes, are addressed; and (2) appropriate Instructions for Continued Airworthiness, which include maintenance requirements, are established to ensure the availability of electrical power, when needed, from the batteries.

In lieu of the requirements of Title 14, Code of Federal Regulations (14 CFR) 25.1353(b)(1) through (b)(4) at Amendment 25–123, all rechargeable lithium batteries and battery installations on Hawker Beechcraft 400A airplanes modified by ST10959SC must be designed and installed as follows:

1. Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition and during any failure of the charging or battery monitoring system not shown to be extremely remote. The rechargeable lithium battery installation must preclude explosion in the event of those failures.

2. Design of the rechargeable lithium batteries and battery systems must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

3. No explosive or toxic gases emitted by any rechargeable lithium battery in normal operation, or as the result of any failure of the battery charging system, monitoring system, or battery installation which is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

4. Installations of rechargeable lithium batteries must meet the requirements of § 25.863(a) through (d).

5. No corrosive fluids or gases that may escape from any rechargeable lithium battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more severe failure condition, in accordance with § 25.1309(b) and applicable regulatory guidance.

6. Each rechargeable lithium battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

7. Rechargeable lithium battery installations must have a system to control the charging rate of the battery automatically, so as to prevent battery overheating or overcharging, and,

a. A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

b. A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

8. Any rechargeable lithium battery installation, the function of which is required for safe operation of the airplane, must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

9. The Instructions for Continued Airworthiness required by § 25.1529 must contain maintenance requirements to assure that the battery is sufficiently charged at appropriate intervals specified by the battery manufacturer and the equipment manufacturer that contain the rechargeable lithium battery or rechargeable lithium battery system. This is required to ensure that lithium rechargeable batteries and lithium rechargeable battery systems will not degrade below specified ampere-hour levels sufficient to power the airplane systems for intended applications. The Instructions for Continued Airworthiness must also contain procedures for the maintenance of batteries in spares storage to prevent the replacement of batteries with batteries that have experienced degraded charge retention ability or other damage due to prolonged storage at a low state of charge. Replacement batteries must be of the same manufacturer and part number as approved by the FAA. Precautions should be included in the Instructions for Continued Airworthiness maintenance instructions to prevent mishandling of the rechargeable lithium battery and rechargeable lithium battery systems, which could result in short-circuit or other unintentional impact damage caused by dropping or other destructive means that could result in personal injury or property damage.

Note 1: The term ''sufficiently charged'' means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where the battery experiences a reduction in the ability to charge and retain a full charge. This reduction would be greater than the reduction that may result from normal operational degradation.

Note 2: These special conditions are not intended to replace § 25.1353(b) at Amendment 25–123 in the certification basis of airplane Hawker Beechcraft 400A airplanes. These special conditions apply only to rechargeable lithium batteries and lithium battery systems and their installations. The requirements of § 25.1353(b) at Amendment 25–123 remain in effect for batteries and battery installations on Hawker Beechcraft 400A airplanes that do not use lithium batteries.

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

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23887 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0730; Directorate Identifier 2013–NM–206–AD; Amendment 39–17984; AD 2014–20–11]

RIN 2120–AA64

Airworthiness Directives; Zodiac Seats France (formerly Sicma Aero Seat) Passenger Seat Assemblies

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

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2011–07–05 for certain Sicma Aero Seat 9140, 9166, 9173, 9174, 9184, 9188, 9196, 91B7, 91B8, 91C0, 91C2, 91C4, 91C5, and 9301 series passenger seat assemblies; and Sicma Aero Seat 9501311–05, 9501301–06, 9501311–15, 9501301–16, 9501441–30, 9501441–33, 9501311–55, 9501301–56, 9501441–83, 9501441–95, 9501311–97, and 9501301–98 passenger seat assemblies. AD 2011–07–05 required a general visual inspection for cracking of backrest links, replacement with new links if cracking is found, and eventual replacement of all links with new links. This new AD requires a new general visual inspection for cracking of backrest links, which includes new seat backrest links; replacement with new links if cracking is found; and eventual replacement of all links with new links. This AD was prompted by a report that new seat backrest links could be affected by cracks similar to those identified on the backrest links with the previous design. We are issuing this AD to detect and correct cracks in the backrest links, which could affect the structural integrity of seat backrests. Failure of the backrest links could result in injury to an occupant during emergency landing conditions.

DATES: This AD becomes effective October 22, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 22, 2014.

We must receive comments on this AD by November 21, 2014.

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

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

For service information identified in this AD, contact Zodiac Seats France, 7, Rue Lucien Coupet, 36100 ISSOUDUN, France; telephone +33 (0) 2 54 03 39 39; fax +33 (0) 2 54 03 39 00; email *customerservices@sicma.zodiac.com;* Internet *http://www.sicma.zodiacaerospace.com/en/.* 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–2014–0730; 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: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office (ACO), FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7161; fax (781) 238–7199; email: *jeffrey.lee@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 14, 2011, we issued AD 2011–07–05, Amendment 39–16642 (76 FR 18020, April 1, 2011). AD 2011–07–05 applied to certain Sicma Aero Seat 9140, 9166, 9173, 9174, 9184, 9188, 9196, 91B7, 91B8, 91C0, 91C2, 91C4, 91C5, and 9301 series passenger seat assemblies; and Sicma Aero Seat 9501311–05, 9501301–06, 9501311–15, 9501301–16, 9501441–30, 9501441–33, 9501311–55, 9501301–56, 9501441–83, 9501441–95, 9501311–97, and 9501301–98 passenger seat assemblies; installed on, but not limited to, various transport category airplanes. AD 2011–07–05 was prompted by reports of cracks on certain backrest links. We issued AD 2011–07–05 to detect and correct cracking of backrest links, which could result in failure of the backrest links during emergency landing conditions and consequent injury to an occupant.

Since we issued AD 2011–07–05, Amendment 39–16642 (76 FR 18020, April 1, 2011), we received a report that new seat backrest links could be affected by cracks similar to those identified on the backrest links with the previous design.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0038, dated March 12, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> On in-service passenger seats, some cracks were found on seat backrest link with part number (P/N) 90–000200–104–1 and 90–000200–104–2.
>
> These cracks could significantly affect the structural integrity of the seat backrests. Failures of the seat backrests could result in injury to passengers or crew members during an emergency landing.
>
> To prevent this condition, a life limit was introduced on the affected backrest links and their mandatory replacement was required by [a French AD] * * * [which corresponds to FAA AD 2011–07–05, Amendment 39–16642 (76 FR 18020, April 1, 2011)].
>
> Since that [French] AD was issued, the seat manufacturer introduced new seat backrest links of similar design with P/N 90–000202–104–1 and P/N 90–000202–104–2 for passenger seat series 91B7, 91B8 and 91C5.
>
> Further analysis showed that also the new seat backrest links are potentially affected by similar cracks to those identified on the backrest links with the previous design.
>
> For the reasons described above, this [EASA] AD, which supersedes * * * [the French AD], requires visual inspections of the seat backrest links, the accomplishment of the applicable corrective actions as well as the replacement of the backrests links before reaching their life limit.

Failure of the backrest links could result in injury to an occupant during emergency landing conditions. The required actions include a general visual inspection for cracking of backrest links, replacement with new links if cracking

is found, and eventual replacement of all links with new links.

We have also received additional information from the seat manufacturer regarding the airlines with the affected seats; all of the airlines with the affected seats are foreign air carriers. Since the affected seats are not installed on airplanes in the U.S. registry, we have revised the ''Costs of Compliance'' information in the preamble of this AD.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0730.

Relevant Service Information

Zodiac Seats France has issued Sicma Aero Seat Service Bulletin 90–25–012, Issue 6, dated January 25, 2012, including Annex 1, Issue 3, dated January 25, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of this 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.

There are no products of this type currently installed on airplanes registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are installed on airplanes that are on the U.S. Register in the future.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of airplanes that are equipped with this product, notice and opportunity for public comment before issuing this AD are unnecessary.

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–2014–0730; Directorate Identifier 2013–NM–206–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 0 seat assemblies installed on, but not limited to, transport airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per seat assembly to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $227 per product. Based on these figures, we estimate the cost of the actions required by this AD is $312 per seat assembly.

According to the manufacturer, the parts 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.

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 removing airworthiness directive (AD) 2011–07–05, Amendment 39–16642 (76 FR 18020, April 1, 2011), and adding the following new AD:

2014–20–11 Zodiac Seats France (formerly Sicma Aero Seat): Amendment 39–17984. Docket No. FAA–2014–0730; Directorate Identifier 2013–NM–206–AD.

(a) Effective Date

This AD becomes effective October 22, 2014.

(b) Affected ADs

This AD replaces AD 2011–07–05, Amendment 39–16642 (76 FR 18020, April 1, 2011).

(c) Applicability

This AD applies to Zodiac Seats France 9140, 9166, 9173, 9174, 9184, 9188, 9196, 91B7, 91B8, 91C0, 91C2, 91C4, 91C5, 91C9, 9301, and 9501 series passenger seat assemblies; identified in Annex 1, Issue 3, dated January 25, 2012, of Sicma Aero Seat Service Bulletin 90–25–012, Issue 6, dated January 25, 2012. These passenger seat assemblies are installed on, but not limited to, the airplanes identified in paragraphs (c)(1), (c)(2) and (c)(3) of this AD, certificated in any category.

(1) Airbus Model A330–200, A330–200 Freighter, and A320–300 series airplanes.

(2) Airbus Model A340–200, A340–300, A340–500, and A340–600 series airplanes.

(3) The Boeing Company Model 777–200, 777–200LR, 777–300, 777–300ER, and 777F series airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

(e) Reason

This AD was prompted by a report of cracks in the backrest links on certain seats. We are issuing this AD to detect and correct cracks in the backrest links, which could affect the structural integrity of seat backrests. Failure of the backrest links could result in injury to an occupant during emergency landing conditions.

(f) Compliance

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

(g) Repetitive Inspections

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do a general visual inspection for cracking of seat backrest links having part number (P/N) 90–000200–104–1, P/N 90–000200–104–2, P/N 90–000202–104–1 and P/N 90–000202–104–2, in accordance with the ''PART ONE: GENERAL INTERMEDIATE CHECKING PROCEDURE'' of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 90–25–012, Issue 6, dated January 25, 2012, including Annex 1, Issue 3, dated January 25, 2012. If no cracking is found on any link, repeat the inspection thereafter at intervals not to exceed 900 flight hours on the seat or 5 months since the most recent inspection, whichever occurs later, until the replacement specified in paragraph (i) of this AD is done.

(1) Within 6,000 flight hours on the seat or 2 years, whichever occurs later after the seat manufacturing date or after the backrest link replacement.

(2) Within 900 flight hours on the seat after the effective date of this AD, but no later than 5 months after the effective date of this AD.

(h) Corrective Actions

(1) If, during any inspection required by paragraph (g) of this AD, any cracking is found on the link and no crack length exceeds the lock-out pin-hole as specified in Figure 2 or 4, as applicable, of Sicma Aero Seat Service Bulletin 90–25–012, Issue 6, dated January 25, 2012, including Annex 1, Issue 3, dated January 25, 2012: Within 600 flight hours on the seat or 3 months, whichever occurs later after crack identification, replace the cracked link with a new link, in accordance with ''PART TWO: ROUTINE REPLACEMENT PROCEDURE (EXCEPT FOR SERIES 91B7, 91B8 & 91C5)'' or ''PART THREE: ROUTINE REPLACEMENT PROCEDURE (FOR SERIES 91B7, 91B8 & 91C5)'' of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 90–25–012, Issue 6, dated January 25, 2012, including Annex 1, Issue 3, dated January 25, 2012.

(2) If, during any inspection required by paragraph (g) of this AD, any cracking is found on the link and any crack length exceeds the lock-out pin-hole as specified in Figure 2 or 4, as applicable, of Sicma Aero Seat Service Bulletin 90–25–012, Issue 6, dated January 25, 2012, including Annex 1, Issue 3, dated January 25, 2012: Before further flight, replace the cracked link with a new link, in accordance with ''PART TWO: ROUTINE REPLACEMENT PROCEDURE (EXCEPT FOR SERIES 91B7, 91B8 & 91C5)'' or ''PART THREE: ROUTINE REPLACEMENT PROCEDURE (FOR SERIES 91B7, 91B8 & 91C5)'' of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 90–25–012, Issue 6, dated January 25, 2012, including Annex 1, Issue 3, dated January 25, 2012.

(i) Replacement

At the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD: Replace all seat backrest links, having P/N 90–000200–104–1, P/N 90–000200–104–2, P/N 90–000202–104–1 and P/N 90–000202–104–2, with new links, in accordance with ''PART TWO: ROUTINE REPLACEMENT PROCEDURE (EXCEPT FOR SERIES 91B7, 91B8 & 91C5)'' or ''PART THREE: ROUTINE REPLACEMENT PROCEDURE (FOR SERIES 91B7, 91B8 & 91C5)'' of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 90–25–012, Issue 6, dated January 25, 2012, including Annex 1, Issue 3, dated January 25, 2012.

(1) Within 12,000 flight hours on the seat or 4 years, whichever occurs later after from the seat manufacturing date or after the backrest link replacement.

(2) Within 3,500 flight hours on the seat after the effective date of this AD, but no later than 18 months after the effective date of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g), (h), and (i) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Sicma Aero Seat Service Bulletin 90–25–012, Issue 3, dated October 3, 2001, which is not incorporated by reference in this AD.

(2) Sicma Aero Seat Service Bulletin 90–25–012, Issue 4, dated December 19, 2001, which is not incorporated by reference in this AD.

(3) Sicma Aero Seat Service Bulletin 90–25–012, Issue 5, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004, which is incorporated by reference in AD 2011–07–05, Amendment 39–16642 (76 FR 18020, April 1, 2011).

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Boston 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 ACO, send it to ATTN: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7161; fax (781) 238–7199. 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, Boston Aircraft Certification Office, FAA; or the European Aviation Safety Agency (EASA).

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2012–0038, dated March 12, 2012, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0730.

(m) Material Incorporated by Reference

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

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

(i) Sicma Aero Seat Service Bulletin 90–25–012, Issue 6, dated January 25, 2012, including Annex 1, Issue 3, dated January 25, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Zodiac Seats France, 7, Rue Lucien Coupet, 36100 ISSOUDUN, France; telephone +33 (0) 2 54 03 39 39; fax +33 (0) 2 54 03 39 00; email *customerservices@sicma.zodiac.com;* Internet *http://www.sicma.zodiacaerospace.com/en/.*

(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. 2014–23538 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0740; Directorate Identifier 2014–CE–030–AD; Amendment 39–17978; AD 2014–20–05]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S. A. (EMBRAER) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Empresa Brasileira de Aeronautica S. A. (EMBRAER) Models EMB–110P1 and EMB–110P2 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion and cracking on the rudder trim tab actuator terminal. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective October 27, 2014.

The Director of the **Federal Register** approved the incorporation by reference of a certain publication listed in the AD as of October 27, 2014.

We must receive comments on this AD by November 21, 2014.

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

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

For service information identified in this AD, contact Embraer—S.A., EFTC—Service Bulletin Engineering, Avenida Brigadeiro Faria Lima, 2170, São José dos Campos—SP—12227–901, Brasil; phone: +55 12 3927 1000; fax: +55 12 3927–6600 (ext. 1624); email: *fleet.reliability@embraer.com.br;* internet: *http://www.flyembraer.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0740; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *Jim.Rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued AD No.: 2014–09–01, dated September 4, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for Empresa Brasileira de Aeronautica S. A. (EMBRAER) Models EMB–110P1 and EMB–110P2 airplanes. The MCAI states:

> This AD was prompted by a report of an in-service occurrence were an EMB–110 airplane performed a forced landing, due to a strong vibration felt by the pilots after the takeoff. The investigation determined that the cause of the vibration most likely resulted from a broken fork end on the rudder trim tab actuator that connects the trim tab to the trim tab actuator due to severe corrosion. We are issuing this AD to detect and correct corrosion and cracking on the rudder trim tab actuator terminal, which could cause the terminal to fail and result in loss of control of the airplane.
>
> Since this condition may exist in other airplanes of the same type and affects flight safety, an immediate corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit without prior notice.

This AD requires inspection of the rudder trim tab actuator components to detect discrepancies and corrosion on the rudder trim tab actuator components and, if any discrepancy exists, repair before further flight is required. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0740.

Relevant Service Information

Empresa Brasileira de Aeronautica S. A. (EMBRAER) has issued EMBRAER Alert Service Bulletin SB No.: 110–27–A095, dated August 21, 2014. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

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 corrosion and cracking on the rudder trim tab actuator terminal could cause the terminal to fail and result in loss of control. Since this condition may exist in other airplanes of the same type and affects flight safety, an immediate corrective action is required. 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–2014–0740; Directorate Identifier 2014–CE–030–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic,

environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will affect 21 products of U.S. registry. We also estimate that it would take about 4.5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $50 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $9,082.50, or $432.50 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $485, for a cost of $740 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify 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 AD:

2014–20–05 Empresa Brasileira de Aeronautica S. A. (EMBRAER): Amendment 39–17978; Docket No. FAA–2014–0740; Directorate Identifier 2014–CE–030–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 27, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Empresa Brasileira de Aeronautica S. A. (EMBRAER) Models EMB–110P1 and EMB–110P2 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion and cracking on the rudder trim tab actuator terminal. We are issuing this AD to detect and correct corrosion and cracking on the rudder trim tab actuator terminal, which could cause the terminal to fail and result in loss of control.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) through (f)(2) of this AD:

(1) Within the next 10 hours time-in-service (TIS) after October 27, 2014 (the effective date of this AD) or 15 days after October 27, 2014 (the effective date of this AD), whichever occurs first, and repetitively thereafter at intervals not to exceed 60 months, do a detailed inspection to detect discrepancies and corrosion on the rudder trim tab actuator components. Follow the Accomplishment Instructions of Embraer Alert Service Bulletin (ASB) 110–27–A095, original issue, dated August 21, 2014.

(2) If any discrepancy is found during any inspection required in paragraph (f)(1) of this AD, before further flight, repair or replace the discrepancy, as necessary, following Accomplishment Instructions of Embraer Alert Service Bulletin (ASB) 110–27–A095, original issue, dated August 21, 2014.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *Jim.Rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, 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.

(h) Related Information

Refer to MCAI Agência Nacional de Aviação Civil (ANAC) AD No.: 2014–09–01, dated September 4, 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–2014–0740.

(i) Material Incorporated by Reference

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

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

(i) EMBRAER Alert Service Bulletin SB No.: 110–27–A095, dated August 21, 2014.

(ii) Reserved.

(3) For Empresa Brasileira de Aeronautica S. A. (EMBRAER) service information identified in this AD, contact Embraer-S.A., EFTC-Service Bulletin Engineering, Avenida Brigadeiro Faria Lima, 2170, São José dos Campos-SP-12227-901, Brasil; phone: +55 12 3927 1000; fax: +55 12 3927–6600 (ext. 1624); email: *fleet.reliability@embraer.com.br;* internet: *http://www.flyembraer.com.*

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

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

Issued in Kansas City, Missouri on September 24, 2014.

Monica L. Nemecek,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23555 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0438; Directorate Identifier 2014–CE–015–AD; Amendment 39–17985; AD 2014–20–12]

RIN 2120–AA64

Airworthiness Directives; Alexandria Aircraft LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 75–20–06 for certain Alexandria Aircraft LLC (type certificate previously held by Bellanca Aircraft Corp., Viking Aviation, Inc., and Bellanca, Inc.) Models 14–19–3A, 17–30, 17–30A, 17–31, 17–31A, 17–31ATC, and 17–31TC airplanes. AD 75–20–06 required repetitively inspecting the aft fuselage structure near the top of the vertical side tubing, which connects the horizontal stabilizer carry-through to the upper fuselage longeron, for cracks and installing the manufacturer's service repair kit as a terminating action for the repetitive inspections to repair any cracks found. Since we issued AD 75–20–06, we have determined that installing the service kit has not prevented cracks from occurring. We have also determined that all affected airplane serial numbers should be included in the Applicability section. This AD requires continued repetitive inspections of the aft fuselage structure near the top of the vertical side tubing for cracks and making all necessary replacements of cracked parts. This AD also adds additional serial number airplanes to the Applicability section. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective November 12, 2014 November 12, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 12, 2014.

ADDRESSES: For service information identified in this AD, contact Alexandria Aircraft LLC, 2504 Aga Drive, Alexandria, MN 5630; phone: (320) 763–4088; fax: (320) 763–4095; Internet: *www.bellanca-aircraft.com;* email: *partsales@bellanca-aircraft.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0438; 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 Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Steven Rosenfeld, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, IL 60018; phone: (847) 294–7030; fax: (847) 294–7834; email: *steven.rosenfeld@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 75–20–06, Amendment 39–2372 (40 FR 43484, September 22, 1975, (''AD 75–20–06''). AD 75–20–06 applied to certain Alexandria Aircraft LLC (type certificate previously held by Bellanca Aircraft Corp., Viking Aviation, Inc., and Bellanca, Inc.) Models 14–19–3A, 17–30, 17–30A, 17–31, 17–31A, 17–31ATC, and 17–31TC airplanes. The NPRM published in the **Federal Register** on July 2, 2014 (79 FR 37679). The NPRM was prompted by reports that cracks are still being found in the vertical side fuselage tube (F.S. 7) in the area near the upper fuselage longeron on airplanes that have had Bellanca Kit SK1234789–0004 installed, which is a terminating action for the repetitive inspections required in AD 75–20–06. The NPRM proposed to retain the inspection requirements of AD 75–20–06, remove the terminating action allowed in AD 75–20–06, and change the applicability to include all serial numbers. We are issuing this AD to correct the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 37679, July 2, 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 37679, July 2, 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 37679, July 2, 2014).

Costs of Compliance

We estimate that this AD affects 847 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
Inspecting the horizontal stabilizer fuselage attachment tube and carry-thru tube support bracket (retained actions from AD 75–20–06).	1 work-hour × $85 per hour = $85.	Not applicable	$85	$71,995

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of the horizontal stabilizer fuselage attachment tube and carry-thru tube support bracket.	30 work-hours × $85 per hour = $2,550.	$575	$3,125

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) 75–20–06, Amendment 39–2372 (40 FR 43484, September 22, 1975), and adding the following new AD:

2014–20–12 Alexandria Aircraft LLC: Amendment 39–17985; Docket No. FAA–2014–0438; Directorate Identifier 2014–CE–015–AD.

(a) Effective Date

This AD is effective November 12, 2014.

(b) Affected ADs

This AD supersedes AD 75–20–06, Amendment 39–2372 (40 FR 43484, September 22, 1975, (''AD 75–20–06'')).

(c) Applicability

This AD applies to Alexandria Aircraft LLC (type certificate previously held by Bellanca Aircraft Corp., Viking Aviation, Inc., and Bellanca, Inc.) Models 14–19–3A, 17–30, 17–30A, 17–31, 17–31A, 17–31ATC, and 17–31TC airplanes, all serial numbers (S/Ns), certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports that cracks are still being found in the vertical side fuselage tube (fuselage station 7) in the area near the upper fuselage longeron on airplanes that have had Bellanca Kit SK1234789–0004 installed, which is a terminating action for the repetitive inspections required in AD 75–20–06. We are issuing this AD to detect and correct cracks in either vertical side fuselage tube (F.S. 7), which is adjacent to the horizontal stabilizer carry-through, in the area near the upper fuselage longeron to prevent failure of the horizontal stabilizer. This failure could cause reduced structural integrity of the fuselage and result in loss of control.

(f) Compliance

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

(g) Inspection

(1) *Models 14–19–3A and 17–31A, S/Ns 32–15 through 76–32–163; Models 17–30 and 17–30A, S/Ns 30263 through 76–30811; and Models 17–31, 17–31TC, and 17–31ATC, S/Ns 30004, and 31004 through 76–31124 (airplanes previously affected by AD 75–20–06)*: Within the next 100 hours time-in-service (TIS) after the last inspection completed by AD 75–20–06 or within the next 25 hours TIS after November 12, 2014 (the effective date of this AD), whichever occurs later, and repetitively thereafter at intervals not to exceed 100 hours TIS, visually inspect the aft fuselage truss for cracks as specified in paragraph 4. INSPECTION of Alexandria Aircraft LLC

Bellanca Service Letter 85, Revision B, dated April 8, 2004.

(2) *Models 14–19–3A, 17–30, 17–30A, 17–31, 17–31A, 17–31ATC, and 17–31TC airplanes, all S/Ns not referenced in paragraph (g)(1) of this AD (airplanes not previously affected by AD 75–20–06):* Before or upon the accumulation of 300 hours TIS or within the next 25 hours TIS after November 12, 2014 (the effective date of this AD), whichever occurs later, and repetitively thereafter at intervals not to exceed 100 hours TIS, visually inspect the aft fuselage truss for cracks as specified in paragraph 4. INSPECTION of Alexandria Aircraft LLC Bellanca Service Letter 85, Revision B, dated April 8, 2004.

(h) Replacement

If cracks are found during any inspection required by paragraphs (g)(1) and (g)(2) of this AD, before further flight, replace the cracked parts with FAA-approved zero-time parts as specified in paragraph 5. REPAIR of Alexandria Aircraft LLC Bellanca Service Letter 85, Revision B, dated April 8, 2004.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved for AD 75–20–06, Amendment 39–2372 (40 FR 43484, September 22, 1975) are not approved as AMOCs for the corresponding provisions of this AD.

(j) Related Information

For more information about this AD, Steven Rosenfeld, Aerospace Engineer, FAA, Chicago ACO, 2300 East Devon Avenue, Room 107, Des Plaines, IL 60018; phone: (847) 294–7030; fax: (847) 294–7834; email: *steven.rosenfeld@faa.gov.*

(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 the AD specifies otherwise.

(i) Alexandria Aircraft LLC Bellanca Service Letter 85, Revision B, dated April 8, 2004.

(ii) Reserved.

(3) For Alexandria Aircraft LLC service information identified in this AD, contact Alexandria Aircraft LLC, 2504 Aga Drive, Alexandria, MN 5630; phone: (320) 763–4088; fax: (320) 763–4095; Internet: *www.bellanca-aircraft.com;* email: *partsales@bellanca-aircraft.com.*

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

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

Issued in Kansas City, Missouri, on September 26, 2014.

Kelly A. Broadway,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23559 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0494; Directorate Identifier 2014–CE–017–AD; Amendment 39–17986; AD 2014–20–13]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Pacific Aerospace Limited Model 750XL airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of the fin forward pickup due to possible fatigue cracks. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective November 12, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 12, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0494; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Pacific Aerospace Unlimited, Airport Road, Hamilton, Private Bag HN3027, Hamilton 3240, New Zealand, phone: +64 7 843 6144; fax: +64 7 843 6134; email: *pacific@aerospace.co.nz,* internet: *www.aerospace.co.nz.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *Karl.Schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to adding an AD that would apply to Pacific Aerospace Limited Model 750XL airplanes. The NPRM was published in the **Federal Register** on July 23, 2014 (79 FR 42721). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> To prevent failure of the fin forward pickup due to possible fatigue cracks, inspect the fitting per the instructions in Pacific Aerospace Limited Mandatory Service Bulletin (MSB) PACSB/XL/068 issue 3, dated 29 May 2014.
>
> If any cracks are found, replace both plates per PACSB/XL/068, before further flight.

The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0494-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request FAA Defer Inspections Until a Design Change Is Completed By Manufacturer

Philip Esdaile of Davis Air Repair, Inc, and Ray Ferrell requested the FAA defer inspections until a design change is completed by the manufacturer and then mandate the design change.

Philip Esdaile and Ray Ferrell stated that the inspection is labor intensive and significant damage can be done to the airplane by repeatedly removing the rudder and fin.

We partially agree with the commenter. Requiring a better engineering solution (design change) would allow longer inspection intervals and would cause less wear and tear on the airplane; however, such a design change is not available. The FAA will monitor the progress of the manufacturer's design change and, if considered an acceptable level of safety, consider additional rulemaking or approve it as an alternative method of compliance (AMOC).

We did not change the final rule AD action based on these comments.

Request a Less Intrusive Inspection Method

Kevin Kelly of Paraclete Aviation stated that the full inspection, as required by the MCAI, is too intrusive and over time causes unnecessary stress and damage to the airplane. The commenter believes that the intent of the inspection can be met by an alternative inspection.

We disagree with the commenter. The mandated inspection is specific; we cannot be certain that the alternative inspection proposed by Kevin Kelly is adequate. However, if someone submits substantiating data, the FAA will review and consider all AMOC requests we receive provided they follow the procedures in 14 CFR 39.19 and this AD.

We did not change the final rule AD action based on these comments.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the 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 42721, July 23, 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 42721, July 23, 2014).

Costs of Compliance

We estimate that this AD will affect 17 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,445, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take 5 work-hours and require parts costing $328, for a cost of $753 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0494; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–20–13 Pacific Aerospace Limited: Amendment 39–17986; Docket No. FAA–2014–0494; Directorate Identifier 2014–CE–017–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective November 12, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, all serial numbers, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of the fin forward pickup due to possible fatigue cracks. We are issuing this proposed AD to detect and correct cracked fin forward pickup fittings to prevent failure of the fin forward pickup.

(f) Actions and Compliance

Do the following actions as specified in paragraphs (f)(1) and (f)(2), including all subparagraphs, of this AD, unless already done:

(1) Inspect the fin forward pickup fittings for cracks on or before 2,000 hours total time-in-service (TTIS) or 150 hours time-in-service (TIS) after November 12, 2014 (the effective

date of this AD), whichever occurs later, and repetitively thereafter at intervals not to exceed 600 hours TIS or 12 months, whichever occurs first. Follow Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/068, issue 3, dated May 29, 2014.

Note 1 to paragraph (f)(1) of this AD: The MCAI mentions actions that are different for standard category versus restricted category airplanes. The Pacific Aerospace Limited Model 750XL airplane is only type certificated in the normal (standard) category in the United States so these are the actions that are specified in this AD.

(2) If you find any cracks as a result of any inspection required by paragraph (f)(1) of this AD, before further flight, replace both plates. Do the replacement following Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/068, issue 3, dated May 29, 2014.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *Karl.Schletzbaum@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

Refer to MCAI New Zealand Civil Aviation Authority (CAA) AD DCA/750XL/16A, dated June 18, 2014, for related information. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0494-0002.*

(i) Material Incorporated by Reference

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

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

(i) Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/068, issue 3, dated May 29, 2014.

(ii) Reserved.

(3) For Pacific Aerospace Limited service information identified in this AD, contact Pacific Aerospace Unlimited, Airport Road, Hamilton, Private Bag HN3027, Hamilton 3240, New Zealand, phone: +64 7 843 6144; fax: +64 7 843 6134; email: *pacific@aerospace.co.nz,* internet: *www.aerospace.co.nz.*

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

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

Issued in Kansas City, Missouri, on September 26, 2014.

Kelly A. Broadway,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23557 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0654; Directorate Identifier 2014–NM–071–AD; Amendment 39–17983; AD 2014–20–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–11–14 for certain The Boeing Company Model 777–200 and -300 series airplanes. AD 2013–11–14 required repetitive general visual inspections of the strut forward dry bay for the presence of hydraulic fluid, and related investigative and corrective actions (including checking drain lines for blockage due to hydraulic fluid coking, and cleaning or replacing drain lines to allow drainage) if necessary. This AD adds airplanes to the applicability. This AD was prompted by reports of hydraulic fluid contamination (including contamination caused by hydraulic fluid in its liquid, vapor, and/or solid (coked) form) found in the strut forward dry bay. We are issuing this AD to detect and correct hydraulic fluid contamination of the strut forward dry bay, which could result in hydrogen embrittlement of the titanium forward engine mount bulkhead fittings, and consequent inability of the fittings to carry engine loads, resulting in engine separation. Hydrogen embrittlement also could cause a through-crack formation across the fittings through which an engine fire could breach into the strut, resulting in an uncontained strut fire.

DATES: This AD is effective October 22, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 22, 2014.

We must receive any comments on this AD by November 21, 2014.

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

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

For service information identified in this AD, contact 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 the 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–2014–0654; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer,

Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On May 24, 2013, we issued AD 2013–11–14, Amendment 39–17474 (78 FR 35749, June 14, 2013), for certain The Boeing Company Model 777–200 and -300 series airplanes. AD 2013–11–14 required repetitive general visual inspections of the strut forward dry bay for the presence of hydraulic fluid, and related investigative and corrective actions (including checking drain lines for blockage due to hydraulic fluid coking, and cleaning or replacing drain lines to allow drainage) if necessary. AD 2013–11–14 resulted from reports of hydraulic fluid contamination (including contamination caused by hydraulic fluid in its liquid, vapor, and/or solid (coked) form) found in the strut forward dry bay. We issued AD 2013–11–14 to detect and correct hydraulic fluid contamination of the strut forward dry bay, which could result in hydrogen embrittlement of the titanium forward engine mount bulkhead fittings, and consequent inability of the fittings to carry engine loads, resulting in engine separation. Hydrogen embrittlement also could cause a through-crack formation across the fittings through which an engine fire could breach into the strut, resulting in an uncontained strut fire.

Actions Since AD 2013–11–14, Amendment 39–17474 (78 FR 35749, June 14, 2013) was Issued

Since we issued AD 2013–11–14, Amendment 39–17474 (78 FR 35749, June 14, 2013), we have received reports that a production change installed on certain airplanes that would have eliminated the need for the inspections required by AD 2013–11–14 could not be installed; therefore, the inspection of these airplanes is now necessary. We are issuing this AD to correct the unsafe condition on these products.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2014–0654.

FAA's Determination

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

AD Requirements

Although this AD does not explicitly restate the requirements of AD 2013–11–14, Amendment 39–17474 (78 FR 35749, June 14, 2013), this AD retains all of the requirements of AD 2013–11–14. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this AD. This AD continues to require repetitive general visual inspections of the strut forward dry bay for the presence of hydraulic fluid, and related investigative and corrective actions (including checking drain lines for blockage due to hydraulic fluid coking, and cleaning or replacing drain lines to allow drainage) if necessary, except as discussed under ''Differences Between this AD and the Service Information.'' This AD also adds airplanes to the applicability.

The phrase ''related investigative actions'' is used in this AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary actions, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between this AD and the Service Information

Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

FAA's Justification and Determination of the Effective Date

Since the airplanes added to the applicability are not on the U.S. Register, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2014–0654 and directorate identifier 2014–NM–071–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 54 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection per inspection cycle	5 work-hours × $85 per hour = $425 per inspection cycle.	$0	$425 per inspection cycle	$22,950 per inspection cycle.

Since none of the newly added airplanes is on the U.S. Register, the requirements of this AD add no additional economic burden.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Detailed inspection	16 work-hours × $85 per hour = $1,360	$0	$1,360
Check drain lines (including cleaning or replacing)	5 work-hours × $85 per hour = $425	$0	$425
Detailed inspection and high frequency eddy current inspection.	16 work-hours × $85 per hour = $1,360	$0	$1,360
Clean and restore sealant, primer, and leveling compound.	5 work-hours × $85 per hour = $425	$0	$425

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

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

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–11–14, Amendment 39–17474 (78 FR 35749, June 14, 2013), and adding the following new AD:

2014–20–10 The Boeing Company: Amendment 39–17983; Docket No. FAA–2014–0654; Directorate Identifier 2014–NM–071–AD.

(a) Effective Date

This AD is effective October 22, 2014.

(b) Affected ADs

This AD replaces AD 2013–11–14, Amendment 39–17474 (78 FR 35749, June 14, 2013).

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, equipped with Pratt & Whitney PW4000 series engines.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by reports of hydraulic fluid contamination (including contamination caused by hydraulic fluid in its liquid, vapor, and/or solid (coked) form) found in the strut forward dry bay. We are issuing this AD to detect and correct hydraulic fluid contamination of the strut forward dry bay, which could result in hydrogen embrittlement of the titanium forward engine mount bulkhead fittings, and consequent inability of the fittings to carry engine loads, resulting in engine separation. Hydrogen embrittlement also could cause a through-crack formation across the fittings through which an engine fire could breach into the strut, resulting in an uncontained strut fire.

(f) Compliance

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

(g) Inspection

At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, except as required by paragraph (h)(1) of this AD: Do a general visual inspection for hydraulic fluid contamination (including contamination caused by hydraulic fluid in its liquid, vapor, and/or solid (coked) form) of the interior of the strut forward dry bay, and do all applicable related investigative and corrective actions (including checking drain lines for blockage due to hydraulic fluid coking, and cleaning or replacing drain lines to allow drainage, as applicable), in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, except as required by paragraph (h)(2) of this AD. Repeat the inspection thereafter at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013. Do all applicable related investigative and corrective actions at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013.

(h) Exceptions to the Service Information

(1) Where the Compliance Time column of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, refers to the compliance time ''after the Revision 1 date of this service bulletin,'' this AD requires compliance after the effective date of this AD.

(2) Where Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, specifies to contact Boeing for repair: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, repair, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–54–0028, dated May 25, 2012.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved for AD 2013–11–14, Amendment 39–17474 (78 FR 35749, June 14, 2013), are approved as AMOCs for the corresponding provisions of this AD.

(k) Related Information

For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on October 22, 2014.

(i) Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013.

(ii) Reserved.

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

(5) You may view the 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.

(6) 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. 2014–23545 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0757; Directorate Identifier 2014–SW–030–AD; Amendment 39–17988; AD 2014–20–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters, Inc. (Previously Eurocopter France) Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are superseding airworthiness directive (AD) 2012–02–13 for certain Airbus Helicopters, Inc. (Airbus Helicopters) Model EC130B4 helicopters. AD 2012–02–13 required inspecting certain areas of the tailboom/Fenestron junction frame (junction frame) for a crack. This AD retains the requirements of AD 2012–02–13, expands the inspection area of the junction frame, and reduces the repetitive inspection interval. These actions are intended to detect a crack in the junction frame, which could result in detachment of the Fenestron and subsequent loss of control of the helicopter.

DATES: This AD becomes effective October 22, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of October 22, 2014.

We must receive comments on this AD by December 8, 2014.

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

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

Examining the AD Docket

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Discussion

On January 23, 2012, we issued AD 2012–02–13, Amendment 39–16936 (77 FR 5994, February 7, 2012), which required repetitively inspecting the right-hand side of the junction frame for a crack, and if there was a crack, replacing the tailboom before further flight.

AD 2012–02–13 was prompted by AD No. 2011–0116, dated July 6, 2011 (AD 2011–0116), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Eurocopter France (now Airbus Helicopters) Model EC130B4 helicopters. EASA advises of several reports of cracks in the junction frame developing in the plane of the rivet head countersink on the right-hand side of the Fenestron and spreading to the web of the frame. EASA further advises that this condition could lead to structural failure resulting in Fenestron detachment and subsequent loss of control of the helicopter. EASA AD 2011–0116 required compliance with Eurocopter's service information to repetitively inspect the affected area and depending on findings, accomplish corrective actions.

Actions Since AD 2012–02–13 Was Issued

Since we issued AD 2012–02–13, EASA has issued AD No. 2014–0114–E, dated May 8, 2014, which superseded EASA AD 2011–0116, for Airbus Helicopters Model EC130B4 helicopters, except those with Modification (MOD) 073880, those with MOD 074609, or those that have been repaired in accordance with certain Repair Design Approval Sheets. EASA advises that after issuing EASA AD 2011–0116, Airbus Helicopters developed MOD 074609, which limits the risk of cracks appearing on the junction frame, and revised its service information to expand the area of inspection. EASA AD 2014–0114–E requires repetitively inspecting the entire circumference of the junction frame for a crack, and also requires altering the helicopter in accordance with MOD 074609 as a terminating action for the repetitive inspections.

We have also determined that the repetitive inspection interval can be reduced to 40 hours time-in-service (TIS) as specified in the Airbus Helicopters service information.

FAA's Determination

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

Related Service Information

Airbus Helicopters, Inc. has published Emergency Alert Service Bulletin (EASB) No. 53A019, Revision 1, dated April 15, 2014 (EASB 53A019). EASB 53A019 describes procedures for inspecting the entire circumference of the junction frame from the inside and outside for cracks. If there is a crack, EASB 53A019 requires contacting Airbus Helicopters for approved repair instructions. Finally, if there is not a crack, EASB 53A019 requires altering the helicopter in accordance with MOD 074609 before December 12, 2017.

AD Requirements

This AD requires repetitively inspecting the circumference of the junction frame for a crack by complying with specified portions of the manufacturer's service bulletin, and replacing the junction frame if there is a crack. This AD also prohibits installing a tailboom without MOD 073880 on any helicopter.

Differences Between This AD and the EASA AD

The EASA AD allows for flights for a certain period of time with known cracks, while this AD does not permit operations with known cracks. The EASA AD allows for an initial inspection which does not require stripping the paint, and then stripping the paint prior to inspection within 110 flight hours. This AD mandates stripping the paint as part of the initial inspection. The EASA AD requires altering the helicopter with MOD 074609 before December 31, 2017, and this AD does not. The EASA AD requires contacting Airbus Helicopters for repair instructions if there is a crack, while this AD requires replacing the junction frame.

Costs of Compliance

We estimate that this AD affects 160 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. Inspecting the junction frame for a crack will require 1 work-hour at an average labor cost of $85 per hour, for a total cost per inspection cycle $85 per helicopter and $13,600 for the entire fleet. If required, replacing a tailboom will require 50 work-hours and required parts will cost $60,000, for a cost per helicopter of $64,250.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments before adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the cracks are in a primary structure of the helicopter that may prevent further safe flight and the required corrective actions must be accomplished within 10 hours TIS, a very short time period for the air tour and helicopter emergency medical services operations of these helicopters.

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

Authority for This Rulemaking

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

Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2012–02–13, Amendment 39–16936 (77 FR 5994, February 7, 2012), and adding the following new AD:

2014–20–15 Airbus Helicopters, Inc. (Previously Eurocopter France): Amendment 39–17988; Docket No. FAA–2014–0757; Directorate Identifier 2014–SW–030–AD.

(a) Applicability

This AD applies to Model EC130B4 helicopters that do not have Modification (MOD) 073880 incorporated, all serial numbers, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as cracks on the tailboom/Fenestron junction frame (junction frame). This condition could result in structural failure of the tailboom, detachment of the Fenestron, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 2012–02–13, Amendment 39–16936 (77 FR 5994, February 7, 2012).

(d) Effective Date

This AD becomes effective October 22, 2014.

(e) Compliance

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

(f) Required Actions

(1) Within 10 hours time-in-service (TIS):

(i) Inspect the right-hand side of the junction frame for cracks in the web from the inside as depicted in Details C and D of Figure 2 of Airbus Helicopters Emergency Alert Service Bulletin No. 53A019, Revision 1, dated April 15, 2014 (EASB).

(ii) Strip the paint around the entire circumference of the junction frame as depicted in Detail E of Figure 3 of the EASB. Apply a coat of primer to the stripped area. Apply varnish to the stripped area.

(iii) Inspect the stripped area of the frame for cracks from the outside.

(2) Thereafter at intervals not to exceed 40 hours TIS, inspect the frame by following the inspection requirements of paragraphs (f)(1)(i) and (f)(1)(iii) of this AD.

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

(4) Do not install a tailboom that does not incorporate MOD 073880 on any helicopter.

(g) Special Flight Permits

Special flight permits are prohibited.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2014–0114–E, dated May 8, 2014. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0757.

(j) Subject

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

(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 the AD specifies otherwise.

(i) Airbus Helicopters Emergency Alert Service Bulletin No. 53A019, Revision 1, dated April 15, 2014.

(ii) Reserved.

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

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

(5) You may view this service information that is incorporated by

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

Issued in Fort Worth, Texas, on September 22, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–23594 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0516; Directorate Identifier 2014–CE–021–AD; Amendment 39–17987; AD 2014–20–14]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2014–04–03 for all Pacific Aerospace Limited Model 750XL airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as broken control column attachment bolts failing in service. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective November 12, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 12, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0516; 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 20590.

For service information identified in this AD, contact Pacific Aerospace Limited, Hamilton Airport, Private Bag 3027 Hamilton 3240, New Zealand; telephone: +64 7 843 6144; fax: +64 7 843 6134; email: *pacific@aerospace.co.nz;* Internet: *http://www.aerospace.co.nz/.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to add an AD that would apply to all Pacific Aerospace Limited Model 750XL airplanes. That NPRM was published in the **Federal Register** on August 1, 2014 (79 FR 44722), and proposed to supersede AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014).

Since we issued AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014), Pacific Aerospace Limited revised the related service information.

The Civil Aviation Authority (CAA), which is the airworthiness authority for New Zealand, has issued AD DCA/750XL/15A, dated June 26, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for Pacific Aerospace Limited Model 750XL airplanes. The MCAI states:

> DCA/750XL/15A revised to mandate the embodiment of modification PAC/XL/0627 to the control column attachment per the instructions in Pacific Aerospace Limited Service Bulletin (SB) PACSB/XL/070 issue 2, dated 3 June 2014.

The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0516-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 44722, August 1, 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 the 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 44722, August 1, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 44722, August 1, 2014).

Costs of Compliance

We estimate that this AD will affect 17 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $200 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $12,070, or $710 per product.

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.

The cost difference between AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014), and this AD is the increase in work-hours from 1.5 to 6 and the increase in cost for parts from $100 to $200, for an overall cost difference on U.S. operators to be $8,202.50, or $482.50 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between

the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0516; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–17761 (79 FR 10344, February 25, 2014) and adding the following new AD:

2014–20–14 Pacific Aerospace Limited: Amendment 39–17987; Docket No. FAA–2014–0516; Directorate Identifier 2014–CE–021–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective November 12, 2014.

(b) Affected ADs

This AD supersedes AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014).

(c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as control column attachment bolts failing in service. We are issuing this AD to prevent failure of the control column attachment bolt, which could result in control column detachment and cause loss of control.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) and (f)(2) of this AD:

(1) As of February 24, 2014 (the effective date of AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014)), if the left hand and the right hand control column attachment bolts have been replaced following the ACCOMPLISHMENT INSTRUCTIONS in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/070, Issue 1, dated January 24, 2014, then within the next 150 hours time-in-service (TIS) after November 12, 2014 (the effective date of this AD), replace the left hand and the right hand control column attachment bolts following the ACCOMPLISHMENT INSTRUCTIONS in Pacific Aerospace Limited Service Bulletin PACSB/XL/070, Issue 2, dated June 3, 2014.

(2) As of February 24, 2014 (the effective date of AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014)), if the left hand and the right hand control column attachment bolts have not been replaced following the ACCOMPLISHMENT INSTRUCTIONS in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/070, Issue 1, dated January 24, 2014, then within the next 10 hours TIS after November 12, 2014 (the effective date of this AD), replace the left hand and the right hand control column attachment bolts following the ACCOMPLISHMENT INSTRUCTIONS in Pacific Aerospace Limited Service Bulletin PACSB/XL/070, Issue 2, dated June 3, 2014.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs):

(i) The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

(ii) AMOCS approved for AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014) are not approved as AMOCs for this AD.

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

(h) Related Information

Refer to MCAI Civil Aviation Authority (CAA) AD DCA/750XL/15A, dated June 26, 2014, and Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/070, Issue 1, dated January 24, 2014, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0516-0002.*

(i) Material Incorporated by Reference

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

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

(i) Pacific Aerospace Limited Service Bulletin PACSB/XL/070, Issue 2, dated June 3, 2014.

(ii) Reserved.

(3) For Pacific Aerospace Limited service information identified in this AD, contact Pacific Aerospace Limited, Hamilton Airport, Private Bag 3027 Hamilton 3240, New Zealand; telephone: +64 7 843 6144; fax: +64 7 843 6134; email: *pacific@aerospace.co.nz;* Internet: *http://www.aerospace.co.nz/.*

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

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

Issued in Kansas City, Missouri, on September 26, 2014.

Kelly A. Broadway,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23560 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1093; Directorate Identifier 2011–SW–020–AD; Amendment 39–17989; AD 2014–20–16]

RIN 2120–AA64

Airworthiness Directives; Brantly International, Inc. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Brantly International, Inc. (Brantly) Model B–2, Model B–2A, and Model B–2B helicopters with certain main rotor blades. This AD requires inspecting each main rotor (M/R) blade for a crack or delamination and removing the blade if a crack exists or if the delamination exceeds certain thresholds. This AD was prompted by multiple reports of M/R blade cracks and an incident in which a crack that originated near the M/R blade trailing edge resulted in the loss of a large section of the M/R blade. The actions of this AD are intended to prevent loss of the M/R blade and subsequent loss of control of the helicopter.

DATES: This AD is effective November 12, 2014.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of November 12, 2014.

ADDRESSES: For service information identified in this AD, contact Brantly International, Inc, 621 South Royal Lane, Suite 100, Coppell, Texas 75019, telephone (972) 829–4638, email *tarcher@superiorairparts.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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Senior Project Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; email *7-AVS-ASW-170@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On October 16, 2012, at 77 FR 63285, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Brantly Model B–2, Model B–2A, and Model B–2B helicopters, with an M/R blade, part number (P/N) 248–101, 248–202, or 248–404, installed. The proposed requirements were intended to prevent loss of the M/R blade and subsequent loss of control of the helicopter.

The NPRM was prompted by a 2007 incident in New Zealand in which a large inboard section of the M/R blade of a Brantly B–2B helicopter separated from the helicopter during flight. The pilot was able to land the helicopter without further damage. Laboratory analysis concluded that the M/R blade failure was caused by hydrocarbon contaminants inside the blade's skin-to-foam bond and that the fracture originated near the blade's trailing edge. There were three other reports of portions of M/R blades separating during flight and another five reports of M/R blades having cracks or other defects found during inspections.

Comments

After our NPRM (77 FR 63285, October 16, 2012), was published, we received comments from 10 commenters.

Request

Allow Some Cracking, Delamination, and Imperfections

Two commenters requested that the AD allow cracks in accordance with approved maintenance inspection procedures and criteria. Three commenters requested that the AD allow some delamination as provided for in Brantly's service information, which is up to 10 square inches of delamination outside of the inboard 12 inches of the M/R blade. Four commenters requested that some imperfections be allowed in the blades as listed in the approved factory maintenance inspection procedures. Some of these commenters stated that a small dent, nick, crease, wrinkle, or bend in the skin of the blade, especially in the middle or trailing edge, does not cause the blade to crack and is not necessarily a safety issue. These commenters expressed concern that many Brantly helicopters will be grounded because of slight imperfections in the main rotor blades that are not a safety issue.

We disagree with allowing any crack in a blade, but we agree the AD should allow some delamination and imperfections. A crack in a blade renders it unairworthy, and no data supports that any crack in these blades is a safe condition. Also, no supporting data justifies allowing 10 square inches of delamination to address the unsafe condition, and such a large area is not supported by any known industry standards. We are changing the AD, however, to allow up to 2 square inches of delamination outside of the inboard 12 inches. We are also removing the dent, nick, crease, wrinkle, bends, extra hole, and inadequate rivet spacing requirements from the AD. Although eliminating these conditions is good design practice, the data we have does not support that a crack in the Brantly rotor blade skins was caused by small dents, nicks, creases, wrinkles, bends, extra hole, or inadequate rivet spacing.

Remove Certain Blades From the Applicability

Two commenters requested that we remove blade P/Ns 248–101 and 248–202 from the applicability of the AD. These commenters did not believe the unsafe condition applies to these blades because they are significantly different in composition and bonding agent than the P/N 248–404 blade. The commenters stated the –101 and –202 blades develop cracks from improper maintenance, rigging, and operation.

We disagree. Failures and fractures have occurred in the field in the P/N 248–202 blades, and we have been provided with no supporting data that shows they occurred because of improper rigging, maintenance, or operation of the aircraft. Brantly, with help from a laboratory report written by a metallurgical engineering company, concluded that the M/R blade failure was caused by hydrocarbons contamination inside the blades' skin-to-foam bond and that the fractures originated near the trailing edge. The P/N 248–101 and P/N 248–404 blades are similar in construction to the P/N 248–202 blades, and thus are included and addressed in this AD. The AD does, however, address the blades separately by not requiring inspecting the P/N

248–404 blades until after 10 years or 1,000 hours time-in-service (TIS), instead of within 8 hours TIS like the other blades.

Eliminate or Change the Eddy Current Inspection Requirements

Eight commenters requested that we eliminate the eddy current inspection from the AD. Five commenters requested replacing the eddy current inspection with other types (visual, tap test, fluorescent or dye penetrant) of inspection. Some commenters said eddy current testing was impractical because it could not be done successfully at certain locations. Many commenters believed an eddy current inspection would not successfully detect a crack or would provide false readings. One commenter stated that the eddy current inspection would destroy the blade.

We disagree. An eddy current inspection is needed to detect a potential unsafe condition, and it is a reasonable, widely used, and cost-effective procedure. No alternate procedure has been provided that can address the unsafe condition as reliably. Visual or magnifying glass inspections are not as effective as eddy current inspections. The eddy current inspection procedure has been validated and is similar to other blade crack inspections. While there may be some false indication, these should be false positives, which can be re-evaluated. The procedure is a nondestructive inspection and if done correctly, will not destroy any blade. The procedure can be done in the field by a qualified inspector if the inspection area is clean, has proper lighting, and has the proper equipment. We have not been provided with any supporting data that justifies eliminating the eddy current inspection from the AD.

We do agree with one commenter who requested a visual inspection before the first flight of each day being performed by the helicopter owner or operator, since this is best accomplished as part of the other daily inspections and does not require tools. We also agree with reducing the scope of the eddy current inspection area to just the first inboard 12 inches because this is where the fractures have occurred. Eddy current inspecting the outboard area would not be effective in finding the unsafe condition. The AD reflects these changes.

Replace the Inspection Requirements

Two commenters suggested replacing the AD requirements with different requirements. One commenter requested a mandatory inspection to identify those main rotor blades not produced or repaired using an FAA approved quality system or materials or processes. The commenter believed such blades alone may contain the unsafe condition due to unapproved blade spars and hinge blocks. Another commenter proposed a check of all used blades because the unsafe condition is caused by incorrect installation of the blade damper units.

We disagree. The lab report concluded that the M/R blade failure was caused by hydrocarbons contamination inside the blades' skin-to-foam bond and that the fracture originated near the trailing edge. No data supports a conclusion that the spar or hinge block were unapproved or that the rivet hole edge distance or pattern caused the unsafe condition. Also, no data shows that the damper caused the unsafe condition and thus an initial check for improper damper installation is not merited. There is history that the incident helicopter may have had quick starts and that the dampers had to be replaced, but the quick starts and damper issues have not been substantiated to be the root cause.

Allow Routine Maintenance To Correct The Unsafe Condition

Five commenters stated that routine maintenance inspections are sufficient to detect a crack in the blades. One commenter requested that a revision to the Brantly Service Bulletin would correct the blade problem and provided suggested content.

We disagree. The failures that have occurred in the field show that the blades have an unsafe condition and that the current routine maintenance and inspection procedures do not have adequate methods to address it. The procedures in the commenter's suggested revision of the service bulletin are also inadequate to address the unsafe condition because those procedures do not include a necessary eddy current inspection and allow too much duration between magnifying glass inspections. Additionally, the FAA does not have the authority to require Brantly to revise its service information with a specific maintenance procedure. Rather, we correct an unsafe condition by mandating certain actions through an AD.

Withdraw the NPRM Because There Is No Unsafe Condition

One commenter requested we withdraw the AD for more analysis and testing of the blades. The commenter questioned the data and analyses relied upon to conclude an unsafe condition exists on these blades and suggested the FAA has insufficient information upon which to make its determination. The commenter stated the FAA should determine the precise root cause and the exact serial number series of affected blades before issuing an AD. Another commenter requested that we perform ''a verification and validation on actual Brantly helicopter blades'' before issuing the AD. Four commenters stated that no blade failures have caused an accident or loss of life and that the blade problem that prompted this AD resulted from the aircraft owner's improper maintenance.

We disagree. Improper maintenance and operation has not been shown to be the root cause of the blade failures. The root cause of the failures has been demonstrated by Brantly with help from a laboratory report written by a metallurgical engineering company. The report took into account stresses and loading and determined that skin fracture was propagated by corrosion fatigue and mechanical fatigue. The report concluded that the M/R blades failure was caused by hydrocarbons contamination inside the blades' skin-to-foam bond and that the fracture originated near the trailing edge.

Additional information about the data and analyses we relied upon in issuing this AD includes the following. The original blades were certificated using a crack initiation methodology (e.g., using the S–N curves and Miner's Rule). Shortly after certification, a fatigue test was accomplished on the mid-span of the spar and skin. Stereomicroscopy, wavelength dispersive X-ray spectroscopy, combustion testing, tensile testing, peel testing, scanning electron microscopy, micro Fourier infrared spectroscopy, and hardness testing were all performed to determine the causes of the delamination and crack propagation. An M/R blade failure analysis, risk analysis, cost analysis, and economic analysis were performed before we issued the NPRM. The failures were found in the skin-to-foam bond and in the skin and rivets at the rivet joints attaching the skin to the hinge block and/or spar. The cracks originated near the skins' trailing edge and propagated between rivet holes and into the leading edge rivet holes. These rivets carry shear between the hinge block and skin and the spar and skin. Per the laboratory report, the bonding material between the skin to foam was 3M 1239 & 3M 11239A, the foam core was Stafoam AA604, the type of rivets were AA1100, and the blade was P/N 248–202. No serial number sequence has been determined or is needed since only the part numbers are necessary to identify the applicable blades.

We also disagree that loss of life or significant damage to an aircraft must

occur for us to determine that there is an unsafe condition. Because it is a critical component, failure of an M/R blade could have catastrophic consequences. However, the commenters are correct that the event in New Zealand was classified as an incident instead of an accident because the helicopter landed without further damage. We have revised the preamble of this AD to reflect this change.

Blade Repairs

One commenter requested the FAA license a certified repair center to rebuild the blades if they crack before the spar and hinge-block have reached their life limit. Another commenter asked us to approve a blade re-skinning or repair process instead of the blade replacement requirement in the AD. Three commenters stated that no replacement blades exist, and therefore if the AD is adopted as proposed, it will ground all flying Brantly helicopters until a source for new blades is found or a facility is certified to re-build the blades.

We disagree. We are unaware of any approved process specification or data to rebuild or re-skin blades to an airworthy condition. Assuming such a process does exist, requiring a repair center to rebuild or re-skin the blades is beyond the authority of the FAA. To the extent spare blades may not exist to replace blades that fail the inspection requirements of this AD, the FAA cannot base its AD action on whether spare parts are available or can be produced. While every effort is made to avoid grounding aircraft, we must address the unsafe condition.

Issue an SAIB

One commenter requested that we issue a special airworthiness information bulletin (SAIB) with certain visual inspection and maintenance procedures and provided proposed contents.

We disagree. An SAIB contains non-mandatory information and guidance for certain safety issues. The SAIB is an information tool to alert, educate, and make recommendations to the aviation community about ways to improve the safety of a product. An SAIB may not be issued where there is an unsafe condition. The FAA has data supporting its determination that an unsafe condition exists with the specified Brantly main rotor blades.

We also disagree with the proposed SAIB contents. No supporting data has been provided demonstrating how the proposed inspection and maintenance practices would stop the blade skins from cracking or delaminating from the foam core because of random overload events and improper operation. Also, no supporting data has been provided that shows that an improperly manufactured or installed hinge block caused the unsafe condition. The proposed SAIB content also eliminates the necessary eddy current inspection and reduces the 10x magnifying glass inspection, which we have determined are necessary to correct the unsafe condition.

Training Programs

One commenter requested education and training for maintenance providers, operators, and owners with respect to the blades. Specifically, the commenter wanted the training to include the significance of the placards, type certificate data sheet (TCDS) instructions, and operating limitations. The commenter stated that Brantly helicopters are safe and attributed the blade failures to lack of education and proper maintenance and operation of the aircraft and its components.

We disagree. Individuals responsible for maintaining and operating an airworthy helicopter are required to know the significance of placards, TCDS instructions, and operating limitations. While additional training may be beneficial, we have no information to suggest that it would correct the unsafe condition.

FAA's Determination

We have reviewed the relevant information, considered the comments received, and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed with the changes described previously. We have also made minor editorial changes in referencing the service information to meet current publishing requirements. These changes are consistent with the intent of the proposals in the NPRM (77 FR 63285, October 16, 2012) and will not increase the economic burden on any operator nor increase the scope of the AD.

Related Service Information

We reviewed Brantly International Inc. Service Bulletin No. 111, dated February 10, 2011 (SB 111). The bulletin describes procedures for inspecting the M/R blades at intervals not to exceed 300 hours TIS using Eddy Current Procedure ET002, performing a visual inspection using a 10X power magnifying glass, and conducting a tap test every 25 hours TIS and a visual inspection of the M/R blades before the first flight of the day.

Differences Between This AD and the Service Information

SB–111 requires accomplishment of sections 1 and 2 before further flight. The AD requires them to be completed within 8 hours TIS. SB–111 allows up to 10 square inches of delamination outside of the inboard 12 inches of the M/R blade. The AD only allows up to 2 square inches of delamination outside of the inboard 12 inches of the M/R blade. SB–111 requires inspecting for nicks, creases, wrinkles, bends, additional holes, extra rivets, and inadequate rivet spacing and replacing the blade if any of these conditions are found. The AD only requires inspecting for a crack and delamination and replacing the blade if there is a crack or if there is delamination in certain areas or exceeding a certain amount. SB–111 calls for eddy current inspections of the entire blade. The AD requires eddy current inspections for cracks only within the inboard 12 inches. Lastly, SB–111 specifies a daily inspection of the M/R blade. We are making a change from the NPRM to allow an owner/operator (pilot) holding at least a private pilot certificate to perform a daily check of the M/R blade. The performance of the check is required to be entered into the aircraft's maintenance records showing compliance with this AD in accordance with applicable regulations. This authorization marks an exception to our standard maintenance regulations.

Costs of Compliance

We estimate that this AD affects 76 helicopters of U.S. registry. We estimate the following costs to comply with this AD, using an average of $85 per work-hour:

- For the visual check before the first flight of each day, we estimate that it requires about one half work-hour for a labor cost of about $43 per inspection cycle. No parts are needed, so the total cost for the U.S. fleet is $3,268.
- For the eddy current inspection, we estimate that it requires about three work-hours for a labor cost of $255 per inspection cycle. No parts are needed, so the total cost for the 76-helicopter U.S. fleet is $19,380 per inspection cycle.
- For the visual inspection with the magnifying glass and the tap inspection, we estimate that it requires about three work-hours for a labor cost of $255 per inspection cycle. No parts are needed, so the total cost for the U.S. fleet is $19,380 per inspection cycle.
- Replacing an M/R blade, if needed, requires about two work-hours for a labor cost of $170. An M/R blade costs

$7,500 for a total cost of $7,670 per helicopter, assuming one M/R blade is replaced.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–20–16 Brantly International, Inc.: Amendment 39–17989; Docket No. FAA–2012–1093; Directorate Identifier 2011–SW–020–AD.

(a) Applicability

This AD applies to the Brantly International, Inc., (Brantly) Model B–2, Model B–2A, and Model B–2B helicopters, with a main rotor (M/R) blade, part number (P/N) 248–101, 248–202, or 248–404, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack or delamination in an M/R blade. This condition could result in loss of an M/R blade and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective November 12, 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 first flight of each day, visually check the top and bottom of each M/R blade for a crack. Pay particular attention to the M/R blade root area, the area around the lead/lag damper mounting fork, and the trailing edge. These actions may be performed by the owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(2) Within 8 hours time-in-service (TIS), for a helicopter with an M/R blade, P/N 248–101 or P/N 248–202, and for a helicopter with an M/R blade P/N 248–404 with 10 or more years or 1,000 or more hours TIS, whichever occurs first, remove each M/R blade and:

(i) Using an inspector qualified to the American Society for Nondestructive Testing (ASNT) Level II or equivalent, eddy current inspect each M/R blade for a crack in accordance with paragraph 4 and paragraphs 7 through 17 of Brantly International B–2 Main Rotor Blade Root Skin Inspection Technique Number ET002, dated November 2007 (technique), except this AD only requires you to inspect the inboard first 12 inches of the top and bottom of each blade.

Note 1 to paragraph (e)(2)(i) of this AD: A copy of the Technique is attached to Brantly International, Inc., Service Bulletin No. 111, dated February 10, 2011 (SB 111).

(ii) Thereafter, at intervals not to exceed 300 hours TIS or five calendar years, whichever occurs first, repeat the eddy current inspection in accordance with the requirements of paragraph (e)(2)(i) of this AD.

(iii) Using a metallic coin or tap hammer, tap inspect each M/R blade for delamination in the bonded areas as shown on SB–111, Section 4. Pay particular attention to the root area in the first 12 inches of the top and bottom of each M/R blade.

(iv) Using a 10X or higher power magnifying glass, visually inspect the top and bottom of each M/R blade for a crack.

(v) Thereafter, at intervals not to exceed 25 hours TIS, repeat the tap inspection in accordance with the requirements of paragraph (e)(2)(iii) of this AD and the visual inspection using a 10X or higher power magnifying glass in accordance with the requirements of paragraph (e)(2)(iv) of this AD.

(3) Before further flight, remove from service any M/R blade with a crack, delamination within the inboard 12 inches, or total delamination greater than 2 square inches outside the inboard 12 inches.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Marc Belhumeur, Senior Project Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; email *7-AVS-ASW-170@faa.gov.*

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

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6210, Main Rotor Blade.

(h) 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) Brantly International B–2 Main Rotor Blade Root Skin Inspection, Technique Number ET002, dated November 1, 2007.

(ii) Brantly International Inc., Service Bulletin No. 111, dated February 10, 2011.

(3) For Brantly service information identified in this AD, contact Brantly International, Inc., 621 South Royal Lane, Suite 100, Coppell Texas, 75019, telephone (972) 829–4638, email *tarcher@superiorairparts.com.*

(4) You may view this service information at FAA, Office of the Regional Counsel,

Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on September 19, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–23592 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL–9917–26–OAR]

Official Release of the MOVES2014 Motor Vehicle Emissions Model for SIPs and Transportation Conformity

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is approving and announcing the availability of the Motor Vehicle Emissions Simulator model (MOVES2014) for official use outside of California. MOVES2014 is the latest state-of-the art upgrade to EPA's modeling tools for estimating emissions from cars, trucks, buses, and motorcycles, based on the latest data and regulations. MOVES2014 is approved for use in state implementation plans (SIPs) and transportation conformity analyses outside of California. This notice starts a two-year grace period before the MOVES2014 emission model is required to be used in new regional emissions analyses and new hot-spot analyses for transportation conformity determinations outside of California.

DATES: EPA's approval of the MOVES2014 emissions model for SIPs and transportation conformity analyses in states other than California is effective October 7, 2014. This approval also starts a two-year transportation conformity grace period that ends on October 7, 2016, after which MOVES2014 is required to be used for new transportation conformity analyses outside of California.

FOR FURTHER INFORMATION CONTACT: For technical model questions regarding the official release or use of MOVES2014, please email EPA at *mobile@epa.gov.* For questions about SIPs, contact Rudy Kapichak at *Kapichak.Rudolph@epa.gov* or (734)214–4574. For transportation conformity questions, contact Astrid Larsen at *larsen.astrid@epa.gov* or (734)214–4812.

SUPPLEMENTARY INFORMATION: The contents of this document are as follows:

I. General Information
II. What is MOVES2014?
III. SIP Policy for MOVES2014
IV. Transportation Conformity and MOVES2014

I. General Information

A. Does this action apply to me?

Entities potentially impacted by the approval of MOVES2014 are those that adopt, approve, or fund transportation plans, transportation improvement programs (TIPs), or projects under title 23 U.S.C. or title 49 U.S.C. Chapter 53 and those that develop and submit SIPs to EPA. Regulated categories and entities affected by this action include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the release of MOVES. Other entities not listed in the table could also be affected. To determine whether your organization is affected by this action, you should carefully examine the transportation conformity applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get copies of MOVES2014 and other related information?

The official version of the MOVES2014 model, along with user guides and supporting documentation, are available on EPA's MOVES Web site: *www.epa.gov/otaq/models/moves/index.htm.*

Individuals who wish to receive EPA announcements related to the MOVES2014 model should subscribe to the EPA-MOBILENEWS email listserv. To subscribe to the EPA-MOBILENEWS listserv, send a blank email to EPA at *join-EPA-MOBILENEWS@lists.epa.gov.* Your email address will then be added to the list of subscribers and a confirmation message will be sent to your email address. For more information about the EPA-MOBILENEWS listserv, visit EPA's Web site at *www.epa.gov/otaq/models/mobilelist.htm.*

Available guidance on how to apply MOVES2014 for SIPs and transportation conformity purposes can be found on EPA's transportation conformity Web site, *http://www.epa.gov/otaq/stateresources/transconf/policy.htm*,[1] including ''Policy Guidance on the Use of MOVES2014 for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' (EPA–420–B–14–008, July 2014).

EPA will continue to update these Web sites as other MOVES support materials and guidance are developed or updated.

II. What is MOVES2014?

MOVES2014 is EPA's latest motor vehicle emissions model for state and local agencies to estimate volatile organic compounds (VOCs), nitrogen oxides (NO_X), particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and other precursors from cars, trucks, buses, and motorcycles for SIP purposes and conformity determinations outside of California.[2] The model is based on analyses of millions of emission test results and considerable advances in the Agency's understanding of vehicle emissions. The first model in the MOVES series, called MOVES2010, was

[1] Interested parties can find these documents under either the ''Emission Model and Conformity'' or ''Project-Level Conformity'' topics on this Web site.

[2] Nonattainment and maintenance areas located in California use the latest approved version of the Emission FACtor (EMFAC) model.

released in December of 2009. MOVES2010 was followed by two minor updates, MOVES2010a and MOVES2010b. Both of these minor MOVES2010 revisions enhanced model performance and did not significantly affect the criteria pollutant emissions results from MOVES2010.

MOVES2014 is a major revision to MOVES2010b and improves upon it in many respects. MOVES2014 includes new data, new emissions standards, and new functional improvements and features. It incorporates substantial new data for emissions, fleet, and activity developed since the release of MOVES2010. These new emissions data are for light- and heavy-duty vehicles, exhaust and evaporative emissions, and fuel effects. MOVES2014 also adds updated vehicle sales, population, age distribution, and vehicle miles travelled (VMT) data.

MOVES2014 incorporates the effects of three new federal emissions standard rules not included in MOVES2010:

- Medium- and heavy-duty engine and vehicle greenhouse gas emission and fuel efficiency standards (promulgated September 2011, 76 FR 57106) began phasing in with the 2014 model year, and will result in lower medium- and heavy-duty engine and vehicle energy consumption rates and some reduction in criteria pollutant emissions as a result of improved aerodynamics and rolling resistance.
- Light-duty vehicle greenhouse gas emission and Corporate Average Fuel Economy standards (promulgated October 2012, 77 FR 62623) will begin phasing in with the 2017 model year, and will result in decreased energy consumption rates and decreased refueling emissions.
- Tier 3 vehicle emission and fuel standards (promulgated April 2014, 79 FR 23414) will begin phasing in with the 2017 model year, and will reduce both tailpipe and evaporative emissions of VOC, NO_X, CO, and PM from light-duty cars and trucks, and some heavy-duty vehicles.

MOVES2014 also includes a number of new functional improvements and features. Some of these, such as the addition of multi-day diurnal events to evaporative emissions calculations, directly affect the estimation of criteria pollutant emissions. Others, such as new options for entering start and extended idle activity, make MOVES2014 more flexible and better able to incorporate local data where available.

EPA performed a comparison of MOVES2014 to MOVES2010b using local data for several different urban counties, varying the local data used by fleet age distribution, fraction of light- and heavy-duty VMT, local fuel specifications, meteorology, and other input factors. In general, VOC, NO_X, PM, and CO emissions show greater decreases over time compared to MOVES2010b. Differences in total emissions vary by calendar year and location, but in general, VOC and NO_X emissions are lower in MOVES2014. PM emissions may be higher in some areas and lower in others. Actual results will vary based on local inputs in a given area, with local variations in fleet age distribution and composition having a significant influence on the final results.

MOVES2014 includes the capability to estimate vehicle exhaust and evaporative emissions as well as brake wear and tire wear emissions for criteria pollutants and precursors. However, MOVES does not include the capability to estimate emissions of re-entrained road dust. To estimate emissions from re-entrained road dust, practitioners should continue to use the latest approved methodologies.[3]

MOVES2014 also incorporates the code and database for the NONROAD2008 model, which provides the option of calculating emissions of nonroad equipment. Because the nonroad capability in MOVES2014 is essentially the same as NONROAD2008, either MOVES2014, NONROAD2008, or the nonroad portion of NMIM2008 (which incorporates NONROAD2008) can be used in analyses to meet any regulatory requirements that call for the development of new nonroad inventories.[4]

III. SIP Policy for MOVES2014

EPA has articulated its policy regarding the use of MOVES2014 in SIP development in its ''*Policy Guidance on the Use of MOVES2014 for State Implementation Plan Development, Transportation Conformity, and Other Purposes*'' (EPA–420–B–14–008, July 2014). This document highlights certain aspects of the guidance, but state and local governments should refer to the guidance for more detailed information on how and when to use MOVES2014 in reasonable further progress SIPs, attainment demonstrations, maintenance plans, inventory updates, and other SIP submissions.

MOVES2014 should be used in ozone, CO, PM, and nitrogen dioxide (NO_2) SIP development as expeditiously as possible, as there is no grace period for the use of MOVES2014 in SIPs. The Clean Air Act requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP is developed.[5] However, EPA also recognizes the time and level of effort that certain states may have already undertaken in SIP development using a version of MOVES2010. States should consult with their EPA Regional Office if they have questions about how MOVES2014 affects SIPs under development in specific nonattainment or maintenance areas. Early consultation can facilitate EPA's adequacy finding for SIP motor vehicle emissions budgets or EPA's SIP approval.

States should use the latest version of MOVES that is available at the time that a SIP is developed, which is currently MOVES2014 to develop the most accurate estimates of emissions possible. However, state and local agencies that have already completed significant work on a SIP with a version of MOVES2010 (e.g., attainment modeling has already been completed with MOVES2010) can continue to do so. It would be unreasonable to require the states to revise these SIPs with MOVES2014 since significant work has already occurred based on the latest information available at the time the SIP was developed, and EPA intends to act on these SIPs in a timely manner.

The Clean Air Act does not require states that have already submitted SIPs or will submit SIPs shortly after the release of a new model to revise these SIPs simply because a new motor vehicle emissions model is now available. This is supported by existing EPA policies and case law [*Sierra Club* v. *EPA,* 356 F.3d. 296, 307–08 (D.C. Cir. 2004)]. Of course, states can choose to use MOVES2014 in these SIPs, for example, if it is determined that it is appropriate to update motor vehicle emissions budgets (''budgets'') with the model for future conformity determinations. However, as stated above, states should use MOVES2014 where SIP development is in its initial stages or has not progressed far enough along that switching from a previous model version would create a significant adverse impact on state resources.

[3] See EPA's notice of availability, ''Official Release of the January 2011 AP–42 Method for Estimating Re-Entrained Road Dust from Paved Roads'', published in the **Federal Register** on February 4, 2011 (76 FR 6328) available on EPA's Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm#models.* In addition to the latest version of AP–42, EPA approved-alternative local methods can be used for estimating re-entrained road dust.

[4] This is an available option although not explicitly mentioned in the ''Policy Guidance on the Use of MOVES2014 for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' (EPA–420–B–14–008, July 2014).

[5] See Clean Air Act section 172(c)(3) and 40 CFR 51.112(a)(1).

Incorporating MOVES2014 into the SIP now could assist areas in mitigating possible transportation conformity difficulties in the future after the MOVES2014 conformity grace period ends. New regional conformity analyses that are started after the grace period is over must be based on MOVES2014 (40 CFR 93.111), so having MOVES2014-based SIP budgets in place at that time could provide more consistency with transportation conformity determinations.

IV. Transportation Conformity and MOVES2014

In this document, EPA is approving MOVES2014 for use in transportation conformity analyses outside of California. EPA is also establishing a two-year conformity grace period before the use of MOVES2014 is required in these transportation conformity determinations. The MOVES2014 grace period for regional conformity and hot-spot analyses applies to the use of MOVES2014 and any future minor revisions that occur during the grace period.[6]

Transportation conformity is a Clean Air Act requirement to ensure that federally supported highway and transit activities are consistent with (''conform to'') the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new air quality violations; worsen existing violations; or delay timely attainment of national ambient air quality standards or any interim milestones. Transportation conformity applies in nonattainment and maintenance areas for transportation-related pollutants: ozone, CO, $PM_{2.5}$, PM_{10} and NO_2. EPA's transportation conformity regulations (40 CFR parts 51.390 and 93 subpart A) describe how federally funded and approved highway and transit projects meet these statutory requirements.

The remainder of this section describes how the transportation conformity grace period was determined and summarizes how it will be implemented, including those circumstances when the grace period could be shorter than two years. However, for complete explanations of how MOVES2014 is to be implemented for transportation conformity, including details about using MOVES2014 during the grace period, refer to ''*Policy Guidance on the Use of MOVES2014 for State Implementation Plan Development, Transportation Conformity, and Other Purposes*'' (EPA–420–B–14–008).

[6] A minor revision would be one that is made to improve performance but does not change results.

A. Why is EPA establishing a two-year conformity grace period?

The transportation conformity regulation at 40 CFR 93.111 requires that conformity determinations be based on the latest motor vehicle emissions model approved by EPA. Section 176(c)(1) of the Clean Air Act states that ''. . . [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates. . . .'' When EPA approves a new emissions model such as MOVES2014, a grace period is established before the model is required for conformity analyses. The transportation conformity rule provides for a grace period for new emissions models of between three and 24 months (40 CFR 93.111(b)(1)), depending on the degree of change in the model and the transportation re-planning by the MPO likely to be necessary.

EPA articulated its intentions for establishing the length of a conformity grace period in the preamble to the 1993 transportation conformity rule (November 24, 1993, 58 FR 62211):

''EPA and DOT [the Department of Transportation] will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an opportunity to revise their SIPs before MPOs must use the model's new emissions factors.''

In consultation with DOT, EPA considered many factors in establishing the length of the grace period, including the degree of change in emissions models and the effects of the new model on the transportation planning process (40 CFR 93.111).

EPA considered the time it will take state and local transportation and air quality agencies to conduct and provide technical support for analyses. State and local agencies will need to become familiar with the MOVES2014 emissions model, and to convert existing data for use in MOVES2014. Since 1993, the fundamental purpose of § 93.111(b) of the transportation conformity rule has been to provide a sufficient amount of time for MPOs and other state and local agencies to learn and employ new emissions models. The transition to a new emissions model for conformity involves more than learning to use the new model and preparing input data and model output. After model start-up is complete, state and local agencies also need to consider how the model affects regional conformity analysis results and whether SIP and/or transportation plan/TIP changes are necessary to assure future conformity determinations.

The two-year conformity grace period is also necessary to provide sufficient time for state and local agencies to learn and apply new technical guidance and training courses that reflect MOVES2014. EPA is working diligently to update these guidance documents and training courses as quickly as possible. EPA will notify MOVES2014 users when these important materials are available, and subsequently, EPA will also work with DOT to provide training for current and new users of the model. Training courses are anticipated to be provided in the form of webinars, other web-based courses, conference seminars, or in-person training. Courses will be developed to address different levels of State and local expertise.

In addition, many agencies will be implementing the transition to PM and CO hot-spot analyses with MOVES2014 for applicable projects in those nonattainment and maintenance areas, with each analysis potentially involving multiple state and local agencies. States with previously approved CO hot-spot protocols (40 CFR 93.123(a)(1)) that are based on a previous model will need time to revise them. As stated above, additional time is necessary to revise previously approved SIPs, and the SIP revision process and state requirements can vary. Finally, EPA considered the general time and monetary resource constraints in which state and local agencies currently operate. These agencies need to participate in EPA and DOT training and possibly provide training to other individuals in their offices.

Upon considerations of all these factors, EPA is establishing a two-year grace period, which begins October 7, 2014 and ends on October 7, 2016, before MOVES2014 is required to be used for new transportation conformity analyses, outside of California.

B. Circumstances When Grace Period Will Be Shorter Than Two Years

The grace period for regional conformity analyses will be shorter than two years for a given pollutant if an area revises its SIP and motor vehicle emissions budgets with MOVES2014, and such budgets have been found adequate or approved into the SIP prior to the end of the two-year grace period. In this case, the new regional emissions analysis must use MOVES2014 if the conformity determination is based on a MOVES2014-based budget (40 CFR 93.111).

Areas that are designated nonattainment or maintenance for multiple pollutants may rely on both MOVES2014 and MOVES2010[7] to determine conformity for different pollutants during the grace period. For example, if an area revises a previously submitted (but not approved) MOVES2010-based PM_{10} SIP with MOVES2014 and EPA finds these revised MOVES2014 budgets adequate for conformity, such budgets would apply for conformity on the effective date of the **Federal Register** notice announcing EPA's adequacy finding. In this example, if the area is nonattainment for PM_{10} and ozone, the MOVES2014 grace period would end for PM_{10} regional conformity analyses once EPA found the new MOVES2014-based SIP budgets adequate for PM_{10} regional conformity analyses begun after the effective date of adequacy finding. However, MOVES2010 could continue to be used for ozone regional emissions analysis begun before the end of the MOVES2014 grace period.[8] In addition, the length of the grace period for hot-spot analyses would not be affected by an early submission of MOVES2014-based budgets. In this example, the two-year grace period for PM_{10} hot-spot analyses would continue to apply even if the grace period is shortened for regional PM_{10} conformity analyses. EPA Regional Offices should be consulted for questions regarding such situations in multi-pollutant areas.

In addition, in most cases, if an area revises previously approved MOBILE or MOVES2010-based SIP budgets using MOVES2014, the revised MOVES2014 budgets would be used for conformity purposes once EPA approves the SIP revision. In general, EPA will not make adequacy findings for these SIPs because submitted SIPs cannot supersede approved budgets until they are approved. However, 40 CFR 93.118(e)(1) allows an approved budget to be replaced by an adequate budget if EPA's approval of the initial budgets specifies that the budgets being approved may be replaced in the future by new adequate budgets. This flexibility has been used in limited situations in the past, such as during the transition from MOBILE5 to MOBILE6. In such cases, the MOVES2014-based budgets would be used for conformity purposes once they have been found adequate, if requested by the state in its SIP submission and specified in EPA's SIP approval. States should consult with their EPA Regional Office to determine if this flexibility applies to their situation.

C. Use of MOVES2014 for Regional Conformity Analyses During the Grace Period

During the conformity grace period, areas should use interagency consultation to examine how MOVES2014 will impact their future transportation plan and TIP conformity determinations, including regional emissions analyses. Isolated rural areas should also consider how future regional conformity analyses will be affected when MOVES2014 is required. Areas should carefully consider whether the SIP and budgets should be revised with MOVES2014 or if transportation plans and TIPs should be revised before the end of the conformity grace period, since doing so may be necessary to ensure conformity in the future.

Finally, the transportation conformity rule provides some flexibility for completing conformity determinations based on regional emissions analyses that use MOVES2010 that are started before the end of the grace period. Regional emissions analyses that are started during the grace period can use either MOVES2010 or MOVES2014. The interagency consultation process should be used if it is unclear if a MOVES2010-based analysis was begun before the end of the grace period. If you have questions about which model should be used in your conformity determination, you can also consult with your EPA Regional Office.

When the grace period ends on October 7, 2016, MOVES2014 will become the only approved motor vehicle emissions model for regional emissions analyses for transportation conformity in states other than California. In general, this means that all new transportation plan and TIP conformity determinations started after the end of the grace period must be based on MOVES2014, even if the SIP is based on MOVES2010, MOBILE6.2, or an older version of the MOBILE model.

D. Use of MOVES2014 for Project-Level Hot-Spot Analyses During the Conformity Grace Period

The MOVES2014 grace period also applies to the use of MOVES2014 for CO, PM_{10} and $PM_{2.5}$ hot-spot analyses. Sections 93.116 and 93.123 of the transportation conformity rule contain the requirements for when a hot-spot analysis is required for project-level conformity determinations.[9] The transportation conformity rule provides some flexibility for analyses that are started before the end of the grace period. A conformity determination for a transportation project may be based on a previous model if the analysis was begun before or during the grace period, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document (40 CFR 93.111(c)). Interagency consultation should be used if it is unclear if a previous analysis was begun before the end of the grace period. For CO, PM_{10} and $PM_{2.5}$ hot-spot analyses that start during the grace period, project sponsors can choose to use MOVES2010 or MOVES2014.

EPA encourages sponsors to use the consultation process to determine which option may be most appropriate for a given situation. Any new CO, PM_{10} or $PM_{2.5}$ hot-spot analyses for conformity purposes begun after the end of the grace period must be based on MOVES2014. EPA released guidance on how to conduct quantitative $PM_{2.5}$ and PM_{10} hot-spot modeling for transportation conformity purposes and will update it to include MOVES2014. See EPA's Project-level *Web page*[10] for latest information and guidance documents on how to conduct CO, PM_{10} and $PM_{2.5}$ hot-spot modeling for transportation conformity purposes.

Any quantitative new CO, PM_{10} or $PM_{2.5}$ hot-spot analysis for conformity purposes begun after the end of the grace period must use MOVES2014. The interagency consultation process should be used if it is unclear whether these conditions are met. For questions about which model should be used in a project-level conformity determination, consult with your EPA Regional Office.

E. FHWA's CO Categorical Hot-Spot Finding

Since FHWA's February 2014 CO categorical hot-spot finding[11] for projects affecting intersections is based on MOVES2010b, a project sponsor can

[7] In the remainder of this notice, ''MOVES2010'' refers to all of the MOVES2010 models: MOVES2010, MOVES2010a, and MOVES2010b.

[8] In this example, such an area would use MOVES2014 to develop a regional emissions analysis for comparison to the revised MOVES2014-based budgets (*e.g.,* PM_{10} budgets). The regional emissions analysis for ozone could be based on MOVES2010 for the VOC and NOx budgets in the ozone SIP for the remainder of the conformity grace period.

[9] In CO nonattainment and maintenance areas, a hot-spot analysis is required for all non-exempt projects, with quantitative hot-spot analyses being required for larger, congested intersections and other projects (40 CFR 93.123(a)(1)). In addition, the transportation conformity rule requires that a quantitative PM_{10} or $PM_{2.5}$ hot-spot analysis be completed for certain projects of local air quality concern (40 CFR 93.123(b)(1)).

[10] See *http://www.epa.gov/otaq/stateresources/transconf/projectlevel-hotspot.htm.*

[11] Section 93.123(a)(3) of the transportation conformity rule allows DOT, in consultation with EPA, to make a categorical hot-spot finding for certain projects based on appropriate modeling.

continue to rely on this categorical finding during the grace period, as long as the project's parameters fall within the acceptable range of modeled parameters of the categorical hot-spot finding. See *http://www.epa.gov/otaq/stateresources/transconf/projectlevel-hotspot.htm#fhwa* for additional details. Any new CO hot-spot analyses for conformity purposes begun after the end of the grace period may no longer rely on the February 2014 CO categorical hot-spot finding because the finding was based on MOVES2010b.

F. Previously Approved CO SIP Hot-Spot Protocols

Section 93.123(a)(1) of the transportation conformity rule allows areas to develop alternate procedures for determining localized CO hot-spot analyses, when developed through interagency consultation and approved by the EPA Regional Administrator. Some states have chosen in the past to develop such procedures based on previously approved EPA emissions models.

During the MOVES2014 grace period, areas with previously approved CO hot-spot protocols based on MOVES2010 may continue to rely on these protocols. Areas with previously approved CO hot-spot protocols based on MOBILE6.2 or earlier MOBILE versions can no longer be used, and should have been discontinued at the end of the previous MOVES2010 grace period. Once the MOVES2014 grace period ends, any new CO hot-spot analyses for conformity purposes begun after the end of the grace period may no longer use their previously approved CO hot-spot protocols that were based on MOVES2010.

Dated: September 22, 2014.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2014–23258 Filed 10–6–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0615; FRL–9916–95–Region 9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen (NO_X) emissions from natural gas-fired water heaters, small boilers, and process heaters. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on December 8, 2014 without further notice, unless EPA receives adverse comments by November 6, 2014. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0615, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

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

Table of Contents

I. The State's Submittal
- A. What rule did the State submit?
- B. Are there other versions of this rule?
- C. What is the purpose of the submitted rule?

II. EPA's Evaluation and Action
- A. How is EPA evaluating the rule?
- B. Does the rule meet the evaluation criteria?
- C. EPA recommendations to further improve the rule
- D. Public comment and final action

III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
PCAPCD	247	Natural Gas-Fired Water Heaters, Small Boilers and Process Heaters	02/13/14	05/13/14

On July 18, 2014, EPA determined that the submittal for PCAPCD Rule 247 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 247 in the SIP, although the PCAPCD adopted an earlier version of this rule on October 10, 2013. CARB did not submit that version to us.

C. What is the purpose of the submitted rule?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. PCAPCD Rule 247 establishes NO_X limits for water heaters, boilers, and process heaters. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see CAA section 110(a)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). CAA section 172(c)(1) requires nonattainment areas to implement all reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable.[1] In ozone nonattainment areas classified as moderate or above, the SIP must require RACT for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of volatile organic compounds (VOCs) or nitrogen oxides (NO_X) (see CAA sections 182(b)(2) and (f)). The PCAPCD regulates an ozone nonattainment area classified as severe for the 1-hour, 1997 8-hour and 2008 8-hour ozone NAAQS (see 40 CFR Part 81.305), so RACT applies to this area. PCAPCD Rule 247 does not, however, regulate a group of sources covered by a CTG document, or any source that emits above the major source threshold of 25 tons per year for NO_X in this area (see section 182(d) and (f)(1)). Therefore, the section 182 NO_X RACT requirement does not apply to PCAPCD Rule 247.

In $PM_{2.5}$ nonattainment areas classified as moderate or above, the SIP must include provisions to assure the implementation of RACM for the control of $PM_{2.5}$ no later than 4 years after designation of the area to moderate (see CAA section 189(a)(1)). Portions of PCAPCD are classified moderate nonattainment for the 2006 $PM_{2.5}$ NAAQS (see 40 CFR Part 81.305), so the RACM requirement in CAA section 189(a)(1) also applies to this area.

Guidance and policy documents that we use to evaluate enforceability, RACM and RACT requirements consistently include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.

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

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

5. ''Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers'' EPA, March 1994.

6. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,'' CARB, July 18, 1991.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT and SIP revisions. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it satisfies all applicable requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by November 6, 2014, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 8, 2014. This will incorporate the rule into the federally enforceable SIP.

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

III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely

[1] EPA generally takes action on a RACM demonstration as part of our action on the State's attainment demonstration for the relevant NAAQS, based on an evaluation of the control measures submitted as a whole and their overall potential to advance the applicable attainment date in the area.

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference IBR, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 5, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(441)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(441) * * *

(i) * * *

(B) * * *

(*2*) Rule 247, ''Natural Gas-Fired Water Heaters, Small Boilers and Process Heaters,'' amended February 13, 2014.

* * * * *

[FR Doc. 2014–23876 Filed 10–6–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 602

[Docket No. FTA–2013–0004]

RIN 2132–AB13

Emergency Relief Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures governing the implementation of the Federal Transit Administration's (FTA) Public Transportation Emergency Relief Program as authorized by the Moving Ahead for Progress in the 21st Century Act.

DATES: This final rule becomes effective on November 6, 2014.

FOR FURTHER INFORMATION CONTACT: For program issues: Adam Schildge, Office of Program Management, 1200 New Jersey Ave. SE., Room E44–420, Washington, DC 20590, phone: (202) 366–0778, or email, *Adam.Schildge@dot.gov*. For legal issues: Bonnie Graves, Office of Chief Counsel, same address, Room E56–306, phone: (202) 366–4011, or email, *Bonnie.Graves@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141) authorized the Public Transportation Emergency Relief Program at 49 U.S.C. 5324. The Emergency Relief Program allows FTA, subject to the availability of appropriations, to make grants for eligible public transportation capital and operating costs in the event of a catastrophic event, such as a natural disaster, that affects a wide area, as a result of which the Governor of a State has declared an emergency and the Secretary of Transportation has concurred, or the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, 42 U.S.C. 5121–5207).

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2), enacted on January 29, 2013, provides $10.9 billion for FTA's Emergency Relief Program solely for recovery, relief and resilience efforts in areas affected by Hurricane Sandy. The law required FTA to issue interim regulations (an interim final rule) for the Emergency Relief Program, which FTA did on March 29, 2013 (*See*

78 FR 19136, *http://www.gpo.gov/fdsys/pkg/FR-2013-03-29/pdf/2013-07271.pdf*). FTA requested comments on the interim regulations, and in this notice FTA is addressing the comments received.

This final rule applies to FTA's Emergency Relief Program, authorized at 49 U.S.C. 5324, and is not limited to Hurricane Sandy response. The rule includes a description of eligible projects, the criteria FTA will use to identify projects for funding, and additional details on how FTA will administer the program.

Authority

Section 5324(a)(2) of title 49, United States Code, defines an ''emergency'' as a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause, as a result of which—

- The Governor of a State has declared an emergency and the Secretary has concurred; or
- the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Section 5324(b) of title 49, United States Code, authorizes the Secretary to make grants and enter into contracts and other agreements (including agreements with departments, agencies, and instrumentalities of the Government) for—

- Capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system operating in the United States or on an Indian reservation that the Secretary determines is in danger of suffering serious damage, or has suffered serious damage, as a result of an emergency; and
- eligible operating costs of public transportation equipment and facilities in an area directly affected by an emergency during—
  - ○ the 1-year period beginning on the date of a declaration; or
  - ○ if the Secretary determines there is a compelling need, the 2-year period beginning on the date of a declaration.

In addition, section 5324(d) provides that a grant awarded under section 5324 shall be subject to the terms and conditions the Secretary determines are necessary, and made only for expenses that are not reimbursed under the Stafford Act. Accordingly, FTA will not fund project expenses that the Federal Emergency Management Agency (FEMA) has funded.

Interim Final Rule and Request for Comments

FTA issued the interim final rule and request for comments on March 29, 2013. The interim final rule, which took effect immediately upon publication, and on which FTA sought comment, included definitions, policy, and eligibility, as well as provisions regarding federal share and pre-award authority, grant requirements and application procedures.

Summary Discussion of Comments Received in Response to the Interim Final Rule

The comment period closed on May 28, 2013. FTA received comments from eight entities: five transit agencies, two transportation workers union organizations, and one public transportation trade association. Several comments were outside the scope of the rulemaking and are therefore not addressed in this notice. For example, some comments were specific to Hurricane Sandy response or to the Disaster Relief Appropriations Act, which provided funding for Hurricane Sandy response. Where appropriate, FTA reached out to commenters to address those concerns. Comments pertaining to the rulemaking are addressed in this notice.

In addition, FTA intends to issue an Emergency Relief Manual or Circular later this year that will provide more detail than what is provided in the regulation. Therefore, FTA will address some of the comments by providing guidance in the Manual or Circular rather than including text in this rule. FTA will provide interested stakeholders with notice and an opportunity to provide comment on the Emergency Relief Manual.

General Comments

In addition to the regulatory text, the interim final rule sought comments on several specific issues: (1) The possibility of imposing a minimum monetary damage threshold for FTA Emergency Relief grants, including the most appropriate method to calculate such a minimum monetary damage threshold; (2) the specificity of the term ''forecast with some certainty to hit the affected area,'' which under the interim final rule triggers the availability of pre-award authority for evacuations and activities to protect public transportation assets in predictable weather events; (3) the appropriate extent of a benefit-cost analysis in the context of emergency repairs, permanent repairs, and resilience projects, including the extent of risk analysis appropriate for resilience projects, as well as methods for evaluating collateral costs resulting from a decrease in overall transit infrastructure capacity; and (4) whether applications for Emergency Relief should incorporate requirements of Section 1315(b) of MAP–21, which requires a periodic evaluation to determine whether there are reasonable alternatives to roads, highways, or bridges that have repeatedly required repair or reconstruction in the past as a result of emergencies or major disasters. The comments and FTA responses are in the section-by-section discussion of comments, below.

Section-by-Section Discussion of Comments

Section 602.1 Purpose

Two commenters suggested amending the purpose section. One commenter suggested removing the term ''serious'' in relation to the damage suffered, noting that currently FEMA allows reimbursement for minor and major damages, while the proposed FTA Emergency Relief program could make minor costs ineligible, requiring the transit agency to incur the costs or apply to FEMA. The commenter also noted the potential lack of eligibility for damage from terrorist acts, as such acts would not qualify as a ''natural disaster,'' and might also not meet the definition of a ''catastrophic failure.'' To address this issue, the commenter suggested including ''manmade disasters'' within the scope of this section's purpose. Another commenter recommended that the eligibility requirements for resilience projects include projects that enhance network resilience and redundancy, and not just those projects that narrowly target the physical location of a specific piece of infrastructure. The commenter suggested that the regulatory language listing ''protection, replacement, repair or reconstruction'' should be amended to, for example, ''protection, replacement, repair, *redundant capability, relief,* or reconstruction of public transportation equipment, facilities, *capacity or networks.* . . .'' The commenter expressed specific concern about island communities and the need to access the mainland via multiple means, particularly if bridges and tunnels are impacted by an emergency or disaster.

FTA declines to make the suggested changes to this section. The language included in this section comes directly from the statute, which provides that FTA may fund ''capital projects to protect, repair, reconstruct or replace

equipment and facilities of a public transportation system . . . that the Secretary determines is in danger of suffering serious damage or has suffered serious damage, as a result of an emergency.'' In addition, FTA interprets ''catastrophic failure from an external cause'' to include manmade disasters.

As for redundancy, FTA agrees that the resilience of a transit system is dependent in part on the availability of backup systems or facilities for critical functions, such as communications, signaling, and power; and that potential alternative service configurations made possible by the availability of redundant infrastructure, such as backup storage, maintenance, or fueling facilities, can significantly improve a transit system's emergency response and recovery efforts, while maintaining service to the public. In so far as projects to construct or install such infrastructure contribute to the protection of the equipment or facilities of a transit system, they may be eligible for funding under this program. Projects that would increase overall system capacity, such as the acquisition of vehicles or construction of infrastructure for permanent additional routes, may increase the overall resilience of a transit system, but would generally not be eligible under this program. In the event a transit agency or community has identified, through the planning process, a need for additional public transit services that may be redundant of existing services, other sources of funds, such as FTA formula funds or Capital Investment Grant program (section 5309) funds, are more appropriate for this purpose, because the primary benefit of ''redundant'' services would be to provide new capacity on a daily basis—not just in the case of a future emergency that cannot be predicted in terms of time, location, or magnitude.

Section 602.3 Applicability

FTA did not receive any comments on this section, and is not amending this section.

Section 602.5 Definitions

Four entities submitted comments on several of the proposed definitions. The comments and agency responses are sorted by each definition, as follows:

''Building'' and ''Contents Coverage.'' FTA is adding these two definitions, which are consistent with FEMA's National Flood Insurance Program definitions at 44 CFR 59.1, for purposes of FTA's policy on insurance, further discussed in section 602.7, Policy. In particular, for the definition of ''building,'' FEMA requires flood insurance for ''manufactured homes'' and includes these in the definition of building as structures ''built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation.'' Federal transit recipients often use manufactured or modular office trailers that meet this definition. Therefore, we have included office trailers in the definition of building.

''Catastrophic Failure.'' Two commenters expressed concern over the provision that a catastrophic failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance. While both commenters agreed that damage caused by lack of maintenance should not be eligible under the Emergency Relief program, they asserted that the phrase as formulated presents a risk of subjectivity and ambiguous eligibility standards. One of the commenters said that the distinction should be based on the ability to link damages and related costs to the disaster, using, for example, maintenance records, photographs, and/or engineering assessments linking damage to the event. The other commenter said that FTA should clarify the criteria and process it proposes to apply in determining whether a catastrophic failure has been experienced.

FTA disagrees that the definition is ambiguous, and notes that catastrophic failure must be read with the definition of ''external cause.'' The spontaneous collapse of a transit bridge, not due to external cause, would be primarily attributable to gradual and progressive deterioration or lack of proper maintenance or to a design flaw. A transit bridge that collapses as a result, for example, of being hit by a vehicle or an act of terrorism collapses due to an external cause. In order to be eligible for Emergency Relief funds, the failure must be the result of an external cause. In the event it is not clear whether the failure of an asset is due to an external cause or to an inherent defect in or lack of maintenance of the asset, FTA will consider maintenance records, photographs, and/or engineering assessments.

''Emergency Operations.'' Two commenters addressed the definition of ''emergency operations.'' One commenter suggested that since the term ''emergency operations'' includes bus or ferry service to replace inoperable rail service or to detour around damaged areas, the definition should also include the deployment of rail service via alternate routes for the same purpose. Another commenter requested that the list of emergency operations include any costs incurred as a result of any memorandum of understanding (MOU) and/or any memorandum of agreement (MOA) that transit agencies may establish pre- or post-disaster.

The definition of ''Emergency Operations'' in the interim final rule for temporary service stated ''including but not limited to . . .'' various types of temporary service. Deployment of rail service via alternate routes would fit within the ''Emergency Operations'' definition as a relocation of public transportation route service before, during, or after an emergency. For clarity, FTA is amending the final rule definition to provide that ''bus, ferry or rail service to replace inoperable service or to detour around damaged areas,'' is an eligible expense. Regarding the second comment, costs incurred as a result of an MOU and/or MOA that a transit agency may establish pre- or post-disaster would be eligible only to the extent that the costs related to evacuation services; rescue operations; temporary public transportation service; or reestablishing, expanding, or relocating public transportation route service before, during, or after an emergency.

''Emergency Protective Measures.'' One commenter requested that FTA depart from FEMA standards under 44 CFR 206.228(a)(2)(iii) and allow regular time as well as standby costs within the definition of emergency protective measures, as these costs were allowed for Hurricane Sandy response. The commenter opined that FEMA's practice of disallowing regular time for in-house personnel rewards applicants who outsource emergency work to contractors, and may not be conducive to restoring transportation in a timely manner in part because a third-party contractor may not have the same expertise or availability as in-house employees or be available. Further, the commenter stated that standby costs are unavoidable during emergency evacuation, reverse evacuation, and transportation restoration. Pre-positioning of resources is part of effective storm planning, and this commenter's labor agreements, for example, require bus operators to be paid for standby time. Finally, the commenter recommended that the definition be revised to include operating costs as well as capital costs for projects undertaken immediately before, during, or after an emergency.

Although this comment was submitted in reference to the definition of ''Emergency Protective Measures,'' FTA believes that some of the commenter's concerns over regular time and standby costs are addressed within

the definition of ''Emergency Operations.'' The definitions of ''Emergency Operations'' and ''Emergency Protective Measures'' are complementary: ''Emergency Operations'' encompasses operating costs and ''Emergency Protective Measures'' encompasses costs related to protecting assets and infrastructure. In general, the purpose of the Emergency Relief program is to reimburse affected recipients for extraordinary costs related to an emergency or major disaster. Regular time—as opposed to overtime—is not an extraordinary cost. However, the operating costs the commenter describes relating to regular time and standby costs would be eligible for reimbursement as long as they satisfied the definition of ''Emergency Operating Costs,'' i.e., costs relating to evacuation service; rescue operations; temporary public transportation service; or reestablishing, expanding, or relocating public transportation route service before, during, or after an emergency. Similarly, operating costs incurred to perform emergency protective measures, such as relocating rolling stock, sandbagging and debris removal, would be eligible for reimbursement.

''Emergency Repairs.'' Two commenters expressed concern that the definition of emergency repairs was limited to projects undertaken immediately following the emergency or major disaster. One commenter noted emergency repairs could be delayed for weeks or even months. The other commenter stated that once service is restored, significant time may be needed before permanent repairs are made, requiring interim or temporary repairs conducted in the meantime. The commenter suggested an additional definition for ''interim repairs'' or ''temporary repairs'' to accommodate this circumstance.

In response to comments, FTA is removing the word ''immediately'' from the definition. Since emergency repairs may be either temporary or permanent, we have retained the term ''emergency repairs,'' but added an additional purpose of emergency repairs: to ensure service can continue to be provided until permanent repairs are made. This will allow interim or temporary repairs to fit within the definition of emergency repairs.

''Incident Period.'' FTA is adding a definition for ''incident period:'' the time interval during which the emergency-causing incident occurs. This definition is relevant with regard to pre-award authority, as FTA will not approve pre-award authority for projects unless the damage to be alleviated resulted from the emergency-causing incident during the incident period or was incurred in anticipation of that incident. The reason for this additional definition is to have consistency with FEMA's definition of ''incident period'' at 44 CFR 206.32(f). For each Stafford Act incident, FTA will adopt the incident period established by FEMA. The term is used in section 602.11, Pre-Award Authority, and replaces the phrase, ''the effective date of a declaration of emergency or major disaster.''

''Major Disaster.'' One commenter suggested that the definition of ''major disaster'' conflicts with the definitions of ''resilience'' and ''resilience projects.'' The commenter recommended substituting the term ''multi-hazard'' for the term ''natural catastrophe'' to encompass manmade disasters.

Congress defined ''Major Disaster'' in the Stafford Act, at 42 U.S.C. 5122(2), and FTA includes that definition in the rule without change. Due to the coordination between FEMA, FTA, and Emergency Relief recipients contemplated within the final rule, FTA believes it is prudent to maintain the interim final rule's inclusion of the statutory definition of ''Major Disaster.''

''Net Project Cost.'' One commenter suggested that the term ''net'' should be removed and the definition revised since the proposed definition does not stipulate if all costs incurred, including indirect costs, are eligible. FTA notes that Federal cost principles apply to all FTA grants and indirect costs are eligible consistent with those principles. These and other administrative requirements for all FTA programs, including the Emergency Relief program, are explained in FTA Circular 5010.1D, Grant Management Requirements. (*See, http://www.fta.dot.gov/legislation_law/12349_8640.html*).

''Resilience.'' FTA is making minor edits to this definition in order for the definition to be consistent with Executive Order 13653, Preparing the United States for the Impacts of Climate Change, Nov. 1, 2013.

''Resilience Project.'' Several commenters expressed concern with the proposed definition of ''resilience project.'' Three of the commenters proposed deleting any reference to whether a future disaster is ''likely to occur.'' Some commenters noted that a given disaster may be unlikely to occur, but resilience principles encompass protections against unlikely events as well. One commenter suggested that ''resilience project'' should include the word ''sustainability,'' to align with FEMA's support of the Department of Housing and Urban Development (HUD) program goals, including combining hazard mitigation objectives with the community development objectives, which include livability, sustainability, and social equity values.

To the extent the eligibility of resilience projects is tied to Emergency Relief funds following a specific event, FTA believes it is important to note probable occurrence or recurrence as a factor in determining eligibility for these projects. In response to comments, FTA is slightly modifying the definition to state, ''. . . due to a probable occurrence or recurrence of an emergency or major disaster in the geographic area . . .'' FTA will provide additional guidance on this in our proposed Emergency Relief Manual, which we intend to publish later this year. Since the primary purpose of resilience projects is to provide protection to transit infrastructure so the taxpayers do not repeatedly pay to replace the same assets, FTA declines to add ''sustainability'' to the definition of resilience project.

Section 602.7 Policy

Several commenters provided comments to this section. One commenter repeated an earlier suggestion to include manmade disasters in the relevant sections of the final rule. One commenter highlighted the connection between the interim final rule and FTA's anticipated regulations regarding transit asset management and a definition of ''state of good repair,'' and repeated a suggestion for a high-level definition of ''state of good repair.''

As stated previously, FTA interprets ''catastrophic failure from an external cause'' to include manmade disasters. As for the definition of state of good repair, FTA recently published an advance notice of proposed rulemaking (ANPRM) requesting comments on a definition of ''state of good repair.'' (78 FR 61251, Oct. 3, 2013, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-10-03/pdf/2013-23921.pdf*). The comment period has closed, but FTA encourages interested stakeholders to review the notice of proposed rulemaking when it becomes available. For purposes of the Emergency Relief program, until FTA has published a program-wide definition, we will use the definition provided in the May 29, 2013, **Federal Register** notice (78 FR 32296) announcing the allocation of Hurricane Sandy relief funds: ''a project is considered to bring the transit assets up to a 'state of good repair' if it consists of the installation of comparable equipment that meets the same basic

function, class, or capacity of the equipment replaced and also meets current technological or design standards, or a like-new condition.''

Regarding paragraph (c), which provides that recipients may include projects that increase the resilience of affected public transportation systems in conjunction with repair and reconstruction activities, two commenters supported the overall policy goal and provided further suggestions. One commenter requested clarification that resilience and reconstruction work can be done in conjunction without being part of the same project or contract. In addition, one commenter asked whether near-term, temporary resilience projects designed to protect against the possibility of an event, such as hurricane season, would be eligible under the Emergency Relief program. If funds become available for FTA to allocate for resilience projects, such near-term projects may be eligible on a case-by-case basis.

In some cases, it will make sense to do resilience projects as part of the same repair/reconstruction contract or project, and in other cases it may be more appropriate for the resilience work to be done under a separate contract or project. The language in the rule is flexible enough to allow either scenario.

Regarding paragraph (e), one commenter requested further clarification regarding allocation of global insurance proceeds to prevent duplication of funding with FTA grants under the Emergency Relief program. The commenter sought specific language in this section of the rule related to allocation of insurance proceeds, and the use of insurance proceeds as local match.

In response, FTA is adding language to this paragraph regarding allocation of insurance proceeds when (1) recipients receive proceeds for specified assets, and (2) recipients receive blanket, lump-sum, or otherwise unallocated proceeds. In the first case, and consistent with existing FTA policy on insurance proceeds, the recipient must either apply those proceeds to the cost of replacing or repairing the damaged or destroyed project property; or return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property. Interested stakeholders should review the provisions of chapter IV of FTA Circular 5010.1D, as these provisions will generally apply. In some cases, a recipient's insurance policy may not attribute insurance proceeds to specific assets, and instead will provide unallocated, or lump-sum payments. Such payments may include proceeds for non-transit assets as well as for business interruption if the recipient has this coverage. In this second case, FTA, in consultation with the recipient, will determine the portion of such proceeds that the recipient must attribute to transit assets.

Generally, insurance proceeds may not be used as local match. However, in some circumstances, as when a recipient receives insurance payments for activities not eligible for FTA reimbursement, any share of the proceeds that is not due to FTA may be used as local match. FTA is adding language to this effect in the rule.

FTA is adding new paragraphs (f), (g) and (h) to address the flood insurance requirements for transit assets in special flood hazard areas (i.e., 100-year flood zones), and to state FTA's policy with regard to uninsured property. Although not included in the IFR, paragraphs (f) and (g) merely summarize the preexisting requirements of the Flood Disaster Protection Act of 1973 and describe the types of transit assets that must be insured if they are located in a special flood hazard area. As stated above in Section 602.5 Definitions, FTA is adapting the definitions of ''building'' and ''contents coverage'' from FEMA's regulation at 44 CFR 59.1 to provide consistency between the National Flood Insurance Program and FTA's Emergency Relief program.

The requirement for flood insurance for transit assets located in special flood hazard areas is not new. In order to ensure compliance with the Flood Disaster Protection Act, Section 23 of FTA's Master Agreement requires recipients to obtain flood insurance as appropriate, and each recipient certifies annually through the certifications and assurances that it is in compliance with this requirement.

In accordance with section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a), new paragraphs (f) and (g) make clear that a covered structure must be insured through the National Flood Insurance Program or a comparable private policy. The policy must provide coverage at least equal to the project cost for which Federal assistance is provided, or to the maximum limit of coverage available under the National Flood Insurance Act (currently $500,000 for buildings and $500,000 for equipment and fixtures), whichever amount is less.

Finally, commenters were opposed to a minimum monetary damage threshold for FTA emergency relief grants, and expressed concern that setting a minimum monetary threshold for capital projects, emergency protective measures or emergency operations would be challenging to implement, given the varying size of transit agencies and resources available to those agencies, and that the threshold calculation, if based on ridership, passenger miles, or some other metric, could be burdensome. In addition, the cost of repairing or replacing assets varies widely depending on the asset.

In response to comments, FTA is not implementing a minimum monetary damage threshold for the Emergency Relief Program.

Section 602.9 Federal Share

One commenter stated that since the Emergency Relief program is intended to fund transit agencies' recovery from unplanned natural disasters, FTA should ensure significant flexibility in the local match funding requirements, which are often unbudgeted. If a one hundred percent federal share is not feasible, the commenter urged FTA to allow for flexibility in the use of matching funds, including the following: Transportation Development Credits, insurance money, over-match budgeted in other FTA funded capital projects already planned or underway in the disaster area, and funds included in approved and funded operating budgets that are intended for identifiable emergency relief tasks.

In response to these comments, FTA notes that the law provides that an Emergency Relief grant shall be for up to 80 percent of the net project cost, and that the Secretary may waive the non-federal share. FTA notes that the federal share for FEMA's Public Assistance grants is 75 percent unless the Federal share is increased, depending on the extent of the damage related to the disaster. The rule provides only information related to the percent federal share, and not the source of local match, as the source of local match is statutory. 49 U.S.C. 5324(e)(2). Sources of local match include an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital. In addition, Transportation Development Credits (i.e., toll credits) are eligible as match pursuant to 23 U.S.C. 120. Further, in accordance with 42 U.S.C. 5305(i), U.S. Department of Housing and Urban Development Community Development Block Grant (CDBG) funds that are available for transportation projects may be used as non-federal match for Emergency Relief fund grants.

Section 602.11 Pre-Award Authority

Five commenters submitted comments on this section. One commenter suggested that the final rule

should clarify whether pre-award authority would encompass resilience projects in addition to emergency preparation and response activities. The commenter also recommended that, rather than limiting pre-award authority ''to a maximum amount as determined by FTA'' based on facts specific to each disaster, FTA should instead allow pre-award authority generally for ''valid and justifiable expenses.'' Another commenter suggested that when money has been appropriated specifically for a particular situation, the full amount should be made immediately available through pre-award authority.

FTA appreciates the suggestions made by these commenters. Resilience projects are inherently different from recovery projects, in that there generally needs to be a benefit-cost analysis to determine if the project is reasonable and will in fact protect public transit assets from future damage. Since these projects require FTA approval in advance of incurring costs, pre-award authority will generally not be available for these projects. In addition, FTA generally will not make an entire appropriation available for pre-award authority; however, the amount FTA allocates to a recipient will be available for pre-award authority. In the event a recipient is incurring costs in excess of the pre-award authority FTA has made available, the recipient should contact FTA to discuss the circumstances and the need for a greater amount of pre-award authority.

Another commenter expressed concern that the provision as written would appear to condition pre-award authority on the typical pre-award requirements that projects be on the Transportation Improvement Program/State Transportation Improvement Program (TIP/STIP), have an environmental finding in place, and be included in a grant that is in development. The commenter noted that such requirements are not appropriate in an emergency situation and suggested that the final rule include the statement from FTA's Allocation Notice that agencies may certify that a project does not result in a substantial functional, locational, or capacity change and therefore does not require inclusion on the TIP/STIP.

The joint FTA/Federal Highway Administration (FHWA) metropolitan and statewide planning rule at 23 CFR 450.324(c)(5) and 450.216(g)(5) provides that emergency relief projects that do not involve substantial functional, locational, or capacity changes are not required to be in the TIP or STIP. Resilience projects—both stand-alone projects and projects completed at the same time as repairs—likely will involve substantial functional, locational, or capacity changes and must be included in the TIP/STIP. The joint FTA/FHWA environmental impact and related procedures rule at 23 CFR part 771 provides that many activities undertaken immediately following an emergency will be categorical exclusions. FTA and FHWA issued a final rule on February 19, 2013 (78 FR 11593, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-02-19/pdf/2013-03494.pdf*), providing that emergency repairs funded under 49 U.S.C. 5324 are categorically excluded (CE), absent unusual circumstances. Further, the rule provides that the repair, reconstruction, restoration, retrofitting, or replacement of any transit facility is categorically excluded if the transit facility is in operation or under construction when damaged, and the action (1) occurs within the existing right-of-way and substantially conforms to the preexisting design, function, and location, and (2) work is commenced within two years of the declared emergency or disaster. It is important to note that the availability of a categorical exclusion for emergency relief projects does not exempt the applicability of other environmental requirements. FTA recommends that any grant applicant that is concerned that a project may not clearly qualify for the categorical exclusion contact the appropriate FTA Regional Office for assistance in determining the appropriate environmental review process and level of documentation necessary before incurring costs for property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials. Project sponsors should consult with FTA directly on approaches to meeting any requirements that FTA does not determine are exempt. The existing rules ensure that recipients can undertake emergency response activities immediately after a disaster with some assurance that they will not violate Federal planning and environmental requirements. Consequently, FTA does not believe it is necessary to include similar provisions in the Emergency Relief rule.

Several commenters addressed FTA's request for comments regarding the phrase ''forecast with some certainty to hit the affected area'' with respect to pre-award authority for storms that can be predicted. Three commenters expressed dissatisfaction with the proposed language, but differed in their alternative suggestions. Two commenters suggested adopting current FEMA standards for defining the beginning of an emergency, including FEMA Policy FP 010–4. One commenter suggested that pre-award authority should be linked to an agency's documented disaster preparedness plan, noting that the plans for different disasters require different time periods. Finally, two commenters approved of the phrase suggested by FTA, with one commenter noting that it provides for maximum flexibility for future emergencies.

In response to comments and for consistency with FEMA, FTA is amending this section. FTA is electing not to adopt FEMA's Policy FP 010–4 in its entirety, as it is subject to revision every three years. Instead, we have conferred with FEMA regarding their practice and reviewed FEMA's regulation for requests for emergency declarations at 44 CFR 206.35, and are amending the text as follows: For expected weather events, the Governor must declare a state of emergency and request concurrence by the Secretary of Transportation or make a request to the President for an emergency declaration, in advance or anticipation of the impact of an incident that threatens such damage as could result in a major disaster, and take action under State law to direct execution of the State emergency plan. In addition, the emergency operations and emergency protective measures activities must be required in anticipation of the event. Adopting this text provides affected recipients with certainty as to when FTA will fund emergency protective measures, evacuations, and other activities, and aligns FTA's regulation with FEMA's.

Finally, FTA notes that recipients may use section 5311 and section 5307 formula funds in response to a disaster or emergency. Importantly, if section 5324 emergency relief funds are or become available, the formula funds may not be replenished from section 5324 funds. However, a recipient may find that use of formula funds is the best course of action. In this case, pre-award authority exists from the first day of the incident period, in an amount up to the amount of formula funds available to that recipient. FTA is adding text to this section of the rule to reflect this.

Section 602.13 Eligible Activities

Five entities commented on this section. Commenters were supportive of FTA's decision to allow replacement of damaged assets with new assets. One commenter suggested FTA should clarify that design standards include applicable building codes and general standards of care and best practices for the industry. FTA believes that

applicable building codes and best practices are captured in the policy statement that projects should be rebuilt/repaired/replaced to a state of good repair.

One commenter suggested that FTA consider allowing a certain percentage of resilience elements in a grant for emergency repairs, and another commenter stated that FTA should allocate resilience funds as soon as possible in order to allow integrated resilience measures to be funded through dollars allocated for repair. FTA agrees in concept that notification of the availability of funds for resilience projects should be made as soon as possible. However, since the funding for the Emergency Relief (ER) program is subject to congressional appropriations each fiscal year, it is not appropriate to specify that level of detail in the ER rule. Resilience projects are an eligible expense; however, it is likely that the availability of funding for resilience projects may be on a case-by-case basis, and not necessarily for all emergencies or disasters.

One commenter suggested that because bus systems necessarily operate on streets and roads, there should be some eligibility in the FTA Emergency Relief Program for ''transit streets'' and ''transit bridges.'' The commenter acknowledged that these roads and bridges fall under the jurisdiction of a different agency. FTA's Emergency Relief program allows FTA to fund capital projects to repair the facilities of a public transportation system. To the extent a bus rapid transit (BRT) system operates on a separated fixed guideway, the guideway would be eligible for ER funding if damaged, in the same way a rail fixed guideway would be eligible for ER funding. However, if the BRT system operates on streets shared with other motor vehicles, damage to the street would not be an eligible expense for FTA's Emergency Relief Program. Repairs to the street or bridge may, however, be eligible for FEMA or FHWA ER funding.

One commenter suggested that FTA be clear that repair or replacement of spare parts held in the normal course of business and damaged or destroyed are an eligible expense. FTA is amending the rule to reflect that replacement of spare parts is eligible for reimbursement. The commenter also noted that some damages could be latent, and the full impact of a disaster may not be known for months or years, and that these damages should be eligible under the Emergency Relief program. Certainly in the case of some disasters, there will be latent damage. Any repairs or replacements would be eligible under the rule as drafted.

Regarding the eligibility of formula and other funds available to the recipient to be used in conjunction with Emergency Relief funds to make substantial changes or improvements to an affected transit asset during the course of an Emergency Relief project, one commenter asked whether formula and other funds could be used as the local match. With the exception of CDBG funds as described above, Federal funds may not be used to match Emergency Relief funds. Affected recipients may use their FTA formula funds to augment their ER funds in order to pay for activities not eligible under the Emergency Relief Program, but may not use formula funds to match ER grants.

FTA requested comment on the extent of the benefit-cost analysis that is appropriate to justify emergency repairs, permanent repairs, and resilience projects, and did not include any regulatory text regarding these analyses in the interim final rule. In response, one commenter had a list of specific suggestions: (1) Projects to restore existing assets and services should be exempt from benefit-cost analysis; (2) wherever possible, FTA should provide standard values to be used in the preparation of benefit-cost analysis to improve comparability across projects and reduce guesswork; (3) the benefit-cost analysis should not be overly onerous, should not require applicants to hire consultants, and should involve mutually supportive interaction between the applicant and FTA; (4) the benefit-cost analysis should recognize transit network benefits and social benefits, including the high-value benefit of network redundancy; and (5) FTA should consider adopting the broad approach to benefits found in the FEMA Hazard Mitigation programs, rather than the narrow criteria present in the FHWA Emergency Response program.

Another commenter recognized the need for benefit-cost analysis, but recommended allowing agencies to use internally-developed processes for evaluating project benefits when identifying resilience measures internally. The commenter further urged that if FTA intends to use benefit-cost analysis to compare resilience projects across properties and allocate funding on that basis, agencies should be able to consider benefits of a project to the transit system as a whole, not merely the line segment where the project will occur. Finally, the commenter suggested that broad economic impacts should also be considered in a benefit-cost analysis to compare projects across agencies, and allowances should be made for regional cost differences in the development of a nation-wide methodology.

A third commenter suggested that the loss of function costs should include economic loss based on the financial status of transit agencies' riders. A fourth commenter also noted that the cost element of a benefit-cost analysis for resilience projects should incorporate the full indirect costs associated with a partial or complete transit system shut-down.

Two commenters suggested that the level of risk analysis performed on a project cost estimate should vary with the type of project, so that routine activities would require minimal review while more complex projects would require deeper risk analysis.

FTA appreciates the comments, and will consider the comments as FTA develops guidance for benefit-cost analyses under this program. FTA is choosing not to include regulatory text related to benefit-cost analysis at this time, as we agree that the submission of a benefit-cost analysis to FTA will usually not be necessary for emergency or permanent repairs. Resilience projects will generally require the completion of some form of benefit-cost analysis, and any future notices of funding availability will specify whether FTA requires a benefit-cost analysis. If a benefit-cost analysis is required for a particular situation, FTA's process will be consistent with OMB Circular A–94. FTA notes that FEMA has developed a rigorous benefit-cost analysis methodology, which FTA considered in developing its procedures for evaluating proposed resilience projects in its recent notice of funding availability for Hurricane Sandy resilience projects (78 FR 78486, Dec. 26, 2013, *http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30867.pdf*).

Section 602.15 Grant Requirements

Five commenters addressed the provisions in this section, focusing on FTA's case-by-case determination of the 45-day inapplicability of FTA's grant requirements, the requirements for Executive Order 11988 floodplain analysis, and the absence of applicability of labor protections for the Emergency Relief Program.

As stated in the preamble to the interim final rule, FTA may determine the inapplicability of certain requirements associated with public transportation programs as necessary and appropriate for emergency repairs, permanent repairs, and emergency operating expenses that are incurred within 45 days of the emergency or

major disaster, or longer as determined by FTA. This 45-day period is consistent with FTA's charter rule at 49 CFR 604.2(f), which provides that the charter rule does not apply to a recipient for actions directly responding to an emergency or major disaster. If FTA determines that any requirement does not apply, this determination shall apply to all eligible activities undertaken with funds authorized under 49 U.S.C. 5324 within the 45-day period, as well as funds authorized under 49 U.S.C. 5307 and 5311 and used for eligible emergency relief activities.

Several commenters stated that the 45-day waiver of the grant requirements was insufficient to provide for effective planning and the reality of disaster response. One commenter said that the Administrator should be given more explicit authority to increase the 45-day waiver period as necessary, commensurate with the intensity of the event and the restoration of normal operating service. Another commenter suggested that, while the 45-day waiver period may be sufficient in many circumstances, FTA should prospectively waive certain requirements for a longer period, and should be as flexible as possible in its implementation of the usual FTA requirements. One commenter recommended a 180-day waiver of normal FTA grant requirements and procurement rules. Two commenters suggested that FTA should be as flexible as possible with regard to procurement requirements, with one commenter recommending that procurement rules should be waived for all emergency work and permanent repairs, and that the use of pre-existing contracts, including those not procured through Federal methods, should be acknowledged and permitted. The commenter also noted that ''exigent circumstances''—a justification for sole source procurements allowed in the common grant rule—might last for several years due to the need to stage work in a way that minimizes the adverse impact to customers.

FTA believes that 45 days is sufficient as a starting point for a broad inapplicability of certain FTA requirements, and that the rule provides sufficient flexibility to permit the Administrator to increase that time period as he or she deems necessary. We note that FTA provided a 90-day period after Hurricane Sandy in which certain FTA requirements were relaxed, and this was ample time for most circumstances. As stated in the preamble to the interim final rule, FTA also establishes an emergency relief docket each year, by which affected recipients may request waivers from FTA requirements. *See* 49 CFR part 601, subpart D.

The common grant rule (49 CFR 18.36) provides that noncompetitive procurement is permitted only when one of a specific set of circumstances applies. One of those circumstances is ''the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.'' Certainly in the first 45 days after a major disaster, affected recipients will need to respond quickly, and the public exigency circumstance will generally apply. However, in FTA's view, while some permanent repairs will be completed soon after the emergency or disaster, many permanent repairs will be planned many months in advance and there will be ample time for competitive solicitations. Public exigency—by definition ''urgency''—is not a circumstance that will last ''for several years.'' FTA expects agencies to stage permanent repair work subsequent to an emergency or major disaster in the same manner they stage their regular, ongoing maintenance and repair work in a way that minimizes adverse impacts to customers.

Regarding the application of Executive Order (E.O.) 11988, Floodplain Management, one commenter noted that the floodplain management provisions should not be applied to ferry projects, which inherently will almost always be placed in a floodplain (an area subject to a one percent or greater chance of flooding in any given year, also known as a special flood hazard area). Two commenters requested that FTA streamline the E.O. 11988 analysis procedures whenever possible, for example by allowing recipients to group and discuss similar repair and resilience projects that would likely result in similar conclusions and findings regarding floodplain impacts, or by allowing agencies to perform the E.O. 11988 analysis concurrently with FTA project development. Three commenters discussed the impracticability of relocating certain transit infrastructure outside of floodplain boundaries, and one commenter suggested that FTA should incorporate into the final rule, text from the preamble stating that elevating structures within the floodplain is not a necessary precondition to funding. In addition, this commenter recommended that FTA specify that only practical measures to mitigate future damage are required, i.e., measures whose costs are not disproportionate to the protection they provide. One commenter suggested that FTA use other official sources of information in addition to FEMA, including the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Army Corps of Engineers, when determining appropriate flood elevations, and that FTA post the current sources of information to its Web site.

While it is true that ferry facilities will almost always be located in a floodplain, there are actions that ferry operators can take to mitigate or prevent damage to ferry terminals and maintenance facilities, as well as the ferries themselves, in the event of a flood. Further, the Executive Order does not give FTA the discretion to exempt ferries or any other transit system from the E.O. requirements. FTA reminds recipients that while Hurricane Sandy brought a renewed focus to the effects of building in floodplains, E.O. 11988 was signed in 1977, and the analysis required by that Executive Order is not new. U.S. DOT and FTA have published guidance on floodplain management (*see http://www.fta.dot.gov/12347_2237.html*) and FTA expects to provide updated guidance as part of an emergency relief guidance document. Generally, FTA has no objection to recipients ''streamlining'' the E.O. 11988 analysis procedures as long as the recipients' actions are consistent with the Executive Order and the DOT guidance. As to the practicality of measures to mitigate future damage within a floodplain, the E.O. discusses the ''practicability'' of alternative site locations and actions to ''minimize'' potential harm when the only practicable alternative is siting in the floodplain. The U.S. DOT Order for Floodplain Management and Protection (*see http://isddc.dot.gov/OLPFiles/DOT/007652.pdf*), published in 1979, defines ''practicable'' as ''capable of being done within natural, social, and economic constraints.'' FTA believes the E.O. and the U.S. DOT Order contemplate the sort of benefit-cost analysis suggested by the commenter, and that it will not be practicable to relocate certain transit infrastructure to non-floodplain areas. As for the suggestion that FTA use other official sources of information for determining appropriate flood elevations, the Executive Order, as amended by E.O. 12148, vests the authority for this function in FEMA. However, as stated in the preamble to the interim final rule, if FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as the ''best available information'' in accordance with E.O. 11988.

In the preamble to the interim final rule, we explained that recipients would also consider the best available data on sea-level rise, storm surge, scouring and erosion before rebuilding in order to comply with the requirements of E.O. 11988. This text was inadvertently left out of the regulatory text, and we have included it in this final rule at section 602.15(d)(6). FTA believes including this requirement in the regulatory text is desirable to clarify that this type of data should be reviewed when determining whether a project is located within a floodplain.

Finally, two commenters urged FTA to include labor protections codified at 49 U.S.C. 5333(b) as grant requirements for the Emergency Relief program. In support of their position, the commenters pointed to the history of labor protections in the Federal transit program, the scope of work to be completed as a result of Hurricane Sandy, and the provision in the ER statute that permits the Secretary to set grant terms and conditions the Secretary determines are necessary.

The Emergency Relief program is not included in the list of programs to which 49 U.S.C. 5333(b) applies, nor does the text of 49 U.S.C. 5324 reference section 5333(b) or the requirements of any other section of chapter 53. Therefore, Congress did not expressly include labor protections as a grant condition for emergency relief grants. Certification of grants by the Department of Labor adds additional time to the grant process, and in an emergency situation, the timing of grant award is often critical, especially for smaller transit agencies that do not have the resources to respond to a disaster and then wait for reimbursement.

FTA understands the concerns raised by the commenters, especially in circumstances such as Hurricane Sandy, with a multi-billion dollar supplemental appropriation and the likelihood that it will take several years to complete repairs. But it is important to note that the final rule will apply to all future emergencies and major disasters, not just Hurricane Sandy response. Hurricane Sandy was the greatest transit disaster in history, and therefore is far from typical. FTA has requested a modest $25 million annual appropriation from Congress in order to provide funding for transit agencies that experience damage as a result of an emergency or major disaster.

One of the commenters acknowledged that labor protections are not required under the Emergency Relief Program, argued that Congress did not prohibit the application of labor protections, and asserted that FTA has the authority to apply labor protections if those protections are deemed necessary. FTA agrees with this commenter, and, given that each disaster is unique, the statutory flexibility to establish grant terms and conditions allows FTA to address the applicability of labor protections to each emergency or disaster on a case-by-case basis. For the above reasons, FTA declines to include specific regulatory text related to this issue.

Section 602.17 Application Procedures

Five commenters submitted comments addressing provisions of this section.

Commenters suggested that six weeks is insufficient time for the preparation of damage assessment reports, and recommended that FTA adopt a 60-day time period for damage assessment reports consistent with FEMA practice. Commenters also noted that damage assessment is an iterative process, as assets that initially appear undamaged may later require repair. In addition, commenters suggested that it is unreasonable to expect initial damage assessment reports to include permanent repairs and recommended resilience projects, which may not be fully identified until after the initial response period.

While the six week damage assessment report is consistent with the FHWA emergency relief rule, FTA acknowledges that transit systems, particularly rail transit systems, can be more complex, and therefore, FTA is amending the rule to allow 60 days for submission of an initial damage assessment report. As with the interim final rule, this time period is qualified by the phrase, ''unless unusual circumstances prevail,'' which allows FTA and affected recipients to take more time if needed. In addition, FTA is adding a provision permitting an affected recipient to submit an updated damage assessment report as appropriate, as when latent damage becomes known.

One commenter requested clarification regarding the coordination of damage assessment reports for both FTA and FEMA. The commenter asked whether the agency would be required to file duplicate reports with both agencies; how conflicts between FTA and FEMA guidance and regulations would be resolved; and whether FTA or FEMA would be designated as the lead agency in terms of agency response. The commenter also requested that FTA include a sample damage assessment report as an appendix to Part 602, or as an attachment to the FTA/FEMA MOU to reflect the information required of recipients of both agencies.

The rule requires coordination with FEMA when appropriate because FTA does not want affected recipients to duplicate efforts after an emergency or major disaster. Until FTA has a regular annual appropriation for the Emergency Relief Program, affected recipients will have to apply to FEMA for reimbursement of emergency relief expenses unless there is a specific appropriation for FTA, as there was with Hurricane Sandy. Alternatively, recipients may use FTA section 5307 or section 5311 formula funds to address an emergency, but those funds may not be ''replenished'' from the FTA Emergency Relief Program, FEMA, or any other Federal source of funds. Generally, affected recipients will not be required to file damage assessment reports with both FTA and FEMA, but working with both agencies prior to a specific appropriation should help to streamline the process in the event FTA receives funding. If FTA has funds, FTA will be the lead agency for disaster response. If FTA does not have funds, FEMA will be the lead agency, and FTA will provide technical assistance to affected recipients. Damage assessment reports will vary widely depending on the nature of the emergency or disaster, as well as the size of the affected recipient and the types of service it provides, so FTA declines to provide a sample as a part of this rulemaking. FTA may develop one or more sample damage assessment reports as part of its guidance for the Emergency Relief Program.

One commenter suggested that, in the interest of efficiency, FTA should not require production of documents, such as disaster declarations, that are a matter of public record. Another commenter requested that as many documents as possible be kept on file and subject to the triennial review or other audit rather than attached in the Transportation Electronic Award Management system (TEAM), including the damage assessment, copy of the disaster declaration, insurance policies, and agreements with other federal agencies. A third commenter suggested that large transit agencies be afforded the discretion to choose and submit those documents that best reflect the impact of the emergency or disaster on the agency's operations.

FTA concurs with the suggestion that publicly available documents not be included in the damage assessment report, and is striking the language requiring a copy of the Governor's or President's declaration of emergency or disaster. If not uploaded into FTA's

electronic grant management system, supporting documents need to be provided to FTA by other means, such as email or in-person. Simply having the documents available is not sufficient, as in many cases FTA will need to become familiar with insurance policies, damage assessments, and agreements with other federal agencies. Therefore, FTA must have copies of those documents as early in the response period as possible. As with the interim final rule, the language of the final rule states, ''as appropriate, the damage assessment report should include . . .'' This allows some latitude to affected recipients to submit the most appropriate documentation.

In the interim final rule, FTA requested comments regarding whether applications for Emergency Relief funds should incorporate requirements of Section 1315(b) of MAP–21, which requires a periodic evaluation to determine whether there are reasonable alternatives to roads, highways, or bridges that have repeatedly required repair or reconstruction in the past as a result of emergencies or major disasters, but did not include at that time any regulatory language. Three entities responded to this request. Two commenters stated that such an analysis would be inappropriate in the context of emergency repairs. One of the commenters noted that this requirement would significantly increase the volume of necessary documentation without adding significant value to the evaluation process. The other commenter noted that compliance with Section 1315(b) provisions would be time-consuming for transit agencies, though the commenter admitted that there should be some mechanism in place to prohibit eligibility for inherently faulty projects, and proposed that alternatively, such projects could be eligible for FEMA's hazard mitigation program. The remaining commenter stated that any evaluation of prior repeated damage should require the applicant to explain whether the current design or proposed redesign more effectively protects against future damage.

After analyzing the comments, FTA has decided to include regulatory language concerning the evaluation of alternatives. Although not included in the IFR, this regulatory language tracks closely both to what FTA requested comment on in the IFR and the comments the agency received and is, therefore, a clear logical outgrowth of the IFR. FTA agrees with commenters that an evaluation is not appropriate in the context of emergency repairs. For other projects, though, today's final rule requires an evaluation of alternatives for infrastructure that has previously required repair or reconstruction as a result of emergencies or major disasters could easily be included in the damage assessment report. Therefore, FTA is adding a new paragraph to section 602.17. As part of the damage assessment report, applicants must include an evaluation of reasonable alternatives, including change of location and addition of resilience/mitigation elements, for any damaged transit facility that has been previously repaired or reconstructed as a result of an emergency or major disaster. If none of a transit agency's damaged assets were previously damaged in an emergency or disaster, the damage assessment report would include that simple statement.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

A. Executive Orders 12866 and 13563

This action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of Department of Transportation regulatory policies and procedures because of substantial congressional, State and local government, and public interest. Those interests include restoring public transportation service as quickly as possible after an emergency or major disaster, the receipt of Federal financial support for repairing and replacing public transportation investments damaged or destroyed by emergencies and major disasters as expeditiously as possible, and the receipt of Federal financial support for emergency operations before, during and after emergencies and major disasters.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. FTA does not know precisely how grants to various entities (i.e., transfer payments) would be affected by the rule. Since the rule may affect transfer payments totaling more than $100 million annually, FTA has determined that this is an ''economically significant'' rule under Executive Order 12866. This determination is based on the Disaster Relief Appropriations Act of 2013 (Pub. L. 113–2), which appropriated $10.9 billion to FTA to provide assistance to public transportation systems impacted by Hurricane Sandy, and the potential for a major disaster to occur in the future.

The Obama Administration's budget requests included $25 million for each of fiscal years 2013 and 2014 for the Emergency Relief program, and the authorization in 49 U.S.C. 5338(f) is for ''such sums as are necessary to carry out section 5324.'' Congress did not appropriate any funds for the Emergency Relief Program in the 2014 Consolidated Appropriations Act (Pub. L. 113–76). Hurricane Sandy was an extraordinary event resulting in historic damage to public transportation systems. While it is impossible to predict how much funding Congress might appropriate for the Emergency Relief Program for extraordinary events such as Hurricane Sandy, in a typical year without an extraordinary event such as Hurricane Sandy, FTA does not expect this rule to have an economic impact greater than $100 million.

Eligible projects under the statute and the rule include emergency operating expenses, as well as capital projects to protect, repair, reconstruct or replace public transportation equipment and facilities. In this rule, FTA has given ''protection'' of assets two distinct meanings: emergency protective measures taken immediately before, during, or after an emergency to protect assets from damage or further damage, and resilience projects that protect against future disasters. FTA's policy, as stated in section 602.7 of this rule, is to assist recipients and subrecipients in restoring public transportation service and in repairing and reconstructing public transportation assets to a state of good repair as expeditiously as possible following an emergency or major disaster. In conjunction with repair and reconstruction activities, recipients may include projects that increase the resilience of affected public transportation systems to protect the systems from the effects of future emergencies and major disasters. Inherent in this policy is a prioritization of emergency operating expenses and emergency recovery and response projects over projects that protect against future emergencies. This prioritization could impact the funds available for resilience projects.

Through the Emergency Relief Program, FTA will reimburse States and local governmental authorities for

eligible operating and capital costs incurred as a result of an emergency or major disaster. MAP–21 generally prescribes the criteria and types of projects eligible for emergency relief grants, and FTA has exercised limited discretion in this rulemaking to implement the statute.

B. Need for Regulation

This final rule will carry out a new Public Transportation Emergency Relief Program, codified at 49 U.S.C. 5324 and authorized by MAP–21. The Disaster Relief Appropriations Act of 2013 required FTA to issue an interim rule and today's action makes minor changes in response to comments and finalizes the rulemaking. This rule applies not only to Hurricane Sandy, but to future emergencies and disasters that public transportation systems may experience.

C. Regulatory Evaluation

1. Overview

The Public Transportation Emergency Relief Program makes funding available to public transportation agencies impacted by emergencies and major disasters. The rule provides that these agencies may apply for funding in order to reimburse the costs incurred as a result of the emergency or major disaster.

2. Covered Entities

Affected recipients that will apply for funding under the Emergency Relief Program are public bodies and agencies (transit authorities and other state and local public bodies and agencies thereof) including states, municipalities, other political subdivisions of states; and public agencies and instrumentalities of one or more states that provide public transportation services. Private non-profit entities that provide public transportation service are eligible subrecipients.

As this rule implements a new program, FTA can only estimate the number of transit agencies that might apply for Emergency Relief funds. Notably, emergencies and major disasters can happen at any place and at any time, in rural, small urbanized as well as large urbanized areas, so any FTA recipient may be affected by this rule.

3. Eligible and Ineligible Activities

As stated previously, FTA has exercised limited discretion in interpreting 49 U.S.C. 5324, which defines the eligible activities for the Emergency Relief Program. It is necessary, however, to provide more detail than what the statute provides regarding eligible activities. FTA turned to its sister agency, the Federal Highway Administration (FHWA), for definitions, eligible activities, and process, as FHWA has had an emergency relief rule for many years (23 CFR part 668). FTA also looked at eligible activities under the Stafford Act in order to ensure that affected recipients would be able to apply for all of their emergency needs from FTA, thus allowing for a streamlined application and reimbursement process.

A. Eligible Expenses

Emergency operations, emergency protective measures, emergency repairs, permanent repairs and resilience projects, as those terms are defined in section 602.5 of this rule, are eligible for emergency relief funding.

FTA's goal is to ensure that all projects eligible under relevant sections of the Stafford Act, including sections 403 (Essential Assistance), 406 (Repair, Restoration and Replacement of Damaged Facilities) and 419 (Emergency Public Transportation), will be eligible under FTA's Emergency Relief Program. Actions taken by public transportation agencies to protect assets in advance of a serious weather event can have substantial financial benefits. For example, moving rolling stock to higher ground to protect it from storm surges can save millions of dollars. Further, actions taken during a weather event and in its immediate aftermath, including debris removal and dewatering, can prevent further damage to public transportation assets. It is in FTA's and the Federal taxpayer's interest to reimburse the cost of these activities.

Public transportation agencies are an integral part of the communities they serve, and these agencies will often assist with evacuations, rescue operations, and transportation of utility workers and other first responders, often without regard to the expense of those services. In addition, reestablishing public transportation service after an emergency or major disaster may cause a public transportation agency to incur extraordinary costs that are not in the agency's budget.

Temporary and permanent repairs undertaken after an emergency or major disaster assist the transit agency with restoring service and bringing the repaired or replaced facilities into a state of good repair. Temporary repairs may be necessary to restore service, and these repairs should, when feasible, be undertaken in such a way as to reduce the cost of permanent repairs. Bringing facilities and equipment into a state of good repair has both quantifiable and non-quantifiable benefits. Systems that are in a state of good repair are more efficient, more reliable, and more attractive to transit riders. Public transportation systems that are in a state of good repair have fewer breakdowns, and it is often less expensive to keep equipment and facilities in a state of good repair than it is to undertake heavy maintenance projects to keep a system running.

Resilience projects to address vulnerabilities to a public transportation facility or system due to the potential future recurrence of emergencies or major disasters have long-term financial benefits. Rebuilding with materials that can withstand weather events, rebuilding in a different location, or adding protective features to a facility or system can prevent the facility or system from experiencing similar damage in the future. These benefits are not only monetary; the ability to restore service in a timelier manner subsequent to an emergency or major disaster, when the facility or system has not sustained serious damage because it was strengthened by a resilience project, helps to restore the community to normalcy more quickly.

Finally, there is a benefit to the public transportation agencies when they can go to FTA for reimbursement of their emergency expenses. Under FEMA's Public Assistance Program a public transportation agency is a subgrantee and therefore receives its funding through the grantee, the State, with which many public transportation agencies do not have an ongoing funding relationship. Therefore, even after Federal obligation of the funds, it can take time before the funds are received by the public transportation agency. The establishment of FTA's Public Transportation Emergency Relief Program should expedite reimbursement to public transportation agencies, resulting in a benefit for these agencies.

B. Ineligible Expenses

The purpose of the Emergency Relief Program is to provide Federal assistance for extraordinary costs resulting from an emergency or major disaster. The Emergency Relief Program should not be a substitute for good management of assets, nor should it be used for minor emergencies that do not cause serious damage. Therefore, heavy maintenance activities are not an eligible expense. In addition, any projects funded by another Federal agency, insurance policies, or already in an FTA grant are not eligible. FTA Emergency Relief funds should supplement, not supplant, these other sources of funds. Revenue losses due to service disruptions are not

eligible expenses. The ineligibility of these expenses will help to ensure good stewardship of public transportation assets, and will ensure that FTA is not using Emergency Relief funds to pay for a project or activity that has another funding source. Some transit agencies may experience significant revenue losses due to service disruptions; however, this is something for which transit agencies can plan, and for which they can be insured. The benefit of not covering these expenses is that more funds will be available for the eligible activities.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FTA has evaluated the effects of this final rule on small entities and has determined the final rule will not have a significant economic impact on a substantial number of small entities. Recipients of Emergency Relief Program funds are generally States and local governmental authorities. The only burden placed upon local governments by this rule is the paperwork burden associated with the application process, which is addressed in the Paperwork Reduction Act section. FTA has sought to minimize the paperwork burdens of the rule. For this reason, FTA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The Federal share for grants made under the Emergency Relief Program is up to 80 percent, and the Secretary may waive all or part of the non-Federal share. This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $143.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria established by Executive Order 13132, and FTA has determined that this final rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this final rule.

Paperwork Reduction Act

On February 6, 2013, in compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and the Office of Management and Budget (OMB) implementing regulation at 5 CFR 1320.13, FTA received emergency approval from OMB for an Information Collection for funds appropriated by the Disaster Relief Appropriations Act (Information Collection number 2132–0575). In compliance with the PRA and OMB implementing regulation at 5 CFR 1320.8(d), FTA sought longer-term approval from OMB for this Information Collection. On August 28, 2013, OMB approved FTA's request for an information collection for the Emergency Relief Program. The modifications to the regulations in this final rule do not modify this collection. Insurance information is included in the project budget as well as the quarterly milestone/progress reports. FTA estimated that it would take recipients approximately 50 hours to develop a damage assessment report, and the addition of an evaluation of alternatives for only those assets that have previously experienced damage as a result of a disaster or emergency will not appreciably change that estimate. The approval for this information collection will expire on August 31, 2016.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), requires Federal agencies to analyze the potential environmental effects of their proposed actions either through a Categorical Exclusion, an Environmental Assessment or an Environmental Impact Statement. This final rule is categorically excluded under FTA's NEPA implementing procedures at 23 CFR 771.118(c)(4), which covers planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations and directives. FTA has determined that no unusual circumstances exist and that this Categorical Exclusion is applicable.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order 12898 and U.S. DOT Order 5610.2(a) (91 FR 27534, May 10, 2012), require DOT agencies to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of all programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. FTA has developed a program circular addressing environmental justice in transit projects, C 4703.1, *Environmental Justice Policy Guidance for Federal Transit Administration Recipients,* 77 FR 42077, July 17, 2012 (available online at *www.fta.dot.gov/legislation_law/12349_14740.html*).

FTA evaluated this rulemaking under the Executive Order and the DOT Order. FTA determined that the establishment of procedures governing the implementation of FTA's Public Transportation Emergency Relief Program will not cause disproportionately high and adverse effects on minority or low income populations. The rule simply defines the eligibility criteria and outlines the process to apply for assistance under the program.

At the time FTA considers an application for emergency relief, FTA has an independent obligation to conduct an evaluation of the proposed action under the applicable environmental justice (EJ) Orders and guidance as part of the environmental review process. The adoption of this rule does not affect the scope or outcome of any EJ evaluation. Outreach to ensure the effective involvement of minority and low income populations in the environmental review process is a core aspect of the EJ Orders and guidance. This rule does not affect the ability of affected populations to raise any concerns about potential EJ effects at the time FTA considers a grant application. For these reasons, FTA determined no further EJ analysis is needed and no mitigation is required in connection with this rulemaking.

Executive Order 12630 (Taking of Private Property)

This action will not affect a taking of private property or otherwise have

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

FTA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this final rule will not cause an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this action under Executive Order 13175 (Nov. 6, 2000), and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

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 U.S. DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 602

Disaster assistance, Grant programs, Mass transportation, Transportation.

Therese McMillan,

Acting Administrator.

■ For the reasons set forth in the preamble, FTA amends Chapter VI of Title 49, Code of Federal Regulations, by revising part 602 to read as follows:

PART 602—EMERGENCY RELIEF

Sec.

602.1 Purpose.
602.3 Applicability.
602.5 Definitions.
602.7 Policy.
602.9 Federal share.
602.11 Pre-award authority.
602.13 Eligible activities.
602.15 Grant requirements.
602.17 Application procedures.

Authority: 49 U.S.C. 5324 and 5334; 49 CFR 1.91.

§ 602.1 Purpose.

This part establishes the procedures and eligibility requirements for the administration of emergency relief funds for emergency public transportation services, and the protection, replacement, repair or reconstruction of public transportation equipment and facilities which are found to have suffered or are in danger of suffering serious damage resulting from a natural disaster affecting a wide area or a catastrophic failure from an external cause.

§ 602.3 Applicability.

This part applies to entities that provide public transportation services and that are impacted by emergencies and major disasters.

§ 602.5 Definitions.

The following definitions apply to this part:

Affected recipient. A recipient or subrecipient that operates public transportation service in an area impacted by an emergency or major disaster.

Applicant. An entity that operates or allocates funds to an entity to operate public transportation service and that applies for a grant under 49 U.S.C. 5324.

Building. For insurance purposes, a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site. This includes manufactured or modular office trailers that are built on a permanent chassis, transported to a site in one or more sections, and affixed to a permanent foundation.

Catastrophic failure. The sudden failure of a major element or segment of the public transportation system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration, lack of proper maintenance or a design flaw.

Contents coverage. For insurance purposes, contents are personal property within a building, including fixtures, machinery, equipment and supplies. In addition to the costs to repair or replace, contents insurance coverage shall include the cost of debris removal and the reasonable cost of removal of contents to minimize damage.

Emergency. A natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm or landslide) or a catastrophic failure from any external cause, as a result of which:

(1) The Governor of a State has declared an emergency and the Secretary of Transportation has concurred; or

(2) The President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Emergency operations. The net project cost of temporary service that is outside the scope of an affected recipient's normal operations, including but not limited to: evacuations; rescue operations; bus, ferry, or rail service to replace inoperable service or to detour around damaged areas; additional service to accommodate an influx of passengers or evacuees; returning evacuees to their homes after the disaster or emergency; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

Emergency protective measures. (1) Projects undertaken immediately before, during or following the emergency or major disaster for the purpose of protecting public health and safety or for protecting property. Such projects:

(i) Eliminate or lessen immediate threats to public health or safety; or

(ii) Eliminate or lessen immediate threats of significant damage or additional damage to an affected recipient's property through measures that are cost effective.

(2) Examples of such projects include, but are not limited to:

(i) Moving rolling stock in order to protect it from damage, e.g., to higher ground in order to protect it from storm surges;
(ii) Emergency communications;
(iii) Security measures;
(iv) Sandbagging;
(v) Bracing/shoring damaged structures;
(vi) Debris removal;
(vii) Dewatering; and
(viii) Removal of health and safety hazards.

Emergency repairs. Capital projects undertaken following the emergency or major disaster, until such time as permanent repairs can be undertaken, for the purpose of:
(1) Minimizing the extent of the damage,
(2) Restoring service, or
(3) Ensuring service can continue to be provided until permanent repairs are made.

External cause. An outside force or phenomenon that is separate from the damaged element and not primarily the result of existing conditions.

Heavy maintenance. Work usually done by a recipient or subrecipient in repairing damage normally expected from seasonal and occasionally unusual natural conditions or occurrences, such as routine snow removal, debris removal from seasonal thunderstorms, or heavy repairs necessitated by excessive deferred maintenance. This may include work required as a direct result of a disaster, but which can reasonably be accommodated by a recipient or subrecipient's routine maintenance, emergency or contingency program.

Incident period. The time interval during which the emergency-causing incident occurs. FTA will not approve pre-award authority for projects unless the damage to be alleviated resulted from the emergency-causing incident during the incident period or was incurred in anticipation of that incident. For each Stafford Act incident, FTA will adopt the incident period established by FEMA.

Major disaster. Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. 5122.

Net project cost. The part of a project that reasonably cannot be financed from revenues. 49 U.S.C. 5302.

Permanent repairs. Capital projects undertaken following the emergency or major disaster for the purpose of repairing, replacing or reconstructing seriously damaged public transportation system elements, including rolling stock, equipment, facilities and infrastructure, as necessary to restore the elements to a state of good repair.

Recipient. An entity that operates public transportation service and receives Federal transit funds directly from FTA.

Resilience. The ability to anticipate, prepare for, and adapt to changing conditions and withstand, respond to, and recover rapidly from disruptions such as significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment.

Resilience project. A project designed and built to address existing and future vulnerabilities to a public transportation facility or system due to a probable occurrence or recurrence of an emergency or major disaster in the geographic area in which the public transportation system is located, and which may include the consideration of projected changes in development patterns, demographics, or climate change and extreme weather patterns. A resilience project may be a stand-alone project or may be completed at the same time as permanent repairs.

Serious damage. Heavy, major or unusual damage to a public transportation facility which severely impairs the safety or usefulness of the facility. Serious damage must be beyond the scope of heavy maintenance.

State. A State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

Subrecipient. An entity that operates public transportation service and receives FTA funding through a recipient.

§ 602.7 Policy.

(a) The Emergency Relief Program is intended to aid recipients and subrecipients in restoring public transportation service and in repairing and reconstructing public transportation assets to a state of good repair as expeditiously as possible following an emergency or major disaster.

(b) Emergency relief funds are not intended to supplant other Federal funds for the correction of preexisting, non-disaster related deficiencies.

(c) Following an emergency, affected recipients may include projects that increase the resilience of affected public transportation systems to protect the systems from the effects of future emergencies and major disasters.

(d) The expenditure of emergency relief funds for emergency repair shall be in such a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work completed after the emergency or major disaster.

(e) Emergency relief funds, or funds made available under 49 U.S.C. 5307 (Urbanized Area Formula Program) or 49 U.S.C. 5311 (Rural Area Formula Program) awarded for emergency relief purposes shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude FTA emergency relief fund assistance for the part of such loss not compensated otherwise. Any compensation for damages or insurance proceeds for repair or replacement of the public transit equipment or facility must be used upon receipt to reduce FTA's emergency relief fund participation in the project.

(1) If a recipient receives insurance proceeds that are directly attributable to specific assets, the recipient must:
(i) Apply those proceeds to the cost of replacing or repairing the damaged or destroyed project property; or
(ii) Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

(2) If under the terms of its policy a recipient receives insurance proceeds that are not attributable to specific assets, such as blanket, lump-sum, or unallocated proceeds, FTA, in consultation with the recipient, will determine the portion of such proceeds that the recipient must attribute to transit assets.

(3) Any insurance proceeds not attributable to transit assets may be used for other purposes without obligation to FTA, including as local share for FTA grants.

(f) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.) provides that Federal agencies may not provide any financial assistance for the acquisition, construction, reconstruction, repair, or improvement of a building in a special flood hazard area (100-year flood zone) unless the recipient has first acquired flood insurance to cover the buildings and contents constructed or repaired with Federal funds, in an amount at least

equal to the Federal investment (less land cost) or to the maximum limit of coverage made available under the National Flood Insurance Act of 1968, whichever is less.

(1) Transit facilities to which this paragraph (f) applies are buildings located in special flood hazard areas and include but are not limited to maintenance facilities, storage facilities, above-ground stations and terminals, and manufactured or modular office trailers.

(2) Flood insurance is not required for underground subway stations, track, tunnels, ferry docks, or to any transit facilities located outside of a special flood hazard area.

(g) Recipients must obtain and maintain flood insurance on those buildings and contents for which FTA has provided funds.

§ 602.9 Federal share.

(a) A grant, contract, or other agreement for emergency operations, emergency protective measures, emergency repairs, permanent repairs and resilience projects under 49 U.S.C. 5324 shall be for up to 80 percent of the net project cost.

(b) A grant made available under 49 U.S.C. 5307 or 49 U.S.C. 5311 to address an emergency shall be for up to 80 percent of the net project cost for capital projects, and up to 50 percent of the net project cost for operations projects.

(c) The FTA Administrator may waive, in whole or part, the non-Federal share required under paragraphs (a) and (b) of this section.

§ 602.11 Pre-award authority.

(a) Except as provided in paragraph (c) of this section, pre-award authority for the Emergency Relief Program shall be effective beginning on the first day of the incident period, subject to the appropriation of Emergency Relief Program funds.

(b) Recipients may use section 5307 or section 5311 formula funds to address an emergency, and, except as provided in paragraph (c) of this section, pre-award authority shall be effective beginning on the first day of the incident period of the emergency or major disaster.

(c) For expected weather events, pre-award authority for evacuations and activities to protect public transportation vehicles, equipment and facilities, shall be effective in advance of the event under the following conditions:

(1) The Governor of a State declares a state of emergency and requests concurrence by the Secretary of Transportation or makes a request to the President for an emergency declaration, in advance or anticipation of the impact of an incident that threatens such damage as could result in a major disaster;

(2) The Governor takes appropriate action under State law and directs execution of the State emergency plan;

(3) The activities are required in anticipation of the event; and

(4) Assistance for a pre-disaster emergency declaration is limited to Emergency Protective Measures and Emergency Operations.

(d) Pre-award authority shall be subject to a maximum amount determined by FTA based on estimates of immediate financial need, preliminary damage assessments, available Emergency Relief funds and other criteria to be determined in response to a particular event.

(e) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project(s).

(f) Except as provided in § 602.15, all FTA statutory, procedural, and contractual requirements must be met.

(g) The recipient must take no action that prejudices the legal and administrative findings that the FTA Regional Administrator must make in order to approve a project.

(h) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/non-Federal match ratio at the time the funds are obligated.

(i) When FTA subsequently awards a grant for the project, the Financial Status Report in FTA's electronic grants management system must indicate the use of pre-award authority.

§ 602.13 Eligible activities.

(a) An affected recipient may apply for emergency relief funds on behalf of itself as well as affected subrecipients.

(b) Eligible uses of Emergency Relief funds include:

(1) Emergency operations;

(2) Emergency protective measures;

(3) Emergency repairs;

(4) Permanent repairs;

(5) Actual engineering and construction costs on approved projects;

(6) Repair or replacement of spare parts that are the property of an affected recipient or subrecipient and held in the normal course of business that are damaged or destroyed; and

(7) Resilience projects.

(c) Ineligible uses of Emergency Relief funds include:

(1) Heavy maintenance;

(2) Project costs for which the recipient has received funding from another Federal agency;

(3) Project costs for which the recipient has received funding through payments from insurance policies;

(4) Except for resilience projects that have been approved in advance, projects that change the function of the original infrastructure;

(5) Projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster;

(6) Reimbursements for lost revenue due to service disruptions caused by an emergency or major disaster;

(7) Project costs associated with the replacement or replenishment of damaged or lost material that are not the property of the affected recipient and not incorporated into a public transportation system such as stockpiled materials or items awaiting installation; and

(8) Other project costs FTA determines are not appropriate for the Emergency Relief Program.

§ 602.15 Grant requirements.

(a) Funding available under the Emergency Relief program is subject to the terms and conditions FTA determines are necessary.

(b) The FTA Administrator shall determine the terms and conditions based on the circumstances of a specific emergency or major disaster for which funding is available under the Emergency Relief Program.

(1) In general, projects funded under the Emergency Relief Program shall be subject to the requirements of chapter 53 of title 49, United States Code, as well as cross-cutting requirements, including but not limited to those outlined in FTA's Master Agreement.

(2) The FTA Administrator may determine that certain requirements associated with public transportation programs are inapplicable as necessary and appropriate for emergency repairs, permanent repairs, emergency protective measures and emergency operating expenses that are incurred within 45 days of the emergency or major disaster, or longer as determined by FTA. If the FTA Administrator determines any requirement is inapplicable, the determination shall apply to all eligible activities undertaken with funds authorized under 49 U.S.C. 5324 within the 45-day period, as well as funds authorized under 49 U.S.C. 5307 and 5311 and used for eligible emergency relief activities.

(3) FTA shall publish a notice on its Web site and in the emergency relief docket established under 49 CFR part 601 regarding the grant requirements for a particular emergency or major disaster.

(c) In the event an affected recipient or subrecipient believes an FTA requirement limits its ability to respond to the emergency or major disaster, the recipient or subrecipient may request that the requirement be waived in accordance with the emergency relief docket process as outlined in 49 CFR part 601, subpart D. Applicants should not proceed on projects assuming that requests for such waivers will be granted.

(d) In accordance with Executive Order 11988, Floodplain Management, recipients shall not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent, as labeled in the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRMs). If there are no alternatives but to locate the action in a floodplain, prior to seeking FTA funding for such action, the recipient shall design or modify its actions in order to minimize potential harm to or within the floodplain.

(1) Except as otherwise provided in this subparagraph, recipients shall use the ''best available information'' as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations (ABFEs)), preliminary and final Flood Insurance Rate Maps, or Flood Insurance Studies (FISs).

(2) If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as ''best available information'' in accordance with Executive Order 11988.

(3) The final determination on ''best available information'' shall be used to establish such reconstruction requirements as a project's minimum elevation.

(4) Where higher minimum elevations are required by either State or locally adopted building codes or standards, the higher of the State or local minimums would apply.

(5) A base flood elevation from an interim or preliminary or non-FEMA source may not be used if it is lower than the current FIRM.

(6) Recipients shall also consider the best available data on sea-level rise, storm surge, scouring and erosion before rebuilding.

§ 602.17 Application procedures.

(a) As soon as practical after an emergency, major disaster or catastrophic failure, affected recipients shall make a preliminary field survey, working cooperatively with the appropriate FTA Regional Administrator and other governmental agencies with jurisdiction over affected public transportation systems. The preliminary field survey should be coordinated with the Federal Emergency Management Agency, if applicable, to eliminate duplication of effort. The purpose of this survey is to determine the general nature and extent of damage to eligible public transportation systems.

(1) The affected recipient shall prepare a damage assessment report. The purpose of the damage assessment report is to provide a factual basis for the FTA Regional Administrator's finding that serious damage to one or more public transportation systems has been caused by a natural disaster affecting a wide area, or a catastrophic failure. As appropriate, the damage assessment report should include by political subdivision or other generally recognized administrative or geographic boundaries—

(i) The specific location, type of facility or equipment, nature and extent of damage;

(ii) The most feasible and practical method of repair or replacement;

(iii) A preliminary estimate of cost of restoration, replacement, or reconstruction for damaged systems in each jurisdiction.

(iv) Potential environmental and historic impacts;

(v) Photographs showing the kinds and extent of damage and sketch maps detailing the damaged areas;

(vi) Recommended resilience projects to protect equipment and facilities from future emergencies or major disasters; and

(vii) An evaluation of reasonable alternatives, including change of location, addition of resilience/mitigation elements, and any other alternative the recipient considered, for any damaged transit facility that has been previously repaired or reconstructed as a result of an emergency or major disaster.

(2) Unless unusual circumstances prevail, the initial damage assessment report should be prepared within 60 days following the emergency, major disaster, or catastrophic failure. Affected recipients should update damage assessment reports as appropriate.

(3) For large disasters where extensive damage to public transportation systems is readily evident, the FTA Regional Administrator may approve an application for assistance prior to submission of the damage assessment report. In these cases, the applicant shall prepare and submit to the FTA Regional Administrator an abbreviated or preliminary damage assessment report, summarizing eligible repair costs by jurisdiction, after the damage inspections have been completed.

(b) Before funds can be made available, a grant application for emergency relief funds must be made to, and approved by, the appropriate FTA Regional Administrator. The application shall include:

(1) A copy of the damage assessment report, as appropriate;

(2) A list of projects, as documented in the damage assessment report, identifying emergency operations, emergency protective measures, and emergency repairs completed as well as permanent repairs needed to repair, reconstruct or replace the seriously damaged or destroyed rolling stock, equipment, facilities, and infrastructure to a state of good repair; and

(3) Supporting documentation showing other sources of funding available, including insurance policies, agreements with other Federal agencies, and any other source of funds available to address the damage resulting from the emergency or major disaster.

(c) Applications for emergency operations must include the dates, hours, number of vehicles, and total fare revenues received for the emergency service. Only net project costs may be reimbursed.

(d) Applicants that receive funding from another Federal agency for operating expenses and also seek funding from FTA for operating expenses must include:

(1) A copy of the agreement with the other Federal agency, including the scope of the agreement, the amount funded, and the dates the other agency funded operating costs; and

(2) The scope of service and dates for which the applicant is seeking FTA funding.

(e) Applicants that receive funding from another Federal agency for emergency or permanent repairs or emergency protective measures and also seek funding from FTA for emergency or permanent repairs or emergency protective measures must include:

(1) A copy of the agreement with the other Federal agency, including the scope of the agreement and the amount funded; and

(2) A list of projects included in the other agency's application or equivalent document.

(f) Applicants are responsible for preparing and submitting a grant application. The FTA regional office may provide technical assistance to the

applicant in preparation of a program of projects. This work may involve joint site inspections to view damage and reach tentative agreement on the type of permanent repairs the applicant will undertake. Project information should be kept to a minimum, but should be sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility of proposed work. If the appropriate FTA Regional Administrator determines the damage assessment report is of sufficient detail to meet these criteria, additional project information need not be submitted.

(g) The appropriate FTA Regional Administrator's approval of the grant application constitutes a finding of eligibility under 49 U.S.C. 5324.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2011–0003; FXES111309F2460–145–FF09E22000]

RIN 1018–AY42

Endangered and Threatened Wildlife and Plants; Listing the Straight-Horned Markhor as Threatened With a Rule Under Section 4(d) of the ESA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened status for the straight-horned markhor (*Capra falconeri megaceros*), under the Endangered Species Act of 1973, as amended (Act). We are also publishing a concurrent rule under section 4(d) of the Act. This rule protects and conserves the straight-horned markhor, while encouraging local communities to conserve additional populations of the straight-horned markhor through sustainable-use management programs.

DATES: This rule becomes effective November 6, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and 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; 5275 Leesburg Pike; Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

We are combining two subspecies of markhor currently listed under the Endangered Species Act of 1973, as amended (Act), the straight-horned markhor (*Capra falconeri jerdoni*) and Kabul markhor (*C. f. megaceros*), into one subspecies, the straight-horned markhor (*C. f. megaceros*), based on a taxonomic change. We are listing the straight-horned markhor (*C. f. megaceros*) as threatened under the Act.

We are also finalizing a rule under section 4(d) of the Act that allows the import of sport-hunted straight-horned markhor trophies under certain conditions. This regulation supports and encourages conservation actions for the straight-horned markhor.

II. Major Provision of the Regulatory Action

This action eliminates the separate listing of the straight-horned markhor and Kabul markhor as endangered and adds the combined straight-horned markhor subspecies as threatened on the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h), and allows the import of sport-hunted straight-horned markhor trophies under certain conditions at 50 CFR 17.40(d). This action is authorized by the Act.

Background

The Endangered Species Act of 1973, as amended (ESA or Act) (16 U.S.C. 1531 *et seq.*), is a law that was passed to prevent extinction of species by providing measures to help alleviate the loss of species and their habitats. Before a plant or animal species can receive the protection provided by the Act, it must first be added to the Federal List of Endangered and Threatened Wildlife or the Federal List of Endangered and Threatened Plants; section 4 of the Act and its implementing regulations at 50 CFR part 424 set forth the procedures for adding species to these lists.

Previous Federal Actions

On June 14, 1976, we published in the **Federal Register** a rule listing the straight-horned markhor, or the Suleiman markhor (*Capra falconeri jerdoni*), and the Kabul markhor (*C. f. megaceros*), as well as 157 other U.S. and foreign vertebrates and invertebrates, as endangered under the Act (41 FR 24062). All species were found to have declining numbers due to the present or threatened destruction, modification, or curtailment of their habitats or ranges; overutilization for commercial, sporting, scientific, or educational purposes; the inadequacy of existing regulatory mechanisms; or some combination of the three. However, the main concerns were the high commercial importance and the inadequacy of existing regulatory mechanisms to control international trade.

Subsequent to the listing in 1976, the Suleiman markhor and the Kabul markhor were later considered by some authorities to be the single subspecies *C. f. megaceros* (straight-horned markhor). However, the Suleiman markhor and the Kabul markhor remained listed as separate subspecies under the Act.

On March 4, 1999, we received a petition from Sardar Naseer A. Tareen, on behalf of the Society for Torghar Environmental Protection and the International Union for Conservation of Nature (IUCN) Central Asia Sustainable Use Specialist Group, requesting that the Suleiman markhor (*C. f. jerdoni* or *C. f. megaceros*) population of the Torghar Hills region of the Balochistan Province, Pakistan, be reclassified from endangered to threatened under the Act. On September 23, 1999 (64 FR 51499), we published in the **Federal Register** a finding, in accordance with section 4(b)(3)(A) of the Act, that the petition had presented substantial information indicating that the requested reclassification may be warranted, and we initiated a status review. We opened a comment period, which closed January 21, 2000, to allow all interested parties to submit comments and information. A 12-month finding was never completed.

On August 18, 2010, we received a petition dated August 17, 2010, from Conservation Force, on behalf of Dallas Safari Club, Houston Safari Club, African Safari Club of Florida, The Conklin Foundation, Grand Slam Club/Ovis, Wild Sheep Foundation, Jerry Brenner, Steve Hornaday, Alan Sackman, and Barbara Lee Sackman, requesting the Service downlist the Torghar Hills population of the Suleiman markhor (*Capra falconeri jerdoni* or *C. f. megaceros*), in the Balochistan Province of Pakistan, from endangered to threatened under the Act. On June 2, 2011, we published in the **Federal Register** a finding that the

petition had presented substantial information indicating that the requested reclassification may be warranted, and we initiated a status review (76 FR 31903).

On February 1, 2012, Conservation Force, Dallas Safari Club, and other organizations and individuals filed suit against the Service for failure to conduct a 5-year status review pursuant to section 4(c)(2)(A) under the Act (*Conservation Force, et al.* v. *Salazar,* Case No. 11 CV 02008 D.D.C.). On March 30, 2012, a settlement agreement was approved by the Court (11–CV–02008, D.D.C.), in which the Service agreed to submit to the **Federal Register** by July 31, 2012, a 12-month finding on the August 2010 petition. In fulfillment of the court-ordered settlement agreement and the requirement to conduct a 5-year status review under section 4(c)(2)(A) of the Act, the Service published in the **Federal Register** a 12-month finding and proposed rule to reclassify the straight-horned markhor (*C. f. jerdoni*) from endangered to threatened with a rule issued under section 4(d) of the Act (known as a 4(d) rule) (77 FR 47011) on August 7, 2012.

On December 5, 2013, the Service published in the **Federal Register** a revised proposed rule to combine the straight-horned markhor and Kabul markhor into one subspecies and reclassify the new subspecies as threatened under the Act with a 4(d) rule (78 FR 73173).

Summary of Comments and Recommendations

We based this action on a review of the best scientific and commercial information available, including all information received during the public comment period. In the December 5, 2013, revised proposed rule, we requested that all interested parties submit information that might contribute to development of a final rule. We also contacted appropriate scientific experts and organizations and invited them to comment on these proposed rules. We received comments from nine individuals and organizations.

We reviewed all comments we received from the public and peer reviewers for substantive issues and new information regarding the proposed reclassification of this subspecies, and we address those comments below. Six of the commenters, including peer reviewers, supported the revised proposed rule and 4(d) rule. Three commenters opposed the reclassification and 4(d) rule; two commenters believed more genetic studies and a better consensus among scientists was needed before combining the two subspecies into one.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from three of the peer reviewers from whom we requested comments. The peer reviewers stated that the revised proposed rule was accurate and our conclusions were logical; no substantive comments were provided. Technical corrections suggested by the peer reviewers have been incorporated into this final rule. In some cases, a technical correction is indicated in the citations by ''personal communication'' (pers. comm.), which could indicate either an email or telephone conversation; in other cases, the research citation is provided.

Public Comments

(1) Comment: We received updated information on the population of straight-horned markhor in Sheikh Buddin Hills, Khyber Pakhtunkhwa Province, Pakistan. A 2011 field survey found that the straight-horned markhor has been extirpated from this area.

Our Response: We included this updated information under the *Range and Population* section below.

(2) Comment: The Service has not put forth sufficient population information, especially for populations outside of the Torghar Hills, to support a finding that the subspecies qualifies as a threatened species.

Our Response: Our finding that the straight-horned markhor meets the definition of a threatened species, as defined under the Act, is not based solely on population numbers. Although most remaining populations of straight-horned markhor are critically low, continue to face threats, and will likely continue to decline, the population in Torghar Hills has continued to increase and is the stronghold of the species. Because of the protective measures provided to the Torghar Hills population, we believe the subspecies as a whole is not presently in danger of extinction, and, therefore, does not meet the definition of endangered under the Act. As explained in more detail in our status determination, the Torghar Hills population is considered to be currently stable and increasing; based upon 2011 population surveys in the Torghar Conservation Project (TCP), the markhor population and domestic livestock have minimal range-use overlap, and the markhor's habitat is secure under current management. However, the straight-horned markhor occupies a narrow geographic range, and threats acting on critically low populations outside Torghar Hills are likely to continue in the foreseeable future. Moreover, within the foreseeable future, pressures on habitat in the Torghar Hills and interactions between livestock and markhor are likely to increase with the growth of domestic livestock herds, the biannual migration of local tribes, and the expansion of markhor populations in the TCP, resulting in the subspecies as a whole being at risk of extinction due to the strong likelihood of a catastrophic or stochastic event (e.g., disease) impacting the Torghar Hills population. Should a catastrophic or stochastic event (e.g., disease) impact the Torghar Hills population, this single, stable population would likely not provide a sufficient margin of safety for the subspecies. Thus, these factors indicate that the straight-horned markhor, while not at risk of extinction now, will likely become in danger of extinction in the foreseeable future. Therefore, we find that this subspecies of markhor qualifies as a threatened species.

(3) Comment: The Service states that the subspecies in Torghar Hills is likely to interact with domestic goats and could be catastrophically impacted by disease. A recent study (Ostrowski *et al.* 2013), not considered by the Service, describes a pneumonia outbreak that killed approximately 20 percent of the markhor population in Tajikistan, concludes that domestic goats can carry a pathogen that poses an insidious risk for cross-species transmission with sympatric wild caprinae, and shows that straight-horned markhor could go extinct due to an outbreak of pneumonia. Therefore, the straight-horned markhor is currently in danger of extinction due to disease.

Our Response: The findings by Ostrowski *et al.* (2013, p. 3) indicate that the outbreak that killed 20 percent of the markhor population of a separate subspecies in Tajikistan was caused by a pathogen, *Mycoplasma capricolum capricolum.* The source of the *Mycoplasma* infection in markhor is unknown, although domestic goats may have been responsible. The findings of the study conclude that the markhor is vulnerable to *M. c. capricolum* infections and may be at risk of future outbreaks in light of increasing encroachment of livestock into wild habitat. However, we have found no information, in this study or elsewhere, to support the commenter's opinion that

this subspecies is currently in danger of extinction due to disease. As noted in the final rule, the Torghar Hills population is considered stable and the overlap of range use with domestic livestock is minimal.

(4) Comment: The 4(d) rule is troubling because the Service recognizes overhunting contributed to the imperiled status and continues to be a threat.

Our Response: Overhunting was a major factor in diminishing the straight-horned markhor population to critical levels. Even today, hunting remains a threat to most remaining populations. However, increases in populations of ungulates, including markhor, have occurred in conservation areas managed specifically for trophy hunting. The 4(d) rule supports and encourages the development of this type of conservation program that addresses the threat of overhunting. A well-managed sport-hunting program that encourages sustainable use can significantly contribute to the conservation of wildlife and improve wildlife populations by providing an economic incentive for local communities to protect these species. Monies received for a hunting permit may be used to build and fund schools and health clinics, improve access to drinking water, and improve sanitation and roads. Local communities see a direct connection between protecting species and improvements to their communities.

(5) Comment: The Service premises the 4(d) rule upon the purported benefits of the proceeds from selling markhor trophies. This approach will only serve to further commercialize endangered and threatened wildlife and sends a message that the United States encourages exchange of imperiled wildlife for cash. This concept runs counter to the intent of the Act to protect and recover species.

Our Response: We are not allowing for the commercialization of the straight-horned markhor. Under this final 4(d) rule, the Director may authorize the importation of noncommercial specimens for personal use, provided the sport-hunted trophy is taken from a conservation program that meets certain criteria. Consistent with the Act, the criteria of the 4(d) rule ensures that imported markhor trophies are only from scientifically-based management programs that provide for the conservation of this subspecies.

(6) Comment: The 4(d) rule does not provide for the conservation of the species because the definition of the term ''conservation'' under the ESA limits take of a threatened species to ''the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved.''

Our Response: The 4(d) rule does not authorize take of straight-horned markhor, rather it authorizes the import of trophy-hunted straight-horned markhor from established conservation programs that meet certain criteria.

(7) Comment: A 4(d) rule authorizing trophy imports must also conserve the species and is, therefore, limited to a finding that overpopulation necessitates the need for regulated take.

Our Response: Take of a wholly foreign species in its native country is not regulated by the Act because the action is not subject to the jurisdiction of the United States. Furthermore, as previously mentioned, the 4(d) rule authorizes the importation, not the taking, of markhor, provided the Director finds that the sport-hunted trophy is from a management program meeting certain criteria. Therefore, we would not make a finding on whether overpopulation necessitates regulated take before authorizing the import of markhor sport-hunted trophies. The criteria of the 4(d) rule ensures that imported markhor trophies are only from scientifically based management programs that provide for the conservation of this subspecies.

(8) Comment: The import of trophies is not carried out for the purpose of promoting conservation; rather the action is undertaken solely for the benefit of the individual hunter.

Our Response: Permitting the import of trophies from scientifically based conservation programs allows the revenue derived from U.S. hunters to be used for markhor conservation, as well as to support the communities that are protecting them.

(9) Comment: The 4(d) rule allows import of sport-hunted trophies from conservation programs that benefit the community and species. Benefits to the community are irrelevant unless they also confer a benefit to the species.

Our Response: We agree. Our 4(d) rule states ''the conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species, and the funds derived from sport hunting are applied toward benefits to the community and the species.'' Involvement of the local community in conservation of a species results in better conservation, especially if it creates sustainable benefits for the community (Damm and Franco in press a, p. 29). Revenue and economic benefits generated for the community from the use of wildlife provide incentives for people to conserve the species and its habitat, thus removing the risk of resource degradation, depletion, and habitat conversion (IUCN SSC 2012, pp. 2–5; Shackleton 2001, pp. 7, 10).

(10) Comment: Allowing the import of hunted trophies based in part on funding communities living near a hunting reserve does not provide for conservation of the species.

Our Response: We disagree. By setting criteria in the 4(d) rule that programs must also benefit the local community to be eligible, we are ensuring that U.S. hunters are participating in conservation programs that truly benefit the species by providing economic incentives that promote community-based conservation of markhor. In essence, the 4(d) rule, provided the criteria is met, ensures that local communities will have sufficient reasons, or incentives, to conserve the species in preference to their domestic livestock and to protect species against poaching.

(11) Comment: The Service inappropriately uses the Conference Resolution 10.15 as a justification for the 4(d) rule by indicating that the rule is necessary to implement the resolution. A CITES Resolution in-and-of-itself is not a proper basis for a 4(d) rule, and the Service must independently determine that the 4(d) rule is ''necessary and advisable.''

Our Response: It was not our intent to indicate that the 4(d) rule was necessary to implement or comply with the Conference Resolution, nor did we intend to use the Conference Resolution as a justification for the 4(d) rule. The Conference Resolution recommends that CITES Authorities (authorities under the Convention on International Trade in Endangered Species of Wild Fauna and Flora) in the State of import approve permits of sport-hunted markhor trophies from Pakistan if they meet the terms of the Resolution. Because the Service will take into account the recommendations in the Conference Resolution when determining whether the criteria under the 4(d) are met, we intended to refer to the consideration of these recommendations as an additional benefit. Thus, for clarification, we removed any language suggesting that compliance with the Resolution was a justification for the 4(d) rule.

(12) Comment: Several commenters raised concerns that the 4(d) rule does not ensure revenue generated through sport hunting would benefit the species and that the Service has not established any guidelines for evaluating or monitoring trophy programs or determining whether funds derived

from sport hunting are sufficiently applied towards the community or species.

Our Response: Under the 4(d) rule, before a sport-hunted trophy may be imported without a permit issued under 50 CFR 17.32, the Service must publish notice of the authorization in the **Federal Register**. In that notice, the Service will explain the basis of a decision to exempt the import of markhor trophies from the permitting requirements. The Service does not believe that we need to codify specific guidelines on evaluating and monitoring scientifically based management programs that include sport hunting or how funds generated by sport hunting must be used in relation to enhancing the conservation of the species. Establishing prescriptive guidelines may, in fact, limit or constrain innovative management efforts, grassroots conservation initiatives, or community development programs. The Service believes that the criteria established in the 4(d) rule sufficiently outline the factors that must be considered in order to exempt imports from the requirement for import permits under the Act.

(13) Comment: The 4(d) rule will be difficult to implement as there is no information on who submits the information on the program, how the Service will determine if the local regulatory authorities are capable of obtaining sound data on populations, and whether and how the Service will decide if regulatory authority can determine where the trophy was hunted.

Our Response: Although information submitted and considered under the 4(d) rule will likely be submitted by the exporting country, it is not a requirement. Information made available to the Service relative to the five criteria established in the 4(d) rule will be evaluated to determine its validity. After a thorough evaluation of the information, the Service will publish a **Federal Register** notice explaining the basis of any decision to exempt the import of markhor trophies from the permitting requirements under the Act.

(14) Comment: Two commenters expressed concern that the 4(d) rule would encourage poaching, create a demand for straight-horned markhor, and facilitate illegal trade or a black market for markhor.

Our Response: It is unclear to the Service how allowing the importation of legally hunted trophies, taken as part of a scientifically based conservation program, would stimulate illegal trade or create an unsustainable demand for straight-horned markhor. While it may be possible to exempt importations from the requirements of a permit issued under the Act at 50 CFR 17.32 if the criteria under the 4(d) rule are met, we must still adhere to CITES requirements. As an Appendix-I species under CITES, straight-horned markhor imports must meet the criteria under 50 CFR part 23. Namely, there is still a requirement that the exporting country make the required findings that the export would not be detrimental to the species and that trophies were legally taken. Moreover, as the authority for the importing country, we would still need to make a finding that the import would be for purposes not detrimental to the survival of the species, and that the specimen will not be used for primarily commercial purposes. Thus, if the Director determines that the conservation program meets the 4(d) criteria, the Service finds that additional authorizations under the Act for importation of sport-hunted trophies would not be necessary and advisable for the conservation of the species, nor appropriate, because such importation already requires compliance with CITES' most stringent international trade controls for this subspecies listed under Appendix I.

(15) Comment: The 4(d) rule is broader than Conference Resolution 10.15 (Establishment of quotas for markhor hunting trophies) and could authorize import of trophies beyond the quota granted to Pakistan under Conference Resolution 10.15. The 4(d) rule should be modified to match Conference Resolution 10.15, including limiting the import of trophies to only those exports from Pakistan.

Our Response: The purpose of the Act is to protect and recover imperiled species and the ecosystems upon which they depend. The 4(d) rule is meant to encourage conservation of straight-horned markhor across its range. Limiting the 4(d) rule to only those trophies exported from Pakistan under the Conference Resolution 10.15 would diminish the conservation benefit to markhor range-wide, since conservation programs established in countries such as Afghanistan would not be eligible. In addition, because the Service will consider the provisions of the Conference Resolution 10.15 when evaluating whether the subject conservation program meets the criteria under the 4(d) rule, incorporating the specific provisions of the Resolution into the 4(d) rule would be impracticable. In the event any future changes to the Resolution are adopted by the Parties to the Convention, the regulatory process for amending the 4(d) rule would take time. During the time taken to amend the 4(d) rule, inconsistencies between the Resolution and our regulations would exist, resulting in possible confusion among the regulated community and potential enforcement difficulties.

(16) Comment: The 4(d) rule eliminates the requirement for a threatened species permit under the Act, thereby also eliminating the public notice and comment requirements typically applicable to CITES and ESA permits. The public should be provided with notice and opportunity for comment on markhor import permits even if they are covered by the 4(d) rule.

Our Response: The Service does not publish notices for receipt of applications for threatened species permits in the **Federal Register**; therefore, there is no requirement for public notice and comment. However, under the 4(d) rule, the Service will publish a **Federal Register** notice explaining the basis of a decision to exempt the import of markhor trophies from the Act's permitting requirements.

(17) Comment: The Service has failed to show how the 4(d) rule is necessary and advisable for the conservation of the species.

Our Response: We have revised the preamble of this final rule to clarify how the 4(d) rule is necessary and advisable. Because the success of markhor conservation is directly related to support from the local community, it is imperative that the 4(d) rule support community-based conservation programs. We set criteria in the 4(d) rule to ensure that U.S. hunters are participating in conservation programs that benefit the species by providing economic incentives that promote community-based conservation of markhor.

(18) Comment: Afghanistan's Ministry of Agriculture, Irrigation, and Livestock (MAIL) stressed that it is imperative that export of markhor trophies be documented as taken from established conservation programs in Torghar Hills only, and not from areas in Afghanistan.

Our Response: Our 4(d) rule establishes that ''regulating authorities can determine that the trophies have in fact been legally taken from the populations under an established conservation program.'' If the country of export, in this case Pakistan, cannot provide that information to the Service, or if there is a proven indication that animals are being taken from outside approved conservation programs, the import would not meet the enhancement criteria set forth in the 4(d) rule. Further, CITES provides additional protections because markhor

are listed under CITES Appendix I. Appendix-I specimens require an export permit to be issued by the Management Authority of the state of export, in this case Pakistan. Prior to issuing the CITES export permit, Pakistan must determine that the specimen was legally obtained, that the trade will not be detrimental to the survival of the species, and that a CITES import permit has already been issued by the importing country (in this case, the United States). We feel that the protections put in place under this 4(d) rule and CITES are sufficient to ensure that animals will not be taken from outside approved conservation programs. However, we would appreciate notification of any such incidences where markhor are taken in violation of CITES or the Act.

(19) Comment: The Service did not adequately address or consider the impacts of the 4(d) rule to endangered snow leopards (*Panthera uncia*), whose range overlaps with the straight-horned markhor in northern Pakistan.

Our Response: The range of the snow leopard overlaps only with the flare-horned markhor (*Capra falconeri falconeri*) and Heptner's markhor (*C. f. heptneri*), not the straight-horned markhor. The 4(d) rule applies only to the straight-horned markhor and has no bearing on the snow leopard.

(20) Comment: The Service has failed to comply with the National Environmental Policy Act (NEPA). The 4(d) rule allows controversial sport-hunting and import under a vague program for conservation and must be fully analyzed.

Our Response: As stated above, the 4(d) rule does not authorize take of straight-horned markhor. Because this subspecies is wholly foreign, the United States and the Act do not have jurisdiction to prohibit or allow take of a listed species. Furthermore, under our 1983 policy, we determined that we do not need to prepare an environmental assessment in connection with regulations adopted under section 4(a) of the Act, including 4(d) rules that accompany listings of threatened species.

(21) Comment: One commenter expressed concerns about the Service's draft Significant Portion of the Range (SPR) policy. Specifically, the commenter disagreed with our analysis of populations of straight-horned markhor outside of Torghar Hills and our conclusion that it did not meet our definition of ''significant'' as defined in our SPR policy.

Our Response: Since we published our revised proposed rule, the Service and National Marine Fisheries Service published a final rule interpreting the phrase ''significant portion of the range'' (79 FR 37578, July 1, 2014). The final policy states that, if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act's protections apply to all individuals of the species wherever found. Consistent with the final policy, because we found the straight-horned markhor to be threatened throughout its entire range, we did not conduct an additional analysis as to whether any portion of the subspecies' range is ''significant.''

(22) Comment: The Service should confirm that the Torghar Hills population meets the criteria set forth in the 4(d) rule and that sport-hunted trophies taken from this population may be imported without a threatened species permit under 50 CFR 17.32.

Our Response: We will review all conservation programs to determine whether they meet the enhancement criteria set forth in the 4(d) rule. We will publish those enhancement findings in a separate **Federal Register** document.

Summary of Changes From the Proposed Rule

We fully considered comments from the public and peer reviewers to develop this final reclassification of the straight-horned markhor. We made some technical corrections and incorporated changes to our proposed rule as described above. In addition, we made some non-substantive changes to our analysis under the *Significant Portion of the Range* section of this rule to reflect the final version of the SPR policy. In the proposed listing rule, after determining the species was threatened throughout its range, we conducted an additional analyses to determine that no portion of the species range was ''significant.'' Under the final SPR policy, however, once it is determined that a species is threatened or endangered throughout its range, the Service need not analyze whether any portion of its range is ''significant.'' Accordingly, we revised the text of the *Significant Portion of the Range* section of this rule to reflect the final version of the SPR policy. Despite this modification, the proposed status determination that the subspecies is threatened throughout its range did not change in this final listing rule.

Subspecies Information

Taxonomic Classification

The markhor (*Capra falconeri*) is a species of wild goat belonging to the Family Bovidae and Subfamily Caprinae (sheep and goats) (Valdez 2008, unpaginated). When the markhor was first listed under the Act in 1975, seven subspecies of markhor were generally recognized: *Capra falconeri jerdoni* (straight-horned or Suleiman markhor), *C. f. megaceros* (Kabul markhor), *C. f. cashmirensis* (Kashmir markhor), *C. f. falconeri* (Astor markhor), *C. f. ognevi* (Uzbek markhor), *C. f. heptneri* (Tajik markhor), and *C. f. chialtanensis* (Chiltan markhor) (64 FR 51499, September 23, 1999; Roberts 1977, p. 196). In 1975, Schaller and Khan (1975, pp. 188, 191) recognized three subspecies of markhor based on horn shape and body characteristics: *C. f. jerdoni* and *C. f. megaceros* were combined into *C. f. megaceros* (straight-horned markhor); *C. f. cashmirensis* and *C. f. falconeri* were combined into *C. f. falconeri* (flare-horned markhor); and *C. f. ognevi* and *C. f. heptneri* were combined into *C. f. heptneri* (Heptner's markhor). Many authorities consider *C. f. chialtanensis* to be *Capra aegagrus chialtanensis* (Chiltan wild goat) (64 FR 51500, September 23, 1999).

In our June 2, 2011, 90-day petition finding, August 7, 2012, proposed rule, and December 5, 2013, revised proposed rule to reclassify the straight-horned markhor (*C. f. jerdoni*), we requested information on the taxonomy of *C. f. jerdoni* and *C. f. megaceros* to determine if these constitute a single subspecies. We have reviewed the available information, including information submitted by the public. While scientists have not reached a consensus on the correct classification of markhor (Zahler 2013, pers. comm.; Frisina 2012, pers. comm.) and genetic studies are needed (Rafique 2014, pers. comm.), the Integrated Taxonomic Information System (ITIS), International Union for Conservation of Nature (IUCN), the IUCN Species Survival Commission (IUCN SSC) Caprinae Specialist Group, and CITES all follow Grubb 2005 (p. 701) and Schaller and Khan (1975 pp. 188, 191), which recognizes three subspecies of markhor (Damm and Franco in press, pp. 4–5; ITIS 2013a, unpaginated; ITIS 2013b, unpaginated; Smithsonian National Museum of Natural History 2011, unpaginated; CITES Resolution Conf. 12.11. (Rev. CoP15) 2010, p. 3; Valdez 2008, unpaginated; CITES 10.84 (Rev.) 1997, p. 894; Shackleton 1997, p. 12).

Currently, the straight-horned markhor (*C.f. jerdoni*) and Kabul markhor (*C.f. megaceros*) are listed as separate subspecies under the Act. Based on the information available and our present understanding of taxonomic relationships, we are revising the List of Endangered and Threatened Wildlife at

50 CFR 17.11(h) to maintain consistency with ITIS, IUCN, and CITES to reflect the current scientifically accepted taxonomy and nomenclature. In the Regulation Promulgation section of this document, we implement a taxonomic change to reflect the combining of the straight-horned markhor (*C. f. jerdoni*) and Kabul markhor (*C. f. megaceros*) into one subspecies, the straight-horned markhor (*C. f. megaceros*). We will also refer to the straight-horned markhor as ''markhor'' in this final rule.

Species Description

Markhor are sturdy animals with strong, relatively short, thick legs and broad hooves. They are a reddish-grey color, with more buff tones in the summer and grey in the winter. The legs and belly are a cream color with a conspicuous dark-brown pattern on the forepart of the shank interrupted by a white carpal patch. They also have a dark brown mid-dorsal stripe that extends from the shoulders to the base of the tail. The tail is short and sparsely covered with long black hairs, but is naked underneath. Adult males have an extensive black beard followed by a long, shaggy mane extending down the chest and from the fore part of the neck. There is also a crest of long black and dark brown hair that hangs like a mane down either side of the spine from the shoulders to the croup (Roberts 1977, p. 197). Horns are straight with an open, tight spiral resembling a corkscrew (Schaller and Khan 1975, p. 189).

Life History

Markhor are associated with extremely rugged terrain with precipitous cliffs, rocky caves, and bare rock surfaces interspersed with patches of arid, steppe vegetation. They can be found from 600 meters (m) (1,969 feet (ft)) up to 3,300 m (10,827 ft) in elevation (Woodford *et al.* 2004, p. 181; Mitchell 1989, p. 8; Johnson 1994b, p. 5).

Markhor are diurnal in feeding activity. They are most active in the early morning and late evening (Mitchell 1989, p. 8). Wild pistachios are a preferred food for straight-horned markhor (Johnson 1994, p. 12; Roberts 1977, p. 198), although in general they are known to feed on grasses and leaves, and twigs of bushes. Markhor seek water in the late afternoon; they may need to descend to valley bottoms for water, but only after darkness (Roberts 1977, p. 198).

Markhor are gregarious, with females, their young, and immature males associating in small herds, but competition with domestic goat flocks may drive markhor populations to higher terrain and result in larger herds. Adult males live solitary lives, taking shelter under rock overhangs or natural caves. They join the females and young only during the rut, which for the straight-horned markhor peaks around mid-November and lasts about 2 weeks. Males may attach themselves to one particular territory or herd. Fighting between rival males also occurs during this time. Markhor reach sexual maturity around 3 years of age. Females usually give birth to one young, but twins are not uncommon. A young markhor will remain with its mother until the rutting season or until the next young is born. After this, the female will drive the older young away if it approaches too closely. In the wild, it is possible that markhor can live up to 18 years of age, but few males are estimated to live beyond 11 or 12 years (Ali 2008, p. 16; Mitchell 1989, p. 9; Roberts 1977, pp. 198–199).

Range and Population

For most of the straight-horned markhor populations, there is no detailed information on distribution, population estimates, or threats to the subspecies; most information that is available predates the onset of hostilities in the region in 1979. However, the Torghar Hills population of the straight-horned markhor has been extensively studied since the mid-1980s due to the implementation of a conservation plan in this area. Therefore, this status review mainly consists of information related to this population. When possible, we have included general information on the status of the populations outside of the Torghar Hills.

Historically, the straight-horned markhor inhabited a wide range in the mountains of eastern Afghanistan and Pakistan. In Afghanistan, it has been reported that this subspecies survives only in the Kabul Gorge and the Kohe Safi area of Kapissa Province, and in some isolated pockets in between (Ali 2008, pp. 17–18; Valdez 2008, unpaginated; Habibi 1997, p. 208; Schaller and Khan 1975, pp. 195–196). However, no surveys have been conducted in the area, and it is likely that this subspecies has been extirpated from Afghanistan (Zahler 2013, pers. comm.). In Pakistan, the straight-horned markhor is found in the mountains of Balochistan and Khyber Pakhtunkhwa provinces. There is one unconfirmed report of the subspecies in Punjab Province (Valdez 2008, unpaginated; CITES 10.84 (Rev.) 1997, p. 894). For a species range map, please see the IUCN Red List species account for *Capra falconeri* (*http://maps.iucnredlist.org/map.html?id=3787*); zooming in on populations will reveal subspecies labels.

Within Balochistan, the straight-horned markhor has been reduced to small, scattered populations on all the mountain ranges immediately to the north and east of Quetta, including Murdar, Takhatu, Zarghun, Kaliphat, Phil Garh, and Suleiman. It is reported that the straight-horned markhor still survives in the Shingar Range on the border of Balochistan and South Waziristan. However, surveys are needed to confirm these localities. The greatest concentration is in the Torghar Hills of the Toba Kakar Range on the border with Afghanistan, within a community-based management program, the Torghar Conservation Project (Rafique 2014, pers. comm.; Frisina and Tareen 2009, pp. 142–143; Johnson 1994b, p. 16; Roberts 1977, p. 198; Schaller and Khan 1975, p. 196).

Within Khyber Pakhtunkhwa, the subspecies is reported to still survive in the Sakra Range, Murghazar Hills, Khanori Hills, and Safed Koh Range. Surveys are needed to confirm these localities; the occurrence in Safed Koh has been questioned due to a lack of information. A 2011 survey found that the straight-horned markhor has been extirpated from the Sheikh Buddin Hills (Rafique 2014, pers. comm.; Ali 2008, p. 18; Valdez 2008, unpaginated; Hess *et al.* 1997, p. 255; Roberts 1977, p. 198).

Limited information is available for populations throughout most of the straight-horned markhor's range. Many historical populations were extirpated due to overhunting (Johnson 1994b, p. 5; Johnson 1994, p. 10). In Afghanistan, very few straight-horned markhor survive; perhaps as few as 50–80 occur in the Kohe Safi region, with few in other isolated pockets (Valdez 2008, unpaginated; Habibi 1997, pp. 205, 208; Schaller and Khan 1975, p. 195). However, as stated above, this subspecies may be extirpated from Afghanistan (Zahler 2013, pers. comm.). In Pakistan, Schaller and Khan (1975, pp. 195–196) estimated 150 in Takhatu, 20 to 30 in Kalifat, 20 in Zarghum, 20 in Shinghar, 20 around Sheikh Buddin, 50 in the Sakra Range, and at least 100 in Safed Koh. Few were estimated to survive in the Murdar Range, and a remnant population may have existed near Loralei in the Gadabar Range. Roberts (1969 in Valdez, 2008, unpaginated) believed the number of markhor in the Toba Kakar range was fewer than 500. In 1984, Tareen estimated fewer than 200 remained in the Torghar Hills (Mitchell, 1989, p. 9). Overall, Schaller and Khan (1975, pp. 195–196) estimated fewer than 2,000

straight-horned markhor survived throughout the subspecies' range.

In general, markhor populations are reported as declining (Kanderian *et al.* 2011, p. 287; Valdez 2008, unpaginated). Hess *et al.* (1997, p. 255) and Habibi (1997, p. 208) concluded that the straight-horned markhor had likely not increased in recent years. Current estimates for populations of straight-horned markhor are lacking, with the exception of the population in the Torghar Hills of the Toba Kakar Range. This population has been extensively studied due to the implementation of a community-based management program. In addition, as part of the use of annual export quotas for markhor sport-hunted trophies granted to Pakistan at the 10th meeting of the Conference of the Parties to CITES, Pakistan submits annual surveys of markhor populations, including populations within the Torghar Conservation Area (Resolution Conf. 10.15 (Rev. CoP 14); see discussion below under Summary of Threats). Based on surveys conducted from 1985 through 1988, Mitchell (1989, p. 9) estimated 450 to 600 markhor inhabited the Torghar Hills. Regular surveys of the managed area have taken place since 1994, when Johnson (1994b, p. 12) estimated the population of markhor to be 695. Later surveys estimated the population to be 1,296 in 1997; 1,684 in 1999; 2,541 in 2005; 3,158 in 2008; and 3,518 in 2011 (Frisina and Rasheed 2012, p. 5; Arshad and Khan 2009, p. 9; Shafique 2006, p. 6; Frisina 2000, p. 8; Frisina *et* al. 1998, p. 6). Although most of the mountain ranges in Balochistan have not been formally surveyed, Johnson (1994b, p. 16) concluded that Torghar was the last remaining stronghold for the subspecies.

Summary of Threats

Throughout the range of the straight-horned markhor, overhunting, keeping of large herds of livestock for subsistence, deforestation, and the lack of effective federal and provincial laws have devastated populations of straight-horned markhor and destroyed vital habitat (Valdez 2008, unpaginated; Habibi 1997, pp. 205, 208; Hess *et al.* 1997, p. 255).

Small-scale hunting has been a long-standing tradition of the people of Afghanistan and Pakistan (Zahler 2013, pers. comm.; Kanderian *et al.* 2011, p. 283; Frisina and Tareen 2009, p. 146; Ahmed *et al.* 2001, p. 2). However, prior to the beginning of the Soviet-Afghan War in 1979, few animals were hunted, as weapons were primitive and ammunition scarce and expensive. After the beginning of the war, there was an influx of more sophisticated weapons, such as semi- and fully-automatic rifles, and cheap ammunition was more accessible. This proliferation of arms and increased likelihood of a successful kill, combined with millions of displaced people dependent on wild meat for subsistence, led to excessive hunting of wildlife and critically low populations of straight-horned markhor (Zahler 2013, pers. comm.; Kanderian *et al.* 2011, p. 284; Frisina and Tareen 2009, p. 145; MAIL 2009, p. 4; Woodford *et al.* 2004, p. 181; Ahmed *et al.* 2001, pp. 2, 4; CITES 10.84 (Rev.) 1997, p. 895; Habibi 1997, pp. 205, 208; Hess *et al.* 1997, p. 255; Johnson 1994b, p. 1).

In an effort to manage diminishing wildlife populations, national bans on hunting were implemented in Pakistan in 1988, 1991, and 2000. However, the ban had little impact on the recovery of wildlife populations (Ahmed *et al.* 2001, p. 5). In 2005, Afghanistan banned hunting for 5 years, but there was no enforcement and most Afghans were either unaware of the decree or ignored it (Kanderian *et al.* 2011, p. 291; MAIL 2009, pp. 4, 23, 24). Additionally, the markhor (*Capra falconeri*) is a protected species under Afghanistan's Environmental Law of 2007, the Balochistan Wildlife Protection Act of 1974 (BWPA), and the North-West Frontier Province Wild-life (Protection, Preservation, Conservation, and Management) Act (NWFPWA) of 1975, which extends to all of the Khyber Pakhtunkhwa Province. Under these laws, hunting, killing, or capturing of markhor is prohibited (MAIL 2009, p. 23; Aurangzaib and Pastakia 2008, p. 58; Official Gazette No. 912, dated 25 January 2007, Article 49; BWPA 1977, p. 15; NWFPWA 1975, Third Schedule).

Today, the straight-horned markhor has been extirpated from much of its former range due to overhunting, and they survive only in the most inaccessible regions of its range (Habibi 1997, p. 205; Johnson 1994b, p. 5; Johnson 1994, p. 10), despite laws intended to provide protection from hunting. We have no information on the extent of poaching currently taking place in most of the subspecies' range, but information suggests that uncontrolled hunting remains a threat to most remaining populations of this subspecies (United Nations Environment Programme (UNEP) 2009, p. 10; NEPA and UNEP 2008, p. 17; Valdez 2008, unpaginated; CITES 10.84 (Rev.) 1997, p. 895; Hess *et al.* 1997, p. 255). However, increases in populations of ungulates, including markhor, have occurred in conservation areas managed specifically for trophy hunting (University of Montana 2013, unpaginated; Frisina and Rasheed 2012, p. 5; Wildlife Conservation Society 2012, unpaginated; Arshad and Khan 2009, p. 9; Government of Pakistan 2009, p. viii; Ali 2008, pp. 21, 38, 64; Shafique 2006, p. 6; Frisina 2000, p. 8; Virk 1999, p. 142; Frisina *et* al. 1998, p. 6). Currently, only one conservation plan is being implemented for the straight-horned markhor, the Torghar Conservation Project (TCP) in Torghar Hills, Pakistan.

In the early 1980s, local tribal leaders became alarmed at the significant decline in the markhor population in the Torghar Hills (Frisina and Tareen 2009, p. 145; Ahmed *et al.* 2001, p. 4; Johnson 1994b, p. 1). The population had dropped to a critical level, estimated at fewer than 200 animals (Ahmed *et al.* 2001, p. 4; Johnson 1994b, p. 14; Mitchell, 1989, p. 9). Tribal leaders attributed the decline to an increase in poaching due to the significant increase in weapons in the area during the Soviet-Afghan War (Frisina and Tareen 2009, p. 145; Johnson 1994b, p. 1). After unsuccessful attempts to receive assistance from the Balochistan Forest Department, they turned to wildlife biologists in the United States, including the U.S. Fish and Wildlife Service. Together, they developed the TCP, an innovative, community-based conservation program that allows for limited trophy hunting to conserve local populations of markhor, improve habitat for both markhor and domestic livestock, and improve the economic conditions for local tribes in Torghar (Frisina and Tareen 2009, p. 146; Woodford *et al.* 2004, p. 182; Ahmed *et al.* 2001, p. 4 Johnson 1994b, pp. 1–2).

In 1985, the TCP was launched and covered most of the Torghar area (approximately 1,000 square kilometers (386 square miles)). First, tribal leaders implemented a ban on all hunting activities by tribesmen in the Torghar Hills. Then, local tribesmen were hired as game guards to assist in population surveys and prevent poachers from entering the Torghar Hills. Guards were placed at points of entry into the protected area to inform migrating tribesmen of the hunting ban, who, in turn, agreed to the ban so as not to jeopardize their passage through the Torghar Hills. Support for the program, including salaries for the game guards, is raised through fees for limited trophy hunting of markhor within the TCP, mostly by foreign game hunters. Currently, markhor fees are $35,000 U.S. dollars, 80 percent of which goes to the TCP and the other 20 percent goes to the Pakistani Government. In the beginning,

7 game guards were hired; currently, 90 game guards are employed. The number of markhor allowed to be hunted each year is based on surveys conducted by game guards and wildlife biologists (Bellon, 2010, p. 117; Frisina and Tareen 2009, pp. 142, 146–147; Ahmed *et al.* 2001, p. 5; Johnson 1994b, p. 3). Numbers of animals taken have ranged from 1 to 5 animals per hunting season, or less than the 2 percent of the total population recommended by Harris (Harris 2012, pers. comm.; 1993 in Woodford *et al.* 2004, p. 182) annually for trophy hunting (Frisina and Tareen 2009, pp. 146–147, 149; Ali 2008, p. 20; Woodford *et al.* 2004, p. 182; Johnson 1997, pp. 403–404). Because markhor have a polygynous mating system, reproduction rates have not been affected by the removal of a limited number of adult males (Woodford *et al.* 2004, p. 182), as evidenced by the continuing increase in the Torghar Hills population.

As a result of the TCP, poaching has been eliminated in the Torghar Hills (Woodford *et al.* 2004, p. 182; Johnson 1994b, p. 3). Johnson (1994b, p. 15) attributed the markhor population growth to the substantial reduction in mortality when uncontrolled hunting was stopped.

The markhor (*Capra falconeri*) is protected under CITES, an international agreement between governments to ensure that the international trade of CITES-listed plant and animal species does not threaten species' survival in the wild. Under this treaty, CITES Parties (member countries or signatories) regulate the import, export, and reexport of specimens, parts, and products of CITES-listed plant and animal species. Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Management Authority of each CITES Party. Both Afghanistan and Pakistan are Parties to CITES.

The straight-horned markhor was listed in CITES Appendix I, effective July 1, 1975. An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The import of an Appendix-I species generally requires the issuance of both an import and export permit. Import permits for Appendix-I species are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species and that the specimen will not be used for primarily commercial purposes (CITES Article III(3)). Export permits for Appendix-I species are issued only if findings are made that the specimen was legally acquired and trade is not detrimental to the survival of the species, and if the issuing authority is satisfied that an import permit has been granted for the specimen (CITES Article III(2)).

Straight-horned markhor in the Torghar Hills, and other subspecies of markhor within community-managed conservation areas in Pakistan, may be legally hunted and exported. In 1997, at the 10th meeting of the Conference of the Parties to CITES, the Government of Pakistan submitted a proposal for approval of an annual export quota for sport-hunted markhor trophies to act as an incentive to communities to conserve markhor. During that same meeting, the Conference of the Parties approved an annual export quota of six sport-hunted markhor trophies for Pakistan (Resolution Conf. 10.15). Due to the success of conservation programs in Pakistan, CITES increased the annual export quota to 12 markhor in 2002, to further encourage community-based conservation; four were allotted to the TCP (Bellon 2010, p. 117; Ali 2008, p. 24; Resolution Conf. 10.15 (Rev. CoP 14)).

Furthermore, because the straight-horned markhor is listed as an Appendix-I species under CITES, legal international trade is very limited; most of the international trade in straight-horned markhor specimens consists of trophies and live animals. Data obtained from the United Nations Environment Programme—World Conservation Monitoring Center (UNEP–WCMC) CITES Trade Database show that, from July 1975, when the straight-horned markhor was listed in Appendix I, through 2012, a total of 136 specimens were reported to UNEP–WCMC as (gross) exports. Of those 136 specimens, 55 were trophies, 80 were live animals, and 1 was a body. In analyzing these data, it appears that one record may be an overcount due to a slight difference in the manner in which the importing and exporting countries reported their trade. It is likely that the actual number of straight-horned markhor specimens in international trade during this period was 134, including 55 trophies, 78 live animals, and 1 body. Exports from range countries included: 48 trophies from Pakistan, 1 trophy from Afghanistan, and 1 body from Afghanistan. It should be noted that the straight-horned markhor trade data provided above are based on reported trade to UNEP–WCMC in both the subspecies *Capra falconeri jerdoni* and the subspecies *Capra falconeri megaceros.* It should also be noted that the markhor at the species level (*Capra falconeri*), except for *C. f. chialtanensis, C. f. megaceros,* and *C. f. jerdoni,* was listed in Appendix II in 1975, but was transferred Appendix I in 1992. Since then, international trade was likely in some cases reported to UNEP–WCMC at the species level rather than the subspecies level. Therefore, it is possible that, between 1992 and 2012, some international trade in *Capra falconeri jerdoni* and *Capra falconeri megaceros* may have been reported to UNEP–WCMC at the species level. It was not possible to determine whether the trade reported at the species level represented trade in straight-horned markhor or trade in other markhor subspecies. Because there has been limited trade in straight-horned markhor, totaling 136 specimens over 38 years, we believe that international trade controlled via valid CITES permits is not a threat to the subspecies.

Habitat modification has also contributed to the decline of the straight-horned markhor. People living in rural areas heavily depend on natural resources; habitat throughout the range of the straight-horned markhor has been negatively impacted by domestic livestock overgrazing and deforestation (Kanderian *et al.* 2011, pp. 281, 284, 287; World Wildlife Fund (WWF) 2011, unpaginated; MAIL 2009, p. 5; UNEP 2009, p. 6; NEPA and UNEP 2008, p. 15; Valdez 2008, unpaginated; WWF 2008, unpaginated; Hess *et al.* 1997, p. 255; CITES 10.84 (Rev.) 1997, p. 895).

Much of the land where straight-horned markhor occur is owned by local tribes whose subsistence is largely dependent on keeping large herds of primarily sheep and goats. Livestock often exceed the carrying capacity of rangelands, leading to overgrazing, a halt to natural regeneration, and subsequent desertification of native vegetation. Overgrazing and competition with domestic livestock for forage is known to have resulted in the decline of wild ungulates and pushed their occurrence to range edges (WWF 2011, unpaginated; Frisina and Tareen 2009, pp. 145, 154; UNEP 2009, p. 8; NEPA and UNEP 2008, pp. 15–17; Valdez 2008, unpaginated; WWF 2008, unpaginated; Woodford *et al.* 2004, p. 180; Tareen 1990, p. 4; Mitchell 1989, pp. 4–5; Schaller and Khan 1975, p. 197).

Throughout the markhor's range, millions of displaced people and a high human population growth rate have created a tremendous demand for natural resources. Straight-horned markhor habitat and food sources are suffering significant declines due to deforestation from illegal logging and collection of wood for building materials, fuel, and charcoal (Zahler

2013, pers. comm.; Smallwood *et al.* 2011, p. 507; WWF 2011, unpaginated; MAIL 2009, pp. 3, 5; UNEP 2009, p. 6; NEPA and UNEP 2008, pp. 15–16; Valdez 2008, unpaginated; WWF 2008, unpaginated; Hess *et al.* 1997, p. 255; Hasan and Ali 1992, pp. 8–9, 12–13).

Several Afghan and Pakistani laws protect wildlife and its habitat in these countries. Protected areas, such as national parks, sanctuaries, and game reserves may be designated under Afghanistan's Environmental Law, the BWPA, and the NWFPWA (MAIL 2009, pp. 22–23; Aurangzaib and Pastakia 2008, pp. 58, 65–67; Environmental Law 2007, Articles 38, 39, 40, and 41; NWFPWA 1975, sections 15, 16, and 17). However, no designated protected areas contain the straight-horned markhor.

Article 45 of Afghanistan's Environmental Law dictates that grazing of livestock shall be managed and controlled by the Ministry of Agriculture, Animal Husbandry, and Food to minimize the impact on, and optimize use of, vegetation cover. Given that overgrazing of livestock is a wide-ranging threat to Afghanistan's environment (UNEP 2009, p. 8; NEPA and UNEP 2008, pp. 15–17; Valdez 2008, unpaginated), it appears that the Environmental Law has not yet been effectively implemented. Also, Presidential Decrees No. 405 and No. 736 prohibit the cutting of forests to preserve and maintain forests as a national asset. However, these decrees are unfamiliar to most Afghans or are ignored (MAIL 2009, pp. 5, 23).

In Balochistan, the Forest Act of 1927 allows for the creation of various classes of forests, the reservation of state-owned forest land, and for the provincial government to assume control of privately owned forest land and declare government-owned land to be a protected area. It also prohibits grazing, hunting, quarrying, and clearing land for cultivation; removal of forest produce; and the felling or lopping of trees and branches in reserved and protected forests (Aurangzaib and Pastakia 2008, p. 46). However, this law does not provide for sustainable use, conservation, or the protection of endangered wildlife within forests. Other legislation related to forests in Balochistan restricts subsistence use, but focuses on maximizing commercial exploitation. This may be because these laws date back to the early 20th century and reflect priorities of that time. Provincial amendments have done little to alter the focus of these laws. Enforcement of forest laws is lacking, and where enforcement is possible, penalties are not severe enough to serve as a deterrent to violators. Furthermore, these laws may be overridden by other laws in favor of development and commercial uses (Aurangzaib and Pastakia 2008, pp. 42–43).

The Land Preservation Act of 1900 is a Punjab law that, by default, was applied to the Balochistan province shortly after its establishment in 1970. This law allows the government to prevent soil erosion and conserve subsoil water. Activities such as clearing, breaking up, and cultivating land not ordinarily under cultivation; quarrying stone and burning lime; cutting trees and removing forest produce; setting fire to trees, timber, and forest produce; and herding and pasturing goats and sheep are prohibited. However, the government may permit inhabitants to carry out such activities (Aurangzaib and Pastakia 2008, p. 39).

In Khyber Pakhtunkhwa, the North-West Frontier Province Forest, Ordinance, 2002 (No. XIX of 2002) consolidates and amends the laws relating to protection, conservation, management, and sustainable development of the forests and natural resources of the province. It allows the government to declare forest land as a reserved forest (Forest Ordinance 2002, section 4). Within a reserved forest, it is illegal for a person to cultivate, clear, break up, or occupy any land; construct a building, road, enclosure, or any infrastructure, or alter or enlarge any such existing structures; trespass, graze, browse, or drive cattle; set fire, cut, fell, uproot, lop, tap, or burn any tree listed in Schedule I; quarry stone, burn lime or charcoal, or collect or remove forest produce; pollute; or hunt, shoot, fish, or set snares or traps (Forest Ordinance 2002, section 26). Given that deforestation is a widespread problem in Pakistan, it appears that this provincial law has not been effectively implemented.

Despite federal and provincial laws, declines in markhor populations and significant degradation of habitat have continued. Enforcement is lacking and very difficult to achieve due to the remoteness of many areas, the political situation in remote areas, conflicting policies, lack of understanding of the need and importance of conservation, and economic constraints (MAIL 2009, pp. 5, 23; UNEP 2009, pp. 4, 29; Aurangzaib and Pastakia 2008, pp. 39, 42–43; Hess *et al.* 1997, p. 243). Additionally, many of the areas where the straight-horned markhor occurs are on tribal lands, which are generally governed by tribal law, and Provincially Administered Tribal Areas where federal and provincial laws do not apply (Frisina and Tareen 2009, p. 144; Ahmed and Khazi 2008, pp. 13, 24; Aurangzaib and Pastakia 2008, p. 23; CITES 10.84 (Rev.) 1997, p. 895; Johnson 1994a, p. 1). In areas where existing laws are applicable, it does not appear that they have provided adequate protection given the severe declines in straight-horned markhor and threats the markhor continues to face from habitat loss and poaching.

Afghanistan and Pakistan are Parties to major multilateral treaties that address natural resource conservation and management (MAIL 2009, p. 32; Ahmed and Khazi 2008, p. 31). Among these are the Convention on Biological Diversity and the Convention on Combating Desertification (MAIL 2009, p. 34; Ahmed and Khazi 2008, pp. 14, 31). In becoming a Party to these treaties, both countries assumed obligations to implement the treaties' provisions, which in many cases require legislation. However, participation in treaty activities or laws to implement obligations is lacking (MAIL 2009, pp. 32–33; Ahmed and Khazi 2008, pp. 14, 31; Aurangzaib and Pastakia 2008, pp. 65, 58). Therefore, these treaties do not provide adequate protections to ameliorate threats faced by the straight-horned markhor.

Although international, federal, and provincial laws do not appear to effectively provide protection to markhor habitat from overgrazing and deforestation, the TCP has taken steps to create better habitat for both markhor and domestic livestock.

In our August 7, 2012, proposed rule, we determined that key areas in the steeper, upland slopes and higher elevation of the Torghar Hills are not easily accessible and, therefore, are not impacted by human settlement or grazing pressure. However, we expressed concern that grazing pressure may increase in these upland areas due to a combination of drought conditions and the tradition of keeping large herds of domestic livestock. The lower slopes and valleys have been denuded of trees for livestock grazing and collection of fuel wood (Ahmed *et al.* 2001, pp. 3, 8; Frisina *et al.* 1998, pp. 9–10). Demand on these resources increases during the biannual migration of local and nearby tribes and their herds through the Torghar Hills (Woodford *et al.* 2004, p. 180; Ahmed *et al.* 2001, p. 4). As forage becomes limited in the lower slopes and valleys, due to drought conditions and grazing pressure, domestic herds are likely to move to higher elevations in search of forage (Frisina *et al.* 2002, p. 13).

Recognizing that protecting markhor and its habitat can generate greater

income for the community than relying solely on traditional livestock production, tribesmen of the Torghar Hills requested that the Society for Torghar Environmental Protection (STEP), the community-based, nongovernmental organization established to administer the TCP, integrate habitat management measures to protect markhor, and create better habitat for both markhor and domestic animals.

A habitat management plan was developed in 2001. The plan emphasizes range management, improved agriculture, and water storage projects to improve habitat conditions, and reduce grazing pressure, eliminate the need for domestic herds to utilize upper slope areas, and, therefore, reduce interactions between domestic livestock and markhor around forage and water resources (Frisina and Tareen 2009, p. 152; Woodford *et al.* 2004, pp. 180, 184; Frisina *et al.* 2002, pp. 3, 8, 16; Ahmed *et al.* 2001, pp. 7, 11). Agriculture is seen as an alternative to raising livestock, thus reducing grazing pressure (Frisina and Tareen 2009, p. 152; Ahmed *et al.* 2001, p. 11). Revenue raised by trophy hunting has been used to fund projects for community needs, including construction of water tanks, dams, and irrigation channels to water fruit trees, and to supply water for the community during times of drought (IUCN SSC 2012, p. 10). STEP plans to plant woodlots of indigenous trees to meet the fuel wood and timber requirements of the local tribes. STEP will also train locals in livestock management and agricultural practices (Bellon 2010, p. 117; Frisina and Tareen 2009, p. 152).

Although we do not know the extent to which the different stages of the management plans described above have been implemented, we have received new information on the markhor and its habitat in the TCP. Frisina and Rasheed (2012, p. 8) concluded from the 2011 population surveys in the TCP that the markhor population and its habitat are secure under the current management scenario.

Currently, there is no evidence of disease transmission between livestock and markhor in the Torghar Hills (Woodford *et al.* 2004, p. 184; Frisina *et al.* 2002, p. 13), although disease transmission was identified as a potential threat to the Torghar Hills straight-horned markhor in our August 7, 2012, proposed rule. The potential for disease transmission stems from livestock-wildlife interactions due to overgrazing by large herds of livestock, drought conditions, and the migration of flocks through the Torghar Hills. The risk of transmission was linked to future and continued habitat and livestock management. The risk of disease transmission is particularly severe if large numbers of domestic livestock are present during periods of drought. During these circumstances, resources are limited and interactions would be more frequent around available water sources and in the vegetated upper slopes. Additionally, researchers are concerned that interactions would likely increase in the TCP if domestic livestock herds grow and the markhor population expands (Woodford *et al.* 2004, p. 183).

In addition to implementing measures to improve habitat conditions at lower elevations, eliminating the need for domestic herds to utilize upper slope areas, and, thereby, reduce interactions between domestic livestock and markhor around forage and water resources, STEP has discussed the establishment of a community-based Animal Health Service. The herdsmen within the TCP have agreed to this measure. As it is not feasible to vaccinate markhor in mountainous terrain, STEP will train and equip tribesmen to act as ''barefoot vets'' with the responsibility of vaccinating domestic sheep and goats, and administering appropriate anthelmintics (drugs that expel parasitic worms) as they travel through the TCP. Veterinary care will be effective only if range and livestock management plans are implemented, and have the potential to result in smaller, healthier domestic livestock herds (Woodford *et al.* 2004, p. 185).

The plans developed by STEP to improve habitat for markhor also lower the risk of disease transmission by addressing livestock management and minimizing interactions between domestic livestock and wildlife. With these actions, coupled with the planned Animal Health Service, the risk of diseases being transferred from domestic livestock to markhor is significantly reduced. Although we do not know the status of the habitat management plans or the Animal Health Service, Frisina and Rasheed (2012, p. 8) concluded from the 2011 population surveys in the TCP that the markhor population and domestic livestock have minimal range-use overlap, and the markhor's habitat is secure under the current management scenario. Therefore, we have no information that indicates that disease transmission is a current threat to the Torghar Hills markhor. However, because the larger Torghar Hills population is within an area that heavily relies on domestic livestock for subsistence, it is more likely to interact with domestic sheep and goats than the other populations. In the event of a disease outbreak, the Torghar Hills population would be particularly vulnerable. Because the other extant populations are critically low, declining, and continue to face threats from poaching and habitat loss, a reduction in the single population in the Torghar Hills will not provide a sufficient enough margin of safety for the subspecies to withstand this type of stochastic event.

In the rest of the straight-horned markhor's range, we have no information on the occurrence of disease or the risk of disease transmission from domestic sheep and goats. Overgrazing of domestic livestock has contributed to habitat loss in other mountain ranges, suggesting large livestock herds have also been maintained in these areas, but we do not have information on herd size or the likelihood of livestock-wildlife interactions. Given the extremely small population estimates of straight-horned markhor outside of the Torghar Hills, interactions may be rare.

We found no information indicating that the current threats to the straight-horned markhor, as described above, are likely to improve in the future. Threats to this subspecies are driven by past and current conflict, the needs of millions of displaced people, and an expanding human population. Current regulatory mechanisms in place to protect the markhor and its habitat are not being implemented effectively in most of the range to reduce or remove threats to the subspecies. With the exception of the TCP in the Torghar Hills, no other management plans are in place to specifically address the straight-horned markhor. Therefore, the tremendous pressure put on natural resources, and the impacts to the straight-horned markhor and its habitat, will likely continue unless the natural resources of Afghanistan and Pakistan are effectively protected.

In the Torghar Hills, the TCP has eliminated poaching of straight-horned markhor and managed the habitat such that the population has steadily increased since the TCP's inception and both the population and its habitat are currently secure. Because the TCP has incorporated economic incentives for the local community and is supported by the community, we believe the protections and management provided by the TCP will continue.

The narrow geographic range of the straight-horned markhor and the small, scattered, and declining populations make this subspecies particularly vulnerable to threats. Furthermore,

small, scattered populations may experience decreased demographic viability and increased susceptibility to extinction from stochastic environmental factors (e.g., weather events, disease) and an increased threat of extinction from genetic isolation and subsequent inbreeding depression and genetic drift. Although the Torghar Hills population is subject to a management plan, and the protections provided by that management plan have led to an increasing population, a reduction in this single stable population would not provide a sufficient margin of safety for the subspecies to withstand effects from catastrophic or stochastic events.

Finding

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute to, the risk of extinction of the species, such that the species warrants listing as endangered or threatened, as those terms are defined in the Act.

As required by the Act, we conducted a review of the status of the subspecies and considered the five factors in assessing whether the straight-horned markhor is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the straight-horned markhor. We reviewed the 1999 petition submitted by the Society for Torghar Environmental Protection and IUCN, the 2010 petition submitted by Conservation Force, information available in our files, other available published and unpublished information, and information received in response to the August 7, 2012, proposed rule and the December 5, 2013, revised proposed rule.

Today, the straight-horned markhor occurs in small, scattered populations in the mountains of Balochistan and Khyber Pakhtunkhwa provinces, Pakistan. Although we have found reports that this subspecies survives in Afghanistan, we believe it has likely been extirpated. In general, markhor populations are reported as declining and have likely not increased since 1975. However, one exception to this declining population trend is the Torghar Hills population in the Toba Kakar Range. Due to the implementation of a conservation plan, which includes revenues brought in from trophy hunting, the Torghar Hills population has increased from fewer than 200 in the mid-1980s to 3,518 currently.

Straight-horned markhor have been significantly impacted by years of conflict and the accompanying influx of sophisticated weapons. Easy access to accurate weapons and millions of displaced people dependent on wild meat for subsistence led to excessive hunting and the extirpation of the straight-horned markhor from much of its former range and a severe reduction in remaining populations. Additionally, tremendous pressure has been placed on natural resources from millions of displaced people and an expanding human population. Deforestation for livestock grazing, illegal logging, and collection of wood for building materials, fuel, and charcoal, to meet the needs of the growing population, continue to impact straight-horned markhor habitat.

Several federal and provincial laws are in place to provide some protection to natural resources, but they are subject to broad exemptions, allowing for overriding laws favoring development and commercial use, and enforcement is lacking. However, in the Torghar Hills, the population of straight-horned markhor and its habitat have been effectively managed by the TCP such that both are secure under the current management scenario. Due to the establishment of the TCP, the cessation of uncontrolled poaching, and the hunting of only a limited number of trophies in the Torghar Hills, the population has increased substantially since TCP's inception in 1985. Furthermore, due to the TCP, straight-horned markhor habitat is currently secure and is presently no longer impacted by overgrazing or collection of wood. Because the TCP has incorporated economic incentives derived from trophy hunting for the local community and is supported by the community, we believe the protections and management provided by the TCP will continue. We are not aware of other populations of straight-horned markhor under the same level of management. Information indicates that hunting and habitat loss remain as threats in the rest of the straight-horned markhor's range; without effective enforcement of federal and provincial laws, we believe these threats will continue into the foreseeable future.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Most of the straight-horned markhor populations are small and declining. Threats to this subspecies from hunting and habitat loss still exist and will likely continue into the foreseeable future. Current regulatory mechanisms are inadequate to ameliorate the negative effects of these threats on the subspecies and will likely remain ineffective until changes in implementation are made. Therefore, we expect that most straight-horned populations will continue to decline into the foreseeable future.

However, although most remaining populations of straight-horned markhor are critically low, continue to face threats from overhunting and habitat loss, and will likely continue to decline, implementation of the TCP has eliminated threats from hunting and habitat loss in the Torghar Hills. This population has continued to increase since the inception of the TCP and, today, is the only stronghold of the species.

Furthermore, because of the protective measures provided to the Torghar Hills population by the TCP, we believe that the threats identified under Factors A, B, and D are not of sufficient imminence, intensity, or magnitude to indicate that the subspecies is presently in danger of extinction, and, therefore, does not meet the definition of endangered under the Act. The Torghar

Hills population is considered to be currently stable and increasing; based upon 2011 population surveys in the TCP, the markhor population and domestic livestock have minimal range-use overlap, and the markhor's habitat is secure under current management. However, the straight-horned markhor occupies a narrow geographic range and threats acting on those critically low populations outside Torghar Hills are likely to continue in the foreseeable future. Moreover, within the foreseeable future, pressures on habitat in the Torghar Hills and interactions between livestock and markhor are likely to increase with the growth of domestic livestock herds, the biannual migration of local tribes, and the expansion of markhor populations in the TCP, resulting in the subspecies as a whole being at risk of extinction due to the strong likelihood of a catastrophic or stochastic event (e.g., disease) impacting the Torghar Hills population. Should a catastrophic or stochastic event (e.g., disease) impact the Torghar Hills population, this single stable population would likely not provide a sufficient margin of safety for the subspecies. Thus, these factors indicate that the straight-horned markhor, while not at risk of extinction now, will likely become in danger of extinction in the foreseeable future due to those continuing threats. Therefore, on the basis of the best scientific and commercial information, we have determined that the straight-horned markhor meets the definition of a ''threatened species'' under the Act. Consequently, we are listing the straight-horned markhor as threatened in its entirety.

Distinct Vertebrate Population Segment

Section 3(16) of the Act defines ''species'' to include any species or subspecies of fish and wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). Under the Service's ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible distinct population segment (DPS). These elements, which are applied similarly for additions to or removals from the Federal List of Endangered and Threatened Wildlife, include:

(1) The discreteness of a population 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, delisting, or reclassification (*i.e.,* is the population segment endangered or threatened?).

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following 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.

(2) It is delimited by international governmental boundaries within which 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.

We reviewed available information to determine whether any population, including the Torghar Hills population, of the straight-horned markhor meets the first discreteness condition of our 1996 DPS policy. We found no evidence that any population was markedly separated from other markhor populations as a consequence of physical, physiological, ecological, or behavioral factors. Additionally, we are not aware of measures of genetic or morphological discontinuity that provide evidence of marked separation. With respect to Torghar Hills, the boundaries are unclear and appear to grade into other ranges within the Toba Kakar Mountains. Additionally, Johnson (1994b, p. 15) noted that, if the Torghar Hills population reaches carrying capacity, it could become a source of emigrants for other mountain ranges in the area and that intermountain movement is probably already taking place. Since that publication, the Torghar Hills population has increased from 695 markhor to 3,518, indicating a greater likelihood that intermountain movement of markhor will or is already taking place. We currently do not know the extent, if any, that markhor are moving from the Torghar Hills into other mountain ranges; however, it appears that they could. Movement may require markhor to cross unsuitable habitat (e.g., the TCP is surrounded by less severe topography and valleys typically not preferred by markhor), but there is no reason that they could not cross, especially if carrying capacity is met, thereby creating a need to emigrate to other suitable areas in adjacent ranges. Therefore, without evidence of marked separation, we determine that none of the populations of the straight-horned markhor meet the first discreteness condition of the 1996 DPS policy.

We next evaluated whether any of the straight-horned markhor populations meet the second discreteness condition of our 1996 DPS policy. A population segment may be considered discrete if it is delimited by international governmental boundaries within which 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. Although the straight-horned markhor is reported to occur in Afghanistan, it has likely been extirpated. Additionally, we found no significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms in Afghanistan and Pakistan; therefore, none of the populations of the straight-horned markhor meet the second discreteness condition of the 1996 DPS policy.

We determine, based on a review of the best available information, that none of the populations of the straight-horned markhor, including the Torghar Hills population, meet the discreteness conditions of the 1996 DPS policy. Because we found that the straight-horned markhor populations do not meet the discreteness element under the Service's DPS policy, we need not conduct an evaluation of significance under that policy. We conclude that none of the straight-horned markhor populations qualify as a DPS under the Act.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' We published a final policy interpreting the phrase ''Significant Portion of its Range'' (SPR) (79 FR 37578, July 1, 2014). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the

species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time FWS or NMFS makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as endangered (or threatened) and no additional SPR analysis is required. We found the straight-horned markhor to be threatened throughout its range. Therefore, no portions of the species' range are ''significant'' as defined in our SPR policy and no additional SPR analysis is required.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection in the United States, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments in the United States, foreign governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. However, given that the straight-horned markhor is not native to the United States, we are not designating critical habitat for this species under section 4 of the Act.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these) within the United States or upon the high seas; import or 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 endangered or threatened wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species and 17.32 for threatened species. For endangered wildlife, a permit may be issued for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and special purposes consistent with the Act.

4(d) Rule

Section 4(d) of the Act states that the Secretary may, by regulation, extend to threatened species prohibitions provided for endangered species under section 9 of the Act. Our implementing regulations for threatened wildlife (50 CFR 17.31) incorporate the section 9 prohibitions for endangered wildlife, except when a 4(d), or special, rule is promulgated. For threatened species, section 4(d) of the Act gives the Secretary discretion to specify the prohibitions and any exceptions to those prohibitions that are appropriate for the species, and provisions that are necessary and advisable to provide for the conservation of the species. A 4(d) rule allows us to include provisions that are tailored to the specific conservation needs of the threatened species and which may be more or less restrictive than the general provisions at 50 CFR 17.31.

Wildlife often competes with humans and land uses upon which human livelihoods depend (e.g., agriculture and pastoralism). In areas where wildlife does not provide any benefits to the local people or imposes substantial costs, it is often killed and its habitat degraded or lost to other, more beneficial land uses (IUCN SCC 2012, p. 5). Well-managed sport hunting programs that encourage sustainable use can contribute to the conservation of wildlife and improve wildlife populations. The primary objective of a well-managed trophy-hunting program is not hunting, but the conservation of large mammals (Shackleton 2001, p. 7). The IUCN SSC Caprinae Specialist Group specifically states that trophy hunting usually generates substantial funds that can be used for conservation activities, such as habitat protection, population monitoring, law enforcement, research, or management programs (IUCN SSC 2012, p. 3). Additionally, involvement of the local community in conservation of a species results in better conservation outcomes, which improve even more if those efforts generate sustainable benefits for the community (Damm and Franco in press a, p. 29). Revenue, employment, improved livelihoods, and/or other benefits generated from the use of wildlife provide incentives for people to conserve the species and its habitat, thus removing the risk of resource degradation, depletion, and habitat conversion (IUCN SSC 2012, pp. 2–5; Shackleton 2001, pp. 7, 10).

Recognizing the potential of sport-hunting-based conservation programs to contribute to the conservation of straight-horned markhor, we are finalizing the following 4(d) rule to allow the import of sport-hunted markhor trophies taken from established conservation programs without a threatened species permit issued under 50 CFR 17.32, provided that certain criteria are met. Importation of a personal sport-hunted straight-horned markhor may be authorized by the Director of the U.S. Fish and Wildlife Service (Director) without a threatened species permit if the trophy is taken from a conservation program that meets the following criteria:

(1) Populations of straight-horned markhor within the conservation program's areas can be shown to be sufficiently large to sustain sport-hunting, and the populations are stable or increasing.

(2) Regulatory authorities have the capacity to obtain sound data on populations.

(3) The conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species, and the funds derived from sport hunting are applied toward benefits to the community and the species.

(4) Regulatory authorities have the legal and practical capacity to provide for the long-term survival of the populations.

(5) Regulatory authorities can determine that the trophies have in fact been legally taken from the populations under an established conservation program.

The Director may, consistent with the purposes of the Act, authorize by publication of a notice in the **Federal Register** the importation of personal sport-hunted straight-horned markhor, taken legally from the established conservation program after the date of such notice, without a threatened species permit, provided that the applicable provisions of 50 CFR parts 13, 14, 17, and 23, which includes obtaining appropriate CITES export and import permits, have been met.

Many hunters are willing to pay relatively large fees for the privilege to hunt, but only if they are able to import their trophy. The United States is a major market country for trophy hunting (IUCN SCC 2012, p. 10). Authorizing the importation of personal sport-hunted straight-horned markhor according to the 4(d) rule without a threatened species permit under the Act facilitates the participation of U.S. hunters in scientifically based conservation programs that include hunting. In the case of the markhor, the revenue generated by hunters has directly supported a community-based conservation program and has resulted in measurable improvements in straight-horned markhor populations. Furthermore, the criteria of the 4(d) rule ensure that U.S. hunters participate in sustainable sport-hunting programs. Additionally, while it may be possible to exempt importations from the requirements of a permit issued under the Act at 50 CFR 17.32 if the criteria under the 4(d) rule are met, we must still adhere to CITES requirements. As an Appendix-I species under CITES, straight-horned markhor imports must meet the criteria under 50 CFR 23. Namely, there is still a requirement that the exporting country make the required findings that the export would not be detrimental to the species and that trophies were legally taken. Moreover, as the authority for the importing country, we would still need to make a finding that the import would be for purposes not detrimental to the survival of the species, and that the specimen will not be used for primarily commercial purposes. Thus, if the Director determines that the conservation program meets the 4(d) criteria, the Service finds that additional authorizations under the Act for importation of sport-hunted trophies would not be necessary and advisable for the conservation of the species, nor appropriate, because such importation already requires compliance with CITES' most stringent international trade controls for this subspecies listed under Appendix I. Therefore, we find that this 4(d) rule contains appropriate provisions, as well as measures that are necessary and advisable for the conservation of the species.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A list of all references cited in this document is available at *http://www.regulations.gov* at Docket No. FWS–R9–ES–2011–0003, or upon request from the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by removing the entry for ''Markhor, Kabul'' and revising the entry for ''Markhor, straight-horned'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Markhor, straight-horned.	*Capra falconeri megaceros.*	Afghanistan, Pakistan.	Entire	T	15, 841	NA	17.40(d)
*	*	*	*	*	*		*

■ 3. Amend § 17.40 by adding a new paragraph (d) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(d) Straight-horned markhor (*Capra falconeri megaceros*).

(1) *General requirements.* Except as noted in paragraph (d)(2) of this section, all prohibitions of § 17.31 and

exemptions of § 17.32 apply to this subspecies.

(2) *What are the criteria under which a personal sport-hunted trophy may qualify for import without a permit under § 17.32?* The Director may, consistent with the purposes of the Act, authorize by publication of a notice in the **Federal Register** the importation, without a threatened species permit issued under § 17.32, of personal sport-hunted straight-horned markhor from an established conservation program that meets the following criteria:

(i) The markhor was taken legally from the established program after the date of the **Federal Register** notice;

(ii) The applicable provisions of 50 CFR parts 13, 14, 17, and 23 have been met; and

(iii) The Director has received the following information regarding the established conservation program for straight-horned markhor:

(A) Populations of straight-horned markhor within the conservation program's areas can be shown to be sufficiently large to sustain sport hunting and are stable or increasing.

(B) Regulatory authorities have the capacity to obtain sound data on populations.

(C) The conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species, and the funds derived from sport hunting are applied toward benefits to the community and the species.

(D) Regulatory authorities have the legal and practical capacity to provide for the long-term survival of the populations.

(E) Regulatory authorities can determine that the sport-hunted trophies have in fact been legally taken from the populations under an established conservation program.

* * * * *

Dated: September 22, 2014.

Stephen Guertin,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2014–23671 Filed 10–6–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140214139–4799–02]

RIN 0648–BD91

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 21

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

ACTION: Final changes to management measures.

SUMMARY: NMFS issues these final changes to management measures to implement Regulatory Amendment 21 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Regulatory Amendment 21), as prepared and submitted by the South Atlantic Fishery Management Council (Council). Regulatory Amendment 21 modifies the definition of the overfished threshold for red snapper, blueline tilefish, gag, black grouper, yellowtail snapper, vermilion snapper, red porgy, and greater amberjack. The purpose of Regulatory Amendment 21 is to prevent snapper-grouper stocks with low natural mortality rates from frequently alternating between overfished and rebuilt conditions due to natural variation in recruitment and other environmental factors.

DATES: These final changes to management measures are effective November 6, 2014.

ADDRESSES: Electronic copies of Regulatory Amendment 21, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727–824–5305, or email: *kate.michie@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic Region is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 1, 2014, NMFS published the proposed changes to management measures for Regulatory Amendment 21 and requested public comment (79 FR 44735). The proposed changes to management measures and Regulatory Amendment 21 outline the rationale for the actions contained herein. A summary of the actions implemented by Regulatory Amendment 21 is provided below.

Regulatory Amendment 21 redefines the minimum stock size threshold (MSST) for red snapper, blueline tilefish, gag, black grouper, yellowtail snapper, vermilion snapper, red porgy, and greater amberjack as 75 percent of spawning stock biomass at maximum sustainable yield (SSB_{MSY}). The MSST is used to determine if a species is overfished. Redefining the MSST for these species will help prevent species from being designated as overfished when small drops in biomass are due to natural variation in recruitment or other environmental variables such as storms, and extreme water temperatures, and will ensure that rebuilding plans are applied to stocks only when truly appropriate.

Comments and Responses

NMFS received eight unique comment submissions on the Regulatory Amendment 21 proposed rule. The comments were submitted by six individuals and two fishing organizations. One individual and two fishing organizations expressed general support for the action in the amendment. Two individuals recommended fishery management techniques other than modifying the MSST. Three comments were not related to the actions in the rule. A summary of the comments and NMFS' responses to comments related to the rule appears below.

Comment 1: Two commenters generally agree with the action in Regulatory Amendment 21. One commenter wrote that abundance may vary for certain species at different times, and the action may help reduce regulatory discards that are created when restrictive regulations are implemented.

Response: NMFS agrees that redefining the overfished threshold for red snapper, blueline tilefish, gag, black grouper, yellowtail snapper, vermilion snapper, red porgy, and greater amberjack is likely to prevent these species from frequently fluctuating between overfished and not overfished conditions. This will help ensure that rebuilding plans and subsequent management measures to rebuild a stock are only implemented when they are biologically necessary.

Comment 2: One commenter suggested that NMFS reexamine how fisheries data on deep-water species are determined. The commenter used snowy grouper as an example of mismanagement of deep-water snapper-grouper species, stating there are many snowy grouper in southern Florida and the bag limit should be one snowy grouper per person per day rather than one per vessel per day.

Response: Snowy grouper has a low natural mortality rate (M = 0.12). Thus, similar to the species affected by the action in Regulatory Amendment 21, the MSST for snowy grouper was changed in 2009 to 75 percent of SSB_{MSY} (spawning stock biomass of the stock at the maximum sustainable yield) through Amendment 15B to the Snapper-Grouper FMP. A new Southeast Data Assessment and Review (SEDAR) stock assessment was completed for snowy grouper in 2014 (SEDAR 32), which indicates that the stock is still overfished according to the MSST definition established in 2009, and that the stock is rebuilding and is no longer undergoing overfishing. The Council is developing an amendment which could change the recreational bag limit for snowy grouper.

Similar to snowy grouper, the species included in Regulatory Amendment 21 were selected because they have a natural mortality rate at or below 0.25, with an MSST defined as a function of the natural mortality rate (M) where MSST = SSB_{MSY}*(1 − M or 0.5, whichever is greater). When the natural mortality rate is small (less than 0.25) there is little difference between the biomass threshold for determining when a stock is overfished (MSST) and when the stock is rebuilt (SSB_{MSY}). Thus, for species which have a low rate of natural mortality, even small fluctuations in biomass due to natural conditions rather than fishing mortality may unnecessarily cause a stock to be classified as overfished.

To prevent red snapper, blueline tilefish, gag, black grouper, yellowtail snapper, vermilion snapper, red porgy, and greater amberjack from unnecessarily being considered overfished, NMFS is modifying the definition of MSST for those species as 75 percent of SSB_{MSY}, which would help prevent overfished designations when small drops in biomass are due to natural variation in recruitment or other environmental variables such as extreme water temperatures, and would ensure that rebuilding plans are applied to stocks when truly appropriate.

Comment 3: One commenter disagrees with the current overfished determination for red snapper, and recommends that NMFS take into account anecdotal information when assessing whether or not red snapper is overfished. Additionally, the commenter suggests different times to harvest red snapper, but those comments are beyond the scope of this amendment.

Response: The overfished determination for red snapper is based on a stock assessment (SEDAR 24) completed in October 2010 using the previous overfished definition of MSST = SSB_{MSY}*(1 − M or 0.5, whichever is greater). Modifying the overfished definition will make a species less likely to be categorized as overfished when reductions in biomass are actually due to natural variations in recruitment or environmental variables rather than fishing-related mortality. However, modifying the overfished definition for red snapper does not change the current overfished determination made during the last completed stock assessment (SEDAR 24) in October 2010 because the assessment indicates that biomass is below 75 percent of SSB_{MSY}.

Anecdotal information is not used in Southeast Data Assessment and Review (SEDAR) stock assessments. SEDAR is a quantitative assessment process that uses data from fishery-dependent and fishery-independent sources to determine the health of a stock. SEDAR is organized around three workshops. First is the Data Workshop, during which fisheries monitoring and life history data are reviewed and compiled. Second is the Assessment Workshop, which may be conducted via a workshop and several webinars, during which assessment models are developed and population parameters are estimated using the information provided from the Data Workshop. Third and final is the Review Workshop, during which independent experts review the input data, assessment methods, and assessment products. The completed assessment, including the reports of all three workshops and all supporting documentation, is then forwarded to the Council's Scientific and Statistical Committee (SSC). The SSC considers whether the assessment represents the best scientific information available and develops fishing level recommendations for Council consideration. SEDAR workshops are public meetings organized by SEDAR. Workshop participants appointed by the lead Council are drawn from state and Federal agencies, non-government organizations, Council members, Council advisors, and the fishing industry with a goal of including a broad range of disciplines and perspectives.

A new stock assessment for red snapper is currently under way (SEDAR 41) and is expected to be completed in spring 2015. The new overfished definition of 75 percent of SSB_{MSY} contained in Regulatory Amendment 21 will be used to determine the overfished status of the stock in the new assessment.

Comment 4: One commenter states that Regulatory Amendment 21 does not define the overfished criteria. Additionally, the commenter suggests other management actions that are beyond the scope of this amendment.

Response: Regulatory Amendment 21 defines criteria used for determining if a stock is overfished, and lists the MSST values established by the new overfished definition for each of the affected species. Currently the stocks addressed by Regulatory Amendment 21 would be overfished if MSST = SSB_{MSY}*(1 − M or 0.5, whichever is greater). Regulatory Amendment 21 modifies the overfished definition to be 75 percent of SSB_{MSY}.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that these final changes to management measures are necessary for the conservation and management of the South Atlantic snapper-grouper species contained in Regulatory Amendment 21 and are consistent with the FMP, the Magnuson-Stevens Act and other applicable law.

The final changes to the management measures have been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the SBA during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. No changes to the final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

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

Dated: October 2, 2014.

Samuel D. Rauch III,

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

[FR Doc. 2014–23912 Filed 10–6–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD535

Fisheries of the Exclusive Economic Zone Off Alaska; Several Groundfish Species in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch of Bering Sea (BS) Greenland turbot, BS Pacific ocean perch, Bering Sea and Aleutian Islands (BSAI) Kamchatka flounder, and BSAI squids and the total allowable catch of BSAI sharks in the BSAI management area. This action is necessary to allow the fisheries to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI management area.

DATES: Effective October 3, 2014, through 2400 hrs, Alaska local time, December 31, 2014. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, October 20, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0152, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0152,* 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, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The 2014 initial total allowable catch (ITAC) of BS Greenland turbot in the BSAI was established as 1,410 metric tons (mt), the 2014 ITAC of BS Pacific ocean perch was established as 6,531 mt, the 2014 ITAC of BSAI Kamchatka flounder was established as 6,035 mt, the 2014 ITAC of BSAI squids was established as 264 mt, and the 2014 total allowable catch (TAC) of BSAI sharks was established as 125 mt by the final 2014 and 2015 harvest specifications for groundfish of the BSAI (79 FR 12108, March 4, 2014). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITACs for BS Greenland turbot, BS Pacific ocean perch, BSAI Kamchatka flounder, BSAI squids and the total allowable catch of BSAI sharks need to be supplemented from the non-specified reserve to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish 71 mt to the BS Greenland turbot ITAC, 1,153 mt to the BS Pacific ocean perch ITAC, 1,065 mt to the BSAI Kamchatka flounder ITAC, 1,500 mt to the BSAI squids ITAC, and 100 mt to the BSAI sharks TAC in the BSAI. These apportionments are consistent with § 679.20(b)(1)(i) and do not result in overfishing of any target species because the revised ITACs and TAC are equal to or less than the specifications of the acceptable biological catch in the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014).

The harvest specification for the 2014 ITACs included in the harvest specifications for groundfish in the BSAI are revised as follows: 1,481 mt for BS Greenland turbot, 7,684 mt for BS Pacific ocean perch, 7,100 mt for BSAI Kamchatka flounder, 1,764 mt for BSAI squids, and 225 mt for BSAI sharks.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the BS Greenland turbot, BS Pacific ocean perch, BSAI Kamchatka flounder, BSAI squids, and BSAI sharks fisheries in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 30, 2014.

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

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until October 20, 2014.

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

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

Dated: October 2, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–23988 Filed 10–3–14; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 194
Tuesday, October 7, 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 50

[Docket No. PRM–50–108; NRC–2014–0171]

Fuel-Cladding Issues in Postulated Spent Fuel Pool Accidents

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking (PRM) from Mr. Mark Edward Leyse (the petitioner), dated June 19, 2014. The petition was docketed by the NRC on July 14, 2014, and has been assigned Docket No. PRM–50–108. The petitioner requests that the NRC make new regulations concerning the use of spent fuel pool (SFP) accident evaluation models. The NRC is not requesting public comment on PRM–50–108 at this time.

DATES: October 7, 2014.

ADDRESSES: Please refer to Docket ID NRC–2014–0171 when contacting the NRC about the availability of information for this petition. You may obtain publicly-available information related to this petition by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0171. 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.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The petition, PRM–50–108, is available in ADAMS under Accession Number ML14195A388.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Daniel Doyle, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3748, email: *Daniel.Doyle@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. The Petitioner

Mr. Mark Edward Leyse (the petitioner) submitted this petition for rulemaking (PRM) as an individual. In Section II of the petition, ''Statement of Petitioner's Interest,'' the petitioner explains that he disagrees with the conclusions of recent MELCOR simulations of boiling water reactor (BWR) Mark I spent fuel pool (SFP) accident scenarios. On December 23, 2013, Mr. Leyse submitted a PRM (ADAMS Accession No. ML14008A427) with similar requests. On March 21, 2014, the NRC requested additional information to further clarify the petitioner's request (ADAMS Accession No. ML14023A743). On June 19, 2014 (ADAMS Accession No. ML14195A388), the petitioner responded to the request and resubmitted the petition with additional information. After evaluating the resubmitted petition, the NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under § 2.802 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Petition for rulemaking,'' and the petition has been docketed as PRM–50–108. The NRC is not requesting public comment on PRM–50–108 at this time.

II. The Petition

The petition requests that the NRC develop new regulations requiring that (1) spent fuel pool (SFP) accident evaluation models use data from multi-rod bundle (assembly) severe accident experiments for calculating the rates of energy release, hydrogen generation, and fuel cladding oxidation from the zirconium-steam reaction; (2) SFP accident evaluation models use data from multi-rod bundle (assembly) severe accident experiments conducted with pre-oxidized fuel cladding for calculating the rates of energy release (from both fuel cladding oxidation and fuel cladding nitriding), fuel cladding oxidation, and fuel cladding nitriding from the zirconium-air reaction; (3) SFP accident evaluation models be required to conservatively model nitrogen-induced breakaway oxidation behavior; and (4) licensees be required to use conservative SFP accident evaluation models to perform annual SFP safety evaluations of: Postulated complete loss-of-coolant accident (LOCA) scenarios, postulated partial LOCA scenarios, and postulated boil-off accident scenarios.

The petition references recent NRC post-Fukushima MELCOR simulations of BWR Mark I SFP accident/fire scenarios. The petition states that the conclusions from the NRC's MELCOR simulations are non-conservative and misleading because their conclusions underestimate the probabilities of large radiological releases from SFP accidents.

The petition states that in actual SFP fires, there would be quicker fuel-cladding temperature escalations, releasing more heat, and quicker axial and radial propagation of zirconium fires than MELCOR indicates. The petition states that the NRC's philosophy of defense-in-depth requires the application of conservative models, and, therefore, it is necessary to improve the performance of MELCOR and any other computer safety models that are intended to accurately simulate SFP accident/fire scenarios.

The petition claims that the new regulations would help improve public and plant-worker safety. The petitioner asserts that the first three proposed regulations, regarding zirconium fuel cladding oxidation and nitriding, as well as nitrogen-induced breakaway oxidation behavior, are intended to

improve the performance of computer safety models that simulate postulated SFP accident/fire scenarios. The petition states that the fourth proposed regulation would require that licensees use conservative SFP accident evaluation models to perform annual SFP safety evaluations of postulated complete LOCA scenarios, postulated partial LOCA scenarios, and postulated boil-off accident scenarios. The petition states that the purpose of these evaluations would be to keep the NRC informed of the potential consequences of postulated SFP accident/fire scenarios as fuel assembles were added, removed, or reconfigured in licensees' SFPs.

Dated at Rockville, Maryland, this 30th day of September, 2014.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2014–23949 Filed 10–6–14; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1263

RIN 2590–AA39

Members of Federal Home Loan Banks

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On September 12, 2014, the Federal Housing Finance Agency (FHFA) published in the **Federal Register** a notice of proposed rulemaking and request for comments proposing to amend its regulations governing Federal Home Loan Bank (Bank) membership. The comment period for the proposed rule is set to expire on November 12, 2014. This notice extends the comment period through and including January 12, 2015.

DATES: The comment period for the proposed rule published on September 12, 2014, at 79 FR 54847, is extended. Written comments must be received on or before January 12, 2015.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number (RIN) 2590–AA39, by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include Comments/RIN 2590–AA39 in the subject line of the message.
- *Courier/Hand Delivery:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA39, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20024. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. to 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA39, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Assistant General Counsel, Office of General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084; or Julie Paller, Senior Financial Analyst, Office of Program Support, Division of Bank Regulation, *Julie.Paller@fhfa.gov,* (202) 649–3201 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION: On September 12, 2014, FHFA published in the **Federal Register** a notice of proposed rulemaking and request for comments proposing to revise its regulations governing Bank membership, located at 12 CFR part 1263. *See* 79 FR 54847 (Sept. 12, 2014). Primarily, the proposed rule would revise part 1263 to: (1) Require each Bank member institution and each applicant for Bank membership to hold one percent of its assets in ''home mortgage loans'' (as that term is defined in proposed part 1263) in order to satisfy the statutory requirement that an institution make long-term home mortgage loans to be eligible for membership; (2) require each member to comply on an ongoing basis, rather than only at the time of application as at present, with the foregoing requirement and, where applicable, with the requirement that it have at least 10 percent of its assets in ''residential mortgage loans'' (as defined in proposed part 1263); (3) define the term ''insurance company'' to exclude captive insurers from Bank membership, but permit existing captive members to remain members for five years with certain restrictions on their ability to obtain advances; (4) require a Bank to obtain and review an insurance company's audited financial statements when considering it for membership; and (5) clarify the standards by which an insurance company's ''principal place of business'' is to be identified in determining the appropriate Bank district for membership.

The comment period for the proposed rule was originally set to expire on November 12, 2014. However, FHFA has received numerous requests from the Banks and from other interested parties for additional time to review the rule and provide comments. In response to these requests, FHFA is extending the comment period by an additional 60 days. This will result in a total comment period of 120 days, which will expire on January 12, 2015.

Dated: October 1, 2014.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2014–23893 Filed 10–6–14; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0771; Directorate Identifier 2014–CE–006–AD]

RIN 2120–AA64

Airworthiness Directives; Beechcraft Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Beechcraft Corporation Model G58 airplanes. This proposed AD was prompted by reports of fuel leaks due to fuel cells that did not properly fit in Model G58 airplanes. This proposed AD would require inspecting for and replacing, as necessary, certain fuel cells. This proposed AD would also require inspecting and replacing parts, as necessary, of the left and right fuel system installations and correcting torques on fuel system fittings; and prohibit future installations of certain fuel cells. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 21, 2014.

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

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

For service information identified in this AD, contact Beechcraft Corporation, 2121 South Hoover Road, Wichita, Kansas 67209; telephone: (316) 676–3140; fax: (316) 676–8027; email: *Piston_support@txtav.com;* Internet: *www.beechcraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0771; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

- For information relating to Beechcraft Corporation Model G58 airplanes or part numbers contact: Thomas Teplik, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4196; fax: (316) 946–4107; email: *thomas.teplik@faa.gov.*
- For information relating to Floats and Fuel Cells, Inc. (FFC) parts manufacturer approval (PMA) fuel cells contact: Keith Moore, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5517; fax: (404) 474–5500; email: *keith.moore@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0771; Directorate Identifier 2014–CE–006–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received seven reports of fuel leaks in Beechcraft Corporation Model G58 airplanes. Six fuel leaks were observed before takeoff or after landing. One in-flight fuel leak caused large and rapid loss of fuel and a 24-gallon fuel imbalance.

An investigation found issues that may have occurred on the production line, including fuel cell fit inconsistencies; improper installation of fuel components, which may cause loads on fuel cells and breach of fuel cells; and improper installation of fuel hoses and clamps, which may cause fuel leaks.

Further investigation found discrepancies and variation in the fit of the fuel cell on airplanes produced after December 2011.

These conditions, if not corrected, could result in significant fuel leakage. This could lead to an imbalance condition, which may affect airplane controllability and/or could lead to an airplane fire.

Relevant Service Information

We reviewed Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013; and Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013. The service information describes procedures for inspection of the left and right fuel system installations and replacement of parts, as necessary; inspection for proper torque on fuel system fittings; and inspection and replacement, as necessary, of fuel cells.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD will only affect fuel cells installed on airplanes produced after December 2011. This proposed AD would include prohibiting the installation of both Beechcraft fuel cell part numbers produced by FFC and any PMA part numbers on the Model G58 airplanes serial numbers (SNs) TH–2335 through TH–2378, certificated in any category.

We are evaluating the Beechcraft and PMA fuel cells that are installed on airplanes prior to December 2011 for the same or similar condition and may take future rulemaking action for airplanes incorporating these parts.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously and prohibit the installation of certain Beechcraft and FFC PMA fuel cells.

Costs of Compliance

We estimate that this proposed AD affects 18 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
* Inspection of fuel cells	12 work-hours × $85 per hour = $1,020.	Not Applicable	$1,020	$5,100
** Inspection of left and right fuel system installations.	30 work-hours × $85 per hour = $2,550.	Not Applicable	2,550	28,050

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
*** Inspection for proper torque on fuel system fittings.	4 work-hours × $85 per hour = $340.	Not Applicable	340	2,380

* Applies to the 5 specific serial numbers on the U.S. registry that may have improperly fitting fuel cells installed at production.
** Applies to the 11 specific serial numbers on the U.S. registry that must do Part 1 of the service information.
*** Applies to the 7 specific serial numbers on the U.S. registry, listed in the service information that must do Part 2 of the service information.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of left-hand (LH) leading edge (LE) outboard fuel cell.	16 work-hours × $85 per hour = $1,360.	$2,599 (includes fuel cell, $2,545 + clamp/gasket, $54).	$3,959
Replacement of right-hand (RH) LE outboard fuel cell	16 work-hours × $85 per hour = $1,360.	$2,599 (includes fuel cell, $2,545 + clamp/gasket, $54).	3,959
Replacement of LH LE inboard fuel cell	16 work-hours × $85 per hour = $1,360.	$4,264 (includes fuel cell, $4,210 + clamp/gasket, $54).	5,624
Replacement of RH LE inboard fuel cell	16 work-hours × $85 per hour = $1,360.	$2,242 (includes fuel cell, $2,188 + clamp/gasket, $54).	3,602
Replacement of LH center fuel cell	16 work-hours × $85 per hour = $1,360.	$1,931 (includes fuel cell, $1,877 + clamp/gasket, $54).	3,291
Replacement of RH center fuel cell	16 work-hours × $85 per hour = $1,360.	$3,049 (includes fuel cell, $2,995 + clamp/gasket, $54).	4,409
Replacement of tube assembly, flex hose, and clamps	10 work-hours × $85 per hour = $850.	$672 (includes LH and RH tube assemblies, flex hoses, and clamps).	1,522

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Beechcraft Corporation: Docket No. FAA–2014–0771; Directorate Identifier 2014–CE–006–AD.

(a) Comments Due Date

We must receive comments by November 21, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Beechcraft Corporation Model G58 airplanes, serial numbers (SNs) TH–2335 through TH–2378, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code: 28, Fuel.

(e) Unsafe Condition

This AD was prompted by reports of fuel leaks due to fuel cells that did not properly fit in Model G58 airplanes. We are issuing this AD to detect and correct improperly fitting fuel cells. We are also issuing this AD to correct left and right fuel system installations and set correct torque on fuel system fittings for all affected airplanes, which if not corrected, could result in significant fuel leakage. This could lead to an imbalance condition, which may affect airplane controllability, and/or could lead to an airplane fire.

(f) Compliance

Comply with this AD within the compliance times specified in paragraphs (g) and (h), including all subparagraphs, unless already done. All of the actions in paragraphs (g) and (h) must be completed for compliance with this AD. The actions of Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013, and Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013, have numerous overlapping tasks. Instead of completing the required actions in paragraph (g) and paragraph (h) separately, you may complete the actions of both paragraphs concurrently to avoid repeating the same tasks unnecessarily. We recommend reviewing Appendices 1 through 3 for general guidance and suggestions for task ordering to assist you in not repeating tasks unnecessarily.

(g) Fuel Cell Inspection

(1) *For Model G58 airplanes, S/Ns TH–2356 through TH–2378:* within the next 100 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, inspect the fuel cells (left hand (LH) inboard, outboard, and center; and right hand (RH) inboard, outboard, and center) following Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013. If any fuel cell is Beechcraft Corporation P/N 60–921046–5, 60–921046–6, 002–920034–9, 002–920034–10, 58–380003–13, or 58–380003–14; or Floats and Fuel Cells, Inc. (FFC) parts manufacturer approval (PMA) P/N B–2503–9/–10; B–2034–3/–4; or B–2646–3/–4, before further flight, replace the fuel cell(s) with Beechcraft Corporation P/N 60–921046–1, 60–921046–2, 002–920034–1, 002–920034–2, 58–380003–5, or 58–380003–6, as applicable, following Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013.

(2) *For Model G58 airplanes, S/Ns TH–2335 through TH–2378:* as of the effective date of this AD, do not install the following P/Ns:

(i) Beechcraft Corporation P/N 60–921046–5, 60–921046–6, 002–920034–9, 002–920034–10, 58–380003–13, or 58–380003–14; or

(ii) FFC PMA fuel cells P/N B–2503–9/–10, B–2034–3/–4, or B–2646–3/–4.

(h) Fuel System Inspection

Certain Model G58 airplanes, as listed in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, may have incorrect left and right fuel system installations and incorrect torque on fuel system fittings.

(1) *For Model G58 airplanes, SNs TH–2335, TH–2338 through TH–2348, TH–2351 through TH–2359, TH–2362 through TH–2366, TH–2369, and TH–2371 that are already in compliance with Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013:* Within 100 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, do the following actions in paragraphs (h)(1)(i) and (h)(1)(ii), including all subparagraphs as applicable:

(i) If any discrepancies are/were found during the inspection of the fuel cell system that required replacement of one of the fuel cells, do the following actions:

(A) Review the airplane maintenance records, Airworthiness Approval Tag (FAA Form 8130–3), or other positive form of parts identification such as a shipping ticket, invoice, or direct ship authority letter, to determine if the replaced fuel cell(s) is P/N 60–921046–5, 60–921046–6, 002–920034–9, 002–920034–10, 58–380003–13, or 58–380003–14; or FFC P/N B–2503–9/–10, B–2034–3/–4, or B–2646–3/–4.

(B) If during the check in paragraph (h)(1)(i)(A) of this AD, you positively identify the replaced fuel cell(s) is not P/N 60–921046–5, 60–921046–6, 002–92003–9, 002–920034–10, 58–380003–13, or 58–380003–14; or FFC P/N B–2503–9/–10, B–2034–3/–4, or B–2646–3/–4, go to the required action in paragraph (h)(1)(ii) of this AD.

(C) If during the check in paragraph (h)(1)(i)(A) of this AD, you positively identify the replaced fuel cell(s) is P/N 60–921046–5, 60–921046–6, 002–920034–9, 002–920034–10, 58–380003–13, 58–380003–14; or FFC P/N B–2503–9/–10, B–2034–3/–4, or B–2646–3/–4, before further flight, replace the fuel cell(s) with Beechcraft Corporation P/N 60–921046–1, 60–921046–2, 002–920034–1, 002–920034–2, 58–380003–5, or 58–380003–6, as applicable, following Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013.

(D) If during the check in paragraph (h)(1)(i)(A) of this AD, you cannot positively identify the P/N of the replaced fuel cell(s), within the next 100 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, physically inspect each replaced fuel cell to verify the part number. If the replaced fuel cell(s) is P/N 60–921046–5, 60–921046–6, 002–920034–9, 002–920034–10, 58–380003–13, 58–380003–14; or FFC P/N B–2503–9/–10, B–2034–3/–4, or B–2646–3/–4, before further flight, replace the fuel cell(s) with Beechcraft Corporation P/N 60–921046–1, 60–921046–2, 002–920034–1, 002–920034–2, 58–380003–5, or 58–380003–6, as applicable, following Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013.

(ii) Gain access to the wet wing interconnect tube P/N 60–921047–1 following Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013. Verify wet wing interconnect tube P/N 60–921047–1 is installed in leading edge outboard fuel cell with correct clamp P/N 52KS3 or P/N 4852SS305 and the clamp is torqued to 20 to 25 inch pounds.

Note 1 to paragraphs (h)(1)(ii) and (h)(2)(iii): The correct clamp part number and correct torque for installing the wet wing interconnect tube were inadvertently omitted from Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013, when it was issued.

(A) If you can positively identify the wet wing interconnect tube is installed with the correct clamp and the correct torque value during the inspection required in paragraph (h)(1)(ii) of this AD, return airplane to service and perform leak check following Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

(B) If you cannot positively identify the wet wing interconnect tube is installed with the correct clamp and/or the correct torque value during the inspection required in paragraph (h)(1)(ii) of this AD, before further flight, replace the clamp with P/N 52KS3 or P/N 4852SS305 and/or correct the clamp torque to 20 to 25 inch pounds. Return airplane to service and do a leak check following Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

(2) *For Model G58 airplanes, SNs TH–2335, TH–2338 through TH–2348, TH–2351 through TH–2359, TH–2362 through TH–2366, TH–2369, and TH–2371 that are not in compliance with Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013:* Within 100 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, do the following actions in paragraphs (h)(2)(i) through (h)(2)(iii) of this AD, including all subparagraphs.

(i) Inspect the fuel cell system following Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

(ii) If any discrepancies are found in the inspection required in paragraph (h)(2)(i) of this AD, before further flight, replace/correct those discrepancies following Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013. If the corrective action requires replacement of one of the fuel cells, replace the fuel cell with Beechcraft Corporation P/N 60–921046–1, 60–921046–2, 002–920034–1, 002–920034–2, 58–380003–5, or 58–380003–6, as applicable.

(iii) During the inspection required in paragraph (h)(2)(i) of this AD, ensure that wet wing interconnect tube P/N 60–921047–1 is installed in the leading edge outboard fuel cell with clamp P/N 52KS3 or P/N 4852SS305 and the clamp is torqued to 20 to 25 inch pounds.

(A) If you can positively identify the wet wing interconnect tube is installed with the correct clamp and the correct torque value during the inspection required in paragraph

(h)(2)(iii) of this AD, return airplane to service and perform leak check following Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

(B) If you cannot positively identify the wet wing interconnect tube is installed with the correct clamp and/or the correct torque value during the inspection required in paragraph (h)(2)(iii) of this AD, before further flight, replace the clamp with P/N 52KS3 or P/N 4852SS305 and/or correct the clamp torque to 20 to 25 inch pounds. Return airplane to service and do leak check following Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

(3) *For Model G58 airplanes SNs TH–2336, TH–2337, TH–2349, TH–2350, TH–2360, TH–2361, TH–2367, TH–2368, TH–2370, TH–2372, and TH–2373:* Within 100 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, inspect the fuel system following Part 2 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013. If any discrepancies are found, before further flight, replace/correct those discrepancies following Part 2 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

(i) Special Flight Permit

Special flight permits are permitted in accordance with 14 CFR 39.23 provided the following limitation is adhered to: One flight to a repair facility.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For information relating to Beechcraft Corporation Model G58 airplanes or part numbers contact: Thomas Teplik, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4196; fax: (316) 946–4107; email: *thomas.teplik@faa.gov.*

(2) For information relating to FFC PMA fuel cells contact: Keith Moore, Atlanta ACO, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5517; fax: (404) 474–5500; email: *keith.moore@faa.gov.*

(3) For service information identified in this AD, contact Beechcraft Corporation, 2121 South Hoover Road, Wichita, Kansas 67209; telephone: (316) 676–3140; fax: (316) 676–8027; email: *Piston_support@txtav.com;* Internet: *www.beechcraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Appendix 1 to AD 2014* * *

For Model G58 airplanes serial numbers TH–2356 through TH–2359, TH–2362 through TH–2366, TH–2369, and TH–2371 that have already completed Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013, but have not completed Part 1 of Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

The information in the appendix cannot be used for direct compliance with the AD. All of the actions in paragraphs (g) and (h) of this AD must be completed for compliance with this AD. The following is a suggested order of tasks that may assist the mechanic in completing overlapping tasks associated with Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013, and Part 1 of Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

Suggested Order of Tasks

1. Do steps (1) through (6) and (6)(a) through (6)(d) (Outboard Wet Wing Interconnect Area) of Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127. Ensure that wet wing interconnect tube part number (P/N) 60–921047–1 is installed in the leading edge outboard fuel cell with the correct clamp P/N 52KS3 or P/N 4852SS305 and the clamp is correctly torqued to 20 to 25 inch pounds. Note: For step (6)(d) of Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, the access panels may need to be removed again for additional tasks listed below.

2. For any fuel cells that were not replaced while doing Beechcraft Mandatory Service Bulletin SB 28–4131, inspect by doing step (7) (Inspection at Three Fuel Cells) of Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127.

3. If any of the fuel cells are found damaged or leaking during the inspection, replace with fuel cells listed in Beechcraft Mandatory Service Bulletin SB 28–4131.

4. Do steps (8) through (25) (Inspection of Wheel Well and Nacelle Area) of Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127.

Appendix 2 to AD 2014* * *

For Model G58 airplanes serial numbers TH–2356 through TH–2359, TH–2362 through TH–2366, TH–2369, and TH–2371 that have not completed Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013, and have not completed Part 1 of Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

The information in the appendix cannot be used for direct compliance with the AD. All of the actions in paragraphs (g) and (h) of this AD must be completed for compliance with this AD. The following is a suggested order of tasks that may assist the mechanic in completing overlapping tasks associated with Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013, and Part 1 of Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

Suggested Order of Tasks

1. Do steps (1)(a) through (1)(e) of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4131.

2. Do steps (6) and (6)(a) through (6)(d) (Outboard Wet Wing Interconnect Area) of Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127. Ensure that wet wing interconnect tube part number (P/N) 60–921047–1 is installed in the leading edge outboard fuel cell with the correct clamp P/N 52KS3 or P/N 4852SS305 and the clamp is correctly torqued to 20 to 25 inch pounds.

Note: For step (6)(d) of Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127, the access panels may need to be removed again for additional tasks listed below.

3. Do step (1)(f) of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4131.

4. If it has been determined by doing step 1(f) of Beechcraft Mandatory Service Bulletin SB 28–4131, that any of the following correct fuel cells P/Ns 60–921046–1, 60–921046–2, 002–920034–1, 002–920034–2, 58–380003–5, or 58–380003–6 are installed in the airplane, do steps (7)(a) through (7)(c) (Inspection at Three Fuel Cells) of Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127. These steps ensure P/Ns 60–921046–1, 60–921046–2, 002–920034–1, 002–920034–2, 58–380003–5, or 58–380003–6 is properly installed.

5. If it has been determined by doing step 1(f) of Beechcraft Mandatory Service Bulletin SB 28–4131, that any of the following fuel cell P/Ns 60–921046–5, 60–921046–6, 002–920034–9, 002–920034–10, 58–380003–13, or 58–380003–14 or PMA part numbers B–2503–9/–10, B–2034–3/–4, or B–2646–3/–4 are installed in the airplane, do steps (2) through (5) of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4131. These steps ensure improperly fitting fuel cells are removed from the airplane. Do steps (7)(a) through (7)(c) (Inspection at Three Fuel Cells) of Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127. For any fuel cell that need replacing, replace with fuel cells listed in Beechcraft Mandatory Service Bulletin SB 28–4131.

6. Do step (7)(d) of Part 1 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127. This step can be done concurrently with step (5) of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4131.

7. Do steps (8) through (25) (Wheel Well and Nacelle Area and Final Check) of Part 1

of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127.

8. Do steps (6) through (10) of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4131.

Note: Steps (21), (24), and (25) from task 7 and steps (8), (9), and (10) from task 8 can be done concurrently.

Appendix 3 to AD 2014* * *

For Model G58 airplanes serial numbers TH–2360, TH–2361, TH–2367, TH–2368, TH–2370, TH–2372, and TH–2373 that have not completed Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013 and have not completed Part 2 of Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

The information in the appendix cannot be used for direct compliance with the AD. All of the actions in paragraphs (g) and (h) of this AD must be completed for compliance with this AD. The following is a suggested order of tasks that may assist the mechanic in completing overlapping tasks associated with Beechcraft Mandatory Service Bulletin SB 28–4131, dated November 2013, and Part 2 of Beechcraft Mandatory Service Bulletin SB 28–4127, dated June 2013.

Suggested Order of Tasks

1. Do steps (1) through (5) of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4131.

2. Do steps (7) and (8) of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4131.

3. Do steps (1) through (6) of Part 2 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127. For step (2), heat shields should have been previously removed for Beechcraft Mandatory Service Bulletin SB 28–4131.

4. Do steps (7) through (11) of Part 2 of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4127.

5. Do steps (6), (9), and (10) of the Accomplishment Instructions in Beechcraft Mandatory Service Bulletin SB 28–4131.

Note: Steps (9) and (10) from task 5 and steps (10), and (11) from task 4 can be done concurrently.

Issued in Kansas City, Missouri, on September 30, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23879 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0770; Directorate Identifier 2014–CE–024–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for PILATUS Aircraft Ltd. Model PC–7 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as possible cracking from stress corrosion on various parts of the aircraft structure made of aluminum alloy AA2024–T351. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 21, 2014.

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

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

For service information identified in this proposed AD, contact PILATUS AIRCRAFT LTD., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; phone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *Techsupport@pilatus-aircraft.com;* internet: *http://www.pilatus-aircraft.com.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0770; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0770; Directorate Identifier 2014–CE–024–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Federal Office of Civil Aviation (FOCA), which is the aviation authority for Switzerland, has issued AD HB–2014–001, dated July 25, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for PILATUS Aircraft Ltd. Model PC–7 airplanes and was based on mandatory continuing airworthiness information originated by an aviation authority of another country. The MCAI states:

This Airworthiness Directive (AD) is prompted due to the possibility of cracks in

some critical parts. It is possible that stress corrosion cracks may occur on various parts of the aircraft structure initially made of aluminium alloy AA2024–T351 which is susceptible to Stress Corrosion Cracking (SCC). Later in production, the material specification was changed to aluminium alloy AA2124–T851 to decrease the risk of stress corrosion. The Part Number (P/N) of the affected structural parts are not always changed when the new material was introduced.

Such a condition, if left uncorrected, could lead to failure of critical parts on the aircraft structure and will prejudice the structural integrity of the aircraft.

In order to correct and control the situation, this AD requires a one-time check to identify the material specification and inspect the affected areas of the airframe that are made of aluminium alloy AA2024–T351. Any structural parts of the aircraft structure found to be cracked must be reported to Pilatus prior to further flight.

The MCAI also requires replacement of the elevator center control-rod, P/N 116.35.07.271 or 116.35.07.345; and shackle, P/N 116.35.07.183. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0770.

Relevant Service Information

PILATUS Aircraft Ltd. has issued PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. PILATUS PC–7 Service Bulletin No: 51–001 was revised to Revision No. 1 after the issuance of the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 10 products of U.S. registry. We also estimate that it would take about 30 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $4,700 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $72,500, or $7,250 per product.

In addition, we estimate that any necessary follow-on actions would take about 14 work-hours and require parts costing $10,000, for a cost of $11,190 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

PILATUS Aircraft Ltd.: Docket No. FAA–2014–0770; Directorate Identifier 2014–CE–024–AD.

(a) Comments Due Date

We must receive comments by November 21, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to PILATUS Aircraft Ltd. Model PC–7 airplanes, manufacturer serial numbers (MSN) 101 through MSN 618, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 51: Standard Practices/Structures.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as possible cracking from stress corrosion on various parts of the aircraft structure made of aluminum alloy AA2024–T351. We are issuing this proposed AD to detect and correct stress corrosion cracks that may occur on various parts of the airplane structure initially made of aluminum alloy AA2024–T351, which is susceptible to stress corrosion cracking (SCC). Such a condition, if left uncorrected, could lead to failure of critical parts on the airplane structure and weaken the structural integrity of the aircraft.

(f) Actions and Compliance

Unless already done, within the next 12 months after the effective date of this AD, perform a one-time conductivity test of items 6 through 9 and 11 through 13 as listed in paragraph 1.A.(2) of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014, to check the material of the parts—determine whether they are made of aluminum alloy AA2124–T851 or aluminum alloy AA2024–T351. Do not install any item

unless it has been inspected following the applicable paragraph of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014.

(1) *For airplanes with any parts made of aluminum alloy AA2124–T851:* Within 12 months after the effective date of this AD, make an entry in the aircraft logbook as required by paragraph 3.D.(3) of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014. The only other actions of this AD that apply to airplanes with all parts made of aluminum alloy AA2124–T851 are the actions in paragraphs (f)(3), (f)(4), and (f)(5) of this AD.

(2) *For airplanes with any parts made of aluminum alloy AA2024–T351:* Within 12 months after the effective date of this AD, do the actions in paragraphs (f)(2)(i) through (f)(2)(iii) as applicable, including all subparagraphs:

(i) For items 7 through 9 and 11 through 13 as listed in paragraph 1.A.(2) of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014, within 12 months after the effective date of this AD, do a one-time inspection for cracks. If any cracks are found as a result of the inspection, before further flight, you must contact PILATUS Aircraft Ltd. to obtain FAA-approved repair instructions approved specifically for compliance with this AD and incorporate those instructions. Use the contact information found in paragraph (h) of this AD.

(ii) For item 6 as listed in paragraph 1.A.(2) of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014, within 12 months after the effective date of this AD, replace with a part made of aluminum alloy AA2124–T851.

(iii) For Items 1, 2, 4, 5, and 10 as listed in paragraph 1.A.(2) of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014, within 12 months after the effective date of this AD, do the following actions in paragraphs (f)(2)(iii)(A) and (f)(2)(iii)(B), as applicable.

(A) For items 1, 2, 4, and 10 as listed in paragraph 1.A.(2) of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014, do a one-time inspection for cracks. If any cracks are found, before further flight, you must contact PILATUS Aircraft Ltd. to obtain FAA-approved repair instructions approved specifically for compliance with this AD and incorporate those instructions. Use the contact information found in paragraph (h) of this AD.

(B) For item 5 as listed in paragraph 1.A.(2) of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014, replace with a part made of aluminum alloy AA2124–T851.

(3) *For all airplanes:* For item 3 as listed in paragraph 1.A.(2) of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014, within 12 months after the effective date of this AD, replace with a part made of aluminum alloy AA2124–T851. You must replace the elevator center control-rods (item 3 as listed in paragraph 1.A.(2) of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014) because it is difficult to inspect them for cracks.

(4) *For all airplanes:* As of 12 months after the effective date of this AD, do not install the parts listed in items 1 and 2, 4, and 7 through 13 of paragraph 1.A.(2) of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014, that are made of aluminum alloy AA2024–T351 unless they have been inspected and found free of cracks.

(5) *For all airplanes:* As of 12 months after the effective date of this AD, do not install the parts listed in items 3, 5, and 6 of paragraph 1.A.(2) of PILATUS PC–7 Service Bulletin No: 51–001, Revision No. 1, dated August 26, 2014, that are made of aluminum alloy AA2024–T351.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, 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.

(h) Related Information

Refer to Federal Office of Civil Aviation (FOCA) AD HB–2014–001, dated July 25, 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–2014–0770. For service information related to this AD, contact PILATUS AIRCRAFT LTD., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; phone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *Techsupport@pilatus-aircraft.com;* Internet: *http://www.pilatus-aircraft.com.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on September 30, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23880 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Parts 478, 555, and 771

[Docket No. ATF 33P; AG Order No. 3469–2014]

RIN 1140–AA40

Rules of Practice in Explosives License and Permit Proceedings (2007R–5P); Revisions Reflecting Changes Consistent With the Homeland Security Act of 2002

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice proposes to codify the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) procedures and practices in connection with the disapproval of initial applications, denials of renewal, and revocations of explosives licenses or permits. The proposed regulations will be codified in a new part entitled ''Rules and Practice in License and Permit Proceedings.'' The proposed regulations are based upon the regulations that ATF relied upon prior to its transfer from the Department of the Treasury to the Department of Justice.

Additionally, the Department proposes minor revisions to regulations governing administrative proceedings related to the denial, suspension, or revocation of a license, and the imposition of a civil fine under Federal firearms law to reference regulations under ATF authority. These proposed revisions remove all references to statutes, regulations, positions, and other terms that are applicable only to the Department of the Treasury. These

revisions reflect ATF's position as a regulatory and enforcement agency under the Department of Justice and are consistent with the proposed regulations governing administrative hearing processes for explosives licenses and permits.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before January 5, 2015. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: Send comments, identified by docket number (ATF 33P), by any of the following methods:

- *Mail:* Denise Brown, Enforcement Programs and Services, Office of Regulatory Affairs, Mailstop 6N–602, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Avenue NE., Washington, DC 20226; *ATTN: ATF 33P.* Written comments must appear in minimum 12-point font size (.17 inches), include the sender's mailing address, and be signed; they may be of any length.
- *Fax:* 202–648–9741.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to the Federal eRulemaking portal, *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Denise Brown, Enforcement Programs and Services, Office of Regulatory Affairs, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648–7070.

SUPPLEMENTARY INFORMATION:

I. Background

The Attorney General has delegated to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) responsibility for administering and enforcing title I of the Gun Control Act of 1968 (GCA), Public Law 90–618, as amended, 18 U.S.C. Chapter 44, relating to commerce in firearms and ammunition; and Title XI, Regulation of Explosives, of the Organized Crime Control Act of 1970 (OCCA), Public Law 91–452, as amended, 18 U.S.C. Chapter 40. *See* 18 U.S.C. 926(a); 18 U.S.C. 843; 28 CFR 0.130. Under the GCA, ATF has the authority to license applicants, renew licenses, and revoke Federal firearms licenses. The OCCA, as amended by the Safe Explosives Act, Title XI, Subtitle C of Public Law 107–296, the Homeland Security Act of 2002 (enacted November 25, 2002), authorizes ATF to provide licenses and permits to qualified applicants for the acquisition, distribution, storage, or use of explosive materials and renew or revoke such licenses and permits.

A. Rules of Practice in Permit Proceedings (27 CFR Part 71)

On November 25, 2002, President George W. Bush signed the Homeland Security Act of 2002, Public Law 107–296 (the Act), which divided the regulatory functions of the Bureau of Alcohol, Tobacco, and Firearms into two separate agencies. The Act renamed the Bureau of Alcohol, Tobacco and Firearms as the Bureau of Alcohol, Tobacco, Firearms, and Explosives and transferred law enforcement and certain regulatory functions to the Department of Justice. The Act also retained in the Department of the Treasury (Treasury) certain functions of the former Bureau of Alcohol, Tobacco, and Firearms. The functions retained by Treasury became the responsibility of a new Alcohol and Tobacco Tax and Trade Bureau (TTB).

As a result of the Act, TTB has all regulatory authority under 27 CFR Part 71 and ATF therefore cannot promulgate new regulations under this part, although ATF uses the regulations in Part 71 to administer hearings related to the application and revocation of Federal explosives licenses and permits.

B. License Proceedings (27 CFR Part 478)

Regulations that implement the provisions of the GCA are set forth in 27 CFR Part 478. Subpart E of Part 478 relates to proceedings involving Federal firearms licensees, including the denial, suspension, or revocation of licenses and the imposition of civil fines. Specifically, 27 CFR 478.76 provides that an applicant or licensee may be represented at a hearing for the disapproval of applications for firearms licenses, for the denial, suspension, or revocation of a firearms license, or for imposition of a civil fine under federal firearms law by an attorney, a certified public accountant, or any other person recognized to practice before ATF as provided in 31 CFR Part 8, if the representative complies with the applicable practice requirements of 26 CFR 601.521 through 601.527.

C. License and Permit Proceedings (27 CFR Part 555)

The regulations that implement OCCA procedural and substantive requirements are found in 27 CFR Part 555. Subpart E of Part 555 relates to proceedings involving Federal explosives licensees and permittees, including the denial of an initial application, denial of a renewal, and revocation of a license or permit. Specifically, 27 CFR 555.78 provides that an applicant, licensee, or permittee may be represented at a hearing for the disapproval of applications for explosives licenses, and for the denial of renewal or revocation of such licenses or permits under federal explosives law by an attorney, a certified public accountant, or any other person recognized to practice before ATF as provided in 31 CFR Part 8, if the representative complies with the applicable practice requirements of 26 CFR 601.521 through 601.527.

II. Proposed Rule

A. Creation of new 27 CFR Part 771

The Department proposes revising ATF regulations to add a new part that implements 18 U.S.C. 843 and 847 relating to the procedures and practice for the disapproval of initial applications, denials of a renewal, and revocations of explosives licenses or permits by ATF under federal explosives law. ATF is incorporating and updating the language relevant to its operations currently found in Part 71 into proposed 27 CFR Part 771. The creation of Part 771 is primarily an administrative change that will improve the organization of ATF regulations. The proposed regulations will be codified in a new part 771 in Chapter II of title 27 CFR and are separated into subparts as follows:

Subpart A—Scope and Construction
Subpart B—Definitions
Subpart C—General
Subpart D—Compliance and Settlement
Subpart E—Grounds for Revocation or Denial
Subpart F—Hearing Procedure
Subpart G—Administrative Law Judges
Subpart H—Decisions
Subpart I—Review
Subpart J—Miscellaneous

B. Proposed Amendments to 27 CFR Part 478

This proposed rule amends ATF regulations governing procedures and practices for disapproving applications for firearms licenses; for denying, suspending, or revoking a firearms license; and for imposing a civil fine

under federal firearms law. The proposed rule revises 27 CFR 478.76 to allow an applicant or licensee to be represented at a proceeding by himself, an attorney, a certified public accountant, or any other person without submitting a declaration of a representative pursuant to 26 CFR 601.521, and it deletes the current references to 31 CFR Part 8 and 26 CFR 601.521 through 601.527. Under the proposed rule, an applicant or licensee shall file in the proceeding a duly executed power of attorney designating his representative. The applicant or licensee shall also file waivers, if applicable, under the Privacy Act of 1974 (*see* 5 U.S.C. 552a), and 26 U.S.C. 6103(c) (confidentiality and disclosure of returns and return information). The Director of Industry Operations may be represented in proceedings under §§ 478.72 and 478.74 by an attorney for the government in the ATF Office of Chief Counsel who is authorized to execute and file motions, briefs, and other papers in the proceeding on behalf of the Director of Industry Operations in the attorney's own name as ''Attorney for the Government.''

C. Proposed Amendments to 27 CFR Part 555

This proposed rule amends ATF regulations governing procedures and practices for disapproving applications, denying renewals, and revoking explosives licenses or permits under federal explosives law. This proposed rule amends § 555.73 and § 555.73 to state that the administrative hearings will be conducted in accordance with the hearing procedures prescribed in part 771, thereby replacing the current references in these sections to part 71.

The proposed rule revises 27 CFR 555.78 to allow an applicant, licensee, or permittee to be represented at a proceeding by himself, an attorney, a certified public accountant, or any other person without submitting a declaration of a representative pursuant to 26 CFR 601.521, and it deletes the current references to 31 CFR Part 8 and 26 CFR 601.521 through 601.527. Under the proposed rule, an applicant, licensee, or permittee shall file in the proceeding a duly executed power of attorney designating his representative. The applicant, licensee, or permittee shall also file waivers, if applicable, under the Privacy Act of 1974 (*see* 5 U.S.C. 552(a)) and 26 U.S.C. 6103(c) (confidentiality and disclosure of returns and return information). An attorney for the government may represent the Director of Industry Operations under §§ 555.73 and 555.75 who is authorized to execute and file motions, briefs, and other papers in the proceeding, on behalf of the Director of Industry Operations, in the attorney's own name as ''Attorney for the Government.''

This proposed rule amends § 555.79 to state that, in the event that an appeal is taken from a decision of a hearing, the process by which the Director will review the complete original record will be contained in a new part 771, thereby replacing the current reference in this section to part 71.

This proposed rule revises § 555.82 to state that regulations governing the procedures and practices for disapproving applications for explosives licenses and permits and for denying renewal of or revoking such licenses and permits are contained in a new Part 771.

Statutory and Executive Order Reviews

A. Executive Order 12866 and 13563

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1, General Principles of Regulation, and section 6, Retrospective Analyses of Existing Rules.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

This rule will not have an annual effect on the economy of $100 million or more, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. Similarly, it does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Accordingly, this rule is not a ''significant regulatory action'' as defined in Executive Order 12866.

Section 6 of Executive Order 13563, directs agencies to develop a plan to review existing significant rules that may be ''outmoded, ineffective, insufficient, or excessively burdensome,'' and to make appropriate changes where warranted. The Department selected and reviewed this rule under the criteria set forth in its Plan for Retrospective Analysis of Existing Rules, and determined that this proposed rule transfers and consolidates regulations governing explosives license application renewal or revocation of licenses and permits, improving the enforcement of ATF regulations.

B. Executive Order 13132

This proposed regulation will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this proposed regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform.''

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) exempts an agency from the requirement to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Attorney General has reviewed this proposed rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. This proposed rule recodifies the ATF regulations governing the procedure and practice for disapproving applications, denying renewals, and revoking explosives licenses or permits under

federal explosives law in a new part 771 under ATF's regulatory authority.

Additionally, this proposed rule updates the regulations governing the denial, suspension, or revocation of a firearms license, and imposition of a civil fine under federal firearms law to only reference regulations under ATF authority. This proposed rule also amends the regulations to require an applicant or licensee in a proceeding concerning the denial, suspension, or revocation of a firearms license, or the imposition of a civil fine under federal firearms law, to file a duly executed power of attorney designating his representative, and waivers, if applicable, under the Privacy Act of 1974 (*See* 5 U.S.C. 552(a)), and 26 U.S.C. 6103(c) (confidentiality and disclosure of returns and return information). This is required in the current regulations by reference to 31 CFR Part 8 and 26 CFR 601.521 through 601.527. The changes proposed in this rule are purely administrative and do not add any new requirements that would have any impact on the economy.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This proposed rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

F. Unfunded Mandates Reform Act of 1995

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

G. Paperwork Reduction Act

This proposed rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Public Participation

A. Comments Sought

ATF is requesting comments on the proposed rule from all interested persons. ATF is also specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand.

All comments must reference this document docket number (ATF 33P), be legible, and include the commenter's name and mailing address. ATF will treat all comments as originals and will not acknowledge receipt of comments.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

B. Confidentiality

Comments, whether submitted electronically or in paper, will be made available for public viewing at ATF and on the Internet as part of the eRulemaking initiative. Comments are subject to the Freedom of Information Act. Commenters who do not want their names or other personal identifying information posted on the Internet should submit their comments by mail or facsimile, along with a separate cover sheet containing their personal identifying information. Both the cover sheet and comment must reference this docket number. Information contained in the cover sheet will not be posted on the Internet. Any personal identifying information that appears within the comment will be posted on the Internet and will not be redacted by ATF.

Any material that a commenter considers to be inappropriate for disclosure to the public should not be included in the comment. Any person submitting a comment shall specifically designate that portion (if any) of the comments that contains material that is confidential under law (e.g., trade secrets, processes, etc.). Any portion of a comment that is confidential under law shall be set forth on pages separate from the balance of the comment and shall be prominently marked ''confidential'' at the top of each page. Confidential information will be included in the rulemaking record but will not be disclosed to the public. Any comments containing material that is not confidential under law may be disclosed to the public. In any event, the name of the person submitting a comment is not exempt from disclosure.

C. Submitting Comments

Comments may be submitted in any of three ways:

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments may be of any length, must appear in minimum 12-point font size (.17 inches), and include the commenter's mailing address and signature.
- *Facsimile:* You may submit comments by facsimile transmission to (202) 648–9741. Faxed comments must:

(1) Be legible and appear in minimum 12-point font size (.17 inches);

(2) Be on 8½″ x 11″ paper;

(3) Contain a legible, written signature; and

(4) Be no more than five pages long. ATF will not accept faxed comments that exceed five pages.

- *Federal eRulemaking Portal:* To submit comments to ATF via the Federal eRulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

D. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit such request for a hearing, in writing, to the Director of ATF within the 90-day comment period. Address requests for public hearings to Denise Brown, Enforcement Programs and Services, Office of Regulatory Affairs, Mailstop 6N–602, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Avenue NE., Washington, DC 20226; *ATTN: ATF 33P.* The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this proposed rule and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E–062, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648–8740.

Drafting Information

The author of this document is Denise Brown; Enforcement Programs and Services; Office of Regulatory Affairs, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects

27 CFR Part 478

Administrative practice and procedure, Arms and munitions, Customs duties and inspection, Exports, Imports, Intergovernmental relations, Law enforcement officers, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 555

Administrative practice and procedure, Customs duties and inspection, Explosives, Hazardous substances, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, Warehouses.

27 CFR Part 771

Administrative practice and procedure, Explosives.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR Parts 478 and 555 are proposed to be amended and Part 771 is proposed to be added to chapter II, title 27 as follows:

PART 478—COMMERCE IN FIREARMS AND AMMUNITION

■ 1. The authority citation for 27 CFR part 478 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–931; 44 U.S.C. 3504(h).

■ 2. Section 478.76 is revised to read as follows:

§ 478.76 Representation at a hearing.

Applicants or licensees may represent themselves or be represented by an attorney, a certified public accountant, or any other person, specifically designated in a duly executed power of attorney that shall be filed in the proceeding by the applicant or licensee. The applicant or licensee shall file waivers, if applicable, under the Privacy Act of 1974 and 26 U.S.C. 6103(c) (confidentiality and disclosure of returns and return information). The Director of Industry Operations may be represented in proceedings under §§ 478.72 and 478.74 by an attorney in the Office of Chief Counsel who is authorized to execute and file motions, briefs, and other papers in the proceeding, on behalf of the Director of Industry Operations, in the attorney's own name as ''Attorney for the Government.''

PART 555—COMMERCE IN EXPLOSIVES

■ 3. The authority citation for 27 CFR part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

■ 4. Amend § 555.73 by removing ''part 71'' and adding in its place ''part 771''.

■ 5. Amend § 555.75 by removing ''part 71'' and adding in its place ''part 771''.

■ 6. Revise 555.78 to read as follows:

§ 555.78 Representation at a hearing.

An applicant, licensee, or permittee may represent himself, or be represented by an attorney, a certified public accountant, or any other person, specifically designated in a duly executed power of attorney that shall be filed in the proceeding by the applicant, licensee, or permittee. The applicant, licensee, or permittee shall file waivers, if applicable, under the Privacy Act of 1974 and 26 U.S.C. 6103(c) (confidentiality and disclosure of returns and return information). The Director of Industry Operations may be represented in proceedings under §§ 555.73 and 555.75 by an attorney in the Office of Chief Counsel who is authorized to execute and file motions, briefs and other papers in the proceeding, on behalf of the Director of Industry Operations, in the attorney's own name as ''Attorney for the Government.''

■ 7. Amend § 555.79 by removing ''part 71'' and adding in its place ''part 771''.

■ 8. Revise § 555.82 to read as follows:

§ 555.82 Rules of practice in license and permit proceedings.

Regulations governing the procedure and practice for disapproval of applications for explosives licenses and permits and for the denial of renewal or revocation of such licenses and permits under the Act are contained in part 771 of this chapter.

■ 9. Add subchapter E (consisting of part 771) to 27 CFR chapter II to read as follows:

SUBCHAPTER E—EXPLOSIVE LICENSE AND PERMIT PROCEEDINGS

PART 771—RULES OF PRACTICE IN EXPLOSIVE LICENSE AND PERMIT PROCEEDINGS

Subpart A—Scope and Construction of Regulations

Sec.
771.1 Scope of part.
771.2 Liberal construction.
771.3 Forms prescribed.

Subpart B—Definitions

771.5 Meaning of terms.

Subpart C—General

771.25 Communications and pleadings.
771.26 Service on applicant, licensee, or permittee.
771.27 Service on the Director of Industry Operations or Director.

Time

771.28 Computation.
771.29 Continuances and extensions.

Representation at Hearings

771.30 Personal representation.
771.31 Attorneys and other representatives.

Subpart D—Compliance and Settlement

771.35 Opportunity for compliance.
771.36 Settlement.
771.37 Notice of contemplated action.
771.38 Licensee's or permittee's failure to meet requirements within reasonable time.
771.39 Authority of Director of Industry Operations to proceed with revocation or denial action.

Subpart E—Revocation or Denial

771.40 Denial of initial application
771.41 Denial of renewal application or revocation of license or permit
771.42 Grounds for revocation of licenses or permits.
771.43 Grounds for denial of applications for licenses or permits.

Subpart F—Hearing Procedure

Notices

771.55 Content.
771.56 Forms.
771.57 Execution and disposition.
771.58 Designated place of hearing.

Request for Hearing

771.59 Initial application proceedings.
771.60 Revocation or denial of renewal proceedings.
771.61 Notice of hearing.

Non-Request for Hearing

771.62 Initial application
771.63 Revocation or denial of renewal.

Responses to Notices

771.64 Answers.
771.65 Responses admitting facts.
771.66 Initial conferences.

Failure To Appear

771.67 Initial applications.
771.68 Revocation or denial of renewal.

Waiver of Hearing

771.69 Withdrawal of request for hearing.
771.70 Adjudication based upon written submissions.

Surrender of License or Permit

771.71 Before citation.
771.72 After citation.

Motions

771.73 General.
771.74 Prior to hearing.
771.75 At hearing.

Hearing

771.76 General.
771.77 Initial applications.
771.78 Revocation or denial of renewal.

Burden of Proof

771.79 Initial applications.
771.80 Revocation or denial of renewal.

General

771.81 Stipulations at hearing.
771.82 Evidence.
771.83 Closing of hearings; arguments, briefs, and proposed findings.
771.84 Reopening of the hearing.

Record of Testimony

771.85 Stenographic record.
771.86 Oath of reporter.

Subpart G—Administrative Law Judges

771.95 Responsibilities of administrative law judges.
771.96 Disqualification.
771.97 Powers.
771.98 Separation of functions.
771.99 Conduct of hearing.
771.100 Unavailability of administrative law judge.

Subpart H—Decisions

771.105 Administrative law judge's findings and recommended decision.
771.106 Certification and transmittal of record and decision.

Action by Director of Industry Operations

771.107 Initial application proceedings.
771.108 Director of Industry Operations' decision.
771.109 Revocation or denial of renewal proceedings.
771.110 Revocation or denial of renewal.
771.111 Proceedings involving violations not within the division of issuance of license or permit.

Subpart I—Review

771.120 Appeal on petition to the Director.
771.121 Review by Director.
771.122 Denial of renewal or revocation.
771.123 Court review.

Subpart J—Miscellaneous

771.124 Depositions.
771.125 Witnesses and fees.
771.126 Discovery.
771.127 Privileges.

Record

771.135 What constitutes record.
771.136 Availability.

Authority: 18 U.S.C. 843, 847.

Subpart A—Scope and Construction of Regulations

§ 771.1 Scope of part.

Regulations in this part govern procedures and practices for disapproving applications for licenses and permits and denying renewal of or revocation of such licenses or permits under 18 U.S.C. Chapter 40.

§ 771.2 Liberal construction.

Regulations in this part shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Rules of Civil Procedure for the U.S. District Courts (28 U.S.C. appendix) are not controlling, but may act as a guide in any situation not provided for or controlled by this part and shall be liberally construed or relaxed when necessary.

§ 771.3 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) Requests for forms should be made to the ATF Distribution Center or through the ATF Web site at *http://www.atf.gov.*

Subpart B—Definitions

§ 771.5 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning provided in this subpart. Words in the plural form shall include the singular, and *vice versa,* and words importing the masculine gender shall include the feminine.

Administrative law judge. The person appointed pursuant to 5 U.S.C. 3105, designated to preside over any administrative proceedings under this part.

Applicant. Any person who has filed an application for a license or permit under 18 U.S.C. Chapter 40.

Application. Any application for a license or permit under 18 U.S.C. Chapter 40 for operations not covered by an existing license or permit.

ATF. The Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

Attorney for the Government. An attorney in the ATF Office of Chief Counsel authorized to represent the Director of Industry Operations in the proceeding.

CFR. The Code of Federal Regulations.

Contemplated notice. Includes any notice contemplating the revocation or denial of renewal of a license or permit.

Director. The Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

Director of Industry Operations. The principal ATF official in a Field Operations division responsible for administering regulations in this part.

Ex parte communication. An oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but not including requests for status reports.

Initial decision. The decision of the Director of Industry Operations in a proceeding concerning the revocation of, denial of renewal of, or denial of application for a license or permit. This decision becomes the agency's final decision in the absence of an appeal.

Final decision. The definitive decision of ATF, e.g., the agency's decision in the absence of an appeal or the Director's decision following an appeal to the Director.

License. Subject to applicable law, entitles the licensee to transport, ship, and receive explosive materials in interstate or foreign commerce, and to engage in the business specified by the license, at the location described on the license.

Licensee. Any importer, manufacturer, or dealer licensed under the provisions of 18 U.S.C. Chapter 40 and 27 CFR Part 555.

Limited permit. A permit issued to a person authorizing him to receive for his use explosive materials from a licensee or permittee in his State of residence on no more than six occasions during the 12-month period in which the permit is valid. A limited permit does not authorize the receipt or transportation of explosive materials in interstate or foreign commerce.

Other term. Any other term defined in the Federal explosives laws (18 U.S.C. Chapter 40), the regulations promulgated thereunder (27 CFR Part 555), or the Administrative Procedure Act (5 U.S.C. 551 et seq.), where used in this part, shall have the meaning assigned to it therein.

Permittee. Any user of explosives for a lawful purpose who has obtained either a user permit or a limited permit under 18 U.S.C. Chapter 40 and 27 CFR Part 555.

Person. Any individual, corporation, association, firm, partnership, society, or joint stock company.

Recommended decision. The advisory decision of the administrative law judge in any proceeding regarding the revocation of, denial of renewal of, or denial of application for a license or permit. ATF must act on a recommended decision with its own initial or final decision.

User-limited permit. A user permit valid only for a single purchase transaction. Recipients of a user-limited permit must obtain a new permit for any subsequent purchase transaction.

User permit. A permit issued to a person authorizing him to—

(1) Acquire for his own use explosive materials from a licensee in a State other than the State in which he resides or from a foreign country, and;

(2) Transport explosive materials in interstate or foreign commerce.

Willfulness. The plain indifference to, or purposeful disregard of, a known

legal duty. Willfulness may be demonstrated by, but does not require, repeat violations involving a known legal duty.

Subpart C—General

§ 771.25 Communications and pleadings.

(a) All communications to the Government regarding the procedures set forth in this part and all pleadings, such as answers, motions, requests, or other papers or documents required or permitted to be filed under this part, relating to a proceeding pending before an administrative law judge, shall be addressed to the administrative law judge at his post of duty and the attorney for the Government. Communications concerning proceedings not pending before an administrative law judge should be addressed to the Director of Industry Operations or Director, as the case may be.

(b) Except to the extent required for the disposition of ex parte matters as authorized by law, no ex parte communications shall be made to or from the administrative law judge concerning the merits of the adjudication. If the administrative law judge receives or makes an ex parte communication not authorized by law, the administrative law judge shall place on the record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses and memoranda stating the substance of all oral responses to paragraphs (b)(1) and (2) of this section.

§ 771.26 Service on applicant, licensee, or permittee.

All orders, notices, motions, and other formal documents required to be served under the regulations in this part may be served by mailing a signed, original copy thereof to the designated representative of the applicant, licensee, or permittee by certified mail, with request for return receipt card, at the representative's business address, by personal service, or as otherwise agreed to by the parties. If the applicant, licensee, or permittee has not yet designated a representative, all orders, notices, motions, and other formal documents required to be served under the regulations in this part may be served by mailing a signed, original copy thereof to the applicant, licensee, or permittee at the address stated on his application, license, or permit, or at his last known address, or by delivery of such original copy to the applicant, licensee, or permittee personally, or in the case of a corporation, partnership, or other unincorporated association, by delivering the same to an officer, or manager, or general agent thereof, or to its attorney of record. Such personal service may be made by any employee of the Department of Justice designated by the Attorney General or by any employee of ATF. A certificate of mailing and the return receipt card, or certificate of service signed by the person making such service, shall be filed as a part of the record.

§ 771.27 Service on the Director of Industry Operations or Director.

Pleadings, motions, notices, and other formal documents may be served by certified mail, by personal service, or as otherwise agreed to by the parties on the Director of Industry Operations (or upon the attorney for the Government on behalf of the Director of Industry Operations), or on the Director, if the proceeding is before him for review on appeal.

Time

§ 771.28 Computation.

In computing any period of time prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time is to run is not to be included. The last day of the period to be computed is to be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the next day that is not a Saturday, Sunday, or Federal holiday. Pleadings, requests, or other papers or documents required or permitted to be filed under this part must be received for filing at the appropriate office within the time limits, if any, for such filing.

§ 771.29 Continuances and extensions.

For good cause shown, the administrative law judge, Director, or Director of Industry Operations, as the case may be, may grant continuances and, as to all matters pending before him, extend any time limit prescribed by the regulations in this part (except where the time limit is statutory).

Representation at Hearings

§ 771.30 Personal representation.

Any individual or member of a partnership may appear for himself, or for such partnership, and a corporation or association may be represented by a bona fide officer of such corporation or association, upon showing of adequate authorization.

§ 771.31 Attorneys and other representatives.

An applicant, licensee, or permittee may represent himself, or be represented by an attorney, a certified public accountant, or any other person, specifically designated in a duly executed power of attorney that shall be filed in the proceeding by the applicant, licensee, or permittee. The applicant, licensee, or permittee shall file waivers, if applicable, under the Privacy Act of 1974 and 26 U.S.C. 6103(c) (confidentiality and disclosure of returns and return information). The Director of Industry Operations may be represented in proceedings by an attorney in the Office of Chief Counsel who is authorized to execute and file motions, briefs, and other papers in the proceeding on behalf of the Director of Industry Operations, in the attorney's own name as ''Attorney for the Government.''

Subpart D—Compliance and Settlement

§ 771.35 Opportunity for compliance.

No license or permit shall be revoked or denied renewal unless, prior to the institution of proceedings, facts or conduct warranting such action shall have been called to the attention of the licensee or permittee by the Director of Industry Operations in writing in a contemplated notice, and the licensee or permittee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements as set forth in section 9(b) of the Administrative Procedure Act. In cases in which the Director of Industry Operations alleges in his contemplated notice, with supporting reasons, willful violations or that the public interest requires otherwise, this section does not apply and the issuance of a contemplated notice is unnecessary.

§ 771.36 Settlement.

Any proposals of settlement should be made to the Director of Industry Operations, but may be made through the attorney for the Government. Where necessary, the date of the hearing may be postponed pending consideration of such proposals when they are made in good faith and not for the purpose of delay. If proposals of settlement are submitted, and they are considered unsatisfactory, the Director of Industry Operations may reject the proposals and may, either directly or through the attorney for the Government, inform the licensee or permittee of any conditions on which the alleged violations may be settled. If the proposals of settlement are considered satisfactory to the Director of

Industry Operations, the licensee or permittee shall be notified thereof and the proceeding shall be dismissed.

§ 771.37 Notice of contemplated action.

Where the Director of Industry Operations has not ascertained whether the licensee or permittee has willfully violated the federal explosives laws and where he believes the matter has the potential to be settled informally, i.e., without formal administrative proceedings, he shall, in accordance with section 5(b) of the Administrative Procedure Act, prior to the issuance of a notice of revocation or denial of renewal, give the licensee or permittee a contemplated notice of such action and an opportunity to show why the license or permit should not be revoked or denied renewal. The notice should inform the licensee or permittee of the charges on which the notice would be based, if issued, and afford him a period of 15 days from the date of the notice, or such longer period as the Director of Industry Operations deems necessary, in which to submit proposals of settlement to the Director of Industry Operations. Where informal settlement is not reached promptly because of inaction by the applicant, licensee, or permittee or proposals are made for the purpose of delay, a notice shall be issued in accordance with §§ 771.42 or 771.43, as appropriate. The issuance of a notice of contemplated action does not entitle the recipient to a hearing before an administrative law judge.

§ 771.38 Licensee's or permittee's failure to meet requirements within reasonable time.

If the licensee or permittee fails to meet the requirements of applicable laws and regulations within such reasonable time as may be specified by the Director of Industry Operations, proceedings for revocation or denial of renewal of the license or permit shall be initiated.

§ 771.39 Authority of Director of Industry Operations to proceed with revocation or denial action.

Where the evidence is conclusive and the nature of the violation is such as to preclude any settlement, the violation is of a continuing character that necessitates immediate action to protect the public interest, or the Director of Industry Operations believes that any informal settlement of the alleged violation will not ensure future compliance with applicable laws and regulations, or in any similar case where the circumstances are such as to clearly preclude informal settlement, and the Director of Industry Operations so finds and states the reasons therefor in the notice, the Director of Industry Operations may proceed with the revocation or denial of renewal.

Subpart E—Revocation or Denial

§ 771.40 Denial of initial application.

Whenever the Director of Industry Operations has reason to believe that an applicant for an original license or permit is not eligible to receive a license or permit under the provisions of § 555.49 of this chapter, the Director of Industry Operations shall issue a notice of denial on ATF Form 5400.11 (Notice of Denial of Application for License or Permit) (F 5400.11). The notice will set forth the matters of fact and law relied upon in determining that the application should be denied and will afford the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If no request for a hearing is filed within that time, a copy of the application, marked ''Disapproved,'' will be returned to the applicant.

§ 771.41 Denial of renewal application or revocation of license or permit.

If, following the opportunity for compliance under § 555.71 of this chapter, or without opportunity for compliance under § 555.71 of this chapter as circumstances warrant, the Director of Industry Operations finds that the licensee or permittee is not likely to comply with applicable laws or regulations or is otherwise not eligible to continue operations authorized under his license or permit, the Director of Industry Operations shall issue a notice of denial of the renewal application or revocation of the license or permit, ATF F 5400.11 (Notice of Denial of Application for License or Permit) or ATF Form 5400.10 (Notice of Revocation of License or Permit) (F 5400.10), as appropriate. The notice will set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. In the case of the revocation of a license or permit, the notice will specify the date on which the action is effective, which date will be on or after the date the notice is served on the licensee or permittee. The notice will also advise the licensee or permittee that he may, within 15 days after receipt of the notice, request a hearing and, if applicable, a stay of the effective date of the revocation of his license or permit.

§ 771.42 Grounds for revocation of licenses or permits.

Whenever the Director of Industry Operations has reason to believe that any holder of a license or permit has willfully violated any provision of 18 U.S.C. Chapter 40 or the regulations prescribed thereunder or has become ineligible to continue operations authorized under the license or permit, the Director of Industry Operations shall issue a notice for the revocation of such license or permit, as the case may be.

§ 771.43 Grounds for denial of applications for licenses or permits.

If, upon examination of any application (including a renewal application) for a license or permit, the Director of Industry Operations has reason to believe that the applicant is not entitled to such license or permit, the Director of Industry Operations shall issue a denial of the application. An applicant is not eligible for a license or permit if he fails to meet the requirements of 18 U.S.C. 843(b) and § 555.49 of this chapter.

Subpart F—Hearing Procedure

Notices

§ 771.55 Content.

(a) Notices for the revocation or denial of renewal of a license or permit shall be promptly issued by the Director of Industry Operations and shall set forth:

(1) The sections of law and regulations relied upon for authority and jurisdiction;

(2) The specific grounds upon which the revocation or denial is based, i.e., the matters of fact constituting the violations specified, dates, places, and sections of law and regulations violated;

(3) In the case of a revocation, the date on which the action is effective; and

(4) That the licensee or permittee has 15 days from receipt of the notice within which to request a hearing before an administrative law judge.

(b) Notices for the denial of an initial application for a license or permit shall set forth:

(1) The sections of law and regulations relied upon for authority and jurisdiction;

(2) The specific grounds upon which the denial is based, i.e., the matters of fact and law relied upon for the disapproval of the application; and

(3) That the application will be disapproved unless a hearing is requested within 15 days from receipt of the Notice.

§ 771.56 Forms.

Notices shall be issued on the following forms:

(a) ATF Form 5400.9, ''Order After Denial or Revocation Hearing,'' for all revocations or denials of renewal of licenses or permits pursuant to 18 U.S.C. Chapter 40 after a hearing has been held and a Recommended Decision

has been issued by the administrative law judge;

(b) Form 5400.10, ''Notice of Revocation for License or Permit,'' for all revocations of licenses or permits pursuant to 18 U.S.C. Chapter 40, except as provided for in paragraph (a) of this section;

(c) Form 5400.11, ''Notice of Denial of Application for License or Permit,'' for the denial of renewal or original applications for licenses or permits pursuant to 18 U.S.C. Chapter 40, except as provided for in paragraph (a) of this section;

(d) Form 5400.12, ''Notice of Contemplated Denial or Revocation of License or Permit,'' for the contemplated revocation or denial of renewal application of licenses or permits pursuant to 18 U.S.C. Chapter 40; or

(e) Such other forms as the Director may prescribe.

§ 771.57 Execution and disposition.

A signed original of the applicable form shall be served on the licensee or permittee. If a hearing is requested, a copy shall be sent to the administrative law judge designated to conduct the hearing. Any remaining copies shall be retained for the office of the Director of Industry Operations.

§ 771.58 Designated place of hearing.

The designated place of hearing shall be determined by the administrative law judge, taking into consideration the convenience and necessity of the parties and their representatives.

Request for Hearing

§ 771.59 Initial application proceedings.

(a) If the applicant for an initial license or permit desires a hearing, he shall file a request in writing with the Director of Industry Operations within 15 days after receipt of notice of the disapproval, in whole or in part, of the application. The request should include a statement of the reasons for a hearing.

(b) On receipt of the request, the Director of Industry Operations shall forward a copy of the request, together with a copy of the notice, to the Office of Chief Counsel for the assignment of an administrative law judge.

(c) After the Office of Chief Counsel notifies the Director of Industry Operations or the attorney for the Government of the assignment of an administrative law judge, the Director of Industry Operations shall notify the licensee or permittee of the assignment.

§ 771.60 Revocation or denial of renewal proceedings.

(a) If the licensee or permittee desires a hearing, he shall file a request, in writing, with the Director of Industry Operations within 15 days after receipt of the notice or within such time as the Director of Industry Operations may allow.

(b) Where a licensee or permittee requests a hearing, the Director of Industry Operations shall forward a copy of the request, together with a copy of the notice, to the Office of Chief Counsel for the assignment of an administrative law judge.

(c) After the Office of Chief Counsel notifies the Director of Industry Operations or the attorney for the Government of the assignment of an administrative law judge, the Director of Industry Operations shall notify the licensee or permittee of the assignment.

(d) In the case of a revocation, a licensee or permittee may include a request for a stay of the effective date of revocation with the request for a hearing.

(e) On receipt of a request for a stay of the effective date of a revocation, the Director of Industry Operations shall timely advise the licensee or permittee whether the stay is granted.

(1) If the stay is granted, the matter shall be referred to an administrative law judge pursuant to paragraph (b) of this section.

(2) If the stay is denied, the licensee or permittee may request an immediate hearing. In this event, the Director of Industry Operations shall immediately refer the matter to the Office of Chief Counsel for the assignment of an administrative law judge, who shall set a date and place for hearing, which date shall be no later than 10 days from the date the licensee or permittee requested the immediate hearing.

§ 771.61 Notice of hearing.

Once a request for a hearing has been referred to the administrative law judge, the administrative law judge shall set a time and place for a hearing and shall serve notice thereof upon the parties at least 10 days in advance of the hearing date.

Non-Request for Hearing

§ 771.62 Initial application.

In the case of an initial application, if the applicant does not request a hearing within 15 days, or within such additional time as the Director of Industry Operations may in his discretion allow, the Director of Industry Operations will return a copy of the application, marked ''Disapproved,'' to the applicant, accompanied by a brief statement including the findings upon which the denial is based.

§ 771.63 Revocation or denial of renewal.

In the case of a revocation or denial of renewal of an application, if the licensee or permittee does not request a hearing within 15 days, or within such additional time as the Director of Industry Operations may in his discretion allow, the Director of Industry Operations shall make the initial decision in the case pursuant to § 771.78(b).

Responses to Notices

§ 771.64 Answers.

(a) Where the licensee or permittee requests a hearing in accordance with § 771.60 of this chapter, a written response to the relevant notice may be filed with the administrative law judge and served on the Director of Industry Operations within 15 days after the licensee or permittee receives service of the designation of the administrative law judge.

(b) Where no hearing is requested, the licensee or permittee may file a written answer to the relevant notice with the Director of Industry Operations within 15 days after service of the notice.

(c) An answer shall contain a concise statement of the facts that constitute the grounds for defense. A hearing, if requested, may be limited to the issues contained in the notice and the answer. The administrative law judge or Director of Industry Operations, as the case may be, may, as a matter of discretion, waive any requirement of this section.

(d) Answers need not be filed in initial application proceedings.

§ 771.65 Responses admitting facts.

If the licensee or permittee desires to waive the hearing on the allegations of fact set forth in the notice and does not contest the facts, the answer may consist of a statement that the licensee or permittee admits all material allegations of fact charged in the notice to be true. The Director of Industry Operations shall base the decision on the notice and such answer, although such an answer shall not affect the licensee's or permittee's right to submit proposed findings of fact and conclusions of law or right to appeal.

§ 771.66 Initial conferences.

(a) In any proceeding, the administrative law judge, upon his own motion or upon the motion of one of the parties or their qualified representatives, may in the administrative law judge's discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:

(1) Simplification of the issues;

(2) The necessity of amendments to the pleadings;

(3) The possibility of obtaining stipulations, admissions of facts, and documents;

(4) The possibility of both parties exchanging information or scheduling discovery;

(5) A date on which both parties will simultaneously submit lists of proposed hearing exhibits;

(6) Limiting the number of expert witnesses;

(7) Identifying and, if practicable, scheduling all witnesses to be called; however, there is no requirement in these proceedings for the parties to submit pre-hearing statements or statements of proposed testimony by witnesses; and

(8) Such other matters as may aid in the disposition of the proceeding.

(b) As soon as practicable after such conference, the administrative law judge shall issue an order that recites the action taken, the amendments allowed to the pleadings, and the agreements made by the parties or their qualified representatives as to any of the matters considered. The order shall also limit the issues for hearing to those not disposed of by admission or agreement. Such order shall control the subsequent course of the proceedings, unless modified for good cause by a subsequent order. After discovery is complete, the order may be amended or supplemented if necessary.

Failure to Appear

§ 771.67 Initial applications.

Where the applicant on an initial application for a license or permit has requested a hearing and does not appear at the appointed time and place, evidence has not been offered to refute or explain the grounds upon which disapproval of the application is contemplated, and no good cause has been shown for the failure to appear, the applicant shall be considered to have waived the hearing. When such waiver occurs, a default judgment against the applicant will be entered and the administrative law judge shall recommend disapproval of said application.

§ 771.68 Revocation or denial of renewal.

If, on the date set for a hearing concerning the revocation or denial of renewal of a license or permit, the licensee or permittee does not appear, no evidence has been offered, and no good cause has been shown for the failure to appear, the attorney for the Government will proceed ex parte and offer for the record sufficient evidence to make a *prima facie* case. At such hearing, documents, statements, and affidavits may be submitted in lieu of testimony of witnesses.

Waiver of Hearing

§ 771.69 Withdrawal of request for hearing.

At any time prior to the assignment of an administrative law judge, the licensee or permittee may, by filing written notice with the Director of Industry Operations, withdraw his request for a hearing. If such a notice is filed after assignment to the administrative law judge and prior to issuance of his recommended decision the Director of Industry Operations shall move the administrative law judge to dismiss the proceedings as moot. If such a notice is filed either after issuance of a notice of denial or notice of revocation and before assignment of the administrative law judge, or after issuance by the administrative law judge of his recommended decision and prior to the Director of Industry Operations' order disapproving the application or denying the renewal of or revoking the license or permit, the Director of Industry Operations shall, by order, dismiss the proceeding.

§ 771.70 Adjudication based upon written submissions.

The licensee or permittee may waive the hearing before the administrative law judge and stipulate that the matter will be adjudicated by the Director of Industry Operations based upon written submissions. Written submissions may include stipulations of law or facts, proposed findings of fact and conclusions of law, briefs, or any other documentary material. The pleadings, together with the written submissions of both the licensee or permittee and the attorney for the Government, shall constitute the record on which the initial decision shall be based. The election to contest the denial or revocation without a hearing under this section does not affect the licensee's or permittee's right to appeal to the Director pursuant to § 555.79 of this chapter or to the United States Court of Appeals for the district in which the licensee or permittee resides or has his principle place of business pursuant to § 555.80 of this chapter.

Surrender of License or Permit

§ 771.71 Before citation.

If a licensee or permittee surrenders the license or permit before the notice of revocation or denial of renewal, the Director of Industry Operations may accept the surrender. But if the evidence, in the opinion of the Director of Industry Operations, warrants issuance of a notice for revocation or denial of renewal, the surrender shall be refused and the Director of Industry Operations shall issue the notice.

§ 771.72 After citation.

If a licensee or permittee surrenders the license or permit after notice, but prior to the referral to an administrative law judge and prior to an initial decision, the Director of Industry Operations may accept the surrender of the license or permit and dismiss the proceeding as moot. If a licensee or permittee surrenders the license or permit after notice and after the referral to the administrative law judge, but prior to the issuance of a recommended decision, the Director of Industry Operations may accept the surrender of the license or permit and shall move the administrative law judge to dismiss the proceedings as moot. In either case, if, in the opinion of the Director of Industry Operations, the evidence is such as to warrant revocation or denial of renewal, as the case may be, the surrender of the license or permit shall be refused, and the proceeding shall continue.

Motions

§ 771.73 General.

All motions shall be made and addressed to the administrative law judge before whom the proceeding is pending, and copies of all motion papers shall be served upon the other party or parties. The administrative law judge may dispose of any motion without oral argument, but he may, if he so desires, set it down for hearing and request argument. The administrative law judge may dispose of such motion prior to the hearing on the merits or he may postpone the disposition until the hearing on the merits. No appeal may be taken from any ruling on a motion until the whole record is certified for review. Examples of typical motions may be found in the Rules of Civil Procedure referred to in § 771.2.

§ 771.74 Prior to hearing.

All motions that should be made prior to the hearing, such as a motion directed to the sufficiency of the pleadings or of preliminary orders, shall be filed in writing with the Director of Industry Operations or the administrative law judge if the matter has been referred to him, and shall briefly state the order or relief applied for and the grounds for such motion.

§ 771.75 At hearing.

Motions at the hearing may be made in writing to the administrative law judge or stated orally on the record.

Hearing

§ 771.76 General.

If a hearing is requested, it shall be held at the time and place stated in the notice of hearing unless otherwise ordered by the administrative law judge.

§ 771.77 Initial applications.

(a) The administrative law judge who presides at the hearing on initial applications shall recommend a decision to the Director of Industry Operations. The administrative law judge shall certify the complete record of the proceedings before him and shall immediately forward the complete certified record to the Director of Industry Operations. The administrative law judge shall also send one copy of his recommended decision to the applicant or the applicant's representative, one copy to the attorney for the Government, and one copy to the Director of Industry Operations, who shall make the initial decision as provided in § 771.107. The applicant may be directed by the Director of Industry Operations to produce such records as may be deemed necessary for examination. All hearings on applications shall be open to the public subject to such restrictions and limitations as may be consistent with orderly procedure.

(b) If no hearing is requested, the return of the application marked ''Disapproved'' is the Director of Industry Operations' initial decision.

§ 771.78 Revocation or denial of renewal.

(a) The administrative law judge who presides at the hearing in proceedings for the revocation or denial of renewal of licenses or permits shall make a recommended decision to the Director of Industry Operations. The administrative law judge shall certify the complete record of the proceedings before him and shall immediately forward the complete certified record to the Director of Industry Operations. The administrative law judge shall also send one copy of his recommended decision to the licensee or permittee or the licensee's or permittee's representative, one copy to the attorney for the Government, and one copy to the Director of Industry Operations, who shall make the initial decision as provided in § 771.109.

(b) If no hearing is requested, the Director of Industry Operations shall make the initial decision.

Burden of Proof

§ 771.79 Initial applications.

In hearings on the initial denial of applications, the burden of proof is on the Government to show by a preponderance of the evidence that the Director of Industry Operations had reason to believe that the applicant is not entitled to a permit or license.

§ 771.80 Revocation or denial of renewal.

In hearings on the revocation or denial of renewal of a license or permit, the burden of proof is on the Government to show that the Director of Industry Operations had reason to believe that the licensee or permittee is not entitled to a permit or license, as may be the case. The Government must meet this proof by a preponderance of the evidence.

General

§ 771.81 Stipulations at hearing.

If there has been no initial conference under § 771.66, the administrative law judge may at the beginning of the hearing require that the parties attempt to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of fact about which there is no substantial dispute. The administrative law judge should take similar action, where appropriate, throughout the hearing and should call and conduct any conferences that he deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved in the hearing.

§ 771.82 Evidence.

Any relevant evidence that would be admissible under the rules of evidence governing civil proceedings in matters not involving trial by jury in the Courts of the United States shall be admissible. The administrative law judge may relax such rules in any hearing when in his judgment such relaxation would not impair the rights of either party and would more speedily conclude the hearing or would better serve the ends of justice. However, the administrative law judge shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, depositions, or duly authenticated copies of records and documents; to submit rebuttal evidence; and to conduct such reasonable cross-examination as may be required for a full and true disclosure of the facts.

(a) *Witnesses.* The administrative law judge shall have the right in his discretion to limit the number of witnesses whose testimony may be merely cumulative and shall, as a matter of policy, not only exclude irrelevant, immaterial, or unduly repetitious evidence but shall also limit the cross-examination of witnesses to that required for a full and true disclosure of the facts so as not to unnecessarily prolong the hearing and unduly burden the record. Opinion testimony shall be admitted when the administrative law judge is satisfied that the witness is properly qualified as defined by Federal Rule of Evidence 701.

(b) *Documentary Evidence.* Material and relevant evidence shall not be excluded because it is not the best evidence unless its authenticity is challenged, in which case reasonable time shall be given to establish its authenticity. When only portions of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the administrative law judge and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document should be made available for examination and for use by opposing counsel for purposes of cross-examination. Compilations, charts, summaries of data, and photostatic copies of documents may be admitted in evidence if the proceedings will thereby be expedited, and if the material upon which they are based is available for examination by the parties. Objections to the evidence shall be in short form, stating the grounds relied upon. The transcript shall not include argument or debate on objections, except as ordered by the administrative law judge, but shall include the rulings thereon. Where official notice is taken of a material fact not appearing in the evidence in the record, any party shall, on timely request, be afforded an opportunity to controvert such fact.

(c) *Hearsay.* Probative, material, and reliable hearsay evidence is admissible in proceedings under this subpart.

§ 771.83 Closing of hearings; arguments, briefs, and proposed findings.

Before closing a hearing, the administrative law judge shall inquire of each party whether the party has any further evidence to offer, which inquiry and the response thereto shall be shown in the record. The administrative law judge may hear arguments of counsel and the administrative law judge may limit the time of such arguments at his discretion. The administrative law judge may, in his discretion, allow briefs to be filed on behalf of either party but shall closely limit the time within which the briefs for both parties shall be filed, so

as to avoid unreasonable delay. The administrative law judge shall also ascertain whether the parties desire to submit proposed findings and conclusions, together with supporting reasons, and, if so, a period of not more than 15 days (unless extended by the administrative law judge)—after the close of the hearing or receipt of a copy of the record, if one is requested—will be allowed for such purpose.

§ 771.84 Reopening of the hearing.

The Director, the Director of Industry Operations, or the administrative law judge, as the case may be, may, as to all matters pending before him, in his discretion reopen a hearing—

(a) In case of default under §§ 771.67 or 771.68 where the applicant, licensee, or permittee failed to request a hearing or to appear after one was set, upon petition setting forth reasonable grounds for such failure, and

(b) Where any party desires leave to adduce additional evidence upon petition summarizing such evidence, establishing its materiality, and stating reasonable grounds why such party with due diligence was unable to produce such evidence at the hearing.

Record of Testimony

§ 771.85 Stenographic record.

A stenographic record shall be made of the testimony and proceedings, including stipulations, admissions of fact, and arguments of counsel in all proceedings. A transcript of the evidence and proceedings at the hearing shall be made in all cases.

§ 771.86 Oath of reporter.

The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that he will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of his ability.

Subpart G—Administrative Law Judges

§ 771.95 Responsibilities of administrative law judges.

Administrative law judges shall be under the administrative control of the Director. In hearings under this subpart, administrative law judges must apply all governing agency rulings and governing agency precedent. They shall be responsible for the conduct of hearings and shall render their decisions as soon as is reasonably possible after the hearing is closed. Administrative law judges shall also be responsible for the preparation, certification, and forwarding of the complete record of proceedings and the administrative work relating thereto and, by arrangement with Directors of Industry Operations and representatives of the Office of Chief Counsel shall have access to facilities and temporary use of personnel at such times and places as are needed in the prompt dispatch of official business.

§ 771.96 Disqualification.

An administrative law judge shall, at any time, withdraw from any proceeding if he deems himself disqualified. Upon the filing in good faith by the applicant, licensee, permittee, or attorney for the Government of a timely and sufficient affidavit of facts showing personal bias or otherwise warranting the disqualification of any administrative law judge, if the administrative law judge fails to disqualify himself, the Director shall upon appeal, as provided in § 771.120, determine the matter as a part of the record and decision in the proceeding. If the Director decides the administrative law judge should have deemed himself disqualified, the Director will remand the record for hearing de novo before another administrative law judge. If the Director should decide against the disqualification of the administrative law judge, the proceeding will be reviewed on its merits by the original administrative law judge. The burden is upon the party seeking disqualification to set forth evidence sufficient to overcome the presumption of the administrative law judge's honesty and integrity.

§ 771.97 Powers.

Administrative law judges shall have authority to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas as authorized by law;

(c) Rule upon offers of proof and receive relevant evidence;

(d) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(e) Regulate the course of the hearing;

(f) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(g) Require the attendance at such conferences of at least one representative of each party who has the authority to negotiate concerning resolution of issues in controversy;

(h) Dispose of procedural requests or similar matters;

(i) Render recommended decisions in proceedings on applications for licenses and permits and on revocation or denial of renewal of licenses or permits;

(j) Call, examine, and cross-examine witnesses, including hostile or adverse witnesses, when the administrative law judge deems such action to be necessary to a just disposition of the case, and introduce into the record documentary or other evidence; and

(k) Take any other action authorized by rule of the Bureau of Alcohol, Tobacco, Firearms, and Explosives consistent with the Administrative Procedure Act.

§ 771.98 Separation of functions.

Administrative law judges shall perform no functions inconsistent with their duties and responsibilities. The Director may assign administrative law judges duties not inconsistent with the performance of their functions as administrative law judges. Except to the extent required for the disposition of ex parte matters as required by law, no administrative law judge shall consult any person or party as to any fact in issue unless there has been notice and opportunity for all parties to participate. The functions of the administrative law judge shall be entirely separated from the general investigative functions of the agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions in any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the administrative law judge's or Director's decision, or in the agency review on appeal, except as a witness or counsel in the proceedings. The administrative law judge may not informally obtain advice or opinions from the parties or their counsel, or from any officer or employee of the ATF, as to the facts or the weight or interpretation to be given to the evidence. The administrative law judge may, however, informally obtain advice on matters of law or procedure in a proceeding from officers or employees who were not engaged in the performance of investigative or prosecuting functions in that proceeding or a factually related proceeding. The administrative law judge may, at any time, consult with and obtain instructions from the Director on questions of law and policy. Furthermore, it is not a violation of the separation of functions for the administrative law judge to participate in the questioning of witnesses, where the questioning is for clarification or to move the proceedings along, and where the questioning is not so extensive as to place the administrative law judge in the position of a prosecuting officer.

§ 771.99 Conduct of hearing.

The administrative law judge is charged with the duty of conducting a fair and impartial hearing and of maintaining order in form and manner consistent with the dignity of a court proceeding. In the event that counsel or any person or witness in any proceeding shall refuse to obey the orders of the administrative law judge, or be guilty of disorderly or contemptuous language or conduct in connection with any hearing, the administrative law judge may, for good cause stated in the record, suspend the hearing, and, in the case of disorderly or contemptuous language or conduct by an attorney, recommend that the Director report the matter to the Chief Counsel regarding the attorney for the Government or the applicable state bar association regarding the attorney for a licensee or permittee for disciplinary action. The refusal of a witness to answer any question that has been ruled to be proper shall be considered by the administrative law judge in determining the weight to be given all the testimony of that witness.

§ 771.100 Unavailability of administrative law judge.

In the event that the administrative law judge designated to conduct a hearing becomes unavailable before the filing of his findings and recommended decision, the Director may assign the case to another administrative law judge for the continuance of the proceeding, in accordance with the regulations in this part in the same manner as if he had been designated administrative law judge at the commencement of the proceeding.

Subpart H—Decisions

§ 771.105 Administrative law judge's findings and recommended decision.

Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the administrative law judge shall render his recommended decision. All decisions shall become a part of the record and, if proposed findings and conclusions have been filed, shall show the administrative law judge's ruling upon each of such proposed findings and conclusions. Decisions shall consist of:

(a) A brief statement of the issues of fact involved in the proceeding;

(b) The administrative law judge's findings and conclusions, as well as the reasons or basis therefor with record references, upon all the material issues of fact, law, or discretion presented on the record (including, when appropriate, comment as to the credibility and demeanor of the witnesses); and

(c) The administrative law judge's recommended determination as to the revocation or denial at issue.

§ 771.106 Certification and transmittal of record and decision.

After reaching his decision, the administrative law judge shall certify the complete record of the proceeding before him and shall immediately forward the complete certified record together with one copy of the administrative law judge's recommended decision to the Director of Industry Operations for initial decision, one copy of the recommended decision to the applicant or the applicant's representative, and one copy of the recommended decision to the attorney for the Government.

Action by Director of Industry Operations

§ 771.107 Initial application proceedings.

(a) *Accepting the recommended decision.* If the Director of Industry Operations, after consideration of the record of the hearing and of any proposed findings, conclusions, or exceptions filed with him by the applicant, accepts the recommended decision of the administrative law judge, the Director of Industry Operations shall by order approve or disapprove of the application in accordance with the recommended decision. If the Director of Industry Operations approves the application, he shall briefly state for the record his reasons therefor. However, if the Director of Industry Operations disapproves of the applications, he shall serve a copy of the administrative law judge's recommended decision on the applicant, informing the applicant of the Director of Industry Operations' contemplated action and affording the applicant not more than 10 days in which to submit proposed findings and conclusions or exceptions to the recommended decision with reasons in support thereof.

(b) *Rejecting the recommended decision.* If, after such consideration referenced in paragraph (a) of this section, the Director of Industry Operations rejects the recommended decision of the administrative law judge, in whole or in part, the Director of Industry Operations shall by order make such findings and conclusions as in his opinion are warranted by the law and facts in the record. Any decision of the Director of Industry Operations ordering the disapproval of an application for a permit shall state the findings and conclusions upon which it is based, including his ruling upon each proposed finding, conclusion, and exception to the administrative law judge's recommended decision, together with a statement of the administrative law judge's findings, conclusions, and reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record. A signed original of the decision of the Director of Industry Operations shall be served upon the applicant and the original copy containing a certificate of service shall be placed in the official record of the proceeding.

§ 771.108 Director of Industry Operations' decision.

When the Director of Industry Operations issues an initial decision in accordance with §§ 771.77 or 771.107 the decision shall become a part of the record. The decision shall consist of:

(a) A brief statement of the issues involved in the proceedings;

(b) The Director of Industry Operations' findings and conclusions, as well as the reasons therefor; and

(c) The Director of Industry Operations' determination on the record.

§ 771.109 Revocation or denial of renewal proceedings.

(a) *Accepting the recommended decision.* After consideration of the complete certified record of the hearing, if the Director of Industry Operations agrees with the recommended decision of the administrative law judge, the Director of Industry Operations shall enter an order revoking or denying the renewal of the license or permit or dismissing the proceedings in accordance with the administrative law judge's recommended decision.

(b) *Rejecting the recommended decision.* After consideration of the complete certified record of the hearing, if the Director of Industry Operations disagrees with the recommended decision of the administrative law judge, he may file a petition with the Director for review of the recommended decision, as provided in § 771.120. If the Director of Industry Operations files such a petition, he shall withhold issuance of the order pending the decision of the Director, upon receipt of which he shall issue the order in accordance with the Director's decision. A signed original of the order of the Director of Industry Operations shall be served upon the licensee or permittee or his representative and the original copy containing a certificate of service shall be placed in the official record of the proceeding.

(c) In a case where the initial decision is made by the Director of Industry Operations in accordance with § 771.78(b), the Director of Industry Operations shall also issue an order revoking or denying the renewal of the license or permit, or dismissing the proceedings in accordance with his initial decision. A signed original of the decision and order of the Director of Industry Operations shall be served upon the licensee or permittee or his representative and the original copy placed in the official record of the proceeding.

§ 771.110 Revocation or denial of renewal.

Pursuant to § 771.109(a), when the Director of Industry Operations issues an order revoking or denying the renewal of a license or permit, he shall furnish a copy of the order and of the recommended decision on which it is based to the Director. Should such order be subsequently set aside on review by the courts, the Director of Industry Operations will so advise the Director.

§ 771.111 Proceedings involving violations not within the division of issuance of license or permit.

In the event violations occurred at a place not within the field division where the licensee or permittee is located, the Director of Industry Operations of the field division where the licensee or permittee is located will take jurisdiction over any proceeding and will take appropriate action in accordance with this subpart, including issuing the relevant notice.

Subpart I—Review

§ 771.120 Appeal on petition to the Director.

(a) An appeal to the Director may be made by the applicant, licensee, or permittee, or by the Director of Industry Operations. For the applicant, licensee, or permittee, such appeal shall be made by filing a petition for review on appeal with the Director within 15 days of the service of the adverse initial decision by the Director of Industry Operations. For the Director of Industry Operations, such appeal shall be taken by filing a petition for review on appeal with the Director within 15 days of the issuance of the administrative law judge's decision recommending against revocation or denial of renewal. The petitioning applicant, licensee, or permittee must submit arguments showing that the Director of Industry Operations' initial decision, and if applicable the underlying administrative law judge's recommended decision, was without reasonable warrant in fact or contrary to law and regulations. The petitioning DIO must submit arguments showing the administrative law judge's recommended decision was without reasonable warrant in fact or contrary to law and regulations. Nothing in these regulations shall limit the authority of the Director to review the administrative law judge's decision exercising all the powers that he would have in making the recommended decision.

(b) A copy of the petition shall be filed with the Director of Industry Operations or served on the applicant, licensee, or permittee, as the case may be. In the event of an appeal, the Director of Industry Operations shall immediately certify and forward the complete original record, by certified mail, to the Director, for his consideration and review.

§ 771.121 Review by Director.

(a) *Modification or reversal.* On appeal, the Director shall afford a reasonable opportunity for the submission of proposed findings, conclusions, or exceptions with reasons in support thereof and an opportunity for oral argument. The Director may alter or modify any finding of the administrative law judge (or of the Director of Industry Operations as the case may be) and may affirm, reverse, or modify the recommended decision of the administrative law judge, or the initial decision of the Director of Industry Operations, or may remand the case for further hearing, but shall not consider evidence that is not a part of the record.

(b) *Affirmance.* Except in the case of a remand, when, on appeal, the Director affirms the initial decision of the Director of Industry Operations or the recommended decision of the administrative law judge, as the case may be, such decision shall be the agency's final decision.

(c) *Recusal.* Appeals and petitions for review shall not be decided by the Director in any proceeding in which the Director has engaged in an investigation or prosecution and in such event the Director shall so state his disqualification in writing and refer the record to the Deputy Director for appropriate action. The Deputy Director may designate an Assistant Director or one of the Deputy Director's principal aides to consider any proceeding instead of the Director. The original copy of the decision on review shall be placed in the official record of the proceeding, a signed duplicate original shall be served upon the applicant, licensee, or permittee, and a copy shall be transmitted to the Director of Industry Operations.

§ 771.122 Denial of renewal or revocation.

If the Director orders the denial of an application, a copy of the application marked ''Disapproved'' will be returned to the applicant by the Director of Industry Operations. If the Director orders a revocation of a license of permit, any stay of revocation will be withdrawn and the revocation will become effective upon the order of the Director of Industry Operations. After the issuance of a denial of a renewal application or a revocation, and pending the final determination of a timely appeal, the licensee or permittee may continue operations, if at all, pursuant to § 555.83 of this chapter.

§ 771.123 Court review.

(a) If an applicant, licensee, or permittee files an appeal in the United States Court of Appeals for the district in which he resides or has his principle place of business, within 60 days after the receipt of the Director's decision, the Director, upon notification that an appeal has been taken, shall prepare the record for submission to the court in accordance with applicable court rules.

(b) If an applicant, licensee, or permittee does not seek review with the Director, but instead seeks review within 60 days after the receipt of the initial decision of the Director of Industry Operations pursuant to § 771.109, the Director of Industry Operations, upon notification that an appeal has been taken, shall prepare the record for submission to the court in accordance with applicable court rules. The Director of Industry Operations shall notify the Director if such an appeal is taken.

(c) The Director, or the Director of Industry Operations, as the case may be, shall certify the correctness of the transcript of the record, forward one copy to the attorney for the Government in the review of the case, and file the original record of the proceedings with the original certificate in the appropriate United States Court of Appeals.

Subpart J—Miscellaneous

§ 771.124 Depositions.

The administrative law judge may take or order the taking of depositions by either party to the proceeding at such time and place as the administrative law judge may designate before a person having the power to administer oaths, upon application therefor and notice to the parties to the action. The testimony shall be reduced to writing by the person taking the deposition, or a person under his direction, and the deposition shall be subscribed by the

deponent unless subscribing thereof is waived in writing by the parties.

§ 771.125 Witnesses and fees.

Witnesses summoned before the administrative law judge may be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear and the person taking the deposition shall be paid by the party at whose instance the deposition is taken.

§ 771.126 Discovery.

The discovery provisions of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure are not controlling with respect to agency proceedings under this part. However, fundamental fairness requires a party be given the opportunity to know what evidence is offered and a chance to rebut such evidence. Either party may petition the administrative law judge for non-burdensome discovery if the party can demonstrate that the interests of justice require disclosure of these materials.

§ 771.127 Privileges.

The Administrative Procedure Act, 5 U.S.C. 559, provides that, except as otherwise required by law, privileges relating to procedure or evidence apply equally to agencies and persons. Therefore, an agency may rely on judicially-approved privileges to resist production of its files where appropriate.

Record

§ 771.135 What constitutes record.

The transcript of testimony, pleadings, exhibits, all papers and requests filed in the proceeding, and all findings, decisions, and orders, shall constitute the exclusive record. Where the decision rests on official notice of material fact not appearing in the record, the administrative law judge shall so state in his findings and any party shall, on timely request, be afforded an opportunity to show facts to the contrary.

§ 771.136 Availability.

A copy of the record shall be available for inspection or copying by the parties to the proceedings during business hours at the office of the administrative law judge or the Director of Industry Operations or, pending administrative review, at the Office of the Director.

Dated: October 1, 2014.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2014–23932 Filed 10–6–14; 8:45 am]

BILLING CODE 4410–FY–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0615; FRL–9916–94–Region 9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen (NOx) emissions from natural gas-fired water heaters, small boilers, and process heaters. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by *November 6, 2014.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0615, by one of the following methods:

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

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

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

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: Placer County Air Pollution Control District Rule 247 Natural Gas-Fired Water Heaters, Small Boilers and Process Heaters. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

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

Dated: September 5, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2014–23775 Filed 10–6–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 13–184; Report No. 3010]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding by Julia Benincosa Legg, on behalf of West Virginia Department of Education; David L. Haga, on behalf of Verizon; Gary Rawson, on behalf of State E-rate Coordinators' Alliance (SECA); Kevin Rupy, on behalf of United States Telecom Association; Michael R. Romano, on behalf of NTCA/Utah Rural Telecom Association; and Dennis Sampson, on behalf of Utah Education Network.

DATES: Oppositions to the Petitions must be filed on or before October 22, 2014. Replies to an opposition must be filed on or before November 3, 2014.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Bachtell, Wireline Competition Bureau, (202) 418–2694, email: *James.Bachtell@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 3010, released September 24, 2014. The full text of Report No. 3010 is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *document* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A) because this document does not have an impact on any rules of particular applicability.

Subject: Modernization of the Schools and Libraries ''E-Rate'' Program, published at 79 FR 49160, August 19, 2014, in WC Docket No. 13–184 and published pursuant to 47 CFR 1.429(e). *See also* § 1.4(b)(1) of the Commission's rules.

Number of Petitions Filed: 6.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–23803 Filed 10–6–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2014–0046; 4500030113]

RIN 1018–BA03

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Black Pinesnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the black pinesnake (*Pituophis melanoleucus lodingi*), a subspecies currently known from Alabama and Mississippi, as a threatened species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to this subspecies and add it to the List of Endangered and Threatened Wildlife.

DATES: We will accept comments received or postmarked on or before December 8, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see ADDRESSES, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 21, 2014.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2014–0046, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2014–0046; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Jackson, MS 39214; telephone 601–321–1122; or facsimile 601–965–4340. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we find that listing a species is endangered or threatened throughout all or a significant portion of its range is warranted, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within one year. Listing a species as an endangered or threatened species can only be completed by issuing a rule. Critical habitat is prudent, but not determinable at this time.

This rule proposes to list the black pinesnake (*Pituophis melanoleucus lodingi*) as a threatened species. In addition, we are proposing a rule under section 4(d) of the Act that outlines the prohibitions and conservation actions necessary and advisable for the conservation of the black pinesnake as a threatened species.

The basis for our action. Under the Act, we may 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 found that the black pinesnake warrants listing as a threatened species due to the past and continuing loss, degradation, and fragmentation of habitat in association with silviculture, urbanization, and fire suppression. Population declines are also attributed to road mortality and intentional killing of snakes by individuals. These threats, coupled with an apparent low reproductive rate, threaten this subspecies' long-term viability.

We will seek peer review. We will seek comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal. Because we will consider all comments and information

we receive during the comment period, our final determination may differ from this proposal.

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Additional information concerning the historical and current status, range, distribution, and population size of the black pinesnake, including the locations of any additional populations of this subspecies.

(2) The black pinesnake's biology, range, and population trends, including:

(a) Biological or ecological requirements of the subspecies, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy, including interpretations of existing studies or whether new information is available;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the subspecies, its habitat, or both.

(3) Factors that may affect the continued existence of the subspecies, which may include habitat modification or destruction, overutilization, collection for the pet trade, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(4) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this subspecies and existing regulations that may be addressing those threats.

(5) Any information concerning the appropriateness and scope of the proposed section 4(d) rule provisions for take of the black pinesnake. We are particularly interested in input regarding timber and forest management and restoration practices that would be appropriately addressed through a section 4(d) rule, including those that adjust the timing or methods to minimize impacts to the species or its habitat.

(6) Any additional information on current conservation activities or partnerships benefitting the subspecies, or opportunities for additional partnerships or conservation activities that could be undertaken in order to address threats.

(7) Any information on specific pesticides that could impact the black pinesnake or its prey base either directly or indirectly, which could cause further mortality or decline of the species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 et seq.) directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

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

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are seeking the expert opinions of seven appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the black pinesnake's biology, habitat, or physical or biological factors, and they are currently reviewing the status information in the proposed rule, which will inform our determination. We invite comment from the peer reviewers during this public comment period.

Previous Federal Actions

We identified the black pinesnake as a Category 2 candidate species in the December 30, 1982, Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58454). Category 2 candidates were defined as taxa for which we had information that proposed listing was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule at the time. The subspecies remained so designated in subsequent annual Candidate Notices of Review (CNORs) (50 FR 37958, September 18, 1985; 54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; and 59 FR 58982, November 15, 1994). In the February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of Category 2 species as candidates; therefore, the black pinesnake was no longer a candidate species.

On October 25, 1999, the black pinesnake was added to the candidate list (64 FR 57534). Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities. The black pinesnake was included in all of our subsequent annual CNORs (66 FR 54808, October 30, 2001; 67 FR 40657, June 13, 2002; 69 FR 24876, May 4, 2004; 70 FR 24870, May 11, 2005; 71 FR

53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013). The black pinesnake has a listing priority number of 3, which reflects a subspecies with threats that are both imminent and high in magnitude.

On May 11, 2004, we were sent a petition to list the black pinesnake. No new information was provided in the petition, and we had already found the subspecies warranted listing, so no further action was taken on the petition.

On May 10, 2011, the Service announced a work plan to restore biological priorities and certainty to the Service's listing process. As part of an agreement with Center for Biological Diversity and WildEarth Guardians, the Service filed the work plan with the U.S. District Court for the District of Columbia. The work plan will enable the agency to, over a period of 6 years, systematically review and address the needs of more than 250 species listed within the 2010 CNOR, including the black pinesnake, to determine if these species should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. This work plan will enable the Service to again prioritize its workload based on the needs of candidate species, while also providing State wildlife agencies, stakeholders, and other partners with clarity and certainty about when listing determinations will be made. On July 12, 2011, the Service reached an agreement with Center for Biological Diversity and WildEarth Guardians and further strengthened the work plan, which will allow the agency to focus its resources on the species most in need of protection under the Act. These agreements were approved on September 9, 2011. The timing of this proposed listing is, in part, therefore, an outcome of the work plan.

Background

Species Information

Species Description and Taxonomy

Pinesnakes (genus *Pituophis*) are large, non-venomous, oviparous (egg-laying) constricting snakes with keeled scales and disproportionately small heads (Conant and Collins 1991, pp. 201–202). Their snouts are pointed. Black pinesnakes are distinguished from other pinesnakes by being dark brown to black both on the upper and lower surfaces of their bodies. There is considerable individual variation in adult coloration (Vandeventer and Young 1989, p. 34), and some adults have russet-brown snouts. They may also have white scales on their throat and ventral surface (Conant and Collins 1991, p. 203). In addition, there may also be a vague pattern of blotches on the end of the body approaching the tail. Adult black pinesnakes range from 48 to 76 inches (122 to 193 centimeters) long (Conant and Collins 1991, p. 203; Mount 1975, p. 226). Young black pinesnakes often have a blotched pattern, typical of other pinesnakes, which darkens with age. The subspecies' defensive posture when disturbed is particularly interesting; when threatened, it throws itself into a coil, vibrates its tail rapidly, strikes repeatedly, and utters a series of loud hisses (Ernest and Barbour 1989, p. 102).

Pinesnakes (*Pituophis melanoleucus*) are members of the Class Reptilia, Order Squamata, Suborder Serpentes, and Family Colubridae. There are three recognized subspecies of *P. melanoleucus* distributed across the eastern United States (Crother 2012, p. 66; Rodriguez-Robles and De Jesus-Escobar 2000, p. 35): the northern pinesnake (*P. m. melanoleucus*); black pinesnake (*P. m. lodingi*); and Florida pinesnake (*P. m. mugitus*). The black pinesnake was originally described by Blanchard (1924, pp. 531–532), and is geographically isolated from all other pinesnakes. However, there is evidence that the black pinesnake was in contact with other pinesnakes in the past. A form intermediate between *P. m. lodingi* and *P. m. mugitus* occurs in Baldwin and Escambia Counties, Alabama, and Escambia County, Florida, and may display morphological characteristics of both subspecies (Conant 1956, pp. 10–11). These snakes are separated from populations of the black pinesnake by the extensive Tensas-Mobile River Delta and the Alabama River, and it is unlikely that there is currently gene flow between pinesnakes across the delta (Duran 1998a, p. 13; Hart 2002, p. 23). A study on the genetic structure of the three subspecies of *P. melanoleucus* (Getz *et al.* 2012, p. 2) showed evidence of mixed ancestry, and supported the current subspecies designations and the determination that all three are genetically distinct groups. Evidence suggests a possible historical intergradation between *P. m. lodingi* and *P. ruthveni* (Louisiana pinesnake), but their current ranges are no longer in contact and intergradation does not presently occur (Crain and Cliburn 1971, p. 496).

Habitat

Black pinesnakes are endemic to the upland longleaf pine forests that once covered the southeastern United States. Habitat for these snakes consists of sandy, well-drained soils with an open-canopied overstory of longleaf pine, a reduced shrub layer, and a dense herbaceous ground cover (Duran 1998a, p. 2). Duran (1998b, pp. 1–32) conducted a radio-telemetry study of the black pinesnake that provided data on habitat use. Snakes in this study were usually located on well-drained, sandy-loam soils on hilltops, on ridges, and toward the tops of slopes in areas dominated by longleaf pine. They were rarely found in riparian areas, hardwood forests, or closed canopy conditions. From radio-telemetry studies, it has been shown that black pinesnakes spend a majority of their time below ground: (1) 65.5 percent of locations (Duran 1998a, p. 12); (2) 53–62 percent of locations (Yager *et al.* 2005, p. 27); and (3) 70.4 percent of locations (Baxley and Qualls 2009, p. 288). These locations were usually in the trunks or root channels of rotting pine stumps.

During two additional radio-telemetry studies, individual pinesnakes were observed using riparian areas, hardwood forests, and pine plantations periodically, but the majority of their time was still spent in intact upland longleaf pine habitat. While they will use multiple habitat types periodically, they repeatedly returned to core areas in the longleaf pine uplands and used the same pine stump and associated rotted-out root system from year to year, indicating considerable site fidelity (Yager, *et al.* 2006, pp. 34–36; Baxley 2007, p. 40). Several radio-tracked juvenile snakes were observed using mole or other small mammal burrows rather than the bigger stump holes used by adult snakes (Lyman *et al.* 2007, pp. 39–41).

Pinesnakes may show some seasonal movement trends of emerging from overwintering sites in February, moving to an active area from March until September, and then moving back to their overwintering areas (Yager, *et al.* 2006, pp. 34–36). The various areas utilized throughout the year may not have significantly different habitat characteristics, but these movement patterns support the need for black pinesnakes to have access to larger, unfragmented tracts of habitat to accommodate fairly large home ranges while minimizing interactions with humans.

The minimum amount of habitat necessary to support a viable black pinesnake population (reserve size) has

not previously been determined, and estimating that value can be quite challenging, primarily based on the elusive nature of the subspecies (Wilson *et al.* 2011, pp. 42–43); however, it is clear that the area would need to constitute an unconstrained activity area, sufficiently large enough to accommodate the long-distance movements that have been reported for the subspecies (Baxley and Qualls 2009, pp. 287–288). Fragmentation by roads, urbanization, or incompatible habitat conversion continues to be a major threat affecting the subspecies (see discussion under *Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence*).

Life History

Black pinesnakes are active during the day but only rarely at night. As evidenced by their pointed snout and enlarged rostral scale (the scale at the tip of their snout), they are accomplished burrowers capable of tunneling in loose soil, potentially for digging nests or excavating rodents for food (Ernst and Barbour 1989, pp. 100–101). In addition to rodents, wild black pinesnakes have been reported to eat nestling rabbits and quail (Vandeventer and Young 1989, p. 34). During field studies of black pinesnakes in Mississippi, hispid cotton rats (*Sigmodon hispidus*) and cotton mice (*Peromyscus gossypinus*) were the most frequently trapped small mammals within black pinesnake home ranges (Duran and Givens 2001, p. 4; Baxley 2007, p. 29). These results suggest that these two species of mammals represent essential components of the snake's diet (Duran and Givens 2001, p. 4).

Duran and Givens (2001, p. 4) estimated the average size of individual black pinesnake home ranges (Minimum Convex Polygons (MCPs)) on Camp Shelby, Mississippi, to be 117.4 acres (ac) (47.5 hectares (ha)) using data obtained during their radio-telemetry study. Observations made during this study also provided some evidence of territoriality in the black pinesnake. A more recent study conducted on Camp Shelby provided home range estimates from 135 to 385 ac (55 to 156 ha) (Lee 2014a, p. 1). Additional studies from the De Soto National Forest (NF) and other areas of Mississippi have documented somewhat higher MCP home range estimates, from 225 to 979 ac (91 to 396 ha) (Baxley and Qualls 2009, p. 287). The smaller home range sizes from Camp Shelby may be a reflection of the higher habitat quality at the site, as the snakes may not need to travel great distances to meet their ecological needs. A modeling study of movement patterns in bullsnakes revealed that home range sizes increased as a function of the amount of avoided habitat, such as agricultural fields (Kapfer *et al.* 2010, p. 15). As snakes are forced to increase the search radius to locate preferred habitat, their home range invariably increases. The dynamic nature of individual movement patterns supports the need for black pinesnake habitat to be maintained in large, unfragmented parcels to sustain survival of a population. In the late 1980s, a gopher tortoise preserve of approximately 2,000 ac (809 ha) was created on Camp Shelby, a National Guard training facility operating under a special use permit on the De Soto NF in Forrest, George, and Perry Counties, Mississippi. This preserve, which has limited habitat fragmentation and has been specifically managed with prescribed burning and habitat restoration to support the recovery of the gopher tortoise, is believed to be central to a much larger managed area (over 100,000 acres) which provides habitat for one of the largest populations of black pinesnakes in the subspecies' range (Lee 2014a, p. 1).

Very little information on the black pinesnake's breeding and egg-laying is available from the wild. Lyman *et al.* (2007, p. 39) described the time frame of mid-May through mid-June as the period when black pinesnakes breed on Camp Shelby, and mating activities may take place in or at the entrance to armadillo burrows. However, Lee (2007, p. 93) described copulatory behavior in a pair of black pinesnakes in late September. Based on dates when hatchling black pinesnakes have been captured, the potential nesting and egg deposition period of gravid females extends from the last week in June to the last week of August (Lyman *et al.* 2009, p. 42). In 2009, a natural nest with a clutch of six recently hatched black pinesnake eggs was found at Camp Shelby (Lee *et al.* 2011, p. 301) at the end of a juvenile gopher tortoise burrow. As there is only one documented natural black pinesnake nest, it is unknown whether the subspecies exhibits nest site fidelity; however, nest site fidelity has been described for other *Pituophis* species. Burger and Zappalorti (1992, pp. 333–335) conducted an 11-year study of nest site fidelity of northern pinesnakes in New Jersey and documented the exact same nest site being used for 11 years in a row, evidence of old egg shells in 73 percent of new nests, and recapture of 42 percent of female snakes at prior nesting sites. The authors suggest that females returning to a familiar site should have greater knowledge of available resources, basking sites, refugia, and predator pressures; therefore they would have the potential for higher reproductive success compared with having to find a new nest site (Burger and Zappalorti 1992, pp. 334–335). If black pinesnakes show similar site fidelity, it follows that they too might have higher reproductive success if their nesting sites were to remain undisturbed.

Specific information about underground refugia of the black pinesnake was documented during a study conducted by Rudolph *et al.* (2007, p. 560), which involved excavating five sites used by the subspecies for significant periods of time from early December through late March. The pinesnakes occurred singly at shallow depths (mean of 9.8 in (25 cm); maximum of 13.8 in (35 cm)) in chambers formed by the decay and burning of pine stumps and roots (Rudolph *et al.* 2007, p. 560). The refugia were not excavated by the snakes beyond minimal enlargement of the preexisting chambers. These sites are not considered true hibernacula because black pinesnakes move above ground on warm days throughout all months of the year (Rudolph *et al.* 2007, p. 561; Baxley 2007, pp. 39–40).

Longevity of wild black pinesnakes is not well documented, but is at least 11 years, based on recapture data from Camp Shelby (Lee, pers. comm., 2014b). The longevity record for a captive male black pinesnake is 14 years, 2 months (Slavens and Slavens 1999, p. 1). Recapture and growth data from black pinesnakes on Camp Shelby indicate that they may not reach sexual maturity until their 4th or possibly 5th year (Yager *et al.* 2006, p. 34).

Predators of black pinesnakes include red-tailed hawks (*Buteo jamaicensis*), raccoons (*Procyon lotor*), skunks (*Mephitis mephitis*), red foxes (*Vulpes vulpes*), feral cats (*Felis catus*), and domestic dogs (*Canis familiaris*) (Ernst and Ernst 2003, p. 284; Yager *et al.* 2006, p. 34; Lyman *et al.* 2007, p. 39) as well as humans.

Historical/Current Distribution

There are historical records for the black pinesnake from one parish in Louisiana (Washington Parish), 14 counties in Mississippi (Forrest, George, Greene, Harrison, Jackson, Jones, Lamar, Lauderdale, Marion, Pearl River, Perry, Stone, Walthall, and Wayne Counties), and 3 counties in Alabama west of the Mobile River Delta (Clarke, Mobile, and Washington Counties). Historically, populations likely occurred in all of these contiguous counties. Currently,

some populations cross county boundaries, but the species is no longer found in all of these counties. A recent record has been identified in Lawrence County, Mississippi (Lee 2014b, p. 1), where black pinesnakes have not previously been documented. However, this is a single capture and it is unknown if it is part of a larger population.

Duran (1998a, p. 9) and Duran and Givens (2001, p. 24) concluded that black pinesnakes have been extirpated from Louisiana and from two counties (Lauderdale, and Walthall) in Mississippi. In these two studies, all historical and current records were collected, land managers from private, State, and Federal agencies with local knowledge of the subspecies were interviewed, and habitat of all historical records was visited and assessed. As black pinesnakes have not been reported west of the Pearl River in either Mississippi or Louisiana in over 30 years, and since there are no recent (post-1979) records from Pearl River County (Mississippi), we believe them to be extirpated from that county as well. To our knowledge there are no recent site-specific surveys from areas west of the Pearl River, and the last record from Louisiana was from 1965.

In general, pinesnakes are particularly difficult to survey for given their tendency to remain below-ground most of the time. Most records are the result of incidental observations from road crossings, road killed snakes, and other activities that take observers into black pinesnake habitat such as forestry, unrelated biological surveys, or recreation.

A review of records, interviews, and status reports indicated that black pinesnakes remain in all historical counties in Alabama (Clarke, Mobile, and Washington) and in 11 out of 14 historical counties in Mississippi (Forrest, George, Greene, Harrison, Jackson, Jones, Lamar, Marion, Perry, Stone, and Wayne). Black pinesnake populations in many of the occupied counties in Mississippi occur on the De Soto NF. Much of the habitat outside of the National Forest has become highly fragmented, and populations on these lands appear to be small and isolated on islands of suitable longleaf pine habitat (Duran 1998a, p. 17; Barbour 2009, pp. 6–13).

Population Estimates and Status

Duran and Givens (2001, pp. 1–35) reported the results of a habitat assessment of all black pinesnake records (156) known at the time of their study. Habitat suitability of the sites was based on how the habitat compared to that selected by black pinesnakes in a previously completed telemetry study of a population occupying what was considered high-quality habitat (Duran 1998b, pp. 1–44). Black pinesnake records were joined using a contiguous suitable habitat model (combining areas of suitable habitat with relatively unrestricted gene flow) to create ''population segments'' (defined as ''that portion of the population located in a contiguous area of suitable habitat throughout which gene flow is relatively unrestricted'') from the two-dimensional point data. These population segments were then assessed using a combination of a habitat suitability rating and data on how recently and/or frequently black pinesnakes had been recorded at the site. By examining historical population segments, Duran and Givens (2001, p. 10) determined that 22 of the 36 (61 percent) population segments known at the time of their study were either extirpated (subspecies no longer present), or were in serious jeopardy of extirpation.

The black pinesnake is difficult to locate even in areas where it is known to occur. From the 14 population segments not determined to be in serious jeopardy of extirpation from the 2001 assessment by Duran and Givens, we estimate that there are 11 populations of black pinesnakes today. Our estimate of the number of populations was derived using record data (post-1990) from species/subspecies experts, Natural Heritage Programs, State wildlife agencies, site assessments by Duran and Givens (2001, pp. 1–35), overlain on current Geographic Information Systems (GIS) analysis of habitat. A population was determined to be distinct if it was separated from other localities by more than 1.3 miles (mi.) (2.1 kilometers (km)). This buffer radius distance was chosen based on movement and home range data provided by black pinesnake researchers (Duran 1998b, pp. 15–19; Yager *et al.* 2005, pp. 27–28; Baxley and Qualls 2009, pp. 287–288). Five of these 11 populations occur in Alabama and 6 in Mississippi. We are unsure of how many individuals are within each population, but they may vary in size from a few individuals to more than 100 in the largest population.

Current GIS analysis of these 11 potential black pinesnake populations, in addition to the assessments by Duran and Givens (2001, pp. 1–35), indicates that 3 of the 11 populations, all located in Alabama, are likely not viable in the long term due to their small size, lack of recent records in the areas of these populations, presence on or proximity to highly fragmented habitat, and/or lack of protection and habitat management for the site. The majority of the known black pinesnake records, and much of the best remaining habitat, occur within the two ranger districts that make up the De Soto NF in Mississippi. These lands represent a small fraction of the former longleaf pine ecosystem that was present in Louisiana, Mississippi, and Alabama, and historically occupied by the subspecies. At this time, we believe the 6 populations in Mississippi (5 on the De Soto NF and one in Marion County) and two sites in Alabama (in Clarke County) are the only ones considered likely to persist long term. Protection and management specifically addressing black pinesnake populations are covered under the Department of Defense integrated natural resources management plan (INRMP) for Camp Shelby in Forrest and Perry Counties, Mississippi; however, this plan covers less than 10 percent of one of the Mississippi populations.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Fire-maintained southern pine ecosystems, particularly the longleaf pine ecosystem, have declined dramatically across the South. Current estimates show that the longleaf pine forest type has declined 96 percent from the historical estimate of 88 million ac (35.6 million ha) to approximately 3.3 million ac (1.3 million ha) (Oswalt *et al.* 2012, p. 13). During the latter half of the 20th century, Louisiana, Alabama, and Mississippi lost between 60 and 90 percent of their longleaf acreage (Outcalt and Sheffield 1996, pp. 1–10). Recently, longleaf acreage has been trending upward in parts of the Southeast through restoration efforts, but these

increases do not align with the range of the black pinesnake (Ware, pers. comm., 2014). Southern forest futures models predict declines of forest land area between 2 and 10 percent in the next 50 years, with loss of private forest land to urbanization accounting for most of this loss (Wear and Greis 2013, p. 78). Natural longleaf pine forests, which are characterized by a high, open canopy and shallow litter and duff layers, have evolved to be maintained by frequent, low intensity fires, which in turn restrict a woody midstory, and promote the flowering and seed production of fire-stimulated groundcover plants (Oswalt *et al.* 2012, pp. 2–3). Although black pinesnakes will occasionally utilize open-canopied forests with overstories of loblolly, slash, and other pines, they are closely associated with natural longleaf pine forests, which have an abundant herbaceous groundcover (Duran 1998a, p. 11; Baxley *et al.* 2011, p. 161; Smith 2011, pp. 86, 100) necessary to support the black pinesnake's prey base (Miller and Miller 2005, p. 202).

The current and historical range of the black pinesnake is highly correlated with the current and historical range of these natural longleaf pine forests, leading to the hypothesis that black pinesnake populations, once contiguous throughout these forests in Alabama, Mississippi, and southeast Louisiana, have declined proportionately with the ecosystem (Duran and Givens 2001, pp. 2–3). In the range of the black pinesnake, longleaf pine is now largely confined to isolated patches on private land and larger parcels on public lands. Black pinesnake habitat has been eliminated through land use conversions, primarily conversion to agriculture and pine plantations and development of urban areas. Most of the remaining patches of longleaf pine on private land within the range of the snake are fragmented, degraded, second-growth forests (see discussion under *Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence*).

Conversion of longleaf pine forest to pine plantation often reduces the quality and suitability of a site for black pinesnakes. Duran (1998b, p. 31) found that black pinesnakes prefer the typical characteristics of the longleaf pine ecosystem, such as open canopies, reduced mid-stories, and dense herbaceous understories. He also found that these snakes are frequently underground in rotting pine stumps. Pine plantations typically have closed canopies and thick mid-stories with limited herbaceous understories. Site preparation for planting of pine plantations frequently involves clearing of downed logs and stumps, thereby interfering with the natural development of stump holes and root channels through decay or from burning, and greatly reducing the availability of suitable refugia (Rudolph *et al.* 2007, p. 563). This could have negative consequences if the pinesnakes are no longer able to locate a previous year's refugium, and are subject to overexposure from thermal extremes or elevated predation risk due to increased above-ground activity.

When a site is converted to agriculture, all vegetation is cleared and underground refugia are destroyed during soil disking and compaction. Forest management strategies, such as fire suppression (see discussion under *Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence*), increased stocking densities, planting of off-site pine species (i.e., slash and loblolly pines), bedding, and removal of downed trees and stumps, all contribute to degradation of habitat attributes preferred by black pinesnakes. It is possible that the presence and distribution of decaying stump holes and their associated rotting root channels may be a feature that limits the abundance of black pinesnakes within their range (Baxley 2007, p. 44).

Baxley *et al.* (2011, pp. 162–163) compared habitat at recent (post-1987) and historical (pre-1987) black pinesnake localities. She found that sites recently occupied by black pinesnakes were characterized by significantly less canopy cover; lower basal area; less midstory cover; greater percentages of grass, bare soil, and forbs in the groundcover; less shrubs and litter in the groundcover; and a more recent burn history than currently unoccupied, but historical, sites. At the landscape level, black pinesnakes selected upland pine forests that lacked cultivated crops, pasture and hay fields, developed areas, and roads (Baxley *et al.* 2011, p. 154). Thus, areas historically occupied by black pinesnakes are becoming unsuitable at both the landscape and microhabitat (small-scale habitat component) levels (Baxley *et al.* 2011, p. 164).

Degradation and loss of longleaf pine habitat within the range of the black pinesnake is continuing. The coastal counties of southern Mississippi and Mobile County, Alabama, are being developed at a rapid rate due to increases in the human population. While forecast models show that federal forest land will remain relatively unchanged in the next few decades, projected losses in forest land are highest in the South, with declines in private forest land from urbanization accounting for most of the loss (Wear 2011, p. 31). Urbanization appears to have reduced historical black pinesnake populations in Mobile County by approximately 50 percent (Duran 1998a, p. 17), with some areas directly surrounding Mobile thought to be potentially extirpated by the Alabama Natural Heritage Program. Substantial population declines were noted throughout the 1970s and 1980s (Mount 1986, p. 35). Jennings and Fritts (1983, p. 8) reported that, in the 1980s, the black pinesnake was one of the most frequently encountered snakes on the Environmental Studies Center (Center) in Mobile County. Urban development has now engulfed lands adjacent to the Center, and black pinesnakes are thought to have been extirpated from the property (Duran 1998a, p. 10). Black pinesnakes were commonly seen in the 1970s on the campus of the University of South Alabama in western Mobile; however, there have not been any observations in at least the past 25 years (Nelson 2014, p. 1).

Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range

When considering whether or not to list a species under the Act, we must identify existing conservation efforts and their effect on the species. The Mississippi Army National Guard (MSARNG) has drafted a candidate conservation agreement (CCA) for the black pinesnake (MSARNG 2013, pp. 1–36). The purpose of this voluntary agreement is to implement proactive conservation and management measures for the black pinesnake and its habitat throughout the De Soto NF, which includes the MSARNG's Camp Shelby Joint Forces Training Center (Camp Shelby). Parties to the agreement include the U.S. Department of Agriculture, Forest Service; U.S. Department of Defense (DoD), Army National Guard; the Service; and the Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP). The goal of the final agreement will be to significantly reduce the threats upon the black pinesnake to improve its conservation status. We are currently working with the MSARNG, Forest Service, and MDWFP to complete the CCA. When conservation efforts defined in the CCA are implemented, they should help maintain black pinesnake habitat on Camp Shelby and the De Soto NF.

The largest remaining populations of black pinesnakes (5 of 11) occur in the De Soto NF, which is considered the core of the subspecies' known range.

The black pinesnake likely receives benefit from longleaf pine restoration efforts, including prescribed fire, implemented by the Forest Service in accordance with its Forest Plan, in habitats for the federally listed gopher tortoise (*Gopherus polyphemus*) and red-cockaded woodpecker (*Picoides borealis*). Additional actions specifically targeting the conservation needs of the black pinesnake should occur when the CCA is finalized and implemented. These targeted actions primarily address the exclusion of stumping (stump removal) during forestry activities, to maintain the underground refugia utilized by pinesnakes, and the establishment and maintenance of larger tracts of suitable habitat to accommodate the home ranges of multiple snakes constituting a breeding population. The CCA should also include a monitoring protocol to track the demography and abundance of black pinesnake populations.

The MSARNG recently updated its Integrated Natural Reources Management Plan (INRMP) and outlined conservation measures to be implemented specifically for the black pinesnake on lands owned by the DoD and the State of Mississippi on Camp Shelby. Planned conservation measures include: Supporting research and surveys on the subspecies; habitat management specifically targeting the black pinesnake, such as retention of pine stumps and prescribed burning; and educational programs for users of the training center to minimize negative impacts of vehicular mortality on wildlife (MSARNG 2014, pp. 93–94). The INRMP addresses integrative management and conservation measures only on the lands owned and managed by DoD and the State of Mississippi (15,195 ac (6,149 ha)), which make up only 11 percent of the total acreage of Camp Shelby (132,195 ac (53,497 ha)), most of which is owned and managed by the Forest Service. Only 5,735 ac (2,321 ha) of the acreage covered by the INRMP provides habitat for the black pinesnake. The larger proportion of habitat on Camp Shelby is managed by the Forest Service in accordance with their Forest Plan.

Longleaf pine habitat restoration projects have been conducted on selected private lands within the range historically occupied by the black pinesnake and may provide benefits to the subspecies (U.S. Fish and Wildlife Service 2012, pp. 12–13). Additionally, restoration projects have been conducted on wildlife management areas (WMAs) (Marion County WMA in Mississippi; and Scotch, Fred T. Stimpson, and Boykin WMAs in Alabama) occupied by black pinesnakes, and on three gopher tortoise relocation areas in Mobile County, Alabama. These gopher tortoise relocation areas are managed for the open-canopied, upland longleaf pine habitat used by both gopher tortoises and black pinesnakes, and have had recent records of black pinesnakes on the property; however, the managed areas are all less than 700 ac (283 ha) and primarily surrounded by urban areas with incompatible habitat. Therefore, we do not believe they would be able to support more than a few (i.e., likely less than five) individual pinesnakes with partially-overlapping home ranges, and likely do not provide sufficient area to support viable populations. There is beneficial habitat management occurring on some of these WMAs and on the tortoise relocation areas. However, these efforts do not currently target the retention or restoration of black pinesnake habitat, which would also include reduction in stump removal and management targeted to maintain larger, unfragmented tracts of open longleaf habitat. We will continue to work with our State partners to encourage the incorporation of these practices, where appropriate.

In summary, the loss and degradation of habitat was a significant historical threat and remains a current threat to the black pinesnake. The historic loss of longleaf pine upland habitat occupied by black pinesnakes occurred primarily due to timber harvest and subsequent conversion of pine forests to agriculture, residential development, and intensively managed pine plantations. This loss of habitat, which has slowed considerably in recent years, in part due to efforts to restore the longleaf pine ecosystem in the Southeast, is still presently compounded by current losses in habitat due to habitat fragmentation (see discussion under *Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence*), incompatible forestry practices, conversion to agriculture, and urbanization. While the use of prescribed fire for habitat management and more compatible site preparation has seen increased emphasis in recent years, expanded urbanization, fragmentation, and regulatory constraints will continue to restrict the use of fire and cause further habitat degradation (Wear and Greis 2013, p. 509). Conservation efforts are implemented or planned that should help maintain black pinesnake habitat on Camp Shelby and the De Soto NF; however, these areas represent a small fraction of the current range of the subspecies. Populations on the periphery of the range have conservation value as well in terms of maintaining the subspecies' genetic integrity (i.e., maintaining the existing genetic diversity still inherent in populations that have not interbred in hundreds or thousands of years) and providing future opportunities for population connectivity and augmentation. Many of the populations on the edge of the range are smaller, which increases their susceptibility to localized extinction from catastrophic and stochastic events, subsequently causing further restriction of the subspecies' range. Although the black pinesnake was thought to be fairly common in parts of south Alabama as recently as 30 years ago, we believe most populations have disappeared or drastically declined due to continued habitat loss and fragmentation. For instance several sites where snakes have been captured historically are now developed and no longer contain habitat. Thus, habitat loss and continuing degradation of the black pinesnake's habitat remains a significant threat to this subspecies' continued existence.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although there is some indication that collecting for the pet trade may have been a problem (Duran 1998a, p. 15), and that localized accounts of a thriving pet trade for pinesnakes have been reported previously around Mobile, Alabama (Vandeventer and Young 1989, p. 34), direct take of black pinesnakes for recreational, scientific, or educational purposes is not currently considered to be a significant threat. This overutilization would be almost exclusively to meet the demand from snake enthusiasts and hobbyists; however, the pet trade is currently saturated with captive-bred black pinesnakes. The need for the collection of wild specimens is thought to have declined dramatically from the levels previously observed in the 1960s and 1970s (Vandeventer 2014). Consequently, we have determined that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the black pinesnake at this time.

Factor C: Disease or Predation

Disease is not presently considered to be a threat to the black pinesnake. However, snake fungal disease (SFD) is an emerging disease in certain populations of wild snakes, even though specific pathological criteria for the disease have not yet been established.

This disease, which has been linked to mortality events, has not been documented in *Pituophis* or in any of the States within the range of the black pinesnake, but is suspected of threatening the viability of small, isolated populations of susceptible snake species and should be monitored during all future research activities (Sleeman 2013, pp. 1–3).

Red imported fire ants (*Solenopsis invicta*), an invasive species, have been implicated in trap mortalities of black pinesnakes during field studies (Baxley 2007, p. 17). They are also potential predators of black pinesnake eggs, especially in disturbed areas (Todd *et al.* 2008, p. 544). In 2010 and 2011, trapping for black pinesnakes was conducted in several areas that were expected to support the subspecies; no black pinesnakes were found, but high densities of fire ants were reported (Smith 2011, pp. 44–45). The severity and magnitude of effects, as well as the long-term effects, of fire ants on black pinesnake populations are currently unknown.

Other predators of pinesnakes include red-tailed hawks, raccoons, skunks, red foxes, and feral cats (Ernst and Ernst 2003, p. 284; Yager *et al.* 2006, p. 34). Lyman *et al.* (2007, p. 39) reported an attack on a black pinesnake by a stray domestic dog, which resulted in the snake's death. Several of these mammalian predators are anthropogenically enhanced (urban predators); that is, their numbers often increase with human development adjacent to natural areas (Fischer *et al.* 2012, pp. 810–811). However, the severity and magnitude of predation by these species are unknown.

In summary, disease is not considered to be a threat to the black pinesnake at this time. However, predation by fire ants and urban predators may represent a threat to the black pinesnake.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

In Mississippi, the black pinesnake is classified as endangered by the Mississippi Department of Wildlife, Fisheries and Parks (Mississippi Museum of Natural Science 2001, p. 1). In Alabama, it is protected as a non-game animal (Alabama Department of Conservation and Natural Resources 2014, p. 1). In Louisiana, the black pinesnake is considered extirpated (Louisiana Department of Wildlife and Fisheries 2014, p. 2); however, Louisiana Revised Statutes for Wildlife and Fisheries were recently amended to prohibit killing black pinesnakes or removing them from the wild (Louisiana Administrative Code, 2014, p. 186), should they be found in the State again. Both Mississippi and Alabama have regulations that restrict collecting, killing, or selling of the subspecies, but do not have regulations addressing habitat loss, which has been the primary cause of decline of this subspecies.

Where the subspecies co-occurs with species already listed under the Act, the black pinesnake likely receives ancillary benefits from the protective measures for the already listed species, including the gopher tortoise, dusky gopher frog (*Rana sevosa*), and red-cockaded woodpecker.

The largest known expanses of suitable habitat for the black pinesnake are in the De Soto NF in Mississippi. The black pinesnake's habitat is afforded some protection under the National Forest Management Act (NFMA; 16 U.S.C. 1600 et seq.) where it occurs on lands managed by the Forest Service that are occupied by federally listed species such as the gopher tortoise and red-cockaded woodpecker. Forest Service rules and guidelines implementing NFMA require land management plans that include provisions supporting recovery of endangered and threatened species. As a result, land managers on the De Soto NF have conducted management actions, such as prescribed burning and longleaf pine restoration, which benefit gopher tortoises, red-cockaded woodpeckers, and black pinesnakes. However, they do not fully address the microhabitat needs of the black pinesnake, such as restrictions on stump removal, which is detrimental to black pinesnakes because of the subspecies' utilization of pine stumps and root channels as refugia (Duran 1998a, p. 14). They continue to work with the Service and other partners to develop and implement a CCA.

As discussed under Factor A above, the MSARNG recently updated its INRMP for Camp Shelby, and outlined conservation measures to be implemented specifically for the black pinesnake on 5,735 ac (2,321 ha) of potential pinesnake habitat owned or managed by DoD. These measures will benefit black pinesnake populations, and include a monitoring protocol to help evaluate the population and appropriate guidelines for maintaining suitable habitat and microhabitats.

In summary, outside of the National Forest and the area covered by the INRMP, existing regulatory mechanisms provide little protection from the primary threat of habitat loss for some populations of the black pinesnake. Longleaf restoration activities on Forest Service lands in Mississippi conducted for other federally listed species do improve habitat for black pinesnake populations located in those areas, but could be improved by ensuring the protection of the belowground refugia critical to the snake.

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

Fire is the preferred management technique to maintain the longleaf pine ecosystem, and fire suppression has been considered a primary reason for the degradation of the remaining longleaf pine forest. It is a contributing factor in reducing the quality and quantity of available habitat for the black pinesnake. Some of the forecasts for southern forests are that land use changes involving fuels management will continue to constrain prescribed fire efforts, and that safety and health regulations and increased urban interface will add to those constraints, making prescribed burning even more challenging in the future (Wear and Greis 2013, p. 509). Reduced fire frequencies and reductions in average area burned per fire event (strategies often used in management of pine plantations) produce sites with thick mid-stories, and these areas are avoided by black pinesnakes (Duran 1998b, p. 32). During a 2005 study using radio-telemetry to track black pinesnakes, a prescribed burn bisected the home range of one of the study animals. The snake spent significantly more time in the recently burned area than in the area that had not been burned in several years (Smith 2005, 5 pp.).

Habitat fragmentation within the longleaf pine ecosystem threatens the continued existence of all black pinesnake populations, particularly those on private lands. This is frequently the result of urban development, conversion of longleaf pine sites to pine plantations, and the associated increases in number of roads. Private forest ownership dynamics in the South are trending towards increased parcellation (e.g., the splitting up of large tracts of land), which could lead to greater fragmentation through estate disposal and urbanization (Wear and Greis 2013, p. 103). When patches of available habitat become separated beyond the dispersal range of a species, populations are more sensitive to genetic, demographic, and environmental variability, and extinction becomes possible. This is likely a primary cause for the extirpation of the black pinesnake in Louisiana and the subspecies' contracted range in Alabama and Mississippi (Duran and Givens 2001, pp. 22–26).

Private landowners hold more than 86 percent of forests in the South and produce nearly all of the forest investment and timber harvesting in the region (Wear and Greis 2013, p. 103). Forecasts indicate a loss of 11 to 23 million ac (4.5 million to 9.3 million ha) of private forest land in the South by 2060. This loss, combined with expanding urbanization and ongoing splitting of ownership as estates are divided, will result in increased fragmentation of remaining forest holdings (Wear and Greis 2013, p. 119). This assessment of continued future fragmentation throughout the range of the black pinesnake, coupled with the assumption that large home range size increases extinction vulnerability, emphasizes the importance of conserving and managing large tracts of contiguous habitat to protect the black pinesnake (Baxley 2007, p. 65). This is in agreement with other studies of large, wide-ranging snake species sensitive to landscape fragmentation (Hoss *et al.* 2010; Breininger *et al.* 2012). When factors influencing the home range sizes of the eastern indigo snake (*Drymarchon corais couperi*) were analyzed, the results suggested that maintaining populations of this subspecies will require large conservation areas with minimum fragmentation (Breininger *et al.* 2011, pp. 484–490).

Roads surrounding and traversing the remaining black pinesnake habitat pose a direct threat to the subspecies. Dodd *et al.* (2004, p. 619) determined that roads fragment habitat for wildlife. Population viability analyses have shown that road mortality estimates in some snake species have greatly increased extinction probabilities (Row *et al.* 2007, p. 117). In an assessment of data from radio-tracked eastern indigo snakes, it was found that adult snakes have relatively high survival in conservation core areas, but greatly reduced survival in edges of these areas along highways, and in suburbs (Breininger *et al.* 2012, p. 361). Clark *et al.* (2010, pp. 1059–1069) studied the impacts of roads on population structure and connectivity in timber rattlesnakes (*Crotalus horridus*). They found that roads interrupted dispersal and negatively affected genetic diversity and gene flow among populations of this large snake (Clark *et al.* 2010, p. 1059). In a Texas snake study, an observed deficit of snake captures in traps near roads suggests that a substantial proportion of the total number of snakes may have been eliminated due to road-related mortality and that populations of large snakes may be depressed by 50 percent or more due to this mortality (Rudolph *et al.* 1999, p. 130).

A modeling study by Steen *et al.* (2012, p. 1092) determined that fragmentation by roads may be an impediment to maintaining viable populations of pinesnakes. Black pinesnakes frequent the sandy hilltops and ridges where roads are most frequently sited. Even on public lands, roads are a threat. During Duran's (1998b pp. 6, 34) study on Camp Shelby, Mississippi, 17 percent of the black pinesnakes with transmitters were killed while attempting to cross a road. In a larger study currently being conducted on Camp Shelby, 14 (38 percent) of the 37 pinesnakes found on the road between 2004 to 2012 were found dead, and these 14 individuals represent about 13 percent of all the pinesnakes found on Camp Shelby during that 8-year span (Lyman *et al.* 2012, p. 42). The majority of road crossings occurred between the last 2 weeks of May and the first 2 weeks of June (Lyman *et al.* 2011, p. 48), a time period when black pinesnakes are known to breed (Lyman *et al.* 2012, p. 42). In the study conducted by Baxley (2007, p. 83) on De Soto NF, 2 of the 8 snakes monitored with radio-transmitters were found dead on paved roads. This is an especially important issue on these public lands because the best remaining black pinesnake populations are concentrated there. It suggests that population declines may be due in part to adult mortality in excess of annual recruitment (Baxley and Qualls 2009, p. 290).

Exotic plant species degrade habitat for wildlife. In the Southeast, longleaf pine forest associations are susceptible to invasion by the exotic cogongrass (*Imperata cylindrica*), which may rapidly encroach into areas undergoing habitat restoration, and is very difficult to eradicate once it has become established, requiring aggressive control with herbicides (Yager *et al.* 2010, pp. 229–230). Cogongrass displaces native grasses, greatly reducing foraging areas, and forms thick mats so dense that ground-dwelling wildlife has difficulty traversing them (DeBerry and Pashley 2008, p. 74).

In many parts of Louisiana, Mississippi, and Alabama, there is a lack of understanding of the importance of snakes to a healthy ecosystem. Snakes are often killed intentionally when they are observed, and dead pinesnakes have been found that have been shot (Duran 1998b, p. 34). Lyman *et al.* (2008, p. 34) and Duran (1998b, p. 34) both documented finding dead black pinesnakes that were intentionally run over as evidenced by vehicle tracks that went off the road in vicinity of dead snakes. In addition, in one of these instances (Lyman *et al.* 2008, p. 34), footprints were observed going from the vicinity of the truck to the snake's head, which had been intentionally crushed. As development pressures mount on remaining black pinesnake habitat, human-snake interactions are expected to increase, which in turn is expected to increase mortality, especially of adults.

Duran (1998b, p. 36) suggested that reproductive rates of wild black pinesnakes may be low, based on failure to detect either nests or mating behaviors during his studies. For long-lived species, animals are expected to replace themselves over their lifespan in order for the population growth rate to remain stable or grow; therefore, if mortality of breeding adults is high, population declines can result. Thus, the loss of mature adults through road mortality, direct killing, or any other means increases in significance. As existing occupied habitat becomes reduced in quantity and quality, low reproductive rates threaten population viability.

Random environmental events may also play a part in the decline of the black pinesnake. Two black pinesnakes were found dead on the De Soto NF during drought conditions of mid-summer and may have succumbed due to drought-related stress (Baxley 2007, p.41).

In summary, a variety of natural or manmade factors currently threaten the black pinesnake. Fire suppression has been considered a primary reason for degradation of the longleaf pine ecosystem; however, invasive species such as cogongrass also greatly reduce the habitat quality for the black pinesnake. Isolation of populations beyond the dispersal range of the subspecies is a serious threat due to the fragmentation of available habitat. The high percentage of radio-tracked black pinesnakes killed while trying to cross roads supports our conclusion that this is a serious threat, and human attitudes towards snakes represent another source of mortality. Stochastic threats such as drought have the potential to threaten black pinesnake populations, and the suspected low reproductive rate of the subspecies could exacerbate other threats and limit population viability. Overall, the threats under Factor E may act in combination with threats listed above under Factors A through D and increase their severity.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present,

and future threats to the black pinesnake. The black pinesnake is considered extirpated from Louisiana and three counties in Mississippi. Threats to the remaining black pinesnake populations exist primarily from two of the five threat factors (Factors A and E); however, predation by fire ants and urban predators (Factor C), and limitations of existing laws and regulations (Factor D) also pose lower-magnitude threats to the subspecies.

Threats also occur in combination, resulting in synergistically greater effects. Threats of habitat loss and degradation (Factor A) represent primary threats to the black pinesnake. While habitat restoration efforts are beginning to reverse the decline of the longleaf pine forest in the Southeastern U.S., most of the black pinesnake's habitat has been either converted from forests to other uses or is highly fragmented. Today, the longleaf pine ecosystem occupies less than 4 percent of its historical range, and the black pinesnake has been tied directly to this ecosystem. For instance, much of the habitat outside of the National Forest in Mississippi (the stronghold of the range) has become highly fragmented, and populations on these lands appear to be small and isolated on islands of suitable longleaf pine habitat (Duran 1998a, p. 17; Barbour 2009, pp. 6–13).

A habitat suitability study of all historical sites for the black pinesnake estimated that this subspecies likely no longer occurs in an estimated 60 percent of historical population segments. It is estimated that only 11 populations of black pinesnakes are extant today, of which about a third are located on isolated patches of longleaf pine habitat that continue to be degraded due to fire suppression and fragmentation (Factor E), incompatible forestry practices, and urbanization.

Threats under Factor E include fire suppression; roads; invasive plant species, such as cogongrass; random environmental events, such as droughts; intentional killing by humans; and low reproductive rates. Fire suppression and invasive plants result in habitat degradation. Roads surround and traverse the ridges, which define black pinesnake habitat, and cause fragmentation of the remaining habitat. Further, vehicles travelling these roads cause the death of a high number of snakes. Roads also increase the rate of human-snake interactions, which likely result in the death of individual snakes. Episodic effects of drought and low reproductive rates of wild black pinesnakes further threaten this subspecies' population viability. These threats in combination lead to an increased chance of local extirpations by making populations more sensitive to genetic, demographic, and environmental variability.

The threats that affect the black pinesnake are important on a threat-by-threat basis, but are even more significant in combination. Habitat loss has been extensive throughout the black pinesnake's range, and the remaining habitat has been fragmented into primarily small patches with barriers to dispersal between them, creating reproductively isolated individuals or populations. The inadequacy of laws and regulations protecting against habitat loss contributes to increases in urbanization and further fragmentation. Urbanization results in an increased density of roads, intensifying the potential for direct mortality of adult snakes, and reductions in population sizes. Reductions in habitat quality have synergistic effects, compounded by low reproductive rates, to cause localized extirpations. Threats to the black pinesnake, working individually or in combination, are ongoing and significant and have resulted in curtailment of the range of the subspecies.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that the black pinesnake meets the definition of a threatened species based on the immediacy, severity, and scope of the threats described above. Most of the longleaf pine habitat within the historical range of the black pinesnake has disappeared, and the remaining habitat exists primarily in fragmented patches too small to support a viable population. Current black pinesnake habitat continues to be lost or degraded due to fire suppression, incompatible forestry practices, and urbanization, and it appears this trend will continue in the future. Only 11 populations are estimated to be extant, and several of these exist in small numbers, are located on fragmented habitat, or have no protection or management in place; thus, their potential for long-term survival is questionable.

We find that endangered status is not appropriate for the black pinesnake because, while we found the threats to the subspecies to be significant and rangewide, we do not know them to be either sudden or calamitous. Although there is a general decline in the overall range of the subspecies and its available habitat, the rate of decline has slowed in recent years due to restoration efforts, and range contraction is not severe enough to indicate imminent extinction. A significant proportion of the remaining black pinesnake populations (45 percent) occur primarily on public lands that are at least partially managed to protect remaining longleaf pine habitat; management efforts on those lands specifically targeting listed longleaf pine specialists, such as the gopher tortoise and red-cockaded woodpecker, should benefit the black pinesnake as well, especially if measures are employed to protect below-ground refugia. Additionally, the 5,735 ac (2,321 ha) covered by the Camp Shelby INRMP are under a conservation plan specifically protecting black pinesnake microhabitats and increasing awareness of the human impacts to rare wildlife. The CCA currently under development with the Forest Service, MDWFP, and MSARNG should provide an elevated level of focused conservation and management for the black pinesnake on their lands. Because of these existing efforts and management plans, this subspecies does not meet the definition of an endangered species. Therefore, on the basis of the best available scientific and commercial information, we propose listing the black pinesnake as threatened in accordance with sections 3(20) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that black pinesnake is threatened throughout all of its range, no portion of its range can be ''significant'' for purposes of the definitions of ''endangered species'' and ''threatened species.'' See the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37577).

Available Conservation Measures

Several conservation efforts already exist for the black pinesnake. The MSARNG recently updated its INRMP and outlined conservation measures to be implemented specifically for the black pinesnake on lands owned by the Department of Defense (DoD) and the State of Mississippi on Camp Shelby. Planned conservation measures include: Supporting research and surveys on the subspecies; habitat management specifically targeting the black pinesnake, such as retention of pine stumps and prescribed burning; and

educational programs for users of the training center to minimize negative impacts of vehicular mortality on wildlife (MSARNG 2014, pp. 93–94). The INRMP addresses integrative management and conservation measures on the lands owned and managed by DoD and the State of Mississippi (15,195 ac (6,149 ha)), which make up 11 percent of the total acreage of Camp Shelby (132,195 ac (53,497 ha)), most of which is owned and managed by the Forest Service.

The Mississippi Army National Guard (MSARNG) has also drafted a candidate conservation agreement (CCA) for the black pinesnake (MSARNG 2013, pp. 1–36). The purpose of this voluntary agreement is to implement proactive conservation and management measures for the black pinesnake and its habitat throughout the De Soto NF, which includes Camp Shelby. While the black pinesnake benefits from actions taken in these areas for other listed species, additional actions specifically targeting the conservation needs of the pinesnake should occur when the CCA is finalized and implemented.

Longleaf pine habitat restoration projects have been conducted on selected private lands within the range historically occupied by the black pinesnake and may provide benefits to the subspecies (U.S. Fish and Wildlife Service 2012, pp. 12–13). Additionally, restoration projects have been conducted on wildlife management areas (WMAs) (Marion County WMA in Mississippi; and Scotch, Fred T. Stimpson, and Boykin WMAs in Alabama) occupied by black pinesnakes, and on three gopher tortoise relocation areas in Mobile County, Alabama. These gopher tortoise relocation areas are managed for the open-canopied, upland longleaf pine habitat used by both gopher tortoises and black pinesnakes, and have had recent records of black pinesnakes on the property.

Other conservation measures which would be 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, Tribal, 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 required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. If the species is listed, a recovery outline, draft recovery plan, and the final recovery plan would be made available on our Web site (*http://www.fws.gov/endangered*) and from our Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the subspecies' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Forest Service or on National Wildlife Refuges managed by the Service; issuance of section 404 Clean Water Act (33 U.S.C. 1251 et seq.) permits by the U.S. Army Corps of Engineers; construction and maintenance of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; construction and maintenance of roads or highways by the Federal Highway Administration; land management practices supported by programs administered by the U.S. Department of Agriculture; Environmental Protection Agency pesticide registration; and projects funded through Federal loan programs which may include, but are not limited to, roads and bridges, utilities, recreation sites, and other forms of development.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies. 50 CFR 17.31 generally applies the prohibitions for endangered wildlife to threatened wildlife, unless a rule issued under section 4(d) of the Act is adopted by the Service.

We may issue permits to carry out otherwise prohibited activities

involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to threatened and endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

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, if the species is listed. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the black pinesnake, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the black pinesnake;

(3) Unauthorized destruction or modification of occupied black pinesnake habitat (e.g., clearcutting, root raking, bedding) that results in ground disturbance or the destruction of stump holes and their associated root systems used as refugia by the subspecies or that impairs in other ways the subspecies' essential behaviors such as breeding, feeding, or sheltering;

(4) Unauthorized use of insecticides and rodenticides that could impact small mammal prey populations, though either unintended or direct impacts within habitat occupied by black pinesnakes; and

(5) Actions, intentional or otherwise, that would result in the destruction of eggs or cause mortality or injury to hatchling, juvenile, or adult black pinesnakes.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Proposed Special Rule

Under section 4(d) of the Act, the Secretary of the Interior has discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of threatened species. The Secretary also has the discretion to prohibit by regulation with respect to a threatened species any act prohibited by section 9(a)(1) of the Act. Exercising this discretion, which has been delegated to the Service by the Secretary, the Service has developed general prohibitions that are appropriate for most threatened species at 50 CFR 17.31 and exceptions to those prohibitions at 50 CFR 17.32. While the prohibitions at 17.31 and 17.32 apply for this species, some activities that would normally be prohibited under 17.31 and 17.32 are necessary for the conservation of this species, because the longleaf wiregrass ecosystem requires active management to ensure appropriate habitat conditions are present. Therefore, for the black pinesnake, the Service has determined that a section 4(d) rule may be appropriate to promote conservation of th this species. As discussed in the Summary of Factors Affecting the Species section of this rule, the primary threat to this subspecies is the continuing loss and degradation of habitat. Foremost in the degradation of this subspecies' habitat is the absence of prescribed fire, which reduces the forest mid-story and promotes an abundant herbaceous groundcover. Fire is a natural component of the longleaf pine ecosystem where the black pinesnake occurs. Another factor affecting the integrity of this ecosystem is the establishment of exotic weeds, particularly cogongrass. Activities such as prescribed burning and noxious weed control, as well as timber management activities associated with restoring and improving the natural habitat to meet the needs of the black pinesnake, would positively affect pinesnake populations and provide an overall conservation benefit to the subspecies.

Provisions of the Proposed Special Rule

This proposed 4(d) rule would exempt from the general prohibitions in 50 C.F.R. 17.32 take incidental to the following activities when conducted within habitats currently or historically occupied by the black pinesnake:

(1) Prescribed burning in the course of habitat management and restoration to benefit black pinesnakes or other native species of the longleaf pine ecosystem.

(2) Noxious weed control, mid-story hardwood control, and hazardous fuels reduction in the course of habitat management and restoration to benefit black pinesnakes or other sensitive species of the longleaf pine ecosystem, provided that these activities are conducted in a manner consistent with Federal law, including Environmental Protection Agency label restrictions; applicable State laws; and herbicide application guidelines as prescribed by herbicide manufacturers.

(3) Restoration along riparian areas and stream buffers.

(4) Intermediate silvicultural treatments (such as planting of longleaf seedlings on existing agricultural or silvicultural sites where mature longleaf stands do not currently exist) performed under a management plan or prescription that is designed to work towards one or more of the following target conditions:

(a) Mature, longleaf-dominated forest with ≤70 percent canopy coverage;

(b) Hardwood mid-story reductions resulting in <10 percent mid-story coverage;

(c) Abundant, diverse, native groundcover covering at least 40 percent of the ground.

All of the activities listed above should be conducted in a manner to maintain connectivity of suitable black pinesnake habitats, allowing dispersal and migration between larger forest stands; to minimize ground and subsurface disturbance by conducting harvests during drier periods when the ground is not saturated, by using low-pressure tires, or both; and to leave stumps, dead standing snags, and woody debris.

We believe these actions and activities, while they may have some minimal level of mortality, harm, or disturbance to the black pinesnake, are not expected to adversely affect the subspecies' conservation and recovery efforts. They would have a net beneficial effect on the subspecies.

Like the proposed listing rule, this proposed special rule will not be finalized until we have reviewed comments from the public and peer reviewers.

Based on the rationale above, the provisions included in this proposed 4(d) rule are necessary and advisable to provide for the conservation of the black pinesnake. Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act and consultation requirements under section 7 of the Act or the ability of the Service to enter into partnerships for the management and protection of the black pinesnake.

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as ''(i) the specific areas

within the geographical area occupied by the species, at the time it is listed . . . on which are found those physical or biological features (I) Essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Section 3(3) of the Act (16 U.S.C. 1532(3)) also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter Act are no longer necessary.''

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat of take attributed to collection or vandalism under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. Therefore, in the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, a finding that designation is prudent is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is unoccupied; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we determine that designation of critical habitat is prudent for the black pinesnake.

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exists: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Our regulations at 50 CFR 424.19 require the Service to ''make available for public comment the draft economic analysis of the designation'' at the time the proposed critical habitat rule publishes in the **Federal Register**. At this point, a careful assessment of the economic impacts that may occur due to a critical habitat designation is still ongoing, and we are still in the process of acquiring the information needed to perform this assessment. Accordingly, we find designation of critical habitat to be not determinable at this time.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of NEPA, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Mississippi Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Pinesnake, black'' to the List of Endangered and Threatened Wildlife in alphabetical order under REPTILES to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
REPTILES							
*	*	*	*	*	*		*
Pinesnake, black	*Pituophis melanoleucus lodingi.*	U.S.A. (AL, LA, MS)	Entire	T		NA	17.42(h).
*	*	*	*	*	*		*

■ 3. Amend § 17.42 by adding paragraph (h) to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(h) Black pinesnake (*Pituophis melanoleucus lodingi*).

(1) *Prohibitions.* Except as noted in paragraph (h)(2) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the black pinesnake.

(2) *Exemptions from prohibitions.* (i) Incidental take of the black pinesnake will not be considered a violation of section 9 of the Act if the take results from any of the following when conducted within habitats currently or historically occupied by the black pinesnake:

(A) Prescribed burning in the course of habitat management and restoration to benefit black pinesnakes or other native species of the longleaf pine ecosystem.

(B) Noxious weed control in the course of habitat management and restoration to benefit black pinesnakes or other sensitive species of the longleaf pine ecosystem, provided that the noxious weed control is conducted in a manner consistent with Federal law, including Environmental Protection Agency label restrictions; applicable State laws; and herbicide application guidelines as prescribed by herbicide manufacturers.

(C) Restoration along riparian areas and stream buffers.

(D) Intermediate silvicultural treatments (such as planting of longleaf seedlings on existing agricultural or silvicultural sites where mature longleaf stands do not currently exist) performed under a management plan or prescription that is designed to work towards the following target conditions:

(*1*) Mature, longleaf-dominated forest with ≤70 percent canopy coverage;

(*2*) Hardwood mid-story reductions resulting in <10 percent mid-story coverage;

(*3*) Abundant, diverse, native groundcover covering at least 40 percent of the ground.

(ii) Forestry practices (i.e., selective thinnings or small group selection cuts) conducted for the activities listed in paragraph (h)(2)(i) of this section must be conducted in a manner to maintain connectivity of suitable black pinesnake habitats, allowing dispersal and migration between larger forest stands; to minimize ground and subsurface disturbance by conducting harvests during drier periods, by using low-pressure tires, or both; and to leave stumps, dead standing snags, and woody debris.

* * * * *

Dated: September 23, 2014.

David Cottingham,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–23673 Filed 10–6–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2014–0041; 4500030113]

RIN 1018–BA05

Endangered and Threatened Wildlife and Plants; Threatened Species Status for West Coast Distinct Population Segment of Fisher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the West Coast Distinct Population Segment of fisher (*Pekania pennanti*), a mustelid species from California, Oregon, and Washington, as a threatened species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species. The effect of this regulation will be to add this species to the List of Endangered and Threatened Wildlife.

DATES: *Written Comments:* We will accept comments received or postmarked on or before January 5, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES,** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for additional public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 21, 2014.

Public Informational Meetings and Public Hearing: We will hold one public hearing and seven public informational meetings. The public hearing will be held on:

(1) November 17, 2014, from 6:00 p.m. to 8:00 p.m. in Redding, California.

The seven public informational meetings will be held on:

(2) November 13, 2014, from 5:00 p.m. to 7:00 p.m. in Yreka, California.

(3) November 17, 2014, from 4:30 p.m. to 6:30 p.m. in Medford, Oregon.

(4) November 20, 2014, from 6:00 p.m. to 8:00 p.m. in Arcata, California.

(5) November 20, 2014, from 3:00 p.m. to 5:00 p.m. and another from 6:00 p.m. to 8:00 p.m. in Lacey, Washington.

(6) December 3, 2014, from 1:00 p.m. to 3:00 p.m. in Visalia, California.

(7) December 4, 2014, from 4:00 p.m. to 6:00 p.m. in Turlock, California.

ADDRESSES: *Comment Submission:* You may submit comments by one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* In the Search box, enter the Docket Number for this proposed rule, which is FWS–R8–ES–2014–0041. You may submit a comment by clicking on ''Comment Now!'' Please ensure that you have

found the correct rulemaking before submitting your comment.

(2) *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2014–0041; U.S. Fish & Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Public Informational Meetings and Public Hearing: We will hold one public hearing and seven public informational meetings at the locations listed below:

(1) Redding, California: Red Lion, 1830 Hilltop Dr., Redding, CA 96002.

(2) Yreka, California: Best Western Miner's Inn, 122 E. Miner St., Yreka, CA 96097.

(3) Medford, Oregon: Rogue Regency Inn, 2300 Biddle Rd., Medford, OR 97504.

(4) Arcata, California: Arcata Public Library, 500 7th St., Arcata, CA 95521.

(5) Lacey, Washington: Lacey Community Center, Banquet A, 6729 Pacific Ave. SE., Lacey, WA 98503.

(6) Visalia, California: Visalia Convention Center, 303 E. Acequia Ave., Visalia, CA 93291.

(7) Turlock, California: California State University, Stanislaus Campus, Faculty Development Center, Room 118, 1 University Circle, Turlock, CA 95382.

People needing reasonable accommodation in order to attend and participate in any of the public informational meetings or the public hearing should contact Erin Williams, Field Supervisor, Yreka Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Erin Williams, Field Supervisor, U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office, 1829 South Oregon Street, Yreka, CA 96097, by telephone 530–842–5763 or by facsimile 530–842–4517. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Under section 3(16) of the Act, we may consider for listing any species, including subspecies, of fish, wildlife, or plants, or any distinct population segment (DPS) of vertebrate fish or wildlife that interbreeds when mature. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule.

This rule will propose the listing of the West Coast DPS of fisher (*Pekania pennanti*) as a threatened species. At this time, we have found the designation of critical habitat to be ''not determinable'' for the West Coast DPS of fisher. The West Coast DPS of fisher is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation has been precluded by other higher priority listing activities. This rule reassesses all available information regarding status of and threats to the West Coast DPS of fisher. In addition, this rule requests consideration and comments on potential alternative DPSs.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that the main threats to the West Coast DPS of fisher are habitat loss from wildfire and vegetation management; toxicants (including anti-coagulant rodenticides); and the cumulative and synergistic effects of these and other stressors acting on small populations.

We will seek peer review. We will seek comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal. Because we will consider all comments and information received during the comment period, our final determination may differ from this proposal.

A team of biologists within the Service prepared a draft Species Report for the West Coast DPS of fisher (Service 2014, entire). This draft Species Report represents a compilation of the best scientific and commercial data available through December 2013 concerning the status of the species, including the past, present, and future stressors to this species. The draft Species Report will be peer-reviewed along with this proposed rule during the comment period. The draft Species Report and other materials relating to this proposal can be found on the Yreka Fish and Wildlife Office Web site at: *www.fws.gov/cno/es/fisher/.* The draft Species Report can also be found on *http://www.regulations.gov* in this docket for this proposal as a supporting document. Any new information that has become available since December 2013 or received during the public comment period will be incorporated, as appropriate, into the final species report. In addition, if substantial new information since December 2013 is considered, we may open an additional comment period before the final rule.

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

Because in this proposed rule we are seeking peer review and public comment of some particularly complex issues with regard to the status of the species and identification of potential distinct population segments, we are providing additional background information in association with several of our questions to aid in understanding the context for the questions posed. Moreover, again due to the complexity of the issues under review, we are requesting information as outlined below to ensure that our final determination is based on the best scientific and commercial information available. We particularly seek comments and information concerning:

(1) The West Coast DPS of fisher's historical and current biology, range, status, distribution, and population size and trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends;

(e) Past and ongoing conservation measures for the species, its habitat, or both; and

(f) Data regarding the current status and trend for the extant native populations in the proposed DPS.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors, including:

(a) Information regarding the magnitude and overall immediacy of threats; and

(b) Information and data concerning whether the factors that may affect the continued existence of the species are evenly distributed across the historical range of the species in Washington, Oregon, and California.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats, and biological, commercial trade, or other relevant data indicating actions or factors that may benefit fishers (such as fuels treatments that reduce the risk of fires).

(4) Scientific or commercial information on the expansion of populations, especially with respect to verified evidence of reproduction, including the verified locations of any individuals or populations of this species not already documented in the draft Species Report (Service 2014, entire).

(5) Information that may assist the Service in designating habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1533), including information as to whether the designation of critical habitat is prudent and determinable.

(6) Scientific or commercial information concerning the listable entity defined in this proposed rule, or concerning possible alternative DPS options as outlined below in the Other DPS Alternatives section; scientific or commercial information concerning whether a separate DPS would be appropriate that encompasses the areas where the West Coast DPS of fisher are considered to be likely extirpated, although on occasion individual fishers may be detected (Washington and most of Oregon); and whether it is appropriate to include areas within a DPS where native fishers are considered to be likely extirpated (Washington and most of Oregon). The Service is also interested in comments regarding other potential DPS configurations not outlined in the Other DPS Alternatives section.

(7) 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. We seek data that support various management actions and regulations that could be utilized to develop a potential section 4(d) rule necessary and advisable to provide for the conservation of fisher, should it be listed as a threatened species.

(8) Any additional genetic information that is important to consider for conservation management of fishers in the proposed DPS or other potential DPS configurations. In particular, we seek public comment on scientific information and perspective regarding potential restoration of connectivity between certain populations of fishers that was not available at the time of the 2004 Finding (described below under Previous Federal Actions). We direct the public to the recent publications of Tucker (2013), Tucker *et al.* (2012), Knaus *et al.* (2011), and the earlier publications of Warheit (2004), Wisely *et al.* (2004), and Drew *et al.* (2003), and we particularly seek comment regarding:

(a) Whether and how this information that has become available since the 2004 Finding may result in a different conclusion from that reached in 2004 regarding the DPS determination and the impact of population isolation on the fisher's overall conservation status.

(b) Whether genetics in the Northern California–Southwestern Oregon (NCSO) population should be managed separately from genetics in the Southern Sierra Nevada (SSN) population, including scientific basis, and how these data may be used to evaluate alternative DPS configurations.

(c) Whether genetics of fishers in Oregon and Washington should be managed separately from genetics in NCSO, including scientific basis, and how these data may be used to evaluate alternative DPS configurations.

(d) Whether various reintroduced populations should be managed based on genetic considerations, including scientific basis.

(9) Scientific data indicating whether the Klamath River, the Rogue River, and Interstate 5 may act as filters or barriers to fisher movement between the native NCSO population and the reintroduced Southern Oregon Cascades (SOC) population, and how these data may be used to evaluate alternative DPS configurations.

(10) Information regarding the scope and severity of the potential threat of anti-coagulant rodenticides throughout the proposed DPS as well as data on potential sublethal effects from disease and toxicants and scientific or commercial information regarding whether there is a difference in the scope and severity of rodenticides among NCSO, SSN, the reintroduced populations, and the rest of the historical range.

(11) Scientific or commercial information regarding the scope and severity of the potential threat of other causes of direct mortality (such as vehicle collisions and disease) throughout the proposed DPS and scientific or commercial information regarding differences in the scope and severity of these causes of direct mortality among NCSO, SSN, the reintroduced populations, and the rest of the historical range.

(12) Scientific or commercial information regarding the scope and severity of the potential threat of wildfire throughout the proposed DPS; in particular, we are interested in public comment on whether and how new research that has become available since the 2004 Finding may affect our evaluation of habitat loss from fire as a potential threat to fishers; and information on the potential tradeoff in terms of risk to fishers from habitat loss as a consequence of wildfire and the potential degradation or removal of habitat by removing structural forest components utilized by fishers in the course of fuel treatments. We ask for comment on this issue in the context of information indicating that climate change is expected to further exacerbate the loss of habitat in certain areas of the DPS, particularly in the SSN and NCSO populations, as noted in the draft Species Report. We direct the public to recent studies indicating that certain populations of fishers may experience relatively high vulnerability to habitat loss from wildfires, in turn leading some to recommend evaluating, prioritizing, and implementing fuels treatment to reduce the amount and severity of habitat loss (see Scheller *et al.* 2011, Mallek *et al.* 2013, Thompson *et al.* 2011, Underwood *et al.* 2010, Truex and Zielinski 2013, Zielinski 2013a, Zielinski *et al.* 2013b). In addition, some of these researchers have suggested that carefully applied treatments to reduce fire risk may be consistent with maintaining fisher habitat. In the context of this new information, we are seeking:

(a) Scientific or commercial information to aid in evaluating the tradeoff between loss of fisher habitat value that may occur when forests are treated to reduce severity of future fires and the loss of fisher habitat that occurs

when untreated stands are consumed by wildfire; and

(b) Scientific or commercial information regarding potential differences in the scope and severity of wildfire among NCSO, SSN, and the rest of the historical range.

(13) Scientific or commercial information regarding the scope and severity of the potential stressor of climate change throughout the proposed DPS and scientific or commercial information regarding differences in the scope and severity of climate change among NCSO, SSN, and the rest of the historical range. We are also seeking scientific or commercial information regarding how the potential direct effects of climate change may manifest in fishers throughout the proposed DPS.

(14) Scientific or commercial information on the scope and severity of vegetation management on Federal land within the range of the fisher, but outside the range of the northern spotted owl in California (we used the northern spotted owl data as a surrogate for fisher data because we do not have fisher-specific information), and scientific or commercial information on the type, scope, and severity of vegetation management (timber harvest, restoration thinning, fuels reduction, etc.; see draft Species Report for details) on non-Federal land in Oregon and Washington. The most useful information would be quantified in terms of acres harvested rather than board-foot volume.

(15) Scientific evaluation of the use of northern spotted owl habitat data as a surrogate for fisher habitat data, and its use as the best available data to determine the scope and severity of vegetation management effects on Federal lands. The Service elected to use northern spotted owl habitat data as a surrogate for habitat data that are lacking for fishers because there is a vast amount of information on northern spotted owl habitat that has been collected, analyzed, and monitored over the past several decades throughout all but the Sierra Nevada portion of the proposed DPS for fisher. Northern spotted owls use habitat types and structural components similar to what fishers use, but fishers also use some habitat types that are not suitable or are poor-quality habitat for northern spotted owls. Therefore, we are seeking comment on:

(a) The strengths and weaknesses of using northern spotted owl habitat data as a surrogate for fisher data, and whether or not and why it is an appropriate surrogate; and

(b) Whether or not and why there is another appropriate surrogate or approach.

(16) Information on the effects of livestock grazing on habitat for fisher prey within the proposed DPS.

(17) Information to assist in evaluating whether or not the existing amount and distribution of habitat may be limiting for fishers within the proposed DPS. We ask for public comment on this issue in the context of information indicating that there are areas of high- and intermediate-quality fisher habitat distributed throughout most of the DPS. At the same time, however, for the most part, existing fisher populations do not appear to have expanded into nearby unoccupied habitat. We are seeking scientific data that will help to elucidate our understanding of the following:

(a) Whether or not the existing amounts and distribution of habitat are limiting for fishers within the DPS; and

(b) Whether and how the current type and amount of habitat loss (for example, as a consequence of wildfire, climate change, or various types of vegetation management) may or may not be a threat to the persistence of fishers within all or portions of the DPS.

(18) Information to assist in evaluating the magnitude and overall immediacy of threats to fisher populations within the proposed DPS, or any of the potential alternative DPSs, in light of new information that has become available regarding occupancy or abundance of fishers in specific study areas since the 2004 Finding (Zielinski 2013a; Hamm *et al.* 2012; Hiller 2011; Matthews *et al.* 2011, Hamm *et al.* 2012).

(19) Comments on the methodology for developing stressor scope and severity, adequacy in revealing assumptions and uncertainties, appropriateness of data extrapolations, and applicability and interpretation of quantitative stressor values in the draft Species Report.

(20) Information to assist in quantifying habitat recruitment through ingrowth of intermediate- and high-quality fisher habitat.

Please include sufficient information with your submission (such as scientific journal articles, other publications, or unpublished data sets) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information may not meet the standard of information required section 4(b)(1)(A) of the Act, which directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

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

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we have sought the expert opinions of a minimum of five appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination and critical habitat designation are based on scientifically sound data, assumptions, and analyses. The peer reviewers will have expertise in such things as fisher biology, ecology, and genetics and are concurrently reviewing the draft Species Report; their review of the proposed rule and draft Species Report will inform our final determination. We invite comment from

the peer reviewers during this public comment period.

Previous Federal Actions

On June 5, 1990, we received a petition from Sierra Biodiversity Project to list the Pacific fisher (*Martes pennanti pacifica*) as endangered in California, Oregon, and Washington. We published a notice in the **Federal Register** (56 FR 1159) on January 11, 1991, stating that, while the petition provided evidence that the Pacific fisher represented a potential listable entity (''a distinct population that interbreeds''—a definition that predates the 1996 policy (61 FR 4722) regarding the recognition of distinct vertebrate populations), it did not present substantial information indicating that the requested action may be warranted.

On December 29, 1994, we received a petition from the Biodiversity Legal Foundation to list two fisher (*Martes pennanti*) populations in the western United States (the Coastal Range population in Washington, Oregon, and California; and the Rocky Mountain population in Idaho, Montana, and Wyoming) as threatened. On March 1, 1996, the Service published a notice in the **Federal Register** (61 FR 8016) finding that the petition did not present substantial information indicating that the two fisher populations at issue constitute distinct vertebrate population segments listable under the Act.

On December 5, 2000, we received from the Center for Biological Diversity and other groups a petition dated November 28, 2000, to list a DPS of the fisher that includes portions of California, Oregon, and Washington as an endangered species pursuant to the Act, and to concurrently designate critical habitat for this distinct population segment. A court order was issued on April 4, 2003, by the U.S. District Court, Northern District of California, that required us to submit for publication in the **Federal Register** a 90-day finding on the November 2000 petition (*Center for Biological Diversity, et al.* v. *Norton, et al.,* No. C 01–2950 SC). On July 10, 2003, we published a 90-day petition finding (68 FR 41169) that the petition provided substantial information that listing may be warranted and initiated a 12-month status review. Through a stipulated order, the court set a deadline of April 3, 2004, for the Service to make a 12-month finding under 16 U.S.C. 1533(b)(3)(B). On April 8, 2004, we published a 12-month status review (69 FR 18769) finding (2004 Finding) that the West Coast DPS of fisher was warranted for listing, but was precluded by higher priority actions; through the 2004 Finding, the West Coast DPS of fisher was added to our candidate species list. Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities. The West Coast DPS of fisher was included in all of our subsequent annual Candidate Notice of Reviews (CNORs) (78 FR 70103, November 22, 2013; 77 FR 69993, November 21, 2012; 76 FR 66370, October 26, 2011; 75 FR 69222, November 10, 2010; 74 FR 57804, November 9, 2009; 73 FR 75176, December 10, 2008; 72 FR 69034, December 6, 2007; 71 FR 53756, September 12, 2006; 70 FR 24870, May 11, 2005). The West Coast DPS of fisher has a listing priority number of 6, which reflects a species with threats that are high in magnitude and not imminent.

On June 10, 2007, Sierra Forest Products, Inc., challenged the Service's April 8, 2004, Finding of warranted but precluded for the West Coast DPS of the fisher by asserting that the Service violated the Act and the Administrative Procedure Act by failing to specify whether the West Coast DPS of the fisher is a DPS of a species or a DPS of a subspecies (*Sierra Forest Products, Inc,* v. *Kempthorne et al.,* No. 2:1007–cv–00060–JAM GGH). On June 6, 2008, the Eastern District Court in California determined the record contained scientific support for the Service's determination that the West Coast DPS of the fisher is a DPS of a species and that the Service's determination in this regard was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. On appeal, the Ninth Circuit affirmed the District Court finding by memorandum opinion issued January 6, 2010 (*Sierra Forest Products, Inc.,* v. *Kempthorne, et al.* (No. 08–16721)).

On April 8, 2010, the Center for Biological Diversity challenged the Service's alleged lack of expeditious progress on pending listing proposals, and in particular regarding the west coast DPS of fisher, for species for which the Service had found listing to be warranted but precluded (*Center for Biological Diversity* v. *Salazar (*No. *3:10–cv–01501–JCS)(N.D. California*)). This challenge was resolved by stipulated dismissal and approved by the court on October 5, 2011, based on the Service's agreement in the context of a larger multidistrict litigation to submit a proposed rule or a not-warranted finding regarding the West Coast DPS of fisher to the **Federal Register** by the end of Fiscal Year (September 30) 2014 (*In re Endangered Species Act Section 4 Deadline Litig.,* Misc. Action No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C.)).

We published a notice of initiation of status review and solicitation of new information for the West Coast DPS of fisher in the **Federal Register** on March 19, 2013 (78 FR 16828).

Background

Distinct Population Segment Analysis

Based on the November 28, 2000, petition, we considered whether the potential distinct vertebrate population segment (DPS) of fisher as described by the petitioners meets the definition of a DPS as described in the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (DPS Policy) (61 FR 4722; February 7, 1996).

Under section 3(16) of the Act, we may consider for listing any species, including subspecies, of fish, wildlife, or plants, or any DPS of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Such entities are considered eligible for listing under the Act (and, therefore, are referred to as listable entities), should we determine that they meet the definition of an endangered or threatened species.

Under the Service's DPS Policy, three elements are considered in the decision concerning the establishment and classification of a possible DPS. These elements include:

(1) The discreteness of a population 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, delisting, or reclassification (i.e., is the population segment endangered or threatened).

In evaluating the distribution of fisher in the species' West Coast range, we examined information in published range maps, published works that included historical occurrences, unpublished studies related to fisher distribution, and other submitted data. Fisher distribution in the species' West Coast range is discussed in detail in the ''Distribution'' section of the draft Species Report (Service 2014, pp. 23–46). We made a DPS determination in our initial 2004 Finding (April 8, 2004; 69 FR 18769); below we summarize discreteness and significance for fisher in the species' West Coast range.

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be

considered discrete if it satisfies either one of the following 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.

(2) It is delimited by international governmental boundaries within which 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.

Under the Service's DPS policy, a population segment of a vertebrate taxon may be considered discrete if it is either markedly separate or delimited by international governmental boundaries. All West Coast populations of fishers are markedly separated from fisher populations to the east by geographical barriers, unsuitable habitat, and urban development. The native fisher populations on the West Coast are separated from native populations to the north by approximately 900 km (560 mi), and it is extremely unlikely that transient individuals could disperse far enough to provide a functional population connection between the native NCSO population and Canadian populations. In addition, the Olympic National Park (ONP) reintroduced population is also physically isolated from known fisher populations in British Columbia by 400 km (250 mi) and by urban development in the greater Seattle/Vancouver area. In summary, fisher populations on the West Coast in Washington, Oregon, and California are geographically isolated from all other populations of the species. Therefore, the marked separation condition for discreteness is met by geographical filters/barriers, urban development, and distances that are beyond the known dispersal distance of fishers.

Regarding the international governmental boundaries condition for discreteness, we conclude that this condition can also be met due to differences in exploitation, management of habitat, conservation status, and regulatory mechanisms between the United States and Canada that collectively play a role in delimiting the northern boundary of the analysis area along the international border with Canada. These differences include the United States' land management under the National Forest Management Act of 1976, as amended (16 U.S.C. 1600), and the Federal Land and Policy Management Act (43 U.S.C. 1712), which provide for protection of wildlife habitat; many of the associated management plans address fisher as a sensitive species (Service 2014, pp. 117–124). Alternatively, Canada has no overarching forest practice laws governing management of its national lands similar to those in the United States. In addition, the fisher can be legally harvested by licensed trappers under regional regulations in Canada, whereas trapping the species has been prohibited for decades in Washington, Oregon, and California (Service 2014, pp. 106–108). Overall, both the marked separation and international governmental boundary conditions are met, and they each individually satisfy the discreteness element of the DPS policy for the fisher in the species' West Coast range.

Significance

If a population segment is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used ''sparingly'' (see Senate Report 151, 96th Congress, 1st Session). In making this determination, we consider available scientific evidence of the DPS's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722, February 7, 1996), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the DPS in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the DPS would result in a significant gap in the range of a taxon;

(3) Evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or

(4) Evidence that the DPS differs markedly from other populations of the species in its genetic characteristics.

To be considered significant, a population segment needs to satisfy only one of these conditions, or other classes of information that might bear on the biological and ecological importance of a discrete population segment, as described in the DPS policy (61 FR 4722, February 7, 1996). Three of these criteria are met for the fisher in the species' West Coast range. We found that loss of the species from its West Coast range in the United States would represent a significant loss of the species from a unique ecological setting because fishers in the West Coast inhabit landscapes dominated by different forest types, climate, and predator-prey relationships compared to fishers in the rest of the range of the taxon. We also found that loss of the West Coast populations of fisher would result in a significant gap in the range because it would significantly impact representation of the species by shifting the southern boundary of the taxon more than 1,600 km (994 mi) to the north and would create a significant gap in the range of the taxon because of its situation at the southern periphery of the species' range. Finally, we found that populations of fisher in the species' West Coast range (NCSO and SSN) differ markedly from other populations of the species in their genetic characteristics because these native fisher populations on the West Coast are genetically distinct from fishers in the remainder of North America (for example, Canada, Rocky Mountains, and Great Lakes) and from each other. As a result, loss of the fisher in the species' West Coast range would result in the reduction in the species' genetic diversity. Overall, the unusual or unique ecological setting, significant gap in the range of the taxon, and marked genetic differences conditions are met, and they each individually satisfy the significance element of the DPS policy for fisher in the species' West Coast range.

Summary of DPS Analysis Regarding Fisher in Its West Coast Range

Given that both the discreteness and the significance elements of the DPS policy are met for fisher in the species' West Coast range, we find that the West Coast DPS of fisher is a valid DPS. Therefore, the West Coast DPS of fisher is a listable entity under the Act, and we now assess this DPS's conservation status in relation to the Act's standards for listing, delisting, or reclassification (i.e., whether this DPS meets the definition of an endangered or threatened species under the Act).

Draft Species Report

We found the West Coast DPS of fisher to be warranted for listing in 2004 and each subsequent year in the CNOR. Also, we completed a draft Species Report incorporating new information that has become available since the 2004

Finding, including new genetic and survey information. The analysis area in the draft Species Report covers the range of the 2004 Finding.

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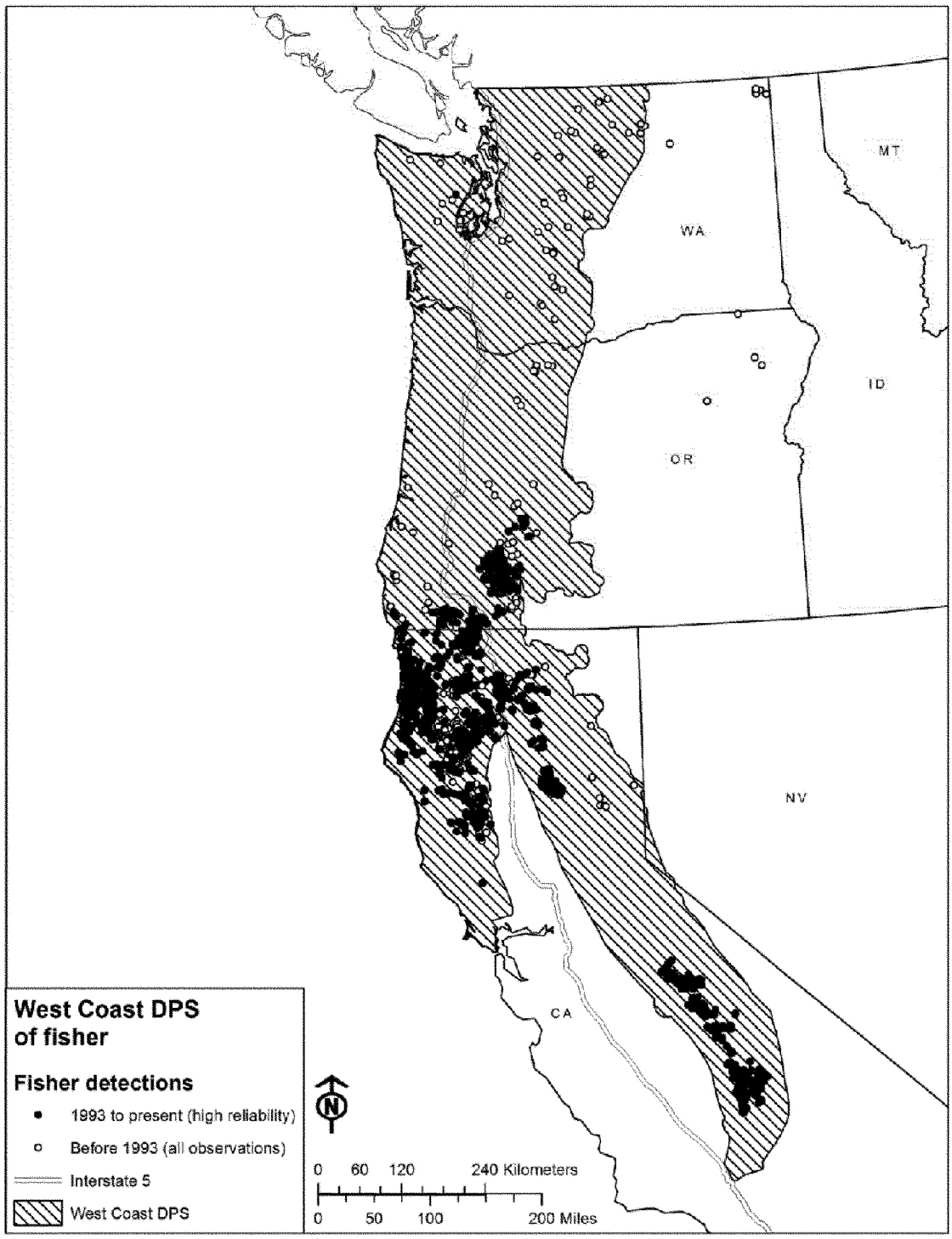
Figure 1. West Coast DPS of fisher (historical range and 2004 Finding range boundary). The black dots represent high reliability fisher detections from 1993 to present, and the white circles represent all fisher observations (low, moderate, and high reliability) before 1993. Please note that the ONP population here is represented by a single black dot, and this representation is based on the information we received from the Washington Department of Fish and Wildlife.



A thorough review of the taxonomy, life history, and ecology of the West Coast Distinct Population Segment (DPS) of fisher is presented in the draft Species Report (Service 2014; *http://www.fws.gov/cno/es/fisher/; http://*

www.regulations.gov). The fisher is a medium-sized light-brown to dark blackish-brown mammal, with the face, neck, and shoulders sometimes being slightly gray; the chest and underside often has irregular white patches. The fisher is classified in the order Carnivora, family Mustelidae, a family that also includes weasels, mink, martens, and otters (Service 2014, pp. 8–9). The occurrence of fishers at regional scales is consistently associated with low- to mid-elevation environments of coniferous and mixed conifer and hardwood forests with characteristics of late-successional forests (large-diameter trees, coarse downed wood, and singular features of large snags, tree cavities, or deformed trees). Historically, fishers were well-distributed throughout the analysis area in the habitats described above. In Washington and Oregon, outside of the existing known populations, fishers are considered likely extirpated (although on occasion individual fishers may be detected). In California, recent survey efforts have not detected fishers in the northern Sierra Nevada, outside of the reintroduced population. Key fisher habitat includes forests with diverse successional stages containing a high proportion of mid- and late-successional characteristics. Throughout their range, fishers are obligate users of tree or snag cavities for denning, and they select resting sites with characteristics of late-successional forests. Late-successional forest characteristics are maintained and recruited in the forest through ecological process such as fire, insect-related tree mortality, disease, and decay (Service 2014, pp. 13–18).

Fishers are found only in North America, and the West Coast DPS encompasses the area where fishers historically occurred throughout western Washington, western Oregon, and California to the Sierra Nevada (Service 2014, p. 26). Currently, the West Coast DPS of fisher occurs in two original native populations (Northern California–Southwestern Oregon Population (NCSO) and the Southern Sierra Nevada Population (SSN)) and three reintroduced populations (Northern Sierra Nevada Reintroduced Population (NSN) in California, Southern Oregon Cascades (SOC) Reintroduced Population in Oregon, and the Olympic Peninsula Reintroduced Population (ONP) in Washington) (Service 2014, p. 34). There have been several approaches used to estimate the NCSO population size in the literature. Based on these various approaches, the NCSO population estimates range from a total population size of 258 to 4,018. For the SSN, population estimates reveal approximately 300 fishers (Service 2014, pp. 37–42). Regarding the reintroduced populations, the SOC has persisted for more than 30 years, despite an apparently small geographic extent, but does not exhibit evidence of broad-scale population expansion. Both the ONP and the NSN have been reintroduced within the past 10 years, and it is too early to determine if the populations will persist. Current indications are encouraging, but it will take time to determine population trend and stability of these two new reintroductions (Service 2014, pp. 43–46).

Summary of Biological Status and Threats

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence, as described below. We completed a comprehensive assessment of the biological status of the West Coast DPS of fisher, and we prepared a report of the assessment (draft Species Report), which provides a thorough account of the species' biology and stressors. In this section, we summarize the information presented in that assessment (draft Species Report), which can be accessed at Docket FWS–R8–ES–2014–0041 on *http://www.regulations.gov* and at *http://www.fws.gov/cno/es/fisher/.* Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, and reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be an endangered or threatened species based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

A species is an endangered species for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range, and is a threatened species if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

In making this finding, information pertaining to the West Coast DPS of fisher in relation to the five factors provided in section 4(a)(1) of the Act is summarized below, based on the analysis of stressors affecting fisher contained in the draft Species Report. In considering what stressors might constitute threats, we must look beyond the mere exposure of the species to the stressor to determine whether the species responds to the stressor in a way that causes actual negative impacts to the species. If there is exposure to a stressor, but no response, or only a positive response, that stressor is not a threat. If there is exposure and the species responds negatively, the stressor may be a threat and we then attempt to determine the scope, severity, and impact of the potential threat. If the threat is having a significant impact on the species, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act. This determination does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of stressors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these stressors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

The draft Species Report represents a comprehensive review of the West Coast DPS of fisher and provides a thorough account of the species' biology and stressors. In the draft Species Report, we reviewed and evaluated past, current, and potential future stressors that may be affecting fishers in the analysis area. For each stressor, we used the best information available to us to estimate the timing, scope, and severity of the potential stressor, noting where stressors may differ regionally (among sub-regions) (Service 2014, pp. 46–51). The sub-regions analyzed in the draft Species Report include: Coastal Washington, Western Washington Cascades, and Eastern Washington Cascades (in Washington); Coastal Oregon, Western Oregon Cascades, and Eastern Oregon Cascades (in Oregon); Northern California–Southwestern Oregon (in Oregon and California); and Sierra Nevada (in California) (Service 2014, p. 47). For the estimations in these sub-regions, we defined stressors as the activities or processes that have caused,

are causing, or may cause in the future the destruction, degradation, or impairment of West Coast fisher populations or their habitat.

The *timing* is the time period that we can be reasonably certain the stressor is acting on fisher populations or their habitats. The *scope* is the proportion of the fisher analysis area sub-region that can reasonably be expected to be affected by a stressor within the appropriate time period of the stressor, given continuation of current circumstances and trends. The *severity* is the level of damage to fisher populations or their habitat (within the scope) that can reasonably be expected from the stressor within the appropriate period for the given stressor assuming continuation of current circumstances and trends. Note that, for the stressors related to habitat, the severity is the percent of habitat within the scope that is likely to be lost over 40 years, whereas for the stressors related to direct mortality, the severity is the percent of animals within the scope that are estimated to die annually. Therefore, a direct comparison cannot be made between the stressors related to habitat and those related to direct mortality of fishers. Please refer to the draft Species Report for the time period over which we analyzed each stressor. The timing (immediacy) of each stressor was assessed independently based upon the nature of the stressor and time period that we can be reasonably certain the stressor is acting on fisher populations or their habitats. In general, we considered that the trajectories of the stressors acting on fisher populations within the analysis area could be reasonably anticipated over the next 40 years (Service 2014, pp. 46–49).

The values and explanations for the scope and severity for each potential stressor in the draft Species Report reflect our current best estimate, but we acknowledge that other estimates are also possible. Depending on the level of data available for each stressor, we made relative estimates of the impacts of the various stressors discussed above between sub-regions. In some cases we had empirical data that supported our estimates (e.g., mortality estimates for some sub-regions), and in others we extrapolated because we did not have data available for that area or we extrapolated from other areas. Therefore, our estimates have the greatest degree of certainty for estimates of mortality derived from studies in areas with extant populations of fishers. Estimates derived from extrapolations of data from one sub-region to another or applied to areas not currently occupied by fishers have greater uncertainty (for habitat stressors) or are not applicable (for stressors related to direct mortality). We utilized these estimates to help us assess the gross level of impact of the various stressors, rather than as a precise quantification, and we recognize that we may further refine these estimates upon review of additional information prior to our final listing determination. Please refer to the narrative sections for each stressor in the draft Species Report for important caveats in interpreting scope and severity estimates.

Analysis Under Section 4(a)(1) of the Act

The Act directs us to determine whether any species is an endangered species or a threatened species because of any of the factors outlined in section 4(a)(1) of the Act that may affect its continued existence. In this section, information regarding the status and threats to this species in relation to the five factors is summarized below.

All potential stressors currently acting upon the West Coast DPS of fisher or likely to affect the species in the future are evaluated and addressed in the draft Species Report; below we consider those stressors in light of the statutory factors identified above. The reader is directed to the draft Species Report for a more detailed discussion of the stressors summarized in this document (*http://www.fws.gov/cno/es/fisher/*).

The draft Species Report evaluated the biological status of the species and each of the potential stressors affecting its continued existence (Service 2014, entire). It was based upon the best available scientific and commercial data and the expert opinion of the draft Species Report team members. Based on the analyses and discussion contained therein, in this document we evaluated potential habitat stressors including wildfire, emergency fire suppression actions, and post-fire management actions; climate change; current vegetation management; and human development (Factor A). We also evaluated potential stressors related to direct mortality of fishers including trapping and incidental capture, research activities, disease or predation, collision with vehicles, and exposure to toxicants (Factors B, C, and E). Finally, we evaluated the inadequacy of existing regulatory mechanisms (Factor D) and other natural or manmade factors affecting its continued existence including direct climate effects and small population size (Factor E).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Wildfire and Fire Suppression

Our evaluation of the effects of wildfire on fisher habitat included those activities associated with fire suppression that may result in removal of fisher habitat (for example, backburning, fuel breaks, and snag removal). For the wildfire and fire suppression stressor, we found that the naturally occurring fire regimes vary widely across the analysis area, and, therefore, the effects of wildfire are also likely to vary geographically. In general, high-severity fire has the potential to permanently remove suitable fisher habitat, and is very likely to remove habitat for a period of many decades while the forest regrows. Moderate-severity fire may also remove habitat, but likely in smaller patches and for a shorter length of time. Low-severity fire may reduce some elements of fisher habitat temporarily, but in general is unlikely to remove habitat.

Fishers' behavioral and population responses to fires are unknown within the West Coast range, but it seems likely based on fishers outside of the West Coast range and other related species that large fires, particularly those of higher severity and larger scale, could cause shifts in home ranges and movement patterns, lower the fitness of fishers remaining in the burned area (due to increased predation, for example), or create barriers to dispersal. Fire suppression actions and post-fire management have the potential to exacerbate the effects of wildfire on fisher habitat. Overall, we found that the scope and severity for this stressor were the highest for the Sierra Nevada and northern California–southwestern Oregon areas; these are the two areas where the two remaining original native populations of fishers are found. Because there is evidence of increasing fire severity in yellow pine–mixed-conifer forests, which include the majority of fisher habitat in the Sierra Nevada, the estimate of the severity of stressors related to wildfire is likely to be an underestimate. Also, because fisher habitat in the Sierra Nevada occurs in a narrow band running north to south, fires burning at high severity within fisher habitat have the potential to severely disrupt north–south connectivity of habitat within the Sierra Nevada which, if lost, could prevent population expansion. In addition, forests burned at high severity in this region may be replaced by chaparral or grassland, which may represent a

permanent loss of fisher habitat. The fire regime in northern California and southwestern Oregon is historically extremely variable, as is the forest composition within this region. In forests with a large hardwood or redwood component, post-fire stump-sprouting may speed the recovery of fisher habitat. However, fisher habitat is highly fragmented in many parts of northern California and southwestern Oregon, and even temporary losses of habitat may impede dispersal and increase fragmentation of the resident fisher population. Throughout most of Oregon and Washington, the scope and severity for this stressor were lower than the Sierra Nevada and northern California–southwestern Oregon areas; however, high-severity fires that remove fisher habitat have the potential to further disrupt habitat connectivity and availability (Service 2014, pp. 57–71).

We consider wildfire and fire suppression to be a threat to fisher habitat now and in the future because the frequency and size of wildfires is increasing; we expect this trend to continue into the future; and based on fishers outside of the West Coast range and other related species, we predict that large fires (particularly those of higher severity and larger scale) will cause shifts in home ranges and movement patterns, lower the fitness of fishers remaining in the burned area, and create barriers to dispersal. We consider fire and fire suppression to be particularly problematic in the SSN because of the narrow band of habitat that comprises SSN and the small population size. The degree to which fire-related effects impact NCSO is lower than SSN because the NCSO does not exist in a narrow band of habitat but rather covers a larger area. However, fire and fire suppression will likely have a negative effect on NCSO because fire will decrease connectivity in the highly fragmented habitat of NCSO. It is difficult to fully determine the impact at NCSO because the locations and severities of future fires relative to important habitat components are not known at this time. In Washington and areas of Oregon outside of NCSO, the effect of fire in scope and severity is lower than the other areas, and much of this area is considered to be unoccupied. Fire in these areas is likely to have a negative impact on existing fisher populations only if they occur within or in proximity to occupied areas; however, as with NCSO, it is difficult to fully determine the potential impact because the locations and severities of future fires relative to important habitat components are not known at this time.

Climate Change

Climate change is ongoing, and its effects on fisher habitat are already occurring in some areas and are likely to increase and become more readily perceptible in the future. Overall, fisher habitat is likely to be affected by climate change, but the severity will vary, potentially greatly, among different regions, with effects to fishers ranging from negative, neutral, or potentially beneficial. Climate change is likely to affect fisher habitat by altering the structure and tree species composition of fisher habitat, and also through the changes to habitat of prey communities and ultimately on prey availability. These effects may cause mortality, decrease reproductive rates, alter behavioral patterns, or lead to range shifts. However, studies of climate change present a range of effects including some that indicate conditions could remain suitable for fisher. Climate throughout the analysis area is projected to become warmer over the next century, and in particular, summers will be hotter and drier, with more frequent heat waves. In the northern portion of the analysis area, winters will likely become wetter, but even these areas will likely experience increased water deficits during the growing season. Modeling projections are done at a large scale, and effects to species can be complex, unpredictable, and highly influenced by local-level biotic and abiotic factors. Although many climate models generally agree about the changes in temperature and precipitation, the consequent effects on vegetation are more uncertain. Therefore, it is not clear how changes in forest type, species composition, or growth rate will affect the availability of fisher habitat and its ability to support fisher populations (Service 2014, pp. 71–84). Consequently, at this time, climate change is not viewed as a threat to fisher habitat now or in the future, although we will continue to seek additional information concerning how climate change may affect fisher habitat.

Vegetation Management

Vegetation management techniques of the past (primarily timber harvest) have been implicated as one of the two primary causes for fisher declines across the United States. Many fisher researchers have suggested that the magnitude and intensity of past timber harvest is one of the main reasons fishers have not recovered in Washington, Oregon, and portions of California, as compared to the northeastern United States (Service 2014, pp. 54–56). Current vegetation management techniques have, and can, substantially modify the overstory canopy, the numbers and distribution of structural elements, and the ecological processes that create them. There are also areas where habitat may not be the limiting factor for current or potential fisher populations and where habitat is being managed intentionally or incidentally in ways that benefit fisher. For example, the Northwest Forest Plan (NWFP), which was adopted by the U.S. Forest Service and the Bureau of Land Management (BLM) in 1994 to guide the management of more than 24 million ac (9.7 million ha) of Federal lands in Washington, Oregon, and northwestern California within the range of the northern spotted owl, provides the basis for conservation of the spotted owl and other late-successional and old-growth forest associated species, such as fisher, on Federal lands. The NWFP incorporates seven land allocations (Congressionally Reserved Areas, Late Successional Reserves, Adaptive Management Areas, Managed Late Successional Areas, Administratively Withdrawn Areas, Riparian Reserves, and Matrix). Much of the NWFP area currently provides fisher habitat, which is expected to increase over time. The Matrix, which represents only 16 percent of the Federal land within the NWFP area, is the Federal land outside the other six NWFP land allocations and is the area in which most timber harvest and other silvicultural activities will be conducted. Late Successional Reserves (LSRs), which cover 30 percent of the NWFP area, are expected, in combination with the other allocations and standards and guidelines, to maintain a functional, interactive, late-successional and old-growth forest ecosystem and are designed to serve as habitat for late-successional and old-growth related species including fishers. Scheduled timber harvest is prohibited from LSRs.

In order to evaluate the current vegetation management stressor on Federal land, we used data on harvest of northern spotted owl habitat as a surrogate for the amount of habitat removed or downgraded, which occurs mostly on Matrix lands, by current vegetation management activities. Because of the similarity between fisher and northern spotted owl habitat requirements, we determined this to be one of the best sources of data to evaluate the potential effects of vegetation management on loss of fisher habitat on Federal lands throughout the analysis area. We used timber harvest

acreage data, approved Timber Harvest Plans, and consultations to evaluate the stressor of current vegetation management on fisher habitat.

Our estimates revealed that the total scope of vegetation management (Federal and non-Federal combined) is the highest in the Oregon and Washington Coast Ranges, likely due to the prevalence of non-Federal land ownership in these sub-regions, where timber harvest rates are substantially higher than on Federal lands (where harvest rates have substantially declined over the past two decades); the lowest values for total scope (Federal and non-Federal combined) were in the Western Oregon Cascades and Sierra Nevada. Overall, we note that the scope for non-Federal areas is higher than the scope for Federal areas in all sub-regions. We estimated severity values separately for the Federal and non-Federal portions of the sub-regions. Because we derived the scope of vegetation management by identifying the removal or downgrading of habitat, we ascribed high severity values (60 to 80 percent) for most regions and ownerships within the scope. Data limitations in most sub-regions prevented us from quantifying what proportion of the treatments in the data sets we used may be outside the scope of habitat loss or downgrade (for example, may include vegetation management activities that may still function as fisher habitat post-treatment), so the severity scores represent our best estimate and are a relatively broad range to incorporate this uncertainty. However, additional data for Federal lands in Washington allowed us to ascribe lower severity values for this ownership in these sub-regions. Landscapes with reduced canopy cover may affect fisher by providing decreased protection from predation, raising the energy costs of traveling between foraging sites, and providing unfavorable microclimate and decreased abundance or vulnerability of preferred prey species (Service 2014, pp. 84–92).

In analyzing stressors related to habitat loss, we only assessed stressors resulting in habitat loss. We did not account for ingrowth of fisher habitat over our 40-year analysis timeframe and, therefore, provide no values for net habitat loss, although we do acknowledge ingrowth is occurring, primarily on Federal lands (Service 2014, pp. 84–92).

We found that vegetation management is a threat because activities that remove or substantially degrade fisher habitat through the removal of large structures and overstory canopy are projected to take place within the analysis area over the next 40 years. For the Sierra Nevada, over half of the sub-region is within Federal ownership with less than 1 percent of fisher habitat expected to be treated by vegetation management that downgrades or removes habitat. Within the Sierra Nevada, 15 percent of fisher habitat is expected to be affected by non-Federal vegetation management that downgrades or removes habitat. For the northwest California–southwest Oregon sub-region, just under half of the sub-region is within Federal ownership with 1 percent of fisher habitat expected to be treated by vegetation management that downgrades or removes habitat. Within the northwest California–southwest Oregon sub-region, 22 percent of fisher habitat is expected to be affected by non-Federal vegetation management that downgrades or removes habitat. In Washington and areas of Oregon outside of NCSO, vegetation management on Federal lands that downgrades or removes habitat in most sub-regions is less than 2 percent of fisher habitat, although the Western Oregon Cascades and Eastern Oregon Cascades range from 5 to 10 percent of fisher habitat. In Washington and areas of Oregon outside of NCSO, 14 to 37 percent of fisher habitat is expected to be affected by non-Federal vegetation management that downgrades or removes habitat.

The type of vegetation management and where it occurs is important to understanding the impacts to fishers. Vegetation management that removes important habitat elements (such as den sites and canopy cover) has a greater effect on fishers than activities that maintain these elements. Vegetation management in or near occupied habitat (particularly where habitat is fragmented or connectivity is limited) would have a greater effect on fishers than actions outside of occupied habitat. The SSN is particularly sensitive to the location and type of vegetation management because of the narrow band of habitat that comprises SSN and the small population size. Vegetation management will likely have a negative effect on NCSO because vegetation management will decrease connectivity in the highly fragmented habitat of NCSO. In Washington and areas of Oregon where the reintroductions have occurred, the effect of vegetation management is less of a concern because habitat occurs in large contiguous blocks. Outside of these areas, much of the fisher habitat in Washington and Oregon is considered to be unoccupied. Although vegetation management outside of occupied areas is less likely to have a negative impact on the viability of existing fisher populations, the maintenance of fisher habitat in these areas is important for future expansion. Maintenance of fisher habitat throughout the analysis area is additionally influenced by the differences in regulatory mechanisms among the different ownerships (see factor D below).

Development

The draft Species Report revealed that human population density within the analysis area varies considerably, but all areas appear to be increasing. Human population growth within the analysis area will increase needs for housing, services, transportation, and other infrastructure, placing ever-greater demands on land, water, and other natural resources. Specifically, human infrastructure growth includes recreational opportunities such as ski area developments, vacation cabins, trails, and campgrounds. Besides permanently removing potential fisher habitat, human developments in rural areas are changing land use from forest to other land cover types, which can fragment previously continuous habitat or hamper fisher movements. Overall, human developments associated with population growth will have an increasing impact on fisher habitat into the future, but the severity varies depending on the type and location of development. The scope of the human development stressor is relatively low throughout the analysis area, but the higher severity values were in the Sierra Nevada, Coastal Washington, and Western Washington Cascades. Within much of the analysis area, human development is generally considered to be of relatively low concern for fishers and occurs at relatively small spatial scales in forested landscapes (Service 2014, pp. 92–96). Consequently, we do not consider development to be a threat to fish habitat now or in the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Trapping

Unregulated historical trapping appears to have been the primary initial cause of fisher population losses in the Pacific States. The effects of current trapping, which are limited to incidental capture and an unknown amount of poaching, are significantly reduced compared to the previous effects of widespread unregulated legal trapping of fishers. Overall, we found that the severity of the potential stressor of trapping and incidental capture is extremely low throughout the analysis

area (Service 2014, pp. 106–108), and therefore, do not consider trapping to be a threat to the fisher now or in the future.

Research

Although scientific research is necessary to understand the various aspects of a species' life-history needs and population status, some research techniques have potential risks to the individual animal including injury and mortality. Current research and monitoring efforts vary greatly by sub-region within the analysis area. The draft Species Report revealed extremely low to nonexistent scope and severity for the research activity stressor throughout the analysis area (Service 2014, pp. 109–112). We conclude that research is not a threat to the continued existence of fisher, now or in the future.

Factor C. Disease or Predation

Several viral and bacterial diseases are known to affect mustelids, including fishers, but it is unclear how these diseases affect wild populations of fishers. Potential predators of fishers include mountain lions, bobcats, coyotes, and large raptors. Disease and predation are stressors related to direct mortality of fishers, and, as described above, they cannot be directly compared with the stressors related to habitat (for habitat stressors, the severity is the percent of habitat within the scope that is likely to be lost over 40 years, whereas for the stressors related to direct mortality, the severity is the percent of animals within the scope that are estimated to die annually). The potential stressors of disease and predation occur throughout the analysis area. The draft Species Report reveals that, where data exist to evaluate severity for the group of direct mortality stressors, the severity of predation throughout the analysis area is higher than that of disease (Service 2014, pp. 112–116). Disease and predation are naturally occurring sources of mortality (although the associated mortality rates may be increased by human-caused factors such as climate change or vegetation management; see Synergistic effects section below), and although they are the most prevalent sources of direct mortality among individual fishers within the study areas for which we have information, it is unknown how disease and predation rates influence fisher population trends in general (Service 2014, pp. 112–116 and 167–169). We do not consider disease or predation to be threats to the fisher, now or in the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

In the draft Species Report, we evaluated the potential for an inadequacy of existing regulatory mechanisms, and we found that there are many existing regulatory mechanisms that provide a benefit to fishers and their habitat. For example, trapping regulations have substantially reduced fisher mortality throughout the analysis area. There are places in the analysis area where forest management practices are explicitly applied to benefit fishers or other species with many similar habitat requirements, such as the northern spotted owl. In addition, some habitat conservation plans (HCPs) are in place and are intended to provide a benefit to fishers and their habitat. Also, fisher is a candidate species under the California Endangered Species Act, and take under that law is prohibited, at least until the California Fish and Wildlife Commission makes a final determination on the listing status of fishers.

Take of fishers in Oregon is also prohibited through its designation as a protected nongame species, although the definition of take under Oregon law is different from the definition of take under the Act. The fisher is State-listed as endangered in Washington, where poaching is prohibited and environmental analyses need to occur for projects that may affect fishers. State and Federal regulatory mechanisms have abated the large-scale loss of fishers to trapping and loss of fisher habitat, especially on Federal land (Service 2014, pp. 117–141). Rodenticides are regulated under Federal and State laws. However, it is not clear how well those regulations prevent fishers from exposure to legal uses of these rodenticides. Fishers are also exposed to rodenticides used illegally (as discussed below).

Federal Regulatory Mechanisms

Forest Service and BLM

There are a number of Federal agency regulations that pertain to management of fisher (and other species and habitat). Most Federal activities must comply with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.). NEPA requires Federal agencies to formally document, consider, and publicly disclose the environmental impacts of major Federal actions and management decisions significantly affecting the human environment. NEPA does not regulate or protect fishers, but requires full evaluation and disclosure of the effects of Federal actions on the environment.

Other Federal regulations affecting fishers are the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528 et seq.) and the National Forest Management Act of 1976, as amended (NFMA) (90 Stat. 2949 et seq.; 16 U.S.C. 1601 et seq.).

NFMA specifies that the Forest Service must have a land and resource management plan to guide and set standards for all natural resource management activities on each National Forest or National Grassland. In addition, the fisher has been identified as a sensitive species by the Forest Service throughout the analysis area. BLM management is directed by the Federal Land Policy and Management Act of 1976, as amended 43 U.S.C. 1704 et seq.). This legislation provides direction for resource planning and establishes that BLM lands shall be managed under the principles of multiple use and sustained yield. This law directs development and implementation of resource management plans, which guide management of BLM lands at the local level. Fishers are also designated as a sensitive species throughout the analysis area on BLM lands.

In addition, the Northwest Forest Plan (NWFP) was adopted by the Forest Service and BLM in 1994 to guide the management of more than 24 million ac (9.7 million ha) of Federal lands in portions of western Washington and Oregon and northwestern California within the range of the northern spotted owl. The NWFP Record of Decision amends the management plans of National Forests and BLM Districts and is intended to provide the basis for conservation of the spotted owl and other late-successional and old-growth forest associated species on Federal lands. The NWFP is important for fishers because it created a network of late-successional and old-growth forests (late-successional reserves, or LSRs) that currently provide fisher habitat, and the amounts of habitat are expected to increase over time. Also, the National Forest and BLM units with anadromous fish watersheds provide riparian habitat conservation area buffers on either side of a stream, depending on the stream type and size. With limited exceptions, timber harvesting is generally not permitted in riparian habitat conservation areas, and the additional protection guidelines provided by National Forests and BLM may provide refugia and connectivity among more substantive blocks of fisher habitat.

Rodenticide Regulatory Mechanisms

The threats posed to fishers from the use of rodenticides are described below,

under Factor E. In the draft Species Report, we analyzed whether existing regulatory mechanisms are able to address the threats to fishers posed from both legal and illegal use of rodenticides. As described in the draft Species Report, the use of rodenticides is regulated by several federal and state mechanisms (e.g., Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as amended, (FIFRA) 7 U.S.C. 136 et seq.; California Final Regulation Designating Brodifacoum, Bromadiolone, Difenacoum, and Difethialone (Second Generation Anticoagulant Rodenticide Products) as Restricted Materials, California Department of Pesticide Regulation, 2014). The primary regulatory issue for fishers with respect to rodenticides is the availability of large quantities of rodenticides that can be purchased under the guise of legal uses, but are then used illegally in marijuana grows within fisher habitat. However, amounts of rodenticides commercially available for legal use are above those that could be expected to kill or harm individual fishers. Both EPA, through its 2008 Risk Mitigation Decision for Ten Rodenticides (EPA 2008, entire) which issued new legal requirements for the labelling, packaging and sale of second generation anticoagulants, and California's Department of Pesticide Regulation, through a new rule effective in July 2014, which restricts access to second generation anticoagulants, are attempting to reduce the risk posed by second generation anticoagulants. However, at present, it is not clear that these mechanisms have yet been effective in addressing the threat of rodenticide and its effects on fishers.

National Park Service

Statutory direction for the 1.6 million ha (4 million ac) of National Park Service lands in the analysis area is provided by provisions of the National Park Service Organic Act of 1916, as amended (16 U.S.C. 1 et seq.) and the National Park Service General Authorities Act of 1970 (16 U.S.C. 1a-1). Land management plans for the National Parks within the West Coast analysis area do not contain specific measures to protect fishers, but areas not developed specifically for recreation and camping are managed toward natural processes and species composition and are expected to maintain fisher habitat. In addition, hunting and trapping are generally prohibited in National Parks (16 U.S.C. 127).

Tribal Lands

Several tribes in the analysis area recognize fishers as a culturally significant species, but only a few tribes have fisher-specific guidelines in their forest management plans. Some tribes, while not managing their lands for fishers explicitly, manage for forest conditions conducive to fisher (for example, marbled murrelet habitat, old-forest structure restoration). Trapping is typically allowed on most reservations and tribal lands, and is frequently restricted to tribal members. Whereas a few tribal governments trap under existing State trapping laws, most have enacted trapping laws under their respective tribal codes. However, trapping is not known to be a common occurrence on any of the tribal lands.

State Regulatory Mechanisms

Washington

The fisher is listed as endangered in Washington (Washington Administrative Code 232–12–014, Statutory Authority: RCW 77.12.020 WSR 98–23–013 (Order 98–232), § 232–12–014, filed 11/6/98, effective 12/7/98). This designation imposes stringent fines for poaching and establishes a process for environmental analysis of projects that may affect the fisher. The primary regulatory mechanism on non-Federal forest lands in western Washington is the Washington State Forest Practices Rules, title 222 of the Washington Administrative Code. These rules apply to all commercial timber growing, harvesting, or processing activities on non-Federal lands, and they give direction on how to implement the Forest Practices Act (Revised Code of Washington (RCW) 76.09) and Stewardship of Non-Industrial Forests and Woodlands (RCW 76.13). The rules are administered by the Washington Department of Natural Resources. The Washington State Forest Practices Rules do not specifically address fishers and their habitat requirements; however, some habitat components important to fishers, like snags, downed wood, and canopy cover, are likely to be retained in riparian management zones as a result of the rules. Land conversion from forested to non-forested uses is interrelated to private timber harvest, but is primarily regulated by individual city and county ordinances that are influenced by Washington's Growth Management Act (RCW 36.70a). In some cases, these ordinances result in maintaining forested areas within the range of the fisher.

Oregon

In Oregon, the fisher is a protected nongame species (Oregon Administrative Rules (OAR) 635–044–0130). In addition, the Oregon Department of Fish and Wildlife does not allow trapping of fishers in Oregon. Although fishers can be injured and/or killed by traps set for other species, known fisher captures are infrequent. State parks in Oregon are managed by the Oregon Parks and Recreation Department, and many State parks in Oregon may provide forested habitats suitable for fisher. The Oregon Forest Practice Administrative Rules (OAR chapter 629, division 600) and Forest Practices Act (Oregon Revised Statutes (ORS) 527.610 to 527.770, 527.990(1) and 527.992) (Oregon Department of Forestry 2010a, entire) apply to all non-Federal and non-Tribal lands in Oregon, regulating activities that are part of the commercial growing and harvesting of trees, including timber harvesting, road construction and maintenance, slash treatment, reforestation, and pesticide and fertilizer use. The OAR provides additional guidelines intended for conserving soils, water, fish and wildlife habitat, and specific wildlife species while engaging in tree growing and harvesting activities, and these rules may retain some structural features (i.e., snags, green trees, downed wood) that contribute to fisher habitat. There are approximately 821,000 ac (332,300 ha) of State forestlands within the analysis area that are managed by the Oregon Department of Forestry, and management of these State forest lands are guided by forest management plans. Managing for the structural habitats as described in these plans should increase habitat for fishers on State forests.

California

Fishers are a Candidate Species in California, and take, under the California Endangered Species Act (CESA) definition, is prohibited during the candidacy period. The California Department of Fish and Wildlife (CDFW) is evaluating the status of the species for possible listing as a threatened or endangered species under the CESA. Thus, protection measures for fishers are in effect in California at this time, but the duration of that protection is uncertain. In addition, it is illegal to intentionally trap fishers in California. The California Environmental Quality Act (CEQA) can provide protections for a species that, although not listed as threatened or endangered, meets one of several criteria for rarity (CEQA 15380). Fishers meet these criteria, and under CEQA a lead agency can require that

adverse impacts be avoided, minimized, or mitigated for projects subject to CEQA review that may impact fisher habitat. All non-Federal forests in California are governed by the State's Forest Practice Rules (FPR) under the Z'Berg Nejedly Forest Practice Act of 1973, a set of regulations and policies designed to maintain the economic viability of the State's forest products industry while preventing environmental degradation. FPRs do not contain rules specific to fishers, but they may provide some protection for fishers.

Factor E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Vehicle Collisions

Regarding the potential stressor of collision with vehicles, roads are sources of vehicle-collision mortality of fishers and disrupt habitat continuity, particularly in high-use, high-speed areas. Collision with vehicles is a stressor related to direct mortality of fishers. In the draft Species Report, we found that collision with vehicles has the potential to be a stressor to extant fisher populations. Collision with vehicles is not a naturally occurring source of mortality, and where we had data to evaluate this stressor, the severity of this stressor is likely lower than that of the naturally occurring stressors of disease and predation, but higher than the current mortality from human-caused trapping (Service 2014, pp. 144–146). Overall, the scope of the vehicle collision stressor is high within all occupied areas. The severity of this stressor ranges from 1 to 4 percent of the population that dies annually from this stressor. At this time, we conclude that vehicle collisions are not a threat to fisher, although, over time, the impact of this stressor on fishers will likely accumulate and act synergistically with other stressors to impact fishers where they occur.

Climate Change

The draft Species Report describes the potential stressor of direct climate effects to fishers as ongoing and likely to become more pronounced in the future as warming increases. In addition to the climate change effects to fisher habitat discussed above, some researchers have suggested climate change may cause direct effects to fishers potentially including increased mortality, decreased reproductive rates, or alterations in behavioral patterns, in addition to range shifts. Fishers may be especially sensitive, physiologically, to warming summer temperatures. These observations suggest that fishers likely will either alter their use of microhabitats or shift their range northward and upslope, in order to avoid thermal stress associated with increased summer temperatures. However, we do not have sufficient data to reliably predict the effect on fisher populations at this time (Service 2014, pp. 146–148).

Exposure to Toxicants

The draft Species Report describes the potential stressor of exposure to toxicants. Recent research documenting mortalities from anticoagulant rodenticides (ARs) in California fisher populations has raised concerns regarding both individual and population-level impacts of toxicants within the fisher's range in the Pacific States. Exposure to ARs, resulting in death in some cases, has been documented in fishers. ARs impair the animal's ability to produce several key blood clotting factors, and anticoagulant exposure is manifested by such conditions as bleeding nose and gums, extensive bruises, anemia, fatigue, and difficulty breathing. Anticoagulants also damage the small blood vessels, resulting in spontaneous and widespread hemorrhaging. In addition, sublethal exposure to ARs likely results in sickness, which may increase the probability of mortality from other sources, and multiple studies have demonstrated that sublethal exposure to ARs or organophosphates may impair an animal's ability to recover from physical injury. A sublethal dose of AR can produce significant clotting abnormalities and hemorrhaging.

Within the Pacific States, AR exposure in fishers appears to be widespread, and has been documented in all extant fisher populations in California. Fishers from the reintroduced ONP population also exhibit AR exposure. Because most of the fishers that were tested were captured and relocated from British Columbia, it is unknown whether these animals were exposed before or after their translocation to the Olympic Peninsula. A comparison of the areas where ARs are reported as being applied under labeled uses in California in relation to areas that are supportive of fisher habitats demonstrates legal applications of ARs are not likely the source for the ARs that have been observed in fishers by researchers. Although all sources of AR exposure in fishers have not been conclusively determined, large quantities of ARs have been found at illegal marijuana cultivation sites within occupied fisher habitat on public, private, and tribal lands in California. The proximity of a large number of marijuana cultivation sites to fisher populations in California and southwestern Oregon and the lack of other probable sources of ARs within occupied fisher habitat have led researchers to implicate marijuana cultivation sites as the source of AR exposure in fishers. In addition, ARs have been detected in a majority of fisher carcasses tested in Washington and California, and ARs have been determined as the direct cause of death for some fisher mortalities in California. However, it is not known if AR exposure in fisher carcasses represents the proportion of live fishers exposed, especially considering the potential sublethal effects of ARs that may predispose them to mortality.

We found that the scope of the toxicant stressor was best reflected by a range of values and varied by sub-region, due to differences in format of available data or the lack thereof. Where we had data available to evaluate, the severity of the toxicant stressor was comparable to disease throughout the analysis area, although we note that disease is a naturally occurring stressor and toxicants are a human-caused stressor. We based our severity estimates on mortality rates alone, but we acknowledge that these values likely underrepresent the population-level effects when considering research conclusions regarding sublethal levels of rodenticides and other toxicants in a wide variety of animal species (Service 2014, pp. 149–166).

We view toxicants as a newly identified threat because of reported mortalities of fishers from toxicants and a variety of potential sublethal effects. Most fisher carcasses tested in SSN, NCSO, and ONP have ARs in their tissues, but we do not know the exposure rate of live fishers. In addition, the minimum amount of AR required for sublethal or lethal poisoning of fishers is currently unknown; however, we do have evidence or fisher mortality and sublethal effects as a result of ARs. Overall, ARs are likely a threat to fisher populations, although we do not have information about the population-level effects at this point in time.

Small Population Size

A principle of conservation biology is that small, isolated populations are subject to an increased risk of extinction from stochastic (random) environmental, genetic, or demographic events. Fishers appear to have several characteristics related to small population size that increase the species' vulnerability to extinction from stochastic events and other threats on the landscape. Extremely small

populations of low-density carnivores, like fishers, are more susceptible to small increases in mortality factors due to their relatively low fecundity and low natural population densities. Fishers may also be prone to instability in population sizes in response to fluctuations in prey availability. Low reproductive rates retard the recovery of populations from declines, further increasing their vulnerability. These factors together imply that fishers are highly prone to localized extirpation, their colonizing ability is somewhat limited, and their populations are slow to recover from deleterious impacts. A scarcity of verifiable sightings in the Western and Eastern Cascades in Washington and Oregon, coastal Oregon, and the north and central sections of the Sierra Nevada indicates that populations of fishers in southwestern Oregon and California are isolated from fishers elsewhere in North America. Fishers in the analysis area are currently restricted to two extant native populations and three reintroduced populations, most of which are known to be small in size. In general, researchers have identified the greatest long-term risk to fishers as the isolation of small populations and the higher risk of extinction due to stochastic events (Service 2014, pp. 147–149). We conclude that small population size constitutes a threat to fisher, now and in the future.

Measures To Reduce the Stressors Related to Habitat or Range

As described in detail in the draft Species Report (Service 2014, pp. 100–105), the fisher is a covered species under the Act in six HCPs within Washington and California (five in Washington and one in California). The species is currently known to occur on lands encompassed by three California HCPs (two that do not cover fisher and one that does) and two Washington HCPs (one that does not cover fisher, and one that does). Should fisher become listed and for purposes of section 10(a)(1)(B), these HCPs include permitted incidental take, and in covering fisher, they are deemed to minimize and mitigate take and not appreciably reduce the likelihood of the survival and recovery of the fisher. Nearly all of the HCPs in California that cover areas of fisher habitat occur in the northwestern portion of the State and are focused on northern spotted owls. Most of the fisher habitat on private lands in California is not currently covered under any HCPs. Several HCPs that do not include fishers as a covered species do provide ancillary benefits because they focus on providing habitat for species such as northern spotted owls and anadromous salmonids that provide some of the habitat conditions beneficial for fisher. These HCPs require maintenance of relatively intact mature forested habitats along streams, where fishers may also be present. By preserving or developing components of habitat structure, these HCPs may benefit fishers above and beyond what would otherwise be required by forest practice regulations in individual States. However, the size and amounts of structural components retained (for example, downed wood, snags, live trees) are less than what are typically found in fisher habitat. Other HCPs have resulted in the retention of large blocks of habitat that may provide refugia for fishers in areas that may otherwise not be conducive to fisher conservation. The fisher is not a covered species under any HCPs in Oregon (Service 2014, pp. 100–102).

Regarding other conservation measures, a Candidate Conservation Agreement with Assurances is in place for the fisher in the Sierra Nevada for management of fisher denning and resting habitat (Service 2014, p. 102). In addition, a draft Interagency Conservation Strategy was created, but not finalized and, therefore, is not being implemented throughout the analysis area. Components of this strategy are, however, being used by Region 5 of the U.S. Forest Service, as well as the Service, to further fisher conservation (Service 2014, pp. 102–103). A State of Washington Fisher Recovery Plan was completed in 2006 that outlines strategies that seek to restore self-sustaining fisher populations to the three recovery areas identified in Washington: the Olympic Mountains, the South Cascade Mountains, and the North Cascade Mountains (Service 2014, pp. 102–103). The ONP reintroduction occurred within the Olympic Mountains recovery area under this Recovery Plan, and, at this point in time, a second reintroduction is in the planning stages for the North and South Cascade Mountains in Washington.

Finally, on December 4, 2012, the Service designated revised critical habitat for the northern spotted owl (77 FR 71876) in California, Oregon, and Washington, and all of this critical habitat is within the range of the West Coast DPS of fisher. The physical or biological features essential to the conservation of the northern spotted owl likely provide ancillary benefit to fishers and fisher habitat that occur within designated northern spotted owl critical habitat. Critical habitat receives protection under section 7 of the Act, requiring that Federal agencies consult with the Service to ensure that their actions will not likely result in the destruction or adverse modification of critical habitat. In practice in this area, Federal agencies implement a form of section 7 consultation, ''Streamlined Consultation,'' where working together the Service and other Federal agencies can develop projects that minimize effects to critical habitat and thereby help to meet the Federal agencies' responsibilities to conserve species and their critical habitat. Thus, implementation of projects within northern spotted owl designated critical habitat often focuses on retaining many of the forest types and structural elements important to fishers and that constitute fisher habitat (for example, canopy closure, large trees, and vegetation diversity) (Service 2014, pp. 103–105).

Synergistic Effects

We took into consideration all of the stressors operating within the five disjunct populations of fishers (four small populations and one with population size estimates ranging from 258 to 4,018); these populations are reduced in size due to historical trapping and past loss of late-successional habitat and, therefore, are more vulnerable to extinction from random events and increases in mortality. We evaluated the potential for cumulative and synergistic (combination of) effects of multiple stressors in the draft Species Report, although we were unable to quantify the scope and severity of synergistic effects and the variation of these effects between sub-regions. However, just as stressors are not occurring in equal scope and severity across the analysis area, it is reasonable to conclude that cumulative and synergistic effects from these stressors are occurring more in some sub-regions than others. Some examples of the synergistic effects of multiple stressors on fisher include:

- Alterations to habitat, which may increase fishers' vulnerability to predation (Factors A and C);
- Sublethal exposure to anticoagulant rodenticides may increase the death rates from predation, vehicle collisions, disease, or intraspecific conflict (Factors C and E);
- Stressors associated with climate change, such as increased risk of fire and forest disease, and environmental impacts of human development that will likely interact to cause large-scale ecotype conversion including shifts away from fisher habitat types, which could impact the viability of populations and reduce the likelihood

of reestablishing connectivity (Factors A and E);

- Increases in disease caused by climate change (Factors A, C, and E); and
- Human development, which is likely to cause increases in vehicle collisions, conflicts with domestic animals, and infections contracted from domestic animals (Factors A, C, and E).

Depending on the scope and severity of each of the stressors and how they combine cumulatively and synergistically, these stressors can be of particular concern where populations are small and isolated. Cumulative and synergistic stressors will be increasingly important in the 21st century, particularly in areas not managed for retention and recruitment of fisher habitat attributes, areas sensitive to climate change, and areas where direct mortality of fishers reduces their ability to maintain or expand their populations (Service 2014, pp. 166–169).

We found that several combinations of cumulative and synergistic stressors rose to the level of a threat in most fisher populations, although there is uncertainty surrounding our estimates of the cumulative and synergistic effects of stressors. As noted above, we had varying levels of uncertainty about the severity and scope of those stressors. In the case of anthropogenic mortality stressors, we added each of these together to arrive at a cumulative estimate, and we qualitatively estimated the synergistic impacts.

For the habitat-related stressors, we qualitatively assessed the cumulative and synergistic impacts. While there is uncertainty in these estimates, these estimates are based on the best available information at this point in time. For the habitat-related stressors, the cumulative and synergistic impacts are particularly problematic in the SSN because of the narrow band of habitat that comprises SSN and its small population size. In addition, for the habitat-related stressors, the degree to which cumulative and synergistic impacts affect NCSO is lower than SSN because the NCSO does not exist in a narrow band of habitat but rather covers a larger area. The cumulative and synergistic impacts related to the habitat stressors will have a negative effect on NCSO because the cumulative and synergistic impacts will decrease connectivity in the highly fragmented habitat of NCSO. In Washington and areas of Oregon outside of NCSO, the effect of cumulative and synergistic impacts related to habitat-related stressors is lower than the other areas, and much of this area is considered to be unoccupied. Where extant populations do occur in these areas (SOC and ONP), the cumulative and synergistic effects are likely relatively greater in SOC compared to ONP, due to the potentially greater effects of fire associated with climate change, although in both cases the cumulative and synergistic effects of stressors remain relatively low.

For the mortality-related stressors, we quantitatively assessed the cumulative impacts where data were available to do so. For fisher populations in SSN and NCSO, where data were available, mortality related to research activities, collisions with vehicles, and anticoagulant rodenticide poisoning add, in aggregate, 3–17 percent annual mortality to naturally occurring mortality from disease and predation (collectively 6–32 percent mortality) and other natural sources such as starvation. These numbers are comparable to studies showing that 10–20 percent reductions within the reasonable range of mortality and reproductive rates would cause fisher populations to shift from growth to population stagnation (lack of expansion) or decline. Therefore, we have concern about cumulative effects related to mortality stressors in these fisher populations. Because we lack specific mortality estimates for reintroduced populations in Washington and Oregon outside of NCSO, we are uncertain whether mortality rates are transferable from the areas with quantitative data. In addition, because the remainder of the area in Washington and Oregon outside of NCSO is considered unoccupied by fishers, estimates of direct mortality do not apply in these areas.

For synergistic effects among mortality stressors, and synergistic effects between mortality and habitat stressors, we qualitatively described, above and in the Species Report (Service 2014, Cumulative and Synergistic Effects section), some of the expected consequences of these combinations of stressors. While the data lack specificity supporting conclusions about impacts to fisher populations, or comparisons between fisher populations, studies indicate that these synergistic effects may lead to increases in mortality rates in the future, beyond those reflected in the scope and severity calculations drawn from current data.

We found that the cumulative and synergistic effects of both mortality and habitat-related stressors pose a threat based on the information presented above. We recognize that there will likely be differences in how these cumulative and synergistic effects present themselves in the various sub-regions and populations. Considered collectively, cumulative and synergistic effects of habitat and mortality-related stressors are particularly problematic in the SSN and NCSO. In Washington and areas of Oregon outside of NCSO, these effects are lower than the other areas, and much of this area is considered to be unoccupied.

The reader is directed to the draft Species Report for a more detailed discussion of our evaluation of the biology of and threats to the West Coast DPS of fisher and the influences that may affect its continued existence. Our conclusions are based upon the best scientific and commercial data available as reflected in our January 2014 draft Species Report and the expert conclusions of the draft Species Report team members.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to the West Coast DPS of fisher.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that the West Coast DPS of fisher meets the definition of a threatened species (likely to become endangered throughout all or a significant portion of its range within the foreseeable future) based on the scope and severity of threats currently impacting the species.

At the time of the 2004 Finding, the West Coast DPS of fisher was described as having lost much of its historical habitat and range. Specifically, the 2004 Finding stated that the fisher is considered to be extirpated or reduced to scattered individuals in Washington,

extant fisher populations in Oregon are restricted to two genetically distinguishable populations in the southern portion of the State, and extant fisher populations in California consist of two remnant populations located in northwestern California and the southern Sierra Nevada Mountains (69 FR 18771). Regarding population size, the 2004 Finding found that the relative reduction in the range of the fisher on the West Coast, the lack of detections or sightings over much of its historical distribution, and the high degree of genetic relatedness within some populations indicate the likelihood that extant fisher populations are small (69 FR 18772). In addition, threats to the West Coast DPS of fisher were described including habitat loss and fragmentation, incidental capture, removal of important habitat elements such as cover, mortality from vehicle collisions, decrease in the prey base, human disturbance, small population size and isolation, and inadequacy of existing regulatory mechanisms (69 FR 18791). A Listing Priority Number of 6 was given to the West Coast DPS of fisher in the 2004 Finding because the overall magnitude of threats was high and the overall immediacy of threats was not imminent. In addition, the threats were described as occurring across the range of the DPS, resulting in a negative impact on fisher distribution and abundance (69 FR 18792). The 2004 Finding also stated that additional reintroduced populations of fishers will reduce the probability that a stochastic event would result in extirpation of the species, and we would evaluate a completed conservation strategy to determine whether it sufficiently removes threats to the fisher so that it no longer meets the definition of a threatened species under the Act (69 FR 18792). Since the 2004 Finding, reintroductions have occurred in ONP and NSN, but a multi-State conservation strategy has not been finalized and implemented.

Currently, fishers in the West Coast DPS are known to exist in two extant native populations (one small population and one with population size estimates ranging from 258 to 4,018) and three small reintroduced populations (Service 2014, pp. 34–46). The two extant native populations are the SSN population and the NCSO population. The three reintroduced populations are the ONP reintroduced population, SOC reintroduced population, and NSN reintroduced population. The population estimate of the SSN population is approximately 300 individuals, but there is no statistically detectable trend in occupancy. There are no discernible positive or negative total trends in the NCSO population, and studies have suggested both positive and negative population trends at various times and at localized study sites. The status and population estimate of the NCSO population as a whole is unclear. The SOC population has persisted since its establishment more than 30 years ago, but it does not appear to have expanded much beyond the area in which it was reintroduced. Fishers reintroduced into ONP and NSN have successfully bred and produced young, but it is still too early to determine the long-term persistence of these populations. Overall, the West Coast DPS of fisher exists in two separate native populations (one small population and one with population size estimates ranging from 258 to 4,018) that have persisted but do not appear to be expanding, and the West Coast DPS of fisher has been supplemented by one reintroduced population more than 30 years ago and two recent reintroductions for which it is too early to conclude the degree to which they will persist and contribute to future fisher conservation.

Based on our draft Species Report, we find the threat of trapping (Factor B) that was prevalent in the early 1900s is no longer a threat to the West Coast DPS of fisher, but the two extant populations are not expanding geographically even though this threat has been removed. The main threats to the West Coast DPS are habitat loss from wildfire and vegetation management (Factor A), as well as toxicants (Factor E), and the cumulative impact and synergistic effects of these and other stressors in small populations (Factor E). These threats, however, are not evenly distributed across the DPS. In addition, threats such as vegetation management are not evenly distributed in scope and severity across ownerships, for example, with increased harvest rates on non-Federal lands. Furthermore, habitat loss on Federal lands, particularly in the NWFP area, has substantially decreased over the past two decades; this information was not recognized or available for our 2004 Finding.

Fisher populations are fragmented and greatly reduced from their historical range in the West Coast DPS area. Since the 2004 Finding, we have more information on many of the threats. For example, it appears that wildfire is increasing in extent (Factor A), more information on the potential effects of climate change on fishers (Factor A and E) has become available, and toxicant exposure has recently been identified as a threat (Factor E). In addition, data are now available that quantify overall mortality rates for direct causes of fisher mortality within study areas. Overall, fishers are still absent from much of their historical range (the two original extant populations have not expanded), threats at the time of the 2004 Finding are still in place, and some threats since the time of the 2004 Finding have increased or are new. And it is too early to determine if the reintroduced populations will persist.

Based on our review of the best scientific and commercial data available, we have determined the West Coast DPS of fisher meets the definition of a threatened species under the Act. The main threats to the West Coast DPS of fisher are habitat loss from wildfire and vegetation management, as well as toxicants, and the cumulative impact and synergistic effects of these and other stressors in small populations. We find that the West Coast DPS of fisher is not currently in danger of extinction throughout all of its range because it exists in two separate native populations (one small and one with population size estimates ranging from 258 to 4,018) that have persisted, and it currently exists in three reintroduced populations that provide redundancy, representation, and resiliency for the extant populations. In addition, the threats acting on the West Coast DPS of fisher are not all imminent, and the threats are not evenly distributed across the DPS. However, we do find that the West Coast DPS of fisher is likely to become endangered throughout all of its range in the foreseeable future (estimated as 40 years for the West Coast DPS of fisher) based on multiple threats impacting the remaining two extant native original populations and the cumulative and synergistic effects of the threats on small populations in the West Coast DPS of fisher. In reaching this conclusion, we have considered available conservation measures and regulatory mechanisms that may ameliorate these threats, but even after taking those factors into account, we conclude that the species is likely to become endangered throughout all of its range in the foreseeable future. After studying an array of time periods used in modeling, we estimated 40 years as the foreseeable future for fisher. For example, climate models pertaining to fisher habitat, HCPs, and timber harvest models generally predict 50 to 100 years into the future, and forest planning documents often predict over shorter timeframes (10 to 20 years). As a result, we considered 40 years to be a reasonable estimate of the foreseeable

future for fisher because it falls within the spectrum of predictions into the future and is supported by habitat model and climate model predictability.

Therefore, on the basis of the best available scientific and commercial information, we propose listing the West Coast DPS of fisher as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Significant Portion of the Range

Because we have determined that the West Coast DPS of fisher is a threatened species throughout all of its range, no portion of its range can be ''significant'' for purposes of the definitions of endangered species and threatened species. See our final policy interpreting the phrase ''Significant Portion of its Range'' (SPR) (79 FR 37578) for more information.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species 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, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for 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 also identifies recovery criteria for review when a species may be ready for downlisting or delisting, 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 Yreka 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, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, 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. If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of California, Oregon, and Washington would be eligible for Federal funds to implement management actions that promote the protection or recovery of the West Coast DPS of fisher. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the West Coast DPS of fisher is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. 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 an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities as well as toxicant use on Federal lands administered by FWS, the U.S. Forest Service, BLM, and National Park Service; issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

Analysis Under Section 4(d) of the Act

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.

The prohibitions have certain statutory exemptions, which are found in section 10 of the Act. 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.

While we are not proposing a section 4(d) rule concurrent with the proposed listing rule, we are soliciting comments and information regarding the applicability of such a rule for the species. See the Information Requested section above for more information.

Other DPS Alternatives

The November 28, 2000, petition we received to list a DPS of the fisher under the Act targeted the portion of the fisher's range that included portions of California, Oregon, and Washington. Because the petitioned action covered the three-State area, and to be responsive to the petition, we began our analysis with this area constituting the DPS boundary. We have found fisher in this area to be a valid DPS warranting listing as a threatened species under the Act (see Determination section above). However, the range of a species may theoretically be divided into any of several potential configurations that may all meet the discreteness and significance criteria of our DPS policy. In the case of the fisher, we have identified smaller areas within the larger DPS boundary that would also potentially constitute a valid DPS, and that may warrant listing under the Act. The historical fisher populations in most of Oregon and Washington are considered to be likely extirpated. Studies of neutral genetic variation revealed that fishers in the West Coast range show a gradient of genetic diversity, decreasing from north to south consistent with a history of colonization from the north, but we do not know the genetic identity of fishers now extirpated from Oregon. New information about genetics and the current distribution of extant fishers led us to consider two other DPS alternatives that more closely reflect the areas where native fishers are known to be currently extant.

Through peer review and public comment we may determine that the proposed DPS as set forth in this document is the most appropriate for fisher conservation. Alternatively, we could determine that one of the alternative DPSs set forth below would be most appropriate for the conservation of the fisher. Therefore, any final listing determination may differ from this proposal.

In conducting our status review of the West Coast DPS of fisher, we evaluated a number of alternative DPSs that may potentially also be valid DPSs (covering a smaller entity or entities). We are considering the appropriateness of two of these alternatives, and we are seeking public and peer review input on potential DPS alternatives. The first alternative (Alternative 1) consists of a single DPS encompassing the extant native populations (one DPS that includes NCSO (which includes the reintroduced native NSN) and SSN (see Figure 2). The second alternative (Alternative 2) consists of two separate narrowly drawn DPSs around each of the extant native populations (one DPS around NCSO (which includes the reintroduced native NSN) and one DPS around SSN) (see Figure 3). Both of these alternatives would not include the reintroduced nonnative SOC population, and an option for the boundary separating the native populations from the nonnative population may be at the Rogue River and Interstate 5 at the northeast corner of the NCSO population. In addition, both of these alternatives would not include the portion of Oregon north of NCSO and all of Washington because native fishers are considered to be likely extirpated. These alternatives would also not include the reintroduced population in Washington (ONP) or the reintroduced population in Oregon (SOC) because individuals in these areas do not share the unique genetic characteristics found in the California and southern Oregon NCSO (which includes the reintroduced native NSN) and SSN populations. Each of these two DPS alternatives is described below.

Alternative 1: Single DPS Encompassing the Extant Populations With Unique Genetic Characteristics in California and Southern Oregon

Alternative 1 includes a single DPS covering the NCSO (which includes the reintroduced NSN) and SSN populations and the area in between these populations. The northern boundary for this DPS could be described as generally the Rogue River in Oregon (approximately 20 km from the northernmost recent verified fisher location in NCSO), Interstate 5 (which divides NCSO from SOC), the Klamath River, and the California border. The rest of the boundary would be based on the historical distribution of fishers as described in the 2004 Finding.

Alternative 1 focuses on conservation of known native west coast fishers and excludes all reintroduced populations established with non-California/Oregon fishers. In addition, this alternative excludes the area to the north of NCSO where native fisher populations are considered to be likely extirpated. This alternative does include both the SSN and the NCSO (which includes the reintroduced NSN) populations, which each have unique genetic characteristics, and it would allow management of both these native populations as a single DPS, allowing for recovery efforts throughout the fisher's historical range in California and southern Oregon.

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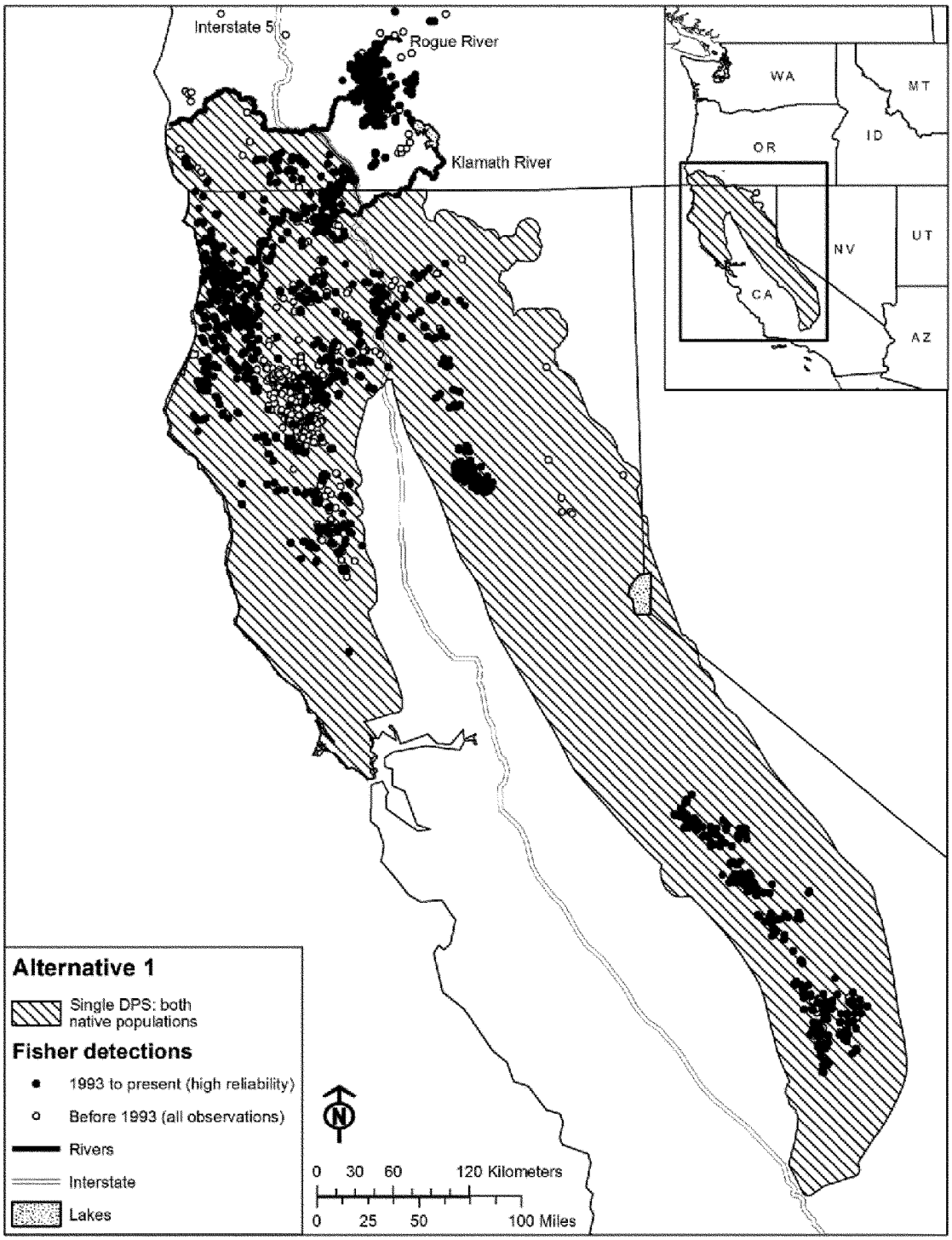
Figure 2. Alternative 1—Single DPS encompassing the extant populations with unique genetic characteristics in California and southern Oregon.



Alternative 2: Two Narrowly Drawn DPSs Around the Extant Populations With Unique Genetic Characteristics in California and Southern Oregon

Alternative 2 encompasses two separate DPSs: one NCSO (which includes the reintroduced NSN) DPS and another SSN DPS. The NCSO (which includes the reintroduced NSN) DPS could be described as the area generally south of the Rogue River in Oregon (approximately 20 km from the northernmost recent verified fisher location in NCSO), Interstate 5 (which divides NCSO from SOC), the Klamath River, and the California border. The NCSO (which includes the reintroduced NSN) DPS southern boundary could be described as running along the Middle Fork Feather River (approximately 20 km south of NSN translocated animals) and California Highway 70. The SSN DPS northern boundary could be described as running along the

Tuolumne River (approximately 30 km north of recent verified fisher locations), which corresponds to a break in habitat continuity according to the habitat models described in the draft Species Report (Service 2014, pp. 18–22). The northeastern boundary of the SSN DPS could be described as running along Tioga Pass Road (State Highway 120) to its junction with forested areas west of Highway 395. The rest of the boundary is based on the historical distribution of fishers as described in the 2004 Finding.

Alternative 2 focuses on conservation of extant native populations with unique genetic characteristics in California and southern Oregon and excludes all reintroduced populations established with non-California/Oregon fishers. In addition, this alternative excludes the area to the north of NCSO where fisher populations (excluding SOC) are considered to be likely extirpated. This alternative does include both the SSN and the NCSO (which includes the reintroduced native NSN) populations, which each have unique genetic characteristics, and this alternative would allow for management of the populations as separate DPSs recognizing the unique genetic characteristics within each population. In addition, if the magnitude of certain threats were found to be different in the two DPSs, this alternative would allow different management for each DPS with regard to recovery.

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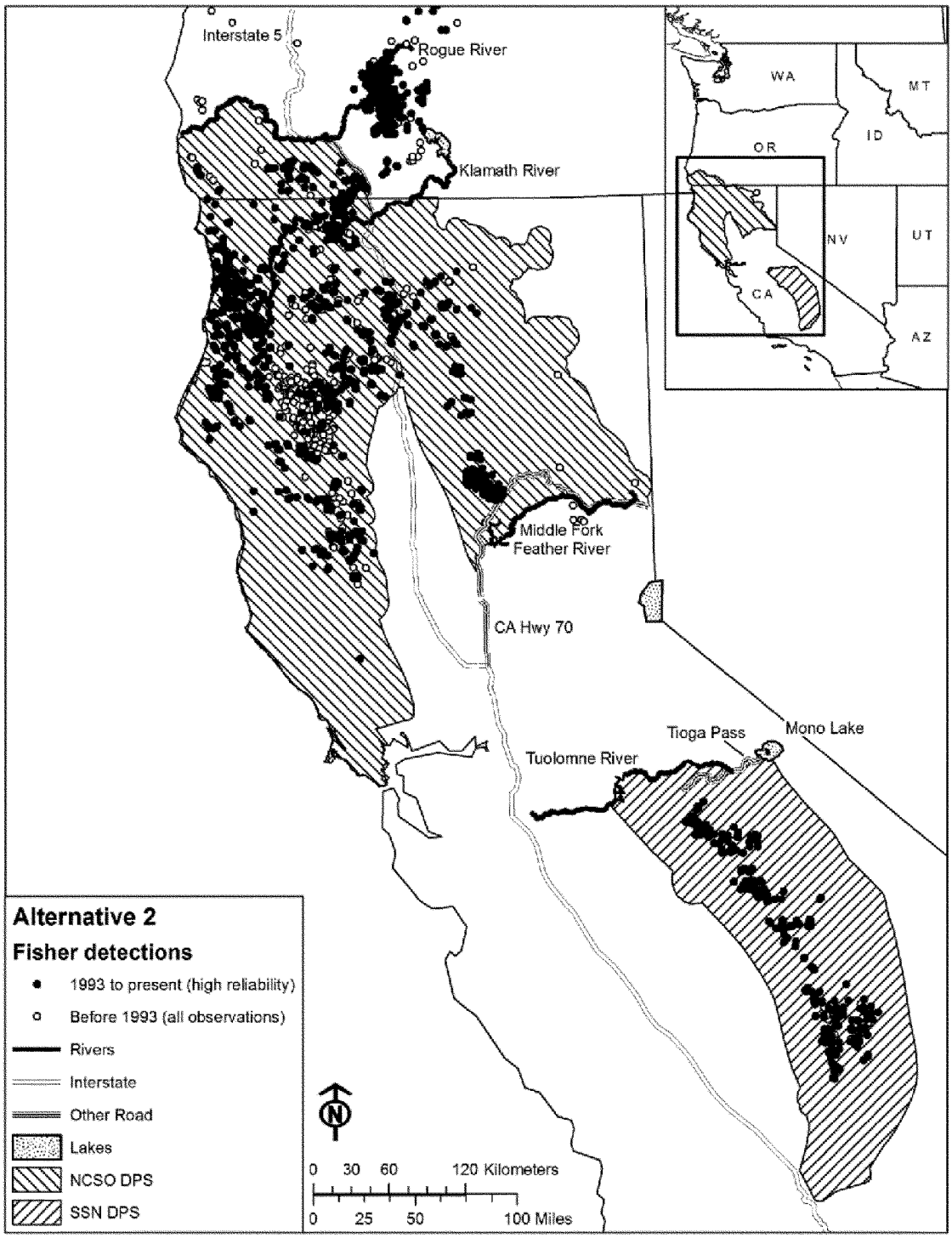
Figure 3. Alternative 2—Two narrowly drawn DPSs around the extant populations with unique genetic characteristics in California and southern Oregon.



We seek peer review and public comment on the uncertainties associated with the specific topics outlined above in the Information Requested section and in this Other DPS Alternatives section. We envision that specific information from the peer reviewers and the public on the proposed DPS and the two alternatives will inform our final listing decision.

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed

. . . on which are found those physical or biological features (I) Essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Section 3(3) of the Act (16 U.S.C. 1532(3)) also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.''

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat of take attributed to collection or vandalism under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. Therefore, in the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, a finding that designation is prudent is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is unoccupied; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we determine that designation of critical habitat is prudent for the West Coast DPS of fisher.

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exists: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Delineation of critical habitat requires, within the geographical area occupied by the West Coast DPS of fisher, identification of the physical or biological features essential to the conservation of the species. Information regarding the West Coast DPS of fisher life functions and habitats associated with these functions has expanded greatly in recent years. At this point, the information sufficient to perform a required analysis of the impacts of the designation is lacking due to the considered DPS alternatives in this proposed rule and our request to seek public and peer review input on these alternatives. A careful assessment of the habitats that may qualify for designation as critical habitat will require a thorough assessment; we also need more time to analyze the comprehensive data to identify specific areas appropriate for critical habitat designation. Accordingly, we find designation of critical habitat to be ''not determinable'' at this time.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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. Specifically, we reached out to Tribes regarding the March 19, 2013, Notice of Initiation of Status Review (78 FR 16828), and in September 2013, we sent a formal request to Tribes for their review of the draft Species Report.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Yreka Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Pacific Southwest Regional Office, the Yreka Fish and Wildlife Office, and the Pacific Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Fisher'' to the List of Endangered and Threatened Wildlife in alphabetical order under Mammals 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						
MAMMALS							
*	*	*	*	*	*		*
Fisher	*Pekania pennanti*	Canada (Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Northwest Territories, Ontario, Quebec, Saskatchewan, Yukon); U.S.A. (CA, CT, DC, IA, ID, IL, IN, KY, MA, MD, ME, MI, MN, MT, NC, ND, NH, NJ, NV, NY, OH, OR, PA, RI, TN, UT, VA, VT, WA,WI, WV, WY).	West Coast DPS: CA, OR, and WA.	T	.....	NA.	NA.
*	*	*	*	*	*		*

* * * * *

Dated: September 9, 2014.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–23456 Filed 10–6–14; 8:45 am]

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Notices

Federal Register
Vol. 79, No. 194
Tuesday, October 7, 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.

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

TIME AND DATE: 10:00 a.m.–12:00 p.m. November 5, 2014

PLACE: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public: The primary purpose of this meeting is to (1) Review the independent auditors' report of Commission's financial statements for fiscal year 2013–2014; (2) Review the Low-Level Radioactive Waste (LLRW) generation information for 2013; (3) Consider a proposed budget for fiscal year 2015–2016; (4) Review recent regional and national developments regarding LLRW management and disposal; and (5) Elect the Commission's Officers.

Portions Closed to the Public: Executive Session, if deemed necessary, will be announced at the meeting.

CONTACT PERSON FOR MORE INFORMATION: Rich Janati, Administrator of the Commission, at 717–787–2163.

Rich Janati,

Administrator, Appalachian Compact Commission.

[FR Doc. 2014–23877 Filed 10–6–14; 8:45 am]

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COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of special meeting.

DATES: *Date and Time:* Friday, October 10, 2014; 9:30 a.m. EDT.

ADDRESSES: *Place:* 1331 Pennsylvania Ave. NW., (entrance on F Street NW.,) Suite 1150, Washington, DC 20425.

FOR FURTHER INFORMATION CONTACT: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the briefing and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

SUPPLEMENTARY INFORMATION:

Business Meeting Agenda

I. Approval of the Agenda
II. Management and Operations
- Discussion on Personnel Matters

III. Adjournment of Meeting

Dated: October 2, 2014.

Marlene Sallo,

Staff Director.

[FR Doc. 2014–23971 Filed 10–3–14; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Membership of the Economic Development Administration Performance Review Board

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of Membership on the Economic Development Administration's Performance Review Board Membership.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the Economic Development Administration (EDA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for EDA's Performance Review Board begins on October 7, 2014.

FOR FURTHER INFORMATION CONTACT: Jennifer Munz, U.S. Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482–4051.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Economic Development Administration (EDA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for EDA's Performance Review Board begins on October 7, 2014. The name, position title, and type of appointment of each member of EDA's Performance Review Board are set forth below by organization:

1. *Department of Commerce, Office of the Secretary, Office of General Counsel (OS/OGC)* Stephen D. Kong, Chief Counsel for Economic Development, Career SES, serves as Chairperson (New Member)
2. *Department of Commerce, International Trade Administration (ITA)* Kenneth J.E. Hyatt, Deputy Under Secretary for International Trade, Career SES; Chandra F. Brown, Deputy Assistant Secretary for Manufacturing, Non-Career SES, Political Advisor (New Member)
3. *Department of Commerce, Minority Business Development Agency (MBDA)* Edith J. McCloud, Associate Director for Management, Career SES
4. *Department of Commerce, Office of the Secretary (OS)* Gordon T. Alston, Director, Financial Reporting and Internal Controls, Career SES.

5. *Department of Commerce, National Oceanic and Atmospheric Administration (NOAA)* Holly A. Bamford, Assistant Administrator for Ocean Services and Coastal Zone Management, Career SES (New Member); Russell F. Smith, III, Deputy Assistant Secretary for International Fisheries, Non-Career SES, Political Advisor (New Member)
6. *Department of Commerce, National Telecommunications and Information Administration (NTIA)* Angela M. Simpson, Deputy Assistant Secretary for Communications and Information, Non-Career SES, Political Advisor (New Member)

Dated: October 1, 2014.

Denise A. Yaag,

Director, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary/Office of the CFO/ASA, Department of Commerce.

[FR Doc. 2014–23948 Filed 10–6–14; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Temporarily Denying Export Privileges

X–TREME Motors LLC a/k/a XTREME Motors, 2496 South 1900 West, West Haven, Utah 84401
and
XTREME Outdoor Store a/k/a XTREME Outdoors, 2496 South 1900 West, West Haven, Utah 84401
and
Tyson Preece, 3930 West Old Highway Road, Morgan, Utah 84050
and
Corey Justin Preece a/k/a Corey Preece a/k/a Justin Preece, 1245 South Morgan Valley Drive, Morgan, Utah 84050
and
Toby Green, 480 West 175 North, Morgan, Utah 84050

Pursuant to Section 766.24 of the Export Administration Regulations (the ''Regulations'' or ''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I issue an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of: X–TREME Motors LLC, also known as XTREME Motors; XTREME Outdoor Store, also known as XTREME Outdoors; Tyson Preece; Corey Justin Preece, also known as Corey Preece or Justin Preece; and Toby Green. Corporate filings with the Utah Secretary of State list both Preeces and Green as officers of X–TREME Motors LLC. X–TREME Motors LLC is a Utah-based company that holds itself out as selling all-terrain vehicle, dirt bike and snowmobile parts. XTREME Outdoors Store is an on-line vendor for tactical gear and equipment such as rifle scopes, and shares the same address and phone number with X–TREME Motors LLC. Corey Justin Preece is listed as the registrant of XTREME Outdoor Store's Web site using the name Justin Preece.

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and 776.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent [.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

In its request, BIS has presented evidence that X–TREME Motors LLC and XTREME Outdoors (collectively ''X–TREME'') have repeatedly engaged in conducted prohibited by the Regulations by exporting items controlled for Crime Control reasons without the required licenses to various destinations, including Russia and China. In order to evade detection by law enforcement, X–TREME has intentionally provided false information on Customs Declarations by stating the packages contain various ATV parts. Since September 1, 2014, the U.S. Government has identified over 200 shipments exported or intended for export where X–TREME mislabeled the contents. The U.S. Government has detained approximately 50 of those shipments, including approximately 20 shipments of rifle scopes to destinations that would require an export license from BIS. A search of BIS's licensing database reveals no licensing history as to any of these shipments of riflescopes.

For example, one detained shipment from on or about September 4, 2014, included a Model XPS–3 holographic weapon sight classified under ECCN 0A987 and controlled for Crime Control reasons. The shipment was destined for Russia, and as such required a Department of Commerce license pursuant to Section 742.7 of the Regulations. The Customs Declaration submitted to the United States Postal Service falsely labeled the contents of the shipment as ''ATV GRIPS.'' X–TREME MOTORS LLC was listed as the shipper. Affixed to the product box containing the XPS–3 weapon sight is a manufacturer's sticker warning that the item ''is controlled under the Export Administration Regulations (EAR) [ECCN 0A987]'' and may not be exported without U.S. Department of Commerce authorization. (Parenthetical and brackets in original). Despite having notice that a license was required to export the item, no license was sought or obtained for this attempted export.

On or about September 10, 2014, the U.S. Government detained another shipment destined for Russia containing a Taser Model C2 stun gun, classified under ECCN 0A985, and controlled for Crime Control reasons. A Department of Commerce license was required to export the item to Russia pursuant to Section 742.7 of the Regulations. The Customs Declaration listed the shipper as X–TREME MOTORS LLC and again falsely indicated that the contents of the shipment were ''ATV GRIPS.'' Similarly, no license was obtained.

A third example involves a shipment detained on or about September 4, 2014, which included two 16-ounce cans of Oleoresin Capsicum Spray (or pepper spray), classified under ECCN 1A984, and controlled for Crime Control reasons. The Customs Declaration indicated that the shipment was destined for Russia. The export therefore required a Department of Commerce license pursuant to Section 742.7 of the Regulations. The Customs Declaration identified X–TREME MOTORS LLC as the shipper, and again falsely stated that the contents of the shipment were ''ATV GRIPS.'' As with the other exports and attempted exports referenced above, no license was obtained.

I find that the evidence presented by BIS demonstrates that a violation of the Regulations is imminent in both time and degree of likelihood. The numerous repeated and willful violations of the

[1] The Regulations are currently codified at 15 CFR parts 730–774 (2014). The EAR issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (Aug. 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (2006 & Supp. IV 2010).

Regulations by X–TREME that have occurred since September 1, 2014, are strong indicators that future violations are likely absent the issuance of a TDO. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with X–TREME in export transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the EAR.

Additionally, Section 766.23 of the Regulations provides that ''[i]n order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders. . . .'' 15 CFR 766.23(a). As stated above, both Preeces and Green are both listed as officers of X–TREME Motors LLC on corporate filings with the Utah Secretary of State's office, and Corey Justin Preece is also listed as the registrant of the XTREME Outdoor Store Web site. Other open source information indicates that Green and Tyson Preece are listed as principals or owners of X–TREME Motors LLC. As such, I find that both Preeces and Green are related to X–TREME Motors LLCs based on their positions of responsibility and that their additions to the order is necessary to prevent evasion.

Accordingly, I find that an order denying the export privileges of X–TREME Motors LLC, XTREME Outdoor Store, Tyson Preece, Corey Justin Preece, and Toby Green is necessary, in the public interest, to prevent an imminent violation of the EAR.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with Section 766.24 of the Regulations.

It is therefore ordered:

First, that X–TREME MOTORS LLC, a/k/a XTREME MOTORS, 2496 South 1900 West, West Haven, Utah 84401; XTREME OUTDOOR STORE, a/k/a XTREME OUTDOORS, 2496 South 1900 West, West Haven, Utah 84401; TYSON PREECE, 3930 West Old Highway Road, Morgan, Utah 84050; COREY JUSTIN PREECE, a/k/a COREY PREECE, a/k/a JUSTIN PREECE, 1245 South Morgan Valley Drive, Morgan, Utah 84050; and TOBY GREEN, 480 West 175 North, Morgan, Utah 84050, and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

In accordance with the provisions of Section 766.24(e) of the EAR, X–TREME Motors LLC and/or XTREME Outdoor Store may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022. In accordance with the provisions of Sections 766.23(c)(2) and 766.24(e)(3) of the EAR, Tyson Preece, Corey Justin Preece and/or Toby Green may, at any time, appeal their inclusion as a related person by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. X–TREME Motors LLC and/or XTREME Outdoor Store may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be sent to X–TREME Motors LLC, XTREME Outdoor Store, and each related person, and shall be published in the **Federal Register**.

This Order is effective upon issuance and shall remain in effect for 180 days.

Dated: September 30, 2014.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2014–23878 Filed 10–6–14; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Membership of the Bureau of Industry and Security Performance Review Board

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

ACTION: Notice of Membership on the Bureau of Industry and Security's Performance Review Board Membership.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the Bureau of Industry and Security (BIS), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of BIS's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for BIS's Performance Review Board begins on October 7, 2014.

FOR FURTHER INFORMATION CONTACT: Ruthie B. Stewart, Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482–3130.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Bureau of Industry and Security (BIS), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of BIS's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for BIS's Performance Review Board begins on October 7, 2014. The name, position title, and type of appointment of each member of BIS's Performance Review Board are set forth below by organization:

Department of Commerce, Bureau of Industry and Security (BIS)

Daniel O. Hill, Deputy Under Secretary for Industry and Security, Career SES, Chairperson

Matthew S. Borman, Deputy Assistant Secretary for Export Administration, Career SES

Richard R. Majauskas, Deputy Assistant Secretary for Export Enforcement, Career SES

Kathryn H. Chantry, Chief Financial Officer and Director of Administration, Career SES (New Member)

Department of Commerce, Office of the General Counsel (OGC)

Brian D. DiGiacomo, Chief, Employment and Labor Law Division, Career SES

Department of Commerce, Office of the Secretary (OS)

Frederick E. Stephens, Deputy Assistant Secretary for Administration, Office of the Chief Financial Officer and Assistant Secretary for Administration, Political Advisor

Dated: October 1, 2014.

Denise A. Yaag,

Director, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary/Office of the CFO/ASA, Department of Commerce.

[FR Doc. 2014–23942 Filed 10–6–14; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Certain Lined Paper Products From India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain lined paper products from India. The period of review (POR) is January 1, 2012, through December 31, 2012, and the review covers one producer/exporter of the subject merchandise, A.R. Printing & Packaging India Pvt. Ltd. (AR Printing).[1] We preliminarily determine that AR Printing received countervailable subsidies during the POR.

DATES: *Effective Date:* October 7, 2014.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain lined paper products. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in the *Lined Paper Order,* remains dispositive.[2]

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific. *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity. In making these findings, we relied, in part, on facts available because AR Printing failed to respond to the Department's requests for necessary information and therefore necessary information was not on the record, and

[1] The Department rescinded its review of Navneet Education Ltd. on January 31, 2014. *See Certain Lined Paper Products from India: Notice of Partial Rescission of Countervailing Duty Administrative Review: 2012,* 79 FR 5377 (January 31, 2014).

[2] *See* Decision Memorandum for Preliminary Results for the Countervailing Duty Administrative Review of Certain Lined Paper Products from India, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated concurrently with these results (Preliminary Decision Memorandum); *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Lined Paper Order*).

AR Printing withheld requested information, failed to provide requested information by the established deadlines, and significantly impeded this proceeding. *See* sections 776(a)(1) and (2)(A)–(C) of the Act. Furthermore, because we determine that AR Printing failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information, we drew an adverse inference in selecting from among the facts otherwise available. *See* section 776(b) of the Act. Finally, the Department intends to seek additional information from the Government of India concerning certain of its claims that AR Printing did not use certain programs and may verify information received.

For a full description of the methodology underlying our conclusions, see ''Decision Memorandum for Preliminary Results for the Countervailing Duty Administrative Review of Certain Lined Paper Products from India,'' (Preliminary Decision Memorandum) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following net subsidy rate exists for the period January 1, 2012, though, December 31, 2012:

Company	Net subsidy rate
A.R. Printing & Packaging India Pvt. Ltd. (AR Printing).	71.71 percent *ad valorem.*

Assessment and Cash Deposit Requirements

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of this review. We will instruct CBP to collect cash deposits for the respondent at the countervailing duty rate indicated above of the f.o.b. invoice price on all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. We will also instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

The Department intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results. The Department will notify interested parties of the schedule for submitting written comments (case briefs) and rebuttal comments (rebuttal briefs).[3] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[4]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[4] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[5] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 30, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

Application of Adverse Facts Available (AFA)—AR Printing

Analysis of Programs

Summary
Background
Scope of the Order
Application of AFA—AR Printing
Analysis of Programs
Programs Preliminarily Determined To Be Countervailable
1. Advance Authorization Program (AAP)
2. Export Promotion of Capital Goods Scheme (EPCGS)
3. Pre and Post-Shipment Loans
4. Export Oriented Units (EOUs)
5. Market Development Assistance (MDA)
6. Status Certificate Program
7. Market Access Initiative (MAI)
8. State Government of Maharashtra (SGOM) Programs
A. Sales Tax Incentives Provided by SGOM
B. Electricity Duties Exemptions Under the SGOM Package Program of Incentives of 1993
C. Loan Guarantees Based on Octroi Refunds by the SGOM
D. Land for Less than Adequate Remuneration (LTAR)
Programs Preliminarily Determined To Be Terminated
1. Duty Entitlement Passbook Scheme
2. Export Processing Zones (Renamed Special Economic Zones)
3. State Government of Gujarat (SGOG) Tax Incentives
Programs Preliminarily Determined To Be Not Used During the POR
1. The GOI's Loan Guarantee Program
2. Income Deduction (801B Tax Program)
Recommendation

[FR Doc. 2014–23968 Filed 10–6–14; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* 19 CFR 351.309(c)(ii) and (d)(1).

[4] *See* 19 CFR 351.309(c)(2) and (d)(2).

[3] *See* 19 CFR 351.310(c).

[5] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–844]

Narrow Woven Ribbons With Woven Selvedge From Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on narrow woven ribbons with woven selvedge from Taiwan. The review covers two producers/exporters of the subject merchandise, King Young Enterprise Co., Ltd. (King Young) [1] and Hen Hao Trading Co. Ltd. a.k.a. Taiwan Tulip Ribbons and Braids Co. Ltd. (Hen Hao). The POR is September 1, 2012, through August 31, 2013. We preliminarily determine that sales of subject merchandise to the United States have been made at prices below normal value (NV). We invite all interested parties to comment on these preliminary results.

DATES: *Effective Date:* October 7, 2014.

FOR FURTHER INFORMATION CONTACT: David Crespo or Alice Maldonado, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3693 and (202) 482–4682, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to this order covers narrow woven ribbons with woven selvedge.[2] The merchandise subject to this order is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by this order is dispositive.

Methodology

The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. Because mandatory respondent Hen Hao failed to respond to the Department's questionnaire, we preliminarily determine to apply adverse facts available (AFA) to this respondent, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and it is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Producer/Exporter	Dumping margin (percent)
King Young Enterprise Co., Ltd./Glory Young Enterprise Co., Ltd./Ethel Enterprise Co., Ltd. Taiwan	3.38
Hen Hao Trading Co. Ltd. a.k.a. Taiwan Tulip Ribbons and Braids Co. Ltd	137.20

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[3] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs to the Department no later than seven days after the date of the final verification report issued in this review. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed within five days after the deadline for the submission of case briefs.[4] A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department.[5] Executive summaries should be limited to five pages total, including footnotes. Interested parties who wish to comment on the preliminary results must file briefs electronically using IA ACCESS. An electronically-filed document must be received successfully in its entirety by IA ACCESS by 5 p.m. Eastern Time on the date the document is due in accordance with 19 CFR 351.303(b).

In accordance with section 774 of the Act, the Department will hold a hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party.[6] Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using IA ACCESS, as noted above. Requests must be received within 30 days of publication of these preliminary results. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.[7] If a request for a

[1] In this review, the Department determined to treat King Young as a collapsed entity with Glory Young Enterprise Co., Ltd., an affiliated producer of subject merchandise, and Ethel Enterprise Co., Ltd. Taiwan, an affiliated trading company that exported subject merchandise to the United States during the period of review (POR). *See* the memorandum from The Team, to James Maeder, Director, Office II, AD/CVD Operations, entitled, ''Whether to Collapse King Young Enterprise Co., Ltd. and Glory Young Enterprise Co., Ltd. in the 2012–2013 Antidumping Duty Administrative Review of Narrow Woven Ribbons With Woven Selvedge From Taiwan,'' dated June 11, 2014.

[2] For a complete description of the scope of the Order, see ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Narrow Woven Ribbons With Woven Selvedge From Taiwan,'' from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement & Compliance (Preliminary Decision Memorandum), dated September 25, 2014. *See also Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR 56982 (Sept. 17, 2010) (*Order*).

[3] *See* 19 CFR 351.224(b).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.309(c)(2).

[6] *See* 19 CFR 351.310.

[7] *Id.*

hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[8] Parties should confirm by telephone the date, time, and location of the hearing.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), unless this deadline is extended.

Assessment Rates

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[9]

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Where assessments are based upon total facts available, including AFA, we instruct CBP to assess duties at the AFA margin rate. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[10]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be equal to the dumping margins established in the final results of this administrative review, unless the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.37 percent, the all-others rate determined in the less-than-fair-value investigation.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 25, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
   a. Normal Value Comparisons
   b. Determination of Comparison Method
   c. Results of Differential Pricing Analysis
   d. Product Comparisons
   e. Export Price
   f. Normal Value
   i. Home Market Viability
   ii. Level of Trade
   iii. Calculation of Normal Value Based on Comparison Market Prices
   iv. Calculation of Normal Value Based on Constructed Value
   g. Currency Conversion
   h. Use of Facts Available
   i. Application of Facts Available With an Adverse Reference
   j. Selection and Corroboration of AFA Rate
5. Recommendation

[FR Doc. 2014–23964 Filed 10–6–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Notice of Partial Rescission and Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain lined paper products (CLPP) from India.[1] The period of review (POR) is September 1, 2012, through August 31, 2013, and the review was initiated with respect to nine companies.[2] We are rescinding the review with respect to seven companies for which review requests were timely withdrawn.[3]

We preliminarily determine that AR Printing had no sales of subject merchandise to the United States during the POR. In addition, we preliminarily find that during the POR, Super Impex made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* October 7, 2014.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Eric Greynolds, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade

[8] *Id.*

[9] *See* 19 CFR 351.212(b)(1).

[10] *See* section 751(a)(2)(C) of the Act.

[11] *See Order,* 75 FR at 56985.

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*CLPP Order*).

[2] The nine companies include: Ampoules & Vials Manufacturing Co. Ltd. (Ampoules & Vials); A.R. Printing & Packaging (India) Pvt. Ltd. (AR Printing); Pioneer Stationery Pvt. Ltd. (Pioneer); Premier Exports (Premier); Marisa International (Marisa); Navneet Publications (India) Ltd.(Navneet); Riddhi Enterprises (Riddhi); SGM Paper Products (SGM); and Super Impex.

[3] The seven companies include: Ampoules & Vials; Pioneer; Premier; Marisa; Navneet; Riddhi; and SGM.

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3797 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the *CLPP Order* is certain lined paper products. The merchandise subject to this order is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.[4]

Partial Rescission of the 2012–2013 Administrative Review

Between November 18, 2013, and February 6, 2014, the following seven companies timely withdrew their requests for administrative review: Ampoules & Vials, Marisa, Navneet, Pioneer, Premier, Riddhi, and SGM. Except for Navneet, no other interested party requested a review of the aforementioned companies. Petitioners submitted requests for review with respect to the following two companies: Navneet and AR Printing.[5] On January 31 and February 6, 2014, Petitioners timely withdrew its review request for Navneet.[6] Thus, in accordance with 19 CFR 351.213(d)(1)[7] and consistent with our practice,[8] we are rescinding this review with respect to these seven companies.

No Shipment Claim by AR Printing

At the outset of this proceeding, AR Printing stated in its quantity and value questionnaire (Q&V) response, that it ''had no shipments of Certain Lined Paper Products during the POR.''[9] On April 10, 2014, we sent a confirmation of non-shipment inquiry to U.S. Customs and Border Protection (CBP) as a means of confirming AR Printing's claim of non-shipment.[10] We did not receive any contradictory information from CBP. Based on AR Printing's assertion of no shipments and no information to the contrary from CBP, we preliminarily determine that AR Printing had no shipments to the United States during the POR.

See the Assessment Rates section of this notice below.

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export prices (EP) have been calculated in accordance with section 772 of the Act.

Super Impex reported that it made no sales to the home market.[11] Super Impex's responses indicate that its sales to third countries also were not viable,[12] within the meaning of section 773(a)(1)(C)(i) of the Act.[13] Therefore, for these preliminary results, we relied on constructed value (CV) as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.

Calculation of Normal Value Based on Constructed Value

For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum at 14–15.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, the Department determines that the weighted-average dumping margin for the POR is as follows:

Producer/exporter	Weighted-average dumping margin (percent)
Super Impex	7.79

Assessment Rate

Upon issuance of the final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[14] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis (i.e.,* 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will

[4] For a complete description of the Scope of the Order, *see* Preliminary Decision Memorandum.

[5] *See* Petitioners' letter dated September 30, 2013.

[6] Petitioners also submitted a withdrawal of review request with respect to Pioneer, but because Petitioners had not submitted a review request for Pioneer, we were unable to act on Petitioners' request. However, because Pioneer self-requested a review, and later timely withdrew its own review request, we were able to rescind the review with respect to Pioneer.

[7] Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review ''if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' The instant review was initiated on October 31, 2012. Therefore, the deadline to withdraw review requests was February 6, 2014. Thus, Petitioners' withdrawal requests are timely.

[8] *See, e.g., Brass Sheet and Strip from Germany: Notice of Rescission of Antidumping Duty Administrative Review,* 73 FR 49170 (August 20, 2008); *see also Certain Lined Paper Products from India: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 21781 (May 11, 2009).

[9] *See* AR Printing's December 2, 2013, Q&V response at 2.

[10] *See* Memorandum to the File from Eric B. Greynolds, Program Manager, titled ''Status of AR Printing & Packaging (India) Pvt. Ltd.'', dated April 7, 2014. CBP returned message no. 4100306 dated April 10, 2014, regarding ''No shipments inquiry for certain lined paper products from India exported by A.R. Printing & Packaging (India) Pvt. Ltd. (A–533–843).''

[11] *See* Super Impex's Section A Questionnaire Response, February 26, 2014, at A–3.

[12] *Id.*

[13] *See* Preliminary Decision Memorandum at 13.

[14] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

apply to entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[15]

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Super Impex will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.91 percent, the all-others rate established in the investigation.

Disclosure and Public Comment

The Department intends to disclose to interested parties to this proceeding the calculations performed in connection with these preliminary results within five days after the date of publication of this notice.[16] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[17] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[18] All case and rebuttal briefs must be filed electronically using IA ACCESS, and must also be served on interested parties.[19] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Executive summaries should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's IA ACCESS system within 30 days of publication of this notice.[20] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.213(h)(2), the Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case and rebuttal briefs, within 120 days after the publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 30, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. Partial Rescission of the 2012–2013 Administrative Review
4. No Shipment Claim by AR Printing
5. Discussion of Methodology

[FR Doc. 2014–23966 Filed 10–6–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this second sunset review, the Department of Commerce (''the Department'') finds that revocation of the antidumping duty order on certain frozen fish fillets (''fish fillets'') from the Socialist Republic of Vietnam (''Vietnam'') would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* October 7, 2014.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2014, the Department published a notice of initiation of the second sunset review of the antidumping duty order on fish fillets from Vietnam,[1] pursuant to section

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[15] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See* 19 CFR 351.224(b).

[17] *See* 19 CFR 351.309(d).

[18] *See* 19 CFR 351.309(c)(2) and (d)(2).

[19] *See* 19 CFR 351.303(f).

[20] *See* 19 CFR 351.310(c).

[1] *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003).

751(c) of the Tariff Act of 1930, as amended (''the Act'').[2] On June 11, 2014, Catfish Farmers of America and individual U.S. catfish processors (''Petitioners'') timely notified the Department of their intent to participate within the deadline specified in 19 CFR 351.218(d)(1)(i), claiming domestic interested party status under section 771(9)(C) and (G) of the Act.[3] On July 2, 2014, the Department received an adequate substantive response from Petitioners within the deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no responses from respondent interested parties. As a result, the Department conducted an expedited (120-day) sunset review of the order, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Order

The merchandise covered by this order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus.* These products are classifiable under tariff article codes 0304.29.6033, 0304.62.0020, 0305.59.0000, 0305.59.4000, 1604.19.2000, 1604.19.2100, 1604.19.3000, 1604.19.3100, 1604.19.4000, 1604.19.4100, 1604.19.5000, 1604.19.5100, 1604.19.6100 and 1604.19.8100 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding, which is contained in the accompanying Issues and Decision Memorandum, is dispositive.[5]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review are addressed in the Issues and Decision Memorandum. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the order were to be revoked. The Issues and Decision Memorandum is a public document and is on file electronically via the Enforcement and Compliance Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to section 752(c)(3) of the Act, the Department determines that revocation of the order would be likely to lead to continuation or recurrence of dumping at weighted average margins up to 63.88 percent.[6]

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: September 29, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–23962 Filed 10–6–14; 8:45 am]

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[2] *See Initiation of Five-Year (''Sunset'') Review,* 79 FR 31306 (June 2, 2014).

[3] *See* Petitioners' June 11, 2014, submission.

[4] *See* Petitioners' July 2, 2014, submission.

[5] *See* ''Expedited Second Sunset Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum,'' from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated concurrently with and hereby adopted by this notice (''Issues and Decision Memorandum'').

[6] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 43713, 43715 (July 24, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Changes to the Membership of the Performance Review Board

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Performance Review Board membership.

SUMMARY: The regulations at 5 CFR 430.310 require agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. In accordance with those regulations, this notice announces changes to the membership of the International Trade Administration's Performance Review Board.

DATES: *Effective Date:* The changes made to the Performance Review Board are effective September 30, 2014.

FOR FURTHER INFORMATION CONTACT: Jennifer Munz, U.S. Department of Commerce, Office of Human Resources Management (OHRM), Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482–4051.

SUPPLEMENTARY INFORMATION: The International Trade Administration (ITA) published its list of Performance Review Board appointees pursuant to the regulations at 5 CFR 430.310 (74 FR 51261). The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay level increases, and Presidential Rank Awards for members of the Senior Executive Service. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

ITA publishes this notice to announce changes to the Performance Review Board's membership. The name, position title, and type of appointment of each member of ITA's Performance Review Board are set forth below by organization:

Department of Commerce, International Trade Administration (ITA)

Tim Rosado, Chief Financial and Administrative Officer, Career SES, serves as Chairperson, new member

Kenneth Berman, Deputy Chief Information Officer, Career SES

Edward M. Dean, Deputy Assistant Secretary for Services, Non-Career SES, Political Advisor, new member

Carole Ann Showers, Director, Office of Policy, Career SES

Holly K. Vineyard, Deputy Assistant Secretary for Asia, Career SES

Department of Commerce, Office of the Secretary (OS)

Lisa A. Casias, Director for Financial Management and Deputy Chief Financial Officer, Career SES

Dated: October 1, 2014.

Denise A. Yaag,

Director, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary/Office of the CFO/ASA, Department of Commerce.

[FR Doc. 2014–23946 Filed 10–6–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Membership of the National Telecommunications and Information Administration's Performance Review Board

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of Membership on the National Telecommunications and Information Administration's Performance Review Board Membership.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of NTIA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for NTIA's Performance Review Board begins on October 7, 2014.

FOR FURTHER INFORMATION CONTACT: Ruthie B. Stewart, Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482–3130.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of NTIA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for NTIA's Performance Review Board begins on October 7, 2014. The name, position title, and type of appointment of each member of NTIA's Performance Review Board are set forth below by organization:

Department of Commerce, National Telecommunications and Information Administration (NTIA)

Fiona M. Alexander, Associate Administrator, Office of International Affairs, Career SES

Leonard M. Bechtel, Chief Financial Officer and Director of Administration, Career SES, Chairperson

Karl B. Nebbia, Associate Administrator for Spectrum Management, Career SES

Department of Commerce, National Telecommunications and Information Administration, First Responder Network Authority (NTIA/FirstNet)

Frank Freeman, Chief Administrative Officer, FirstNet, Career SES (New Member)

Stuart H. Kupinsky, Chief Counsel, FirstNet, Career SES (New Member)

Department of Commerce, International Trade Administration (ITA)

Kenneth Berman, Deputy Chief Information Officer, Career SES (New Member)

Department of Commerce, Office of the Secretary (OS)

Theodore E. LeCompte, Deputy Chief of Staff, Non-Career SES, Political Advisor (New Member)

Dated: October 1, 2014.

Denise A. Yaag,

Director, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary/Office of the CFO/ASA, Department of Commerce.

[FR Doc. 2014–23944 Filed 10–6–14; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0140]

Agency Information Collection Activities; Comment Request; 2015–16 National Teacher and Principal Survey (NTPS) Preliminary Activities

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 8, 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–0140 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 Kubzdela, (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: 2015–16 National Teacher and Principal Survey (NTPS) Preliminary Activities.

OMB Control Number: 1850–0598.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 8,851.

Total Estimated Number of Annual Burden Hours: 1,422.

Abstract: The National Teacher and Principal Survey (NTPS) is a redesign of the Schools and Staffing Survey (SASS). NTPS will be an in-depth, nationally representative survey of first through twelfth grade public school teachers, principals and schools. Kindergarten teachers in schools with at least a first grade are also surveyed. The NTPS will be conducted every two years utilizing core content and a series of rotating modules to allow timely collection of important education trends as well as trend analysis. Topics covered include characteristics of teachers, principals, schools, teacher training opportunities, retention, retirement, hiring, and shortages. This submission is for OMB approval to conduct preliminary field activities prior to data collection. These activities will take place in early 2015 and include submitting NTPS research applications to special districts that require prior research approval before their schools can be recruited for the study. The lead time is necessary to secure approval for the NTPS from these districts prior to the start of data collection.

Dated: October 2, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–23897 Filed 10–6–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0108]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Race to the Top Program Review Protocols

AGENCY: Office of the Secretary/Office of the Deputy Secretary (OS), 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 an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 6, 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–0108 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 Patrick Carr, 202–708–8196.

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: Race to the Top Program Review Protocols.

OMB Control Number: 1894–0011.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 12.

Total Estimated Number of Annual Burden Hours: 744.

Abstract: The ARRA provides $4.3 billion for the Race to the Top Fund (referred to in the statute as the State Incentive Grant Fund). This is a competitive grant program. The purpose of the program is to encourage and reward States that are creating the conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and implementing ambitious plans in four core education reform areas: (a) Adopting internationally benchmarked standards and assessments that prepare students for success in college and the workplace; (b) building data systems that measure student success and inform teachers and principals in how they can improve their practices; (c)

increasing teacher effectiveness and achieving equity in teacher distribution; and (d) turning around our lowest-achieving schools.

Dated: October 2, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–23875 Filed 10–6–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: EIA has submitted to the Office of Management and Budget (OMB) for clearance, under the provisions of the Paperwork Reduction Act of 1995, for the natural gas survey forms (OMB–1975–0175). EIA requests a three-year clearance for the following forms:

• EIA 176, ''Annual Report of Natural and Supplemental Gas Supply and Disposition,''

• EIA 191, ''Monthly and Annual Underground Natural Gas Storage Report,''

• EIA–757, ''Natural Gas Processing Plant Survey,''

• EIA 857, ''Monthly Report of Natural Gas Purchases and Deliveries to Consumers,''

• EIA–910, ''Monthly Natural Gas Marketer Survey,'' and

• EIA–912, ''Weekly Underground Natural Gas Storage Report.''

The proposed data collection will make minor changes to the forms and instructions to provide clarity. The number of respondents for EIA–191, EIA–857 and EIA–757 has been increased to reflect recent survey frame research which has identified new respondents. Data confidentiality procedures for protecting the identifiability of submitted data remain unchanged for all forms with the exception of a portion of Form EIA–191. EIA is also proposing a change to the published revision policy for Form EIA–912, a Principal Federal Economic Indicator. In addition, EIA is proposing specific changes to several of the forms; these changes are described in detail in the ''Supplementary Information'' section below.

DATES: Comments regarding this collection must be received on or before November 6, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718 or contacted by email at *Chad_S_Whiteman@omb.eop.gov.*

ADDRESSES: Written comments should be sent to the

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503, *Chad_S_Whiteman@omb.eop.gov.* and to

Amy Sweeney, U.S. Energy Information Administration, Mail Stop EI–24, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, *Amy.Sweeney@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Ms. Sweeney at the address listed above. Also, the draft forms and instructions are available on the EIA Web site at *http://www.eia.gov/survey/notice/ngdownstreamforms2015.cfm.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) OMB No.: 1975–0175.

(2) Information Collection Request Title: ''Natural Gas Data Collection Program Package.''

(3) Type of Request: Proposed revision and three-year extension of the natural gas surveys.

(4) Purpose: EIA is proposing the following changes:

(a) Form EIA–176, *''Annual Report of Natural and Supplemental Gas Supply and Disposition''*

1. Type of Request: Extension, with changes, of a currently approved collection.

2. Purpose: Form EIA–176, ''Annual Report of Natural and Supplemental Gas Supply and Disposition,'' collects data on natural, synthetic, and other supplemental gas supplies, disposition, and certain revenues by state. The data appear in the EIA publications, *Monthly Energy Review, Natural Gas Annual,* and *Natural Gas Monthly.* The proposed changes include:

• In Part 3, EIA is proposing to collect information on the price of compressed natural gas (CNG) for natural gas local distribution companies that sell CNG to the public. This information will provide information on retail prices of CNG. CNG is a growing segment of the natural gas industry that is not represented in EIA's natural gas retail price series.

• In Part 4, EIA is proposing to collect data related to costs associated with already-reported information on natural gas purchased and received at the city gate. EIA collects information on costs associated with purchases at the city gate on a monthly basis on Form EIA–857 for a sample of companies that report on Form EIA–176. However, the monthly city gate purchase information is frequently subject to monthly true-ups and having an annual benchmark for city gate purchase costs is expected to lead to a more accurate depiction of natural gas distributors' cost of natural gas.

• In Part 5, EIA is proposing to collect the capacity of liquefied natural gas (LNG) marine terminals to gain a better understanding of the extent to which these storage assets are able to supply the market during periods of peak natural gas demand.

3. Estimated Number of Survey Respondents: 2,012 respondents.

4. Annual Estimated Number of Total Responses: The annual number of total responses is 2,012.

5. Annual Estimated Number of Burden Hours: The annual estimated burden is 24,144 hours.

6. Annual Estimated Reporting and Recordkeeping Cost Burden: Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

(b) Form EIA–191, *''Monthly Underground Gas Storage Report''*

1. Type of Request: Extension, with changes, of a currently approved collection.

2. Purpose: Form EIA–191, ''Monthly Underground Gas Storage Report,'' collects data on the operations of all active underground storage facilities. The data appear in the EIA publications *Monthly Energy Review, Natural Gas Annual,* and *Natural Gas Monthly.* EIA is proposing to make the following changes to the form:

• To reduce reporting burden EIA is proposing to discontinue two categories regarding Field Status: ''Depleting'' and ''Other.'' EIA will use only two categories, ''Active'' and ''Inactive.'' The category ''Inactive'' is more descriptive and replaces the Field Status category label of ''Abandoned.'' The ''Depleting'' and ''Other'' categories are rarely used by reporting companies and collapsing these categories into ''Inactive'' will not

cause a loss in data utility, as the same data will still be reported, albeit in a single category.

• EIA is proposing to make public reported values for monthly base gas levels reported in Part 4. This information will enhance the utility of the underground storage information already available to the public pertaining to capacity and working gas capacity. Additionally, base gas can indicate another potential source of supply during times of sustained high demand as there have traditionally been some withdrawals of base gas, albeit small amounts, late during the heating season. The current confidentiality protection covering the other information reported in Part 4, including monthly working gas, total gas in storage, and injections and withdrawals into storage, will be retained. EIA will continue to publish, in disaggregated form, information collected in Part 3 of Form EIA–191, including storage field name and type, reservoir name, location, working gas and total storage field capacity, and maximum deliverability. On its Web site, EIA currently releases this information at the field level through its Natural Gas Annual Respondent Query System.

3. Estimated Number of Survey Respondents: There are approximately 135 respondents. This has been increased from the previous clearance to reflect additional storage operators that have been identified via survey frame research. The change results in an increase of total annual responses and total burden hours as stated below.

4. Annual Estimated Number of Total Responses: The annual estimated number of total responses is 1,620.

5. Annual Estimated Number of Burden Hours: The annual estimated burden is 4,212 hours.

6. Annual Estimated Reporting and Recordkeeping Cost Burden: Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

(c) Form EIA–757, ''*Natural Gas Processing Plant Survey''*

1. Type of Request: Extension, with changes, of a currently approved collection.

2. Purpose: Form EIA–757, ''Natural Gas Processing Plant Survey,'' collects information on the capacity, status, and operations of natural gas processing plants, and monitors constraints of natural gas processing plants during periods of supply disruption in areas affected by an emergency, such as a hurricane. Schedule A of the EIA–757 is collected no more than every three years to collect baseline operating and capacity information from all respondents and Schedule B is activated as needed and collected from a sample of respondents in affected areas as needed. Schedule A was most recently conducted in 2012 and Schedule B was most recently activated in 2012 for Hurricane Isaac with a sample of approximately 20 plants. EIA is proposing to continue the collection of the same data elements on Form EIA–757 Schedules A and B in their present form with the following change:

• EIA is proposing to eliminate two elements from Schedule A, annual average total plant capacity and annual average natural gas flow at plant inlet, as this information will be duplicative of information to be collected on a proposed new survey of natural gas processing plants, Form EIA–915, to be submitted under a separate OMB Control Number.

3. Estimated Number of Survey Respondents: Schedule A: 600; Schedule B: To be determined based on the number of processing plants that are within the proximity of the natural gas supply disruption, historically around 20. Note the total number of respondents in schedule A has been increased from 500 to 600 due to recent research into the number of active natural gas processing plants which has yielded new potential respondents. The change results in an increase of total annual responses and total burden hours as stated below.

4. Annual Estimated Number of Total Responses: Schedule A is used to collect information once every three years. Therefore, the annual estimated number of total responses is 200. The number of respondents for Schedule B varies from year to year, but the most recent activation surveyed approximately 20 respondents.

5. Annual Estimated Number of Burden Hours: The annual estimated burden for Schedule A is 100 hours. Schedule B is estimated to require 1.5 hours for each respondent to complete; the number of respondents varies but the most recent activation surveyed approximately 20 respondents, so the estimated burden is 30 hours.

6. Annual Estimated Reporting and Recordkeeping Cost Burden: Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

(d) Form EIA–857, *''Monthly Report of Natural Gas Purchases and Deliveries to Consumers''*

1. Type of Request: Extension, with change, of a currently approved collection.

2. Purpose: Form EIA–857, ''Monthly Report of Natural Gas Purchases and Deliveries to Consumers,'' collects data on the quantity and cost of natural gas delivered to distribution systems and the quantity and revenue of natural gas delivered to end-use consumers by market sector, on a monthly basis by state. The data appear in the EIA publications, *Monthly Energy Review, Natural Gas Annual,* and *Natural Gas Monthly*. EIA is proposing the following change:

• EIA is proposing to add a new question to the form that asks whether the reporting company is including any adjustments to prior periods in their current monthly reporting. Reporting companies frequently make adjustments to correct data previously submitted in prior periods that skew the current month's reporting and EIA would like to propose this mechanism to more easily identify this phenomenon and address it proactively with the reporting companies.

3. Estimated Number of Survey Respondents: 320 respondents each month. The number of firms surveyed each month has increased to 320 in order to maintain sufficient coverage of the survey variables collected on EIA–857. The change results in an increase of total annual responses and total burden hours as stated below.

4. Annual Estimated Number of Total Responses: The annual estimated number of total responses is 3,840.

5. Annual Estimated Number of Burden Hours: The annual estimated burden is 13,440 hours.

6. Annual Estimated Reporting and Recordkeeping Cost Burden: Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

(e) Form EIA–910, *''Monthly Natural Gas Marketer Survey''*

1. Type of Request: Extension of a currently approved collection.

2. Purpose: Form EIA–910, ''Monthly Natural Gas Marketer Survey,'' collects information on natural gas sales from marketers in selected states that have active customer choice programs. EIA is requesting information on the volume and revenue for natural gas commodity sales and any receipts for distribution charges and taxes associated with the sale of natural gas. EIA is proposing to continue Form EIA–910 in its present form with no changes to the elements collected or geographic coverage.

3. Estimated Number of Survey Respondents: There are approximately 210 respondents each month.

4. Annual Estimated Number of Total Responses: The annual estimated number of total responses is 2,520.

5. Annual Estimated Number of Burden Hours: The annual estimated burden is 5,040 hours.

6. Annual Estimated Reporting and Recordkeeping Cost Burden: Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

(f) Form EIA–912, *''Weekly Underground Natural Gas Storage Report''*

1. Type of Request: Extension, with changes, of a currently approved collection.

2. Purpose: Form EIA–912, ''Weekly Underground Natural Gas Storage Report,'' collects information on weekly inventories of natural gas in underground storage facilities and serves as a Principal Federal Economic Indicator. The proposed changes include an additional data element as well as expanded geographic categories for working gas collection and publication in the Lower 48 states:

• Instead of dividing the states into three regions, the East, West and Producing Regions, EIA is proposing to collect data in five regions by further breaking out the current regions. The states currently included in the Producing region will remain unchanged except for the removal of New Mexico. The Producing region will now be referred to as the South Central region. The South Central region will continue to have two subcategories for the different storage technologies prevalent in the region, salt and non-salt facilities. Four additional regions that further break out the current East and West regions will be added in order to enhance the analysis and usability of the data. The new geographic regions are defined in the following table:

Current EIA–912 regions	Proposed EIA–912 regions
Producing Region: Alabama, Arkansas, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas.	South Central Region: Alabama, Arkansas, Kansas, Louisiana, Mississippi, Oklahoma, and Texas.
East Region: Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Maryland, Maine, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Wisconsin, and West Virginia.	East Region: Connecticut, Delaware, District of Columbia, Florida, Georgia, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.
	Midwest Region: Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, and Tennessee, and Wisconsin.
West Region: Arizona, California, Colorado, Idaho, Minnesota, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.	Mountain Region: Arizona, Colorado, Idaho, Montana, Nebraska, New Mexico, Nevada, North Dakota, South Dakota, Utah, and Wyoming.
	Pacific Region: California, Oregon, and Washington.

• EIA is also proposing a new data element, inventory adjustments of working gas in storage, to better distinguish when adjustments to working gas inventories, such as reclassifications between working and base gas, occur. In most instances, this data element would not be applicable to the majority of respondents. However, when inventory adjustments do occur, they will most easily be discerned by being directly reported in a designated portion of the form instead of being listed in the comments section. As the primary use of the *WNGSR's* data is the net change in weekly inventory data, which serves as a proxy for natural gas flowing into and out of underground storage, clearer data on inventory adjustments that can obscure the nature of flows into and out of storage will be more easily distinguished and published.

• Finally, EIA is proposing two changes to its current *Weekly Natural Gas Storage Report revision policy.* The first proposed change would reduce the threshold for published revisions and reclassifications between working and base gas from 7 billion cubic feet (Bcf) to 4 Bcf. Under the proposed revision policy, revisions will be announced in the regularly scheduled release, when the sum of reported changes is at least 4 Bcf at either a regional or national level. Second, EIA is also proposing to amend the policy addressing the unscheduled release of revisions. Under the current policy, an unscheduled release of revised data will occur when the cumulative effect of respondent submitted data changes or corrections is at least 10 Bcf for the current or prior report week. Under the proposed policy, the unscheduled release of revisions to weekly estimates of working gas held in underground storage will occur when the cumulative sum of data changes or corrections to working gas and the net change between the two most recent report weeks is at least 10 Bcf. The proposed change leaves the 10-Bcf threshold, as well as the current out-of-cycle release procedures, intact but will further require that the revision have an impact of 10 Bcf or more on the reported net change between the two most recently reported weekly periods. For example, if one or more respondents submits changes totaling 10 Bcf to previously submitted data but the changes are the result of errors that have been accumulating over several weeks and do not affect flows of working natural gas into or out of storage in the most recent two reported weekly periods by more than 10 Bcf, the unscheduled data release will not occur and the revisions will be published with the next regularly scheduled release.

3. Estimated Number of Survey Respondents: There are approximately 85 respondents every week.

4. Annual Estimated Number of Total Responses: The annual estimated number of total responses is 4,420.

5. Annual Estimated Number of Burden Hours: The annual estimated burden is 4,420 hours.

6. Annual Estimated Reporting and Recordkeeping Cost Burden: Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, September 30, 2014.

Nanda Srinivasan,

Director of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2014–23751 Filed 10–6–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

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

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces an open meeting of the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). The Federal Advisory Committee Act, Pub. L. 92–463, 86 Stat. 770, requires notice of the meeting be announced in the **Federal Register**.

DATES: Tuesday, November 18, 2014, 8:30 a.m.–5:30 p.m.; Wednesday, November 19, 2014, 8:00 a.m.–1:00 p.m.

ADDRESSES: Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Email: *HTAC@nrel.gov* or at the mailing address: James Alkire, Deputy Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 15013 Denver West Parkway, Golden, CO 80401.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Pub. L. No. 109–58; 119 Stat. 849.

Purpose of the Meeting: To provide advice and recommendations to the Secretary of Energy on the program authorized by Title VIII of EPACT.

Tentative Agenda: (updates will be posted on the web at: *http://hydrogen.energy.gov/advisory_htac.html*).

- HTAC Business (including public comment period)
- DOE Leadership Updates
- Program and Budget Updates
- Updates from Government and Industry
- HTAC Subcommittee Updates
- Open Discussion Period

Public Participation: The meeting is open to the public. Individuals who would like to attend and/or to make oral statements during the public comment period must register no later than 5:00 p.m. on Wednesday, November 12, 2014, by email at *HTAC@nrel.gov.* Entry to the meeting room will be restricted to those who have confirmed their attendance in advance. Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government-issued identification. Those wishing to make a public comment are required to register. The public comment period will take place between 8:30 a.m. and 9:00 a.m. on November 18, 2014. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov/advisory_htac.html.*

Issued in Washington, DC, in October 1, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–23914 Filed 10–6–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2014–BT–DET–0009]

RIN 1904–AD27

Determination Regarding Energy Efficiency Improvements in ANSI/ASHRAE/IES Standard 90.1–2013: Energy Standard for Buildings, Except Low-Rise Residential Buildings; Correction

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

ACTION: Notice of determination; Correction.

SUMMARY: On September 26, 2014 the U.S. Department of Energy (DOE) published a notice in the **Federal Register** regarding its determination surrounding ANSI/ASHRAE/IES Standard 90.1–2013 (79 FR 57900). The original notice included an incorrect date by which states are required by statute to submit certifications. This notice contains a correction to the state certification deadline.

FOR FURTHER INFORMATION CONTACT: Jeremiah Williams; U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., EE–5B, Washington, DC 20585; (202) 287–1941; *Jeremiah.Williams@ee.doe.gov.*

For legal issues, please contact Kavita Vaidyanathan; U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., GC–71, Washington, DC 20585; (202) 586–0669; *Kavita.Vaidyanathan@hq.doe.gov.*

Correction

In the **Federal Register** dated September 26, 2014 (79 FR 57900), FR Doc. 2014–22882, the **DATES** section is corrected to read: Certification statements provided by States must be submitted by September 26, 2016.

Issued in Washington, DC, on September 30, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–23916 Filed 10–6–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–552–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Application

Take notice that on September 22, 2014, Tennessee Gas Pipeline Company, L.L.C. (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for authorization to replace compression facilities at its Compressor Station 245 located in Herkimer County, New York. The filing may also be viewed on the Web at *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 at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to John E. Griffin, Assistant General Counsel, Tennessee Gas Pipeline Company, L.L.C., 1001 Louisiana Street, Houston, Texas 77002, telephone (713) 420–3624, fax (713) 420–1601, and email: *John_Giffin2@kindermorgan.com*; or Richard Siegel, Manager, Rates and Regulatory Affairs, Tennessee Gas Pipeline Company, L.L.C., 1001 Louisiana Street, Houston, Texas 7700, telephone (713) 420–5535, fax (713) 420–1605, and email: *Richard_Siegel@kindermorgan.com.*

In response to a review and analysis of compressor unit emissions at Station 245 conducted by the New York State Department of Environmental Conversion (NYSDEC), Tennessee proposes to remove an existing Worthington ML compressor unit and

retire three Worthington UTC compressor units from active service. Three retired compressor units will be used as redundant units enabling Tennessee to continue its obligations during repairs or maintenance at Station 245. The combined horsepower (hp) of the four existing compressor units is 7,700 hp. Tennessee proposes to install in place of the four compressor units with a Solar Taurus 70 turbine compressor unit rated at 8,219 hp. This replacement will increase the total horsepower at Station 245 by 519 hp, from 19,700 hp to 20,219 hp. Tennessee does not anticipate that this increase will result in any changes in mainline capacity. Tennessee proposes to complete and put the project in-service by December 2015. The estimated cost of the project is $32.2 million.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5:00 p.m. Eastern Time on October 22, 2014.

Dated: October 1, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–23882 Filed 10–6–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1437–003.

Applicants: Tampa Electric Company.

Description: Notice of Non-Material Change in Status of Tampa Electric Company.

Filed Date: 9/30/14.

Accession Number: 20140930–5155.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–1653–002.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing per 35: Attachment X Article 5A Compliance Filing—Docket No. ER14–1653 to be effective 3/1/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5145.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER10–1901–009.

Applicants: Upper Peninsula Power Company.

Description: Notice of Non-Material Change in Status of Upper Peninsula Power Company.

Filed Date: 9/30/14.

Accession Number: 20140930–5184.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER10–2860–005.

Applicants: TC Ravenswood, LLC.

Description: Notice of Non-Material Change in Status of TC Ravenswood, LLC.

Filed Date: 9/30/14.

Accession Number: 20140930–5151.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2966–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–09–30_NSP–WKFLD-UnEXE T–L Filing-571 to be effective 9/1/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5156.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2967–000.

Applicants: TransCanada Maine Wind Development Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): TransCanada Maine Wind Development—Revised Tariff Filing to be effective 10/1/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5168.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2968–000.

Applicants: Louisville Gas and Electric Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): EKPC NITSA AMENDMENT to be effective 12/1/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5181.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2969–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to OATT Attachment Q re Miscellaneous Credit Revisions to be effective 12/1/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5186.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2970–000.

Applicants: TransCanada Hydro Northeast Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): TransCanada Hydro Northeast, Inc. Revised Electric Tariff Filing to be effective 10/1/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5193.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2971–000.

Applicants: NV Energy, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): OATT Revisions to Attachment N—LGIA to be effective 8/4/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5197.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2972–000.

Applicants: PacifiCorp.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Tri-State Transmission Interconnection Agreement to be effective 10/1/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5216.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2973–000.

Applicants: Cheyenne Light, Fuel and Power Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): OATT—Real Power Losses Factor to be effective 10/1/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5283.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2974–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): First Revised Service Agreement No. 2195; Queue No. X1–074 to be effective 8/28/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5302.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2975–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): FPL and Lee County Electric Cooperative, Inc. Revisions to NITSA No. 266 to be effective 9/1/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5306.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2976–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to the OATT and OA re: Demand Bid Volume Limits and Demand Bid Screen to be effective 1/13/2015.

Filed Date: 9/30/14.

Accession Number: 20140930–5307.

Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2977–000.

Applicants: TC Ravenswood, LLC.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revised MBR Sale of Capacity Tariff to be effective 10/1/2014.

Filed Date: 9/30/14.

Accession Number: 20140930–5314.

Comments Due: 5 p.m. ET 10/21/14.

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 30, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23919 Filed 10–6–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–150–000.

Applicants: Arlington Wind Power Project LLC, Blue Canyon Windpower V LLC, Cloud County Wind Farm, LLC, Headwaters Wind Farm LLC, Paulding Wind Farm II LLC, Pioneer Prairie Wind Farm I, LLC, Rising Tree Wind Farm LLC, Rising Tree Wind Farm II LLC, Fiera Axium Nove AcquisitionCo LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Arlington Wind Power Project LLC, et al.

Filed Date: 9/29/14.

Accession Number: 20140929–5345.

Comments Due: 5 p.m. ET 10/20/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–2245–000.

Applicants: TriEagle Energy, LP.

Description: eTariff filing per 35.19a(b): Refund Report Compliance Filing to be effective N/A.

Filed Date: 9/29/14.

Accession Number: 20140929–5326.

Comments Due: 5 p.m. ET 10/20/14.

Docket Numbers: ER14–2309–000.

Applicants: Lea Power Partners, LLC.

Description: Supplement to June 30, 2014 Lea Power Partners, LLC Triennial Update Market Power Analysis Filing for NE Region & Tariff Amendment.

Filed Date: 9/25/14.

Accession Number: 20140925–5117.

Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: ER14–2960–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–09–29_SA 2702 ATC-Wisconsin River Power Co. GIA (Petenwell) to be effective 9/30/2014.

Filed Date: 9/29/14.

Accession Number: 20140929–5304.

Comments Due: 5 p.m. ET 10/20/14.

Docket Numbers: ER14–2961–000.

Applicants: PacifiCorp.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): BPA Construction Agmt (USBR Green Springs) to be effective 11/29/2014.

Filed Date: 9/29/14.

Accession Number: 20140929–5306.

Comments Due: 5 p.m. ET 10/20/14.

Docket Numbers: ER14–2962–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–09–29_SA 743 ATC–WPSC Amended Generation-Transmission Agreement to be effective 9/30/2014.

Filed Date: 9/29/14.

Accession Number: 20140929–5310.

Comments Due: 5 p.m. ET 10/20/14.

Docket Numbers: ER14–2963–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–09–29_AnnualOperationsReviewElimination to be effective 11/29/2014.

Filed Date: 9/29/14.

Accession Number: 20140929–5321.

Comments Due: 5 p.m. ET 10/20/14.

Docket Numbers: ER14–2964–000.

Applicants: Tampa Electric Company.

Description: Notice of Cancellations of Rate Schedules FERC Nos. 41 and 45 of with City of Lakeland, Florida of Tampa Electric Company.

Filed Date: 9/29/14.

Accession Number: 20140929–5343.

Comments Due: 5 p.m. ET 10/20/14.

Docket Numbers: ER14–2965–000.

Applicants: Arizona Public Service Company.

Description: Notice of Cancellation of Service Agreement Nos. 123 and 124 with Coral Power of Arizona Public Service Company.

Filed Date: 9/29/14.

Accession Number: 20140929–5347.

Comments Due: 5 p.m. ET 10/20/14.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM14–3–000.

Applicants: Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Services, Inc., Entergy Texas, Inc., Entergy Services, Inc.

Description: Application Under PURPA Section 210(m) of Entergy Services, Inc., et al.

Filed Date: 9/29/14.

Accession Number: 20140929–5374.

Comments Due: 5 p.m. ET 10/27/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 30, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23918 Filed 10–6–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–8–000]

PJM Interconnection, L.L.C.; Notice of Filing

Take notice that on September 30, 2014, PJM Interconnection, L.L.C. filed a refund report to comply with the Federal Energy Regulatory Commission's (Commission) Order on Complaint issued February 10, 2014.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 21, 2014.

[1] *Vineland Municipal Electric Utility v. Atlantic City Electric Company et al.,* 146 FERC ¶ 61,077 (2014).

Dated: October 1, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23921 Filed 10–6–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ14–27–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on September 25, 2014, Oncor Electric Delivery Company LLC submitted its tariff filing per 35.28(e): Oncor Tex-La Tariff Rate Changes, effective September 12, 2014.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 16, 2014.

Dated: October 1, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23920 Filed 10–6–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14592–000]

Belton Power, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 28, 2014, Belton Power, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a Hydroelectric Project to be located at the U.S. Army Corps of Engineers (Corps) Belton Dam on the Leon River in Bell County, Texas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) Five 300-foot-long, 48-inch-diameter steel penstocks each housing an inline generating unit for a total capacity of 6 megawatts; (2) five 50-foot-long, 48-inch-wide tailraces on a 66-foot-long, 50-foot-wide concrete foundation downstream of the dam; (3) a switchyard on the surface of the south bank of the dam; and (4) a 1-mile-long, 12.5 kilovolt transmission line. The proposed project would have an estimated average annual generation of 20,000 megawatt-hours and operate as directed by the Corps.

Applicant Contact: Mr. Magnús Jóhannesson, America renewables Power, LLC, 46 Peninsula Center, Ste. E, Rolling Hills Estates, CA 90274, phone 310–699–6400

FERC Contact: Christiane Casey, phone: (202) 502–8577, email *christiane.casey@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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. The first page of any filing should include docket number P–14592–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14592) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 1, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–23883 Filed 10–6–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14615–000]

FFP Project 97, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 14, 2014, FFP Project 97, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project to be located at the U.S. Army Corps of Engineers' (Corps) William Bacon Oliver Lock and Dam on the Black Warrior River near the towns of Tuscaloosa and Northport in Tuscaloosa County, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 320-foot-long, 120-foot-wide intake channel; (2) a 90-foot-long, 140-foot-wide powerhouse containing two generating units with a total capacity of 16.4 megawatts; (3) a 320-foot-long, 140-foot-wide tailrace; (4) a 4.16/115 kilo-Volt (kV) substation; and (5) a 1-mile-long, 115kV transmission line. The proposed project would have an estimated average annual generation of 65,800 megawatt-hours, and operate as directed by the Corps.

Applicant Contact: Mr. Daniel Lissner, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

FERC Contact: Christiane Casey, *christiane.casey@ferc.gov,* (202) 502–8577.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *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* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14615–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14615) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 1, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–23884 Filed 10–6–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R06–OW–2014–05694; FRL–9917–50–Region–6]

Clean Water Act: Proposed Section 404(c) Exemption

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) proposes to extend coverage under an existing Clean Water Act Section (CWA) 404(c) exception for the continued operation and maintenance of a portion of an electrical transmission line and a portion of a distribution line at the Bayou aux Carpes site in Jefferson Parish, Louisiana. The extension will authorize minimal discharges (approximately 1.35 cubic yards) to wetlands of dredged or fill material associated with ongoing activities by Entergy Louisiana, L.L.C. (Entergy) in order to provide electrical service to residential, commercial, military, industrial, and other facilities in nearby Plaquemines Parish.

DATES: Comments on this proposed action must be received on or before October 22, 2014.

ADDRESSES: Written comments may be addressed to Ms. Barbara Keeler (6WQ–EC), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733. Comments may also be submitted by email to Ms. Keeler at *keeler.barbara@epa.gov.* All comments should directly address whether the Southern Natural Gas Pipeline exception to the 1985 Bayou aux Carpes CWA Section 404(c) EPA Final Determination should be extended to cover the work requested by Entergy.

FOR FURTHER INFORMATION CONTACT: For further information, contact Ms. Barbara Keeler by phone at (214) 665–6698 or by email at *keeler.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION: The Bayou aux Carpes CWA Section 404(c) site is located approximately ten miles south of New Orleans, Louisiana, on the West Bank of Jefferson Parish. The site includes about 3,000 acres of wetlands subject to federal jurisdiction under the CWA. The area is bounded on the north by the Estelle Pumping Station Outfall Canal, on the east by Bayou Barataria (Gulf Intracoastal Waterway), on the south by Bayou Barataria and Bayou des Familles, and on the west by State Highway 3134 and the ''V-Levee.'' In 2009, most of the site was incorporated into the Barataria Unit of the Jean Lafitte National Historic Park and Preserve and the site remains subject to the CWA Section 404(c) restrictions.

Entergy petitioned EPA for an exception to the October 16, 1985, EPA Final Determination for the Bayou aux Carpes site in Jefferson Parish, Louisiana, issued under Section 404(c) of the CWA. An exception was provided in the 1985 restriction for discharges associated with routine operation and maintenance of the Southern Natural Gas Pipeline Company pipeline. Subsequently, the exception was extended to cover minor discharges from emergency maintenance and relocation of a portion of another existing pipeline operated by Shell Pipeline Corporation. Both the original exception and the subsequent amended coverage were allowed based on determinations that the proposed activities associated with existing linear service utilities would be unlikely to result in unacceptable adverse effects to the Bayou aux Carpes CWA Section 404(c) site. The currently proposed coverage under the same exception is for a similar purpose and is projected to entail minor temporary impacts to the subject wetlands.

The October 16, 1985, Bayou aux Carpes Clean Water Act Section 404(c) EPA Final Determination and other background information are available online at: *http://www.regulations.gov* (Docket No. EPA–R06–OW–2014–0569).

Background

Section 404(c) of the CWA authorizes EPA to prohibit, deny, restrict or withdraw the use of any defined area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. The U.S. Army Corps of Engineers (Corps) authorizes thousands of CWA Section 404 permits every year and EPA works with the Corps and applicants to resolve environmental concerns. Since the passage of the CWA in 1972, EPA has finalized 404(c) prohibitions or restrictions only 13 times. The use of this authority has typically involved major projects with unacceptable impacts on some of America's most ecologically valuable waters.

On November 15, 1985, EPA published (50 FR 47267) a CWA Section 404(c) Final Determination prohibiting, with three exceptions, future discharges of dredged or fill material to wetlands in the Bayou aux Carpes site. The CWA Section 404(c) action was based upon a thorough record of investigations, including field surveys, remote sensing and other technical analyses conducted by three EPA facilities, the U.S. Fish and Wildlife Service, the National Park Service, and the Louisiana State University Center for Wetland Resources.

The 1985 EPA Bayou aux Carpes CWA Section 404(c) Final Determination included three exceptions. The first of the original three approved exceptions is for discharges associated with the completion of a specific design option for the Corps' Harvey Canal—Bayou Barataria Levee Project, which was never constructed. The second exception is for discharges associated with routine operation and maintenance of the Southern Natural Gas Pipeline, under specified conditions. The third exception provides for possible future EPA approved habitat enhancement activities. EPA determined that these three types of activities would be unlikely to result in unacceptable adverse effects to the aquatic environment, as long as they were performed in accordance with any specified conditions and complied with any permit conditions that might be imposed by the Corps through the CWA Section 404 permit process. A provision was also included to allow other interests to petition EPA for reconsideration if, in the future, other activities were to be proposed for public benefit which would result in only minor impacts.

There has been only one major modification to EPA's 1985 decision to restrict discharges into the wetlands of the Bayou aux Carpes site. The modification was granted to the Corps in 2009 in association with the construction of flood risk reduction upgrades following Hurricane Katrina. On November 4, 2008, the Corps requested that the Bayou aux Carpes CWA Section 404(c) designation be modified to allow construction of a floodwall along Bayou Barataria and tying into the planned West Closure Complex, as part of the post-Hurricane Katrina upgrades known as the Greater New Orleans Hurricane and Storm Damage Risk Reduction System Project. This work was but a small part of the larger effort to reduce flood risks to the 250,000 people living on the west bank of the Mississippi River and to infrastructure supporting the greater New Orleans area by building a more

resilient and reliable storm damage and risk reduction system, as directed by Congress.

Following a public meeting, opportunity for public comments, extensive interagency coordination and thorough ecological analyses, EPA approved the modification request on May 28, 2009, publishing the decision at 74 FR 143 (July 28, 2009). EPA determined that construction of the modified ''T-wall'' style floodwall within a 100 foot by 4,200 foot corridor (≤ 9.6 acres) on a previously impacted area of the Bayou aux Carpes site (along with commitments from the Corps that would minimize construction impacts and provide for mitigation, wetland enhancement and long-term monitoring) was an acceptable approach. EPA found that compelling circumstances justified a modification, that there were no less environmentally damaging practicable alternatives that would adequately address those circumstances and that all feasible means of minimizing adverse wetland effects to the Bayou aux Carpes site would be implemented. This decision to modify a CWA Section 404(c) Final Determination was unique in the history of such determinations and EPA granted the modification in the belief that it would achieve a balance between the national interest in reducing overwhelming flood risks to the people and critical infrastructure of south Louisiana while minimizing any damage to the Bayou aux Carpes Section 404(c) area to the maximum degree possible in order to avoid unacceptable adverse effects.

In addition to that modification of the 1985 EPA Bayou aux Carpes CWA Section 404(c) Final Determination, EPA has considered very few requests for coverage under the original exceptions. In 1992, Shell Pipeline Corporation requested permission to allow the discharge of dredged and fill material effecting approximately 0.43 acres of wetlands in the restricted site in connection with a proposed below ground pipeline relocation. This work was necessary to facilitate the enlargement of a federal hurricane protection levee and to remedy the emergency reconstruction of a leaking temporary by-pass pipeline segment. In addition, future routine operation and maintenance activities associated with this pipeline were requested to be excluded from the CWA Section 404(c) restriction. After notifying interested parties of the request via **Federal Register** publication and coordinating with the Corps and other agencies, EPA granted the requests, publishing the decision at 57 FR 3757 (January 31, 1992). EPA concluded that relocating the pipeline to non-wetlands was infeasible from the perspectives of engineering and public safety, the work would have only minimal and temporary effects on the wetlands at issue and the work was essentially the same as that envisioned under the second exception included in the 1985 Final Determination.

Over the years, additional requests for modifications have been the subject of initial analyses by EPA. In each of those cases, however, the petitioners did not complete the analyses required for an agency decision.

Proposed Activities

On August 18, 2014, Entergy petitioned EPA for an exception to cover anticipated temporary impacts to a total of 0.003 acres (approximately 1.35 cubic yards) of wetlands resulting from operation and maintenance activities for portions of an existing transmission and portions of a distribution line located partially within the Bayou aux Carpes Section 404(c) area.

The Barataria to Alliance Transmission line was constructed in the 1960's by Entergy's predecessor, Louisiana Power & Light. Of the 74,012 total transmission line length, an 11,543 foot section and 15 towers are within the 120 foot right-of-way that runs through the southern portion of the Bayou aux Carpes CWA Section 404(c) site. The distribution line and 15 wooden single poles course through approximately 3,415 feet within a ten foot right-of-way section of the Bayou aux Carpes site.

Entergy has requested permission to conduct preventative maintenance and inspections as required by Federal Energy Regulatory Commission regulations, North American Electric Reliability Corporation regulations, and Entergy's guidelines and procedures. Numerous techniques for minimizing impacts have been proposed and alternatives have been evaluated. The foreseeable activities are projected to temporarily effect no more than 0.003 acres of the protected wetlands during the remaining 50–60 years of expected facility life. Entergy has requested that EPA extend authorization for this work under the 1985 EPA CWA Section 404(c) Bayou aux Carpes Final Determination exception that covers the routine operation and maintenance of a similar linear utility, namely the Southern Natural Gas Pipeline.

EPA proposes to extend coverage, as specified in the request from Entergy, under this exception because the work would have only minimal and temporary effects on 0.003 acres of wetlands and would not be considered to be unacceptable. Further, the activities to be conducted are essentially the same as that envisioned under the Southern Natural Gas Pipeline exception, which was granted in the 1985 EPA Bayou aux Carpes CWA Section 404(c) Final Determination.

Dated: September 23, 2014.

William K. Honker,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 2014–23900 Filed 10–6–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

FASAB Requests Comments on Public-Private Partnerships: Disclosure Requirements

AGENCY: Federal Accounting Standards Advisory Board

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 2010, notice is hereby given that the Federal Accounting Standards Advisory Board is seeking input on the Exposure Draft: Public-Private Partnerships: Disclosure Requirements.

The Exposure Draft is available at *http://www.fasab.gov/board-activities/documents-for-comment/exposure-drafts-and-documents-for-comment/.*

Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft.

Written comments are requested by January 2, 2015, and should be sent to: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW., Suite 6814, Mail Stop 6H19, Washington, DC 20548.

For assistance in accessing the document contact FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: October 2, 2014.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2014–23911 Filed 10–6–14; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0991]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 8, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0991.

Title: AM Measurement Data.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,900 respondents; 3,335 responses.

Estimated Hours per Response: 0.50–25 hours.

Frequency of Response: Recordkeeping requirement, Third party disclosure requirement, On occasion reporting requirement.

Total Annual Burden: 20,780 hours.

Total Annual Cost: $2,171,500.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality treatment with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The following information collection requirements are contained in this collection:

47 CFR 73.54(c) requires that AM licensees file a letter notification with the FCC when determining power by the direct method. In addition, Section 73.54(c) requires that background information regarding antenna resistance measurement data for AM stations must be kept on file at the station.

47 CFR 73.54(d) requires AM stations using direct reading power meters to either submit the information required by (c) or submit a statement indicating that such a meter is being used.

47 CFR 73.61(a) states each AM station using a directional antenna with monitoring point locations specified in the instrument of authorization must make field strength measurements at the monitoring point locations specified in the instrument of authorization, as often as necessary to ensure that the field at those points does not exceed the values specified in the station authorization. Additionally, stations not having an approved sampling system must make the measurements once each calendar quarter at intervals not exceeding 120 days. The provision of this paragraph supersedes any schedule specified on a station license issued prior to January 1, 1986. The results of the measurements are to be entered into the station log pursuant to the provisions of Section 73.1820.

47 CFR 73.61(b) states if the AM license was granted on the basis of field strength measurements performed pursuant to Section 73.151(a), partial proof of performance measurements using the procedures described in Section 73.154 must be made whenever the licensee has reason to believe that the radiated field may be exceeding the limits for which the station was most recently authorized to operate.

47 CFR 73.61(c) requires a station may be directed to make a partial proof of performance by the FCC whenever there is an indication that the antenna is not operating as authorized.

47 CFR 73.62(b) requires an AM station with a directional antenna system to measure and log every monitoring point at least once for each mode of directional operation within 24 hours of detection of variance of operating parameters from allowed tolerances.

47 CFR 73.68(c) states a station having an antenna sampling system constructed according to the specifications given in paragraph (a) of this section may obtain approval of that system by submitting an informal letter request to the FCC in Washington, DC, Attention: Audio Division, Media Bureau. The request for approval, signed by the licensee or authorized representative, must contain sufficient information to show that the sampling system is in compliance with all requirements of paragraph (a) of this section.

47 CFR 73.68(d) states in the event that the antenna monitor sampling system is temporarily out of service for repair or replacement, the station may be operated, pending completion of repairs or replacement, for a period not exceeding 120 days without further authority from the FCC if all other operating parameters and the field monitoring point values are within the limits specified on the station authorization.

47 CFR 73.68(e)(1) Special Temporary Authority (see Section 73.1635) shall be requested and obtained from the Commission's Audio Division, Media Bureau in Washington to operate with parameters at variance with licensed values pending issuance of a modified license specifying parameters subsequent to modification or replacement of components.

47 CFR 73.68(e)(4) states request for modification of license shall be submitted to the FCC in Washington, DC, within 30 days of the date of sampling system modification or replacement. Such request shall specify the transmitter plate voltage and plate current, common point current, base currents and their ratios, antenna monitor phase and current indications, and all other data obtained pursuant to this paragraph.

47 CFR 73.68(f) states if an existing sampling system is found to be patently of marginal construction, or where the performance of a directional antenna is found to be unsatisfactory, and this deficiency reasonably may be attributed, in whole or in part, to inadequacies in the antenna monitoring system, the FCC may require the reconstruction of the sampling system in accordance with requirements specified above.

47 CFR 73.69(c) requires AM station licensees with directional antennas to file an informal request to operate without required monitors with the Media Bureau in Washington, DC, when conditions beyond the control of the licensee prevent the restoration of an antenna monitor to service within a 120 day period. This request is filed in conjunction with Section 73.3549.

47 CFR 73.69(d)(1) requires that AM licensees with directional antennas request to obtain temporary authority to operate with parameters at variance with licensed values when an authorized antenna monitor is replaced pending issuance of a modified license specifying new parameters.

47 CFR 73.69(d)(5) requires AM licensees with directional antennas to submit an informal request for modification of license to the FCC within 30 days of the date of antenna monitor replacement.

47 CFR 73.151(c)(1)(ix) states the orientation and distances among the individual antenna towers in the array shall be confirmed by a post-construction certification by a land surveyor (or, where permitted by local regulation, by an engineer) licensed or registered in the state or territory where the antenna system is located.

47 CFR 73.151(c)(2)(i) describes techniques for moment method modeling, sampling system construction, and measurements that must be taken as part of a moment method proof. A description of the sampling system and the specified measurements must be filed with the license application.

47 CFR 73.151(c)(3) states reference field strength measurement locations shall be established in directions of pattern minima and maxima. On each radial corresponding to a pattern minimum or maximum, there shall be at least three measurement locations. The field strength shall be measured at each reference location at the time of the proof of performance. The license application shall include the measured field strength values at each reference point, along with a description of each measurement location, including GPS coordinates and datum reference.

47 CFR 73.154 requires the result of the most recent partial proof of performance measurements and analysis to be retained in the station records and made available to the FCC upon request. Maps showing new measurement points shall be associated with the partial proof in the station's records and shall be made available to the FCC upon request.

47 CFR 73.155 states a station licensed with a directional antenna pattern pursuant to a proof of performance using moment method modeling and internal array parameters as described in § 73.151(c) shall recertify the performance of that directional antenna pattern at least once within every 24 month period.

47 CFR 73.155(c) states the results of the periodic directional antenna performance recertification measurements shall be retained in the station's public inspection file.

47 CFR 73.158(b) requires a licensee of an AM station using a directional antenna system to file a request for a corrected station license when the description of monitoring point in relation to nearby landmarks as shown on the station license is no longer correct due to road or building construction or other changes. A copy of the monitoring point description must be posted with the existing station license.

47 CFR 73.3538(b) requires a broadcast station to file an informal application to modify or discontinue the obstruction marking or lighting of an antenna supporting structure.

47 CFR 73.3549 requires licensees to file with the FCC requests for extensions of authority to operate without required monitors, transmission system indicating instruments, or encoders and decoders for monitoring and generating the Emergency Alert System codes. Such requests musts contain information as to when and what steps were taken to repair or replace the defective equipment and a brief description of the alternative procedures being used while the equipment is out of service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–23820 Filed 10–6–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 2014.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Little London Bancorp,* Colorado Springs, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of 5Star Bank, Colorado Springs, Colorado.

Board of Governors of the Federal Reserve System, October 1, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–23874 Filed 10–6–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the

banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 2014.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Cornerstone Holding Company, Inc.,* Fargo, North Dakota; to merge with Lakeside Bank Holding Company, and thereby indirectly acquire Lakeside State Bank, both in New Town, North Dakota, and McKenzie County Bank, Watford City, North Dakota.

Board of Governors of the Federal Reserve System, October 2, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–23892 Filed 10–6–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0177; Docket No. 2014–0055; Sequence 27]

Information Collection; Reporting Executive Compensation and First-Tier Subcontract Awards

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement for Reporting Executive Compensation and First-tier Subcontract Awards.

DATES: Submit comments on or before December 8, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–0177, Reporting Executive Compensation and First-tier Subcontract Awards, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0177. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0177, Reporting Executive Compensation and First-tier Subcontract Awards.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0177, Reporting Executive Compensation and First-tier Subcontract Awards'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC: 9000–0177, Reporting Executive Compensation and First-tier Subcontract Awards.

Instructions: Please submit comments only and cite ''Information Collection 9000–0177, Reporting Executive Compensation and First-tier Subcontract Awards,'' in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, Office of Government-wide Policy, contact via telephone 703–605–2868 or email *mahruba.uddowla@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Funding Accountability and Transparency Act (''Transparency Act''), Public Law 109–282, as amended by section 6202 of Public Law 110–252, was enacted to reduce ''wasteful and unnecessary spending'' by requiring that OMB establish a free, public, online database containing full disclosure of all Federal contract award information for awards of $25,000 or more.

DoD, GSA, and NASA published an interim rule for public comment at 75 FR 39414, on July 8, 2010, to implement the Transparency Act reporting requirements. The rule requires the insertion of FAR clause 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards, in solicitations and contracts (including commercial item contracts and commercially available off-the-shelf (COTS) item contracts) of $25,000 or more.

The clause at 52.204–10 requires, unless otherwise directed by the contracting officer, for first-tier subcontracts valued at $25,000 or more, prime contractors to report first-tier subcontract award data (*e.g.,* name, amount, address, etc.). If the contractor in the previous tax year had gross income, from all sources, under $300,000, the contractor is exempt from the requirement to report first-tier subcontractor awards. If a first-tier subcontractor in the previous tax year had gross income from all sources under $300,000, the contractor does not need to report awards to that first-tier subcontractor. Contractors will provide these subcontract reports to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) (*http://www.fsrs.gov*). DoD, GSA, and NASA note that there is pre-population of some data in FSRS from other Government systems.

The clause at 52.204–10 also requires a contractor to report in the System for Award Management (SAM) database at *https://www.sam.gov,* the names and total compensation of each of its five most highly compensated executives for the contractor's preceding completed fiscal year. Contractors and first-tier subcontractors are not required to report the total compensation information required by the rule, unless—

(i) In the contractor or subcontractor's preceding fiscal year, the contractor or subcontractor received—

(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements; and

(2) $25,000,000 or more in annual gross revenue from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has

access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

B. Annual Reporting Burden

The total annual burden associated with the reporting requirements of FAR 52.204–10 is estimated to be $33,230,972.

1. *Reporting first-tier subcontract award information.* The FY13 Federal Procurement Data System (FPDS) data collected for new contract actions valued at $25,000 or greater, indicated that there were 155,292 contractors with unique DUNS numbers. It is estimated that based on the exemptions in the rule (*e.g.,* contractors in the previous tax year with less than $300,000 in gross income do not have to report), seventy-five percent of the contractors with actions valued at $25,000 or greater would be subject to the reporting requirements, which would be 116,469 contractors. The burden to report the subcontractor award information (*e.g.,* name, amount, address, etc.) under FAR 52.204–10 is estimated to average 2 hours per response for a prime contractor and approximately three first-tier subcontractors per prime contractor. We estimate the total annual public cost burden for these elements to be $*30,747,816* based on the following:

Respondents: 116,469.

Responses per respondent: 3.

Total annual responses: 349,407.

Preparation hours per response: 2.

Total response burden hours: 698,814.

Average hourly wages ($33.00 + 36.25% overhead. Rounded to nearest dollar): $45.00.

Estimated cost to the public: $30,747,816.

2. *Reporting executive compensation.* There were 367,875 active registrants in SAM as of September 17, 2014. Of the 367,875 total active registrants, 360,000 were screened out by two questions supporting the rule's requirements, *i.e.,* didn't have 80% or more of their annual gross revenue in U.S. Federal contracts, grants, and/or cooperative agreements and didn't make more than $25 million in annual gross revenue, or did have 80% or $25 million from Federal contracts/grants/cooperative agreements, but the public already had access to the information. It is estimated that it would require those 360,000 registrants 0.10 hours per response, for a total of 36,000 response hours.

A total of 7,875 SAM registrants would be required to enter actual values for their top five most highly compensated executives. It is estimated that it would require these 7,875 registrants 2.5 hours to provide the information required, for a total of 19,688 response hours.

Therefore, it is estimated that the total population of respondents is 367,875, and the total estimated response hours is 55,688, resulting in a weighted average of 0.15 hours per respondent for executive compensation reporting.

The Councils estimate the total annual public cost burden for this element to be $2,483,156 based on the following:

Respondents: 367,875.

Responses per respondent: 1.

Total annual responses: 367,875.

Preparation hours per response: 0.15.

Total response burden hours: 55,181.

Average hourly wages: ($33.06 + 36.25% overhead. Rounded to nearest dollar): $45.00.

Estimated cost to the public: $2,483,156.

Based on the above calculations, DoD, GSA, and NASA estimate the total annual burden associated with reporting requirements of FAR 52.204–10 to be $33,230,972. The reporting burden includes the time for reviewing instructions, and reporting the data. It does not cover the time required to conduct research or the time to obtain the information for the data elements.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405–0001 telephone 202–501–4755. Please cite OMB Control No. 9000–0177, Reporting Executive Compensation and First-tier Subcontract Awards, in all correspondence.

Dated: September 30, 2014.

Edward Loeb,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014–23907 Filed 10–6–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–15–0919]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (OMB No. 0920–0919, expires 01/31/2015)—Revision—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the CDC has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.).

To request additional information, please contact LeRoy A. Richardson, Reports Clearance Officer, Centers for Disease Control and Prevention, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Supplementary Information:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

This is a revision to a previously approved collection of information. Respondents will be screened and selected from Individuals and Households, Businesses Organizations, and/or State, Local or Tribal Government. A total of 12 individual data collections were approved under our originally approved generic information collection (OMB # 0920–0919, expiration 01/31/2015). Data collection activities were equally divided between focus groups and online surveys and were conducted to test and refine NCBDDD messages and materials regarding alcohol use during pregnancy, autism spectrum disorder, folic acid, Deep Vein Thrombosis/Pulmonary Embolism (DVT/PE), and preconception health. A customer service survey was also conducted using this mechanism.

We expect to conduct 12 individual data collections (four each year) over the next three years in order to continue testing and refining our public health messages aimed at targeted groups by using a variety of instruments and platforms. Based on the number of burden hours actually used during the initial approval period and the number of respondents involved, we request a reduction in the number of respondents and burden hours.

Below we provide CDC's projected annualized estimate for the next three years. There is no cost to respondents other than their time. The estimated annualized burden hours for this data collection activity are 3,625.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Annual frequency per response	Hours per response
General Public/Public Health Practitioners/Delivery Partners and Stakeholders.	Online surveys	2,500	1	30/60
General Public/Public Health Practitioners/Delivery Partners and Stakeholders.	Paper surveys	750	1	30/60
General Public/Public Health Practitioners/Delivery Partners and Stakeholders.	Focus groups	1,000	1	2

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–23864 Filed 10–6–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–14–14BAA]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public 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. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404–639–7570 or send comments to Leroy A. Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Written comments should be received within 60 days of this notice.

Proposed Project

A Comprehensive Assessment of the National Program to Eliminate Diabetes Related Health Disparities in Vulnerable Populations—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Diabetes affects over 29 million people in the United States, is the sixth leading cause of death in the country, and can cause serious health complications including heart disease, blindness, kidney failure, and lower-extremity amputations. The overall prevalence of diabetes in the U.S. is > 9%, however, higher rates of type 2 diabetes and its complications exist in particular subgroups of the population. These subgroups include adults ages 60 years and older, racial and ethnic minority groups (e.g., African Americans, Hispanic/Latino Americans, American Indians, Native Hawaiians and other Pacific Islanders, and some Asian Americans), people with low socioeconomic status (SES), and rural populations. Population subgroups that are not well integrated into the health care system because of ethnic, cultural, economic, or geographic characteristics, and that may not receive adequate health care, are considered vulnerable populations.

In an effort to reduce diabetes-related disparities, CDC's Division of Diabetes Translation (DDT) aims to concentrate efforts where the greatest impact can be achieved for populations with the greatest burden or risk of diabetes. DDT established the National Program to Eliminate Diabetes Related Health Disparities in Vulnerable Populations (the ''VP Program'') to coordinate and integrate efforts in high-risk communities involving CDC, national organizations, and community partners. Through the VP Program, six national organizations received cooperative agreements to assist a total of 18 communities with planning, implementing, and evaluating community-based diabetes control programs. Each VP awardee is required to use the community change framework to guide their work with three communities.

CDC proposes to collect information to learn more about how the community change approach is working in communities that are significantly impacted by factors that influence the disproportionate burden of diabetes in vulnerable populations, such as low income, limited education, limited access to health care, and a physical environment that does not promote health.

Semi-structured telephone interviews will be conducted with key personnel associated with each national organization (awardee) and each community site. One project coordinator and one consultant at each of the six VP grantee organizations (n=12) will be asked to participate in an interview of 1.5 hours in length. In addition, an interview of approximately 1.5 hours will be conducted with one community partner or one coalition member at each community site (n=18) and one site coordinator at each community site (n=18) over a two-month period. The interviews will allow CDC to explore capacity building and support strategies used by the awardees to facilitate community change, and provide insight into the facilitators and barriers experienced by the program stakeholders in addressing diabetes in their communities.

OMB approval is requested for one year. Data collection, management, and analysis will be conducted by a contractor working on behalf of CDC. Participation in the interviews is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Grantee (Staff Designee and Consultant).	Grantee Interview Guide	12	1	1.5	18
Community Partner/Coalition Member.	Community Partner/Coalition Member Interview Guide.	18	1	1.5	27

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Site Coordinator	Site Coordinator Interview Guide	18	1	1.5	27
Total					72

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–23865 Filed 10–6–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the charter for the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through September 18, 2016.

For information, contact Catherine Ramadei, Acting Designated Federal Officer, Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road NE., Mailstop K48, Atlanta, Georgia 30333, telephone (770) 488–4796 or fax (404) 248–4152.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–23858 Filed 10–6–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Workers' Compensation Surveillance, PAR14–227, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11:00 a.m.–7:00 p.m., November 5, 2014 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Workers' Compensation Surveillance, PAR14–227, initial review.''

Contact Person for More Information: Donald Blackman, Ph.D., Scientific Review Officer, CDC, 2400 Century Center Parkway NE., 4th Floor, Room 4204, Mailstop E–74, Atlanta, Georgia 30345, Telephone: (404) 498–6185, *DYB7@CDC.GOV* .

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–23854 Filed 10–6–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 8:15 a.m.–4:30 p.m., Pacific Daylight Time, November 6, 2014.

Public Comment Time and Date: 4:30 p.m.–5:30 p.m., Pacific Daylight Time, November 6, 2014.

Place: Hilton Garden Inn Los Angeles/Redondo Beach, 2410 Marine Avenue, Redondo Beach, CA 90278, Phone: 310–727–9999; Fax: 310–727–9998. Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537 with a pass code of 9933701.

Live Meeting Connection: https://www.livemeeting.com/cc/cdc/join?id=ZN5GQZ&role=attend&pw=ABRWH; Meeting ID: ZN5GQZ; Entry Code: ABRWH.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 100 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific

validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2015.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters for Discussion: The agenda for the Advisory Board meeting includes: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; SEC Issues Work Group Report on ''Sufficient Accuracy''/Co-Worker Dose Modeling; SEC Petitions Update; an update on SEC and Site Profile work for the Area IV of the Santa Susana Field Laboratory (Ventura County, CA); and Board Work Session.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted to the contact person below well in advance of the meeting. Any written comments received will be provided at the meeting in accordance with the redaction policy provided below.

Policy on Redaction of Board Meeting Transcripts (Public Comment): (1) If a person making a comment gives his or her personal information, no attempt will be made to redact the name; however, NIOSH will redact other personally identifiable information, such as contact information, social security numbers, case numbers, etc., of the commenter.

(2) If an individual in making a statement reveals personal information (e.g., medical or employment information) about themselves that information will not usually be redacted. The NIOSH Freedom of Information Act (FOIA) coordinator will, however, review such revelations in accordance with the Federal Advisory Committee Act and if deemed appropriate, will redact such information.

(3) If a commenter reveals personal information concerning a living third party, that information will be reviewed by the NIOSH FOIA coordinator, and upon determination, if deemed appropriated, such information will be redacted, unless the disclosure is made by the third party's authorized representative under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) program.

(4) In general, information concerning a deceased third party may be disclosed; however, such information will be redacted if (a) the disclosure is made by an individual other than the survivor claimant, a parent, spouse, or child, or the authorized representative of the deceased third party; (b) if it is unclear whether the third party is living or deceased; or (c) the information is unrelated or irrelevant to the purpose of the disclosure.

The Board will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comments; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., MS E–20, Atlanta, Georgia 30333, telephone: (513) 533–6800, toll free: 1–800–CDC–INFO, email: *dcas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–23855 Filed 10–6–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Date and Time: October 29, 2014, EST, 10:30 a.m.–5:00 p.m.

Place: Audio Conference Call via FTS Conferencing.

Status: Open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number, 1–866–659–0537 and the passcode is 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3,

2001, renewed at appropriate intervals, and will expire on August 3, 2015.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters for Discussion: The agenda for the Subcommittee meeting includes the following dose reconstruction program quality management and assurance activities: Discussion of current findings from NIOSH and Advisory Board dose reconstruction blind reviews; discussion of dose reconstruction cases under review (cases involving Hanford, Mound Plant, Y–12, Oak Ridge National Laboratory, Lawrence Livermore National Laboratory, Pacific Proving Grounds, Hooker Electrochemical, Simonds Saw and Steel, Bethlehem Steel, Weldon Spring, W.R. Grace, Westinghouse, International Minerals and Chemical (IMC) Corporation, Koppers Company, Bridgeport Brass, Uranium Mill in Monticello, General Steel Industries, and DuPont Deepwater Works); and preparation of the Advisory Board's next report to the Secretary, HHS, summarizing the results of completed dose reconstruction reviews.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., Mailstop E–20, Atlanta GA 30333, Telephone (513)533–6800, Toll Free 1(800)CDC–INFO, Email *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–23857 Filed 10–6–14; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting of the aforementioned committee.

Times and Dates:

8:00 a.m.–5:45 p.m., EDT, October 29, 2014

8:00 a.m.–1:15 p.m., EDT, October 30, 2014

Place: Centers for Disease Control and Prevention, Tom Harkin Global Communications Center, 1600 Clifton Road NE., Building 19, Kent ''Oz'' Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines. Further, under provisions of the Affordable Care Act, at section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been adopted by the Director of the Centers for Disease Control and Prevention must be covered by applicable health plans.

Matters for Discussion: The agenda will include discussions on: General recommendations; human papillomavirus vaccines; influenza; novel influenza vaccines, tetanus, diphtheria, and acellular pertussis vaccine (Tdap); meningococcal vaccines; child/adolescent immunization schedule; adult immunization schedule; immunization safety; hepatitis vaccines; typhoid vaccines; and vaccine supply. Recommendation votes are scheduled for general recommendations, child/adolescent immunization schedule, adult immunization schedule and typhoid vaccines. Time will be available for public comment.

Agenda items are subject to change as priorities dictate. *Contact Person for More Information:* Stephanie Thomas, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road NE., MS–A27, Atlanta, Georgia 30333, telephone 404/639–8836; Email *ACIP@CDC.GOV*

Meeting is Webcast live via the World Wide Web; for instructions and more information on ACIP please visit the ACIP Web site: *http://www.cdc.gov/vaccines/acip/index.html.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–23856 Filed 10–6–14; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0386]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Orphan Drugs; Common European Medicines Agency/Food and Drug Administration Application Form for Orphan Medicinal Product Designation

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 (PRA).

DATES: Fax written comments on the collection of information by November 6, 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 0910–0167. 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.

Orphan Drugs; Common European Medicines Agency/Food and Drug Administration Application Form for Orphan Medicinal Product Designation—21 CFR Part 316 (OMB Control Number 0910–0167)—Revision

FDA is amending the 1992 Orphan Drug Regulations, part 316 (21 CFR part 316). The 1992 regulations were issued to implement sections 525 through 528 of the Orphan Drug Act Amendments to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360aa through 360ee). The 1992 regulations specify the procedures for sponsors of orphan drugs to use in obtaining the incentives provided for in the FD&C Act and set forth the procedures that FDA will use in administering the FD&C Act.

The amendments are intended to clarify regulatory provisions and make minor improvements to address issues that have arisen since the issuance of the regulations in 1992. They are intended to assist sponsors who are seeking and who have obtained orphan drug designations, as well as FDA in its administration of the orphan drug program. Except with respect to the two revisions addressed further, the revisions in this rule clarify existing language and do not constitute a substantive or material modification to the approved collections of information in current part 316 (see 5 CFR 1320.5(g)). The collections of information in current part 316 have been approved by OMB in accordance with the PRA under OMB control number 0910–0167.

One revision concerns the name of the drug in an orphan-drug designation request. As provided in current § 316.20(b)(2) (*Content and format of a request for orphan-drug designation*), requests for orphan-drug designation must include the generic and trade name, if any, of the drug. For some products, however, neither a generic nor trade name may be available. This can be the case for some large and complicated biological products or for any molecule for which the sponsor has not yet obtained a trade name. Under § 316.20(b)(2) as revised, requests for designation must include a chemical name or a meaningful descriptive name of the drug if neither a generic nor trade name is available. Drug names need to be meaningful to the public because the Orphan Drug Act (Pub. L. 97–414) requires that notice respecting designation of a drug be made available to the public (section 526(c) of the FD&C Act and § 316.28 (*Publication of orphan drug designations*)). Internal business codes or other similar identifiers do not suffice for publication purposes, as they do not provide meaningful notice to the public of a designation. By providing a chemical name or a meaningful descriptive name of a drug in a request for designation, if neither a generic nor trade name is available, sponsors would help ensure that the name of the product that FDA ultimately publishes upon designation is accurate and meaningful.

FDA regulations are currently silent on when sponsors must respond to a deficiency letter from FDA on an orphan-drug designation request. FDA sends such deficiency letters when a request lacks necessary information or contains inaccurate information, i.e., miscalculated prevalence estimate. This rule revises § 316.24(a) (*Deficiency letters and granting orphan-drug designation*) to include a requirement that sponsors respond to deficiency letters from FDA on designation requests within 1 year of issuance of the deficiency letter, unless within that time frame the sponsor requests an extension of time to respond. FDA will grant all reasonable requests for an extension. In the event the sponsor fails to respond to the deficiency or request an extension of time to respond within the 1-year time frame, FDA may consider the designation request voluntarily withdrawn. This proposal is necessary to ensure that designation requests do not become ''stale'' by the time they are granted, such that the basis for the initial request may no longer hold.

Sections 525 through 528 of the FD&C Act give FDA statutory authority to do the following: (1) Provide recommendations on investigations required for approval of marketing applications for orphan drugs, (2) designate eligible drugs as orphan drugs, (3) set forth conditions under which a sponsor of an approved orphan drug obtains exclusive approval, and (4) encourage sponsors to make orphan drugs available for treatment on an ''open protocol'' basis before the drug has been approved for general marketing. The implementing regulations for these statutory requirements have been codified under part 316, specify procedures that sponsors of orphan drugs use in availing themselves of the incentives provided for orphan drugs in the FD&C Act, and set forth procedures FDA will use in administering the FD&C Act with regard to orphan drugs. Section 316.10 specifies the content and format of a request for written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of marketing applications. Section 316.12 provides that, before providing such recommendations, FDA may require results of studies to be submitted for review. Section 316.14 contains provisions permitting FDA to refuse to provide written recommendations under certain circumstances. Within 90 days of any refusal, a sponsor may submit additional information specified by FDA. Section 316.20 specifies the content and format of an orphan drug application, which includes requirements that an applicant document that the disease is rare (affects fewer than 200,000 persons in the United States annually) or that the sponsor of the drug has no reasonable expectation of recovering costs of research and development of the drug. Section 316.26 allows an applicant to amend the applications under certain circumstances. Section 316.30 requires submission of annual reports, including progress reports on studies, a description of the investigational plan, and a discussion of changes that may affect orphan status. The information requested will provide the basis for an FDA determination that the drug is for a rare disease or condition and satisfies the requirements for obtaining orphan drug status. Secondly, the information will describe the medical and regulatory history of the drug. The respondents to this collection of information are biotechnology firms, drug companies, and academic clinical researchers.

The information requested from respondents, for the most part, is an accounting of information already in the possession of the applicant. It is estimated, based on frequency of requests over the past 3 years, that 275 persons or organizations per year will request orphan-drug designation and none will request formal recommendations on design of preclinical or clinical studies.

In the **Federal Register** of April 16, 2014 (79 FR 21471), 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/FDA Form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
316.10, 316.12, and 316.14	2	1	2	100	200
316.20, 316.21, and 316.26	225	2	450	150	67,500
Form FDA 3671	50	3	150	45	6,750
316.22	65	1	65	2	130
316.27	43	1	43	5	215
316.30	450	1	450	3	1,350
316.36	2	3	6	15	90
Total					76,235

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 1, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–23846 Filed 10–6–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0222]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on User Fee Waivers, Reductions, and Refunds for Drug and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry on User Fee Waivers, Reductions, and Refunds for Drug and Biological Products'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: On July 16, 2014, the Agency submitted a proposed collection of information entitled ''Guidance for Industry on User Fee Waivers, Reductions, and Refunds for Drug and Biological Products'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0693. The approval expires on August 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 1, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–23842 Filed 10–6–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0432]

Pathological Complete Response in Neoadjuvant Treatment of High-Risk Early-Stage Breast Cancer: Use as an Endpoint To Support Accelerated Approval; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Pathological Complete Response in Neoadjuvant Treatment of High-Risk Early-Stage Breast Cancer: Use as an Endpoint to Support Accelerated Approval.'' This guidance is intended to assist applicants in designing trials to support marketing approval of drugs to treat breast cancer in the neoadjuvant (preoperative) setting using pathological complete response (pCR) as a surrogate endpoint that could support approval under the accelerated approval regulations. Despite advances in systemic therapy of early-stage breast cancer over the past few decades, there remains a significant unmet medical need for certain high-risk or poor prognosis populations of early-stage breast cancer patients. This guidance is intended to encourage industry innovation and expedite the development of breakthrough therapies to treat high-risk early-stage breast cancer. This guidance finalizes the draft guidance issued May 30, 2012.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Tatiana Prowell, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2112, Silver Spring, MD 20993–0002, 301–796–2330.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Pathological Complete Response in Neoadjuvant Treatment of High-Risk Early-Stage Breast Cancer: Use as an Endpoint to Support Accelerated Approval.'' Under the accelerated approval regulations (21 CFR part 314, subpart H, and 21 CFR part 601, subpart E), FDA may grant marketing approval for a new drug on the basis of adequate and well-controlled trials establishing

that the drug has an effect on a surrogate endpoint that is reasonably likely to predict clinical benefit (e.g., in early-stage breast cancer, an improvement in disease-free or overall survival), provided that the applicant conducts additional trials or collects additional data after approval to verify and describe the predicted clinical benefit. This guidance is intended to assist applicants in designing trials to support marketing approval of drugs to treat breast cancer in the neoadjuvant (preoperative) setting using pCR as a surrogate endpoint that could support approval under the accelerated approval regulations. The guidance provides acceptable definitions of pCR for regulatory purposes. The guidance also describes appropriate patient populations for inclusion in neoadjuvant trials conducted with regulatory intent. Finally, the guidance outlines critical design features of trials for both accelerated approval and confirmation of clinical benefit to support regular approval.

FDA recognizes that despite advances in adjuvant systemic therapy of breast cancer over the past few decades, there remains a significant unmet medical need for certain high-risk or poor prognosis populations of early-stage breast cancer patients. Developing highly effective new drugs for these populations is an FDA priority. In providing guidance on the use of pCR as a surrogate endpoint that could support accelerated approval in the neoadjuvant setting, FDA hopes to encourage industry innovation and expedite the development and widespread availability of highly effective novel therapies to treat high-risk early-stage breast cancer.

This guidance finalizes the draft guidance issued May 30, 2012 (77 FR 31858). The current version clarifies appropriate trial designs and development strategies to support accelerated approval in the neoadjuvant setting, defines acceptable endpoints for accelerated approval and confirmation of clinical benefit, standardizes the approach to postoperative systemic therapy, includes guidelines for evaluation of the axillary lymph nodes, and provides detailed recommendations for pathology standard operating procedures.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on use of pCR as an endpoint to support accelerated approval of drug and biological products to treat high-risk early-stage breast cancer patient populations. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that 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 parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively. The collections of information for special protocol assessments have been approved under OMB control number 0910–0470.

III. 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.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: October 1, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–23845 Filed 10–6–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1208]

Laboratory Site Tours Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Tobacco Products' (CTP) Office of Science is announcing an invitation for participation in its Laboratory Site Tours Program. This program is intended to give CTP staff an opportunity to visit facilities involved in the testing and analysis of tobacco products and tobacco smoke. These visits are intended to provide CTP staff with the opportunity to gain a better understanding of tobacco science and laboratory operations and are not intended as regulatory inspections or facility visits for the purposes of developing Tobacco Product Manufacturing Practice regulations. The purpose of this notice is to invite parties interested in participating in the Laboratory Site Tours Program to submit their requests to CTP.

DATES: Submit either an electronic or written request for participation in this program by December 8, 2014. The request should include a description of your facility, including, as applicable, a list of the types of testing and analyses of tobacco products and tobacco smoke performed. Please specify the physical address(es) of the site(s) for which you are submitting a request, along with a proposed 1-day tour agenda.

ADDRESSES: If your facility is interested in offering a site visit, submit either an electronic request to *http://www.regulations.gov* or a written request to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Carolyn Dresler, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Document Control Center, Bldg. 71, rm. G335, Silver Spring, MD 20993–0002, 240–402–4067, *carolyn.dresler@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) was signed into law, amending the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and giving FDA authority to regulate tobacco product manufacturing, distribution, and marketing.

CTP's Office of Science is conducting the Laboratory Site Tours Program to provide its scientific and regulatory staff the opportunity to gain a better understanding of tobacco science and laboratory operations, to include tobacco product testing and analysis. CTP's goal for the Laboratory Site Tours Program is for its staff to gain: (1) Firsthand exposure to laboratories that perform tobacco product testing and (2)

knowledge of product analyses used by tobacco product manufacturers to ensure product consistency.

II. Description of Site Tours Program

In the Laboratory Site Tours Program, small groups of CTP staff plan to observe the operations of laboratories that perform testing and analyses of tobacco products and tobacco smoke relative to analytical chemistry, microbiology, toxicology, biomarkers of exposure or risk, and analytical method development. Please note that the Laboratory Site Tours Program is not intended to include official FDA inspections of facilities to determine compliance with the FD&C Act or for the purposes of developing Tobacco Product Manufacturing Practice regulations; rather, the program is meant to educate CTP staff and improve their understanding of laboratory testing and analyses used by the tobacco industry.

III. Site Selection

CTP plans to select a wide variety of laboratories that include academic, private, and those affiliated with tobacco manufacturers. All travel expenses associated with the site tours will be the responsibility of CTP. Final site selections will be based on the availability of CTP funds and resources for the relevant fiscal year, as well as the following factors, if applicable: (1) Compliance status of the requesting facility and affiliated firm, (2) whether the requesting facility is in arrears for user fees, and (3) whether the requesting facility or affiliated firm has a significant request or marketing application or submission pending with FDA.

IV. Requests for Participation

Identify requests for participation with the docket number found in brackets in the heading of this document. Received requests are available for public examination in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 30, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–23844 Filed 10–6–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; NIMH Database of Cognitive Training and Remediation Studies (DCTRS) (NIMH)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 15, 2014, pages 21250–21252 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Mental Health (NIMH), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Keisha Shropshire, NIMH Project Clearance Liaison, Science Policy and Evaluation Branch, OSPPC, NIMH, NIH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Rockville Pike, Bethesda, MD 20892, or call 301–443–4335 or Email your request, including your address to: *nimhprapubliccomments@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection

NIMH Database of Cognitive Training and Remediation Studies (DCTRS)—New—National Institute of Mental Health (NIMH), National Institute of Health (NIH).

Need and Use of Information Collection: The NIMH Database of Cognitive Training and Remediation Studies (DCTRS) is an integrated database that includes study- and subject-level data from studies of cognitive remediation (CR) in schizophrenia. DCTRS will allow NIMH staff and interested investigators to examine the ways in which various patient characteristics, intervention approaches and features, and treatment combinations affect responses to remediation. The DCTRS Study Information Form and Data Submission Agreement are necessary for the ''Submitter'' to request permission to submit study data to the NIMH DCTRS for general research purposes. The primary use of this information is to collect submitter information and study information for inclusion in the NIMH DCTRS database. The DCTRS data submission agreement includes two forms: (1) The data submission form that includes the terms, agreement, submitter information and certifications, and (2) the study information form which collects de-identified data for each study.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 60.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Type of respondent	Number of respondents	Frequency of response	Average time per response (in hours)	Annual hour burden
Data Submission Agreement	Principal Investigators/Physicians	12	1	5	60

Dated: September 29, 2014.

Keisha Shropshire,

NIMH Project Clearance Officer, NIMH, NIH.

[FR Doc. 2014–23938 Filed 10–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; NIMH Data Repositories Data Submission Request; NIMH Data Repositories Data Access and Use Certification

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Mental Health (NIMH), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: NIMH Project Clearance Liaison, Science Policy and Evaluation Branch, OSPPC, NIMH, NIH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Rockville Pike, Bethesda, MD 20892, or call 301–443–4335 or Email your request, including your address to: *nimhprapubliccomments@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: NIMH Data Repositories (NDR) Data Submission Request, the NIMH Data Repositories Data Access and Use Certification, 0925–0667 Revision; National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Institutes of Mental Health (NIMH) Data Repositories are a group of Federal data repositories based on an informatics platform for human-subjects research domains related to mental health, initially established as the National Database for Autism Research (NDAR) to support autism-related research. In 2013, NIMH received approval from OMB for use of the NIMH Data Access Request and Use Certification (DUC) Form to meet the unique data access needs of all existing NIMH data repositories, which at the time consisted of NDAR, Pediatric MRI (PedsMRI), and the NIMH Clinical Research Datasets (NCRD)—OMB# 0925–0667 (Expiration: 09/30/2016). Now in 2014, two new databases have been added and integrated into the NDAR infrastructure, NDCT and RDoCdb. At this time, NIMH is seeking OMB approval to add an all-purpose NIMH Data Repositories Data Submission Request Form and to add a revised all-purpose NIMH Data Repositories Data Access and Use Certification Form. As the data repositories have matured, and with the introduction of the new databases—namely NDCT and RDoCdb—the information being collected for data submission has become more complex, rendering an OMB-approved submission form a new necessity.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 221.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	A. Estimates annual burden hours			
	Number of respondents	Frequency of response	Average time per response (in hours)	Annual burden hour
NIMH Data Repositories Data Submission Request Form	40	1	95/60	63
NIMH Data Repositories Data Access and Use Certification Form	100	1	95/60	158

Dated: September 29, 2014.

Keisha L Shropshire,

Project Clearance Liaison, NIMH, NIH.

[FR Doc. 2014–23959 Filed 10–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Synthetic and Biological Chemistry.

Date: November 4–5, 2014.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–1722, *eissenstatma@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Imaging Correlates of Neurodegeneration.

Date: November 4, 2014.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alessandra C Rovescalli, Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm 5205 MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR11–346 Interventions for Health Promotion.

Date: November 5, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Martha L Hare, Ph.D., RN, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7770, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Alcohol, Drugs and Heavy Metals.

Date: November 5–6, 2014.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *selmanom@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Biology, Pathophysiology and Diseases of the Visual System.

Date: November 5, 2014.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR13–195 Preclinical Research on Model Organisms to Predict Treatment Outcomes for Disorders Associated with Intellectual and Developmental Disabilities.

Date: November 5, 2014.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Endocrinology and Reproduction.

Date: November 5, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Garofalo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–13–231: Phenotyping Embryonic Lethal Knockout Mice (R01).

Date: November 5, 2014.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 1, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–23811 Filed 10–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel SBIR Phase IIB Bridge Awards.

Date: November 7, 2014.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel SBIR Phase IIB Small Market Awards.

Date: November 7, 2014.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Developing Improved Assessments of Tissue Oxygenation (SBIR/STTR).

Date: November 12, 2014.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington DC/Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–435–0725, *kristen.page@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Research Evaluation and Commercialization Hub.

Date: November 13–14, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific

Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, 301–435–0297, *goltrykl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: October 1, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–23810 Filed 10–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel NIAMS Building Interdisciplinary Research Team (BIRT) Grant Review Meeting.

Date: October 30, 2014.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy, Boulevard, Suite 800, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kan Ma, Ph.D., Scientific Review Officer Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 1, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–23812 Filed 10–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; R13 Conference Grant Review (PA13–347).

Date: November 5, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Minna Liang, Ph.D., Scientific Review Officer, Grants Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4226, MSC 9550, Bethesda, MD 20892–9550, 301–435–1432, *liangm@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; GOMED U01: Grand Opportunity in Medications Development for Substance-Related Disorders.

Date: November 12, 2014.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hilton Garden Inn, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, *ruizjf@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Strategic Alliances for Medications Development to Treat Substance Use Disorders (R01) (PAR–13–334).

Date: November 12, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, *ruizjf@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; FY15 NIDA Avant-Garde Award Program for HIV/AIDS Research.

Date: November 18, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Gerald L. McLaughlin, Ph.D. Scientific Review Officer, Office of Extramural Affairs, national Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 1, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–23809 Filed 10–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2014–0763; OMB Control Number 1625–0109]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of an extension to the following collection of information: 1625–0109, Drawbridge Operation Regulations. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 8, 2014.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2014–0763] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICR are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (Cg–612), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether the ICR should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2014–0763], and must be received by December 8, 2014. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2014–0763], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* 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 DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2014–0763'' in the ''Search'' box. 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 will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Search'' box insert ''USCG–2014–0763'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

1. *Title:* Drawbridge Operation Regulations.

Omb Control Number: 1625–0109.

Summary: The Bridge Program receives approximately 150 requests from bridge owners or the general public per year to change the operating schedule of various drawbridges across the navigable waters of the United States. The information needed for the change to the operating schedule can only be obtained from the bridge owner and is generally provided to the Coast Guard in a written format.

Need: 33 U.S.C. 499 authorizes the Coast Guard to change the operating schedules drawbridges that cross over navigable waters of the United States.

Forms: N/A.

Respondents: The public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Burden Estimate: The estimated burden remains at 150 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: September 24, 2014.

Thomas P. Michelli,

Chief Information Officer, Acting, U.S. Coast Guard.

[FR Doc. 2014–23915 Filed 10–6–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2014–0713; OMB Control Number 1625–NEW]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of an existing collection of information in use without an OMB control number: 1625–NEW, State Registration Data. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 8, 2014.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2014–0713] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICR(s) are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2014–0713], and must be received by December 8, 2014. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2014–0713], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* 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 DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2014–0713'' in the ''Search'' box. 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 will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to

http://www.regulations.gov, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Search'' box insert ''USCG–2014–0713'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request.

1. *Title:* State Registration Data.

Omb Control Number: 1625–NEW.

Summary: This file provides information on the collection of registration data from the State reporting authorities.

Need: Title 46 U.S.C. 12302 and 33 CFR 174.123 authorizes the collection of this information. Registration data is used for statistical purposes.

Forms: CG–3923.

Respondents: 56 State reporting authorities respond.

Frequency: Annually.

Burden Estimate: The estimated burden is 42 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: September 24, 2014.

Thomas P. Michelli,

Chief Information Officer, Acting, U.S. Coast Guard.

[FR Doc. 2014–23925 Filed 10–6–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2014–0154; OMB Control Number 1625–0005]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625–0005, Application and Permit to Handle Hazardous Materials. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 8, 2014.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2014–0154] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICR(s) are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr., Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2014–0154], and must be received by December 8, 2014. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2014–0154], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* 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 DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2014–0154'' in the ''Search'' box. 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 will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Search'' box insert ''USCG–2014–0154'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

1. *Title:* Application and Permit to Handle Hazardous Materials.

OMB Control Number: 1625–0005.

Summary: The information sought by this collection, which includes form CG–4260, ensures the safe handling of explosives and other hazardous materials around ports and aboard vessels.

Need: Sections 1225 and 1231 of 33 USC authorize the Coast Guard to establish standards for the handling, storage, and movement of hazardous materials on a vessel and waterfront facility. Regulations in 33 CFR 126.17, 49 CFR 176.100, and 176.415 prescribe the rules for facilities and vessels.

Forms: CG–4260.

Respondents: Shipping agents and terminal operators that handle hazardous materials.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 205 hours to 182 hours a year due to a decrease in the estimated number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: September 24, 2014.

Thomas P. Michelli,

Chief Information Officer, Acting, U.S. Coast Guard.

[FR Doc. 2014–23913 Filed 10–6–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2014–0265; OMB Control Number 1625–0106]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a Reinstatement, without change of a previously approved collection for which approval has expired for the following collection of information: 1625–0106, Unauthorized Entry into Cuban Territorial Waters. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before November 6, 2014.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2014–0265] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Anthony Smith, Office of Information Management, telephone 202–475–3532 or fax 202–372–8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains

information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2014–0265], and must be received by November 6, 2014. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2014–0265]; indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* 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 DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2014–0265'' in the ''Search'' box. 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 will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Search'' box insert ''USCG–2014–0265'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625–0106.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (79 FR 33575, June 11, 2014) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

1. *Title:* Unauthorized Entry into Cuban Territorial Waters.

OMB Control Number: 1625–0106.

Type Of Request: Extension of a currently approved collection.

Respondents: Owners and Operators of vessels.

Abstract: The rule (33) CFR 107) requires certain U.S. vessels and vessels without nationality, in U.S. territorial waters that thereafter enter Cuban territorial waters to apply for and receive a permit from the U.S. Coast Guard.

Forms: CG–3300.

Burden Estimate: The estimated burden remains unchanged at 1 hour per year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: September 24, 2014.

Thomas P. Michelli,

U.S. Coast Guard, Chief Information Officer, Acting.

[FR Doc. 2014–23917 Filed 10–6–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2014–0911]

Recreational Boating Safety Grants for Nonprofit Organizations

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard proposes several possible ''areas of interest'' for which fiscal year (FY) 2015 national nonprofit organization grants could be awarded, and requests public comments on which areas the Coast Guard should select.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before October 28, 2014.

ADDRESSES: Submit comments using one of the listed methods, and see **SUPPLEMENTARY INFORMATION** for more information on public comments.

- *Online—http://www.regulations.gov* following Web site instructions.
- *Fax*—202–372–1932.
- *Mail* or *hand deliver*—Docket Management Facility (CG–BSX–24), U.S. Coast Guard, Room 4M24–14, 2703 Martin Luther King Jr. Ave. SE., Washington, DC 20593–7501. Hours for hand delivery are 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays (telephone 202–372–1060). To be sure someone is there to help you, please call before coming.

FOR FURTHER INFORMATION CONTACT: For information about this document call or

email Carlin Hertz, Nonprofit Grants Coordinator; 202–372–1060, *carlin.r.hertz@uscg.mil.* For information about viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826, toll free 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

We encourage you to comment or submit relevant material in response to this notice. Submissions will be shared with members of the National Boating Safety Advisory Committee (NBSAC), a group that consists of members of the public who advise the Coast Guard on boating safety, and who operate in compliance with the Federal Advisory Committee Act. The next NBSAC meeting will occur on November 6, 2014. NBSAC may recommend the areas of interest that should be the focus of Coast Guard boating safety grants to nonprofit organizations in FY 2015. Minutes of the November meeting will be posted on NBSAC's Web site, *http://homeport.uscg.mil/NBSAC.*

Mark your submission with docket number USCG–2014–0911 and explain your reasons for any suggestion or recommendation. Provide personal contact information so that we can contact you if we have questions regarding your comments; but note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008).

Mailed or hand-delivered comments should be in an unbound 8½ x 11 inch format suitable for reproduction. The Docket Management Facility will acknowledge receipt of mailed comments if you enclose a stamped, self-addressed postcard or envelope with your submission.

Documents mentioned in this notice and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following the Web site's instructions. You can also view the docket at the Docket Management Facility (see the mailing address under **ADDRESSES**) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Discussion

This notice is issued under the authority of, but is not required by, 46 U.S.C. 13102. It concerns the annual recreational boating safety grants that the Coast Guard issues to nonprofit organizations. We have not issued such a notice in previous years, and, depending on the public response to this year's notice, we may or may not issue similar notices in future years.

The Coast Guard's national recreational boating safety program aims to reduce accidents, injuries and deaths on America's waterways and to facilitate safe enjoyable boating. It promotes greater uniformity among States and localities in boating safety laws, enforcement, and administration. The program also encourages boating safety activity by nonprofit organizations, and each year makes grants to such organizations. This notice discusses eight possible areas of interest for which grants might be awarded in FY 2015. We invite public comments on these eight areas or others that the public feels we should address. Comments can discuss environmental or other concerns you have about a possible area of interest, and can include or cite relevant information or data.

The following possible areas of interest for FY 2015 are intended to support boating safety outreach strategies and goals that we have developed in consultation with NBSAC. For each possible area, grantees would need to develop performance metrics to demonstrate their success, and report to the Coast Guard on their accomplishments. For each area, we may award grants to multiple applicants. We invite your comments on each of these, and to suggest other possible areas of interest we should consider.

1. Year-Round Safe Boating Campaign. The campaign would function nationally, throughout the year, be coordinated with other safety initiatives and media events, and would—

- Align with the National Recreational Boating Safety Strategic Plan, particularly Objective 2: *Boating Safety Outreach*
- Target specific boating safety topics and specific boater market segments;
- Reach boaters at the local level;
- Promote the RBS Program's ''Boat Responsibly'' brand;
- Educate boaters about the consequences of drinking alcohol, taking drugs, or other irresponsible behavior on the water;
- Educate boaters about reporting boating accidents;
- Stress the importance of wearing life jackets and getting boater safety training; and
- Emphasize that boat operators are responsible for their own safety and that of their passengers.

2. Outreach and Awareness Conference. This possible area of interest would use a conference instead of a year-round campaign to focus on the topics discussed under the first possible area of interest, in support of the National Recreational Boating Safety Strategic Plan's Objective 2—*Boating Safety Outreach.* Conference organizers must focus on professional development opportunities for conference participants. The conference must include a session for grant recipients to give brief reports on completed grant projects and on plans for using new Coast Guard grants. Three to six months after the conference, the organizers must survey participants on the long term impacts of the conference and include survey results in their final report.

3. Standardize Statutes and Regulations. In this possible area of interest, the grantee would develop programs to achieve measurable standardization and reciprocity among State boating safety statutes and regulations and how they are administered and enforced, especially with respect to accident reporting, boater education, and life jacket wear requirements. This standardization should be compatible with other State boating safety efforts and promote RBS program effectiveness, the use of Coast Guard-approved boater education programs, and improved administration of Coast Guard-approved vessel numbering and accident reporting systems. The grantee's final report must include an updated comprehensive guide to State recreational boating safety laws and regulations.

4. Accident Investigation Seminars. In this possible area of interest, the grantee would develop a Coast Guard-approved curriculum and materials for seminars for Federal and State recreational boating accident investigators in support of the National Recreational Boating Safety Strategic Plan's Objective 9—*Boating Accident Reporting.* The curriculum must cover the requirements of 46 U.S.C. 6102 and 33 CFR parts 173 subpart C, part 174 subparts C & D (in particular the accident-reporting system administration requirements of 33 CFR 174.103), and part 179. Between four and eight 60-student regional seminars would be required, as well as between two and four advanced courses at the National Transportation Safety Board Training Facility in Ashburn, Virginia, or some other appropriate location. Three 20-student regional train-the-trainer seminars would also be required. Seminar locations must be approved by the Coast Guard. Each seminar would reserve at least four places for Coast Guard marine investigators to be

assigned by the Coast Guard. Each regional seminar must cover an overview of recreational boat accident investigations, witness interviews, collision dynamics, evidence collection and preservation, diagramming, and report writing with an emphasis on adherence to definitions and detail in the accident narrative. The advanced seminars must include instruction in the investigation of video-simulated accidents with actual recreational boats used as training aids.

5. Life Jacket Wear. The grantee in this possible area of interest would provide reliable estimates of nationwide recreational boater life jacket wear rates. This estimate will directly address the National Recreational Boating Safety Strategic Plan's Strategy 4.1—*Track and Evaluate Life Jacket Wear Rates.* Estimates could be developed on an annual or biennial basis, using paid or volunteer observers, and must be based on actual observation of a representative sample of boaters on high-use lakes, rivers, and bays. Methods for developing estimates must be replicable from year to year and must be able to collect data by number, type, length, operation, and activity of boats and by boater age and gender.

6. Voluntary Standards Development. The grantee in this possible area of interest would develop and carry out a program to promote the development of technically sound voluntary standards for building recreational boats. Development of these standards will address the National Recreational Boating Safety Strategic Plan's Strategy 7.3—*Manufacturer Outreach.* The standards must help reduce accidents in which stability, speed, operator inattention, and navigation lights are factors. For example, standards could be developed for labeling flybridge capacity or horsepower rating, or for minimizing operator distraction, or for determining the effects of underwater or decorative lighting.

7. Safety Training for Urban Youth. The grantee in this possible area of interest would build a sustainable network of training providers for urban youth, who in the past 10 years, according to the Centers for Disease Control and Prevention, have been involved in the most water-based fatalities. This effort must support Objectives 2 and 3 of the National Recreational Boating Safety Program Strategic Plan—*Boating Safety Outreach and Advanced and/or On the Water, Skills Based Boating Education.* Training should provide structured, engaging, in-depth opportunities for learning basic boating safety and for practicing on-the-water boating safety skills and must promote the ''Boat Responsibly'' brand.

8. ''Boating Under the Influence'' (BUI) Detection and Enforcement. The grantee in this possible area of interest would develop and conduct train-the-trainer and BUI detection and enforcement training courses for State and local marine patrol officers, Coast Guard boarding officers and others. The goal of the training would be to give students the knowledge and skills they need to deter recreational boater alcohol use and alcohol-related accidents. These courses will directly address National Recreational Boating Safety Strategic Plan Strategy 6.2, *Train marine law enforcement officers in Boating Under the Influence* and Strategy 6.3, *Expand nationwide use of the validated Standardized Field Sobriety Tests (SFST).*

Dated: October 1, 2014.

Jonathan C. Burton,

Captain, Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2014–23807 Filed 10–6–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-New]

Agency Information Collection Activities: USCIS Electronic Payment Processing, Form No Form; New Collection

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 8, 2014.

ADDRESSES: All submissions received must include the OMB Control Number 1615–New in the subject box, the agency name and Docket ID USCIS–2014–0005. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2014–0005;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* USCIS Electronic Payment Processing.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The Immigration and Nationality Act of 1952 (INA), as amended, provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants (see INA section 286(m), 8 U.S.C. 1356(m)) and USCIS will accept certain fee payments electronically.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection is 1,200,000 and the estimated hour burden per response is .167 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 200,400 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is captured as a part of the form which requires a payment to be processed.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: September 30, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–23873 Filed 10–6–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0097]

Agency Information Collection Activities: Sworn Statement of Refugee Applying for Admission to the United States, Form G–646; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting 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. The information collection notice was previously published in the **Federal Register** on March 27, 2014, at 79 FR 17171, allowing for a 60-day public comment period. USCIS did receive 2 comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 6, 2014. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0097.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Sworn Statement of Refugee Applying for Admission to the United States.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–646; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the data collected via the G–646 to determine eligibility for the admission of the applicant to the United States as refugees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 respondents with an estimated hour burden per response of .333 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated hour burden per response of this collection of information is 24,975 hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: October 1, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–23872 Filed 10–6–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5696–N–12]

Additional Waivers and Alternative Requirements for Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds Under the Disaster Relief Appropriations Act, 2013

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice provides an additional waiver and alternative requirements for Minot, North Dakota, a Community Development Block Grant (CDBG) disaster recovery grantee in receipt of funds under Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112–55) and the Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2). Minot, ND initially received disaster assistance under Public Law 112–55 and was provided with additional assistance through Public Law 113–2 (together, the supplemental Acts). The waiver in this Notice specific to Minot, ND applies to both its 112–55 funds and 113–2 funds as described herein. To date, the Department has allocated nearly $15.5 billion under the supplemental Acts to assist recovery in the most impacted and distressed areas identified in major disaster declarations in calendar years 2011, 2012 and 2013.

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

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Applicable Rules, Statutes, Waivers, and Alternative Requirements
III. Catalog of Federal Domestic Assistance
IV. Finding of No Significant Impact

I. Background

Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011) makes available up to $400 million, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act) in 2011.

Additionally, the Disaster Relief Appropriations Act, 2013 (Public Law 113–2, approved January 29, 2013) made available $16 billion (reduced to $15.18 billion after sequestration) [1] in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Stafford Act, due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

To describe these allocations and the accompanying requirements, the Department published multiple **Federal Register** notices: March 5, 2013 (78 FR 14329), April 19, 2013 (78 FR 23578), May 29, 2013 (78 FR 32262), August 2, 2013 (78 FR 46999), November 18, 2013 (78 FR 69104), March 27, 2014 (78 FR 17173), June 3, 2014 (79 FR 31964), and July 11, 2014 (79 FR 40133). For Minot, North Dakota, allocations and requirements under Public Law 112–55 can be found in the Notice published April 16, 2012 (77 FR 22583). These are referred to collectively in this Notice as the ''Prior Notices.'' The requirements of the Prior Notices continue to apply, except as modified by this Notice.[2]

As the supplemental Acts require funds to be awarded directly to a State, or unit of general local government (hereinafter, local government), at the discretion of the Secretary, the term ''grantee'' refers to any jurisdiction that has received a direct award from HUD under the supplemental Acts.

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The supplemental Acts authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of Title I of the HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

This Notice modifies requirements of the Prior Notices. The waivers and alternative requirements in this Notice apply to Minot, North Dakota, as identified herein. For the waiver and alternative requirements described in this Notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of Title I of the HCD Act. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of the supplemental Acts, waivers must be published in the **Federal Register** no later than five days before the effective date of such waiver.

1. General note. Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are those governing the funds appropriated under

[1] On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG–DR grants under the Public Law 113–2 to $15.18 billion.

[2] Links to the Prior Notices, the text of the supplemental Acts, and additional guidance prepared by the Department for CDBG–DR grants, are available on HUD's Web site under the Office of Community Planning and Development, Disaster Recovery Assistance: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/drsi.* The same information is also available on HUD's OneCPD Web site: *https://www.onecpd.info/cdbg-dr/.*

Public Law 112–55 and Public Law 113–2 and already published in the **Federal Register**.

2. Waiver of Section 414 of the Stafford Act and Alternative Requirements. (City of Minot, North Dakota, only).

Section 414 of the Stafford Act provides that that no person otherwise eligible for a replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), may be denied eligibility for that payment as a result of being unable because of a major disaster as determined by the President to meet the occupancy requirements set by the URA. Accordingly, residential occupants displaced from their homes as a result of the 2011 floods in Minot, North Dakota, would be eligible for relocation assistance upon implementation of a rehabilitation program affecting homes that had been previously vacated.

The city of Minot has requested a waiver of section 414 of the Stafford Act, as amended, for its Small Rental Rehabilitation and Reconstruction Program (SRRRP). This Notice grants the city's request and provides alternative requirements consistent with the purpose of the supplemental Acts.

Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d), which is found among the regulations implementing the URA), is waived to the extent that it would apply to the CDBG disaster recovery-funded program SRRRP initiated by the city of Minot under approved Action Plans for Disaster Recovery for its grants under Public Law 113–2 and Public Law 112–55 provided that the program or affiliated projects were not planned, approved, or otherwise underway prior to the disaster.

The Department has surveyed other federal agencies' administration of Section 414 and found varying strategies for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. Under the supplemental Acts, HUD has the authority to waive Section 414 and impose alternative requirements. The Department has, in specific circumstances, previously granted a waiver and provided alternative requirements of Section 414 to CDBG–DR grantees, including the Gulf States impacted by disasters in 2005 and 2008 (see 72 FR 48804).

The severe flood of 2011 substantially damaged Minot's affordable rental housing stock resulting in increased housing burden among the city's renters. According to the city, approximately one quarter of the city's rental units were damaged by the flood. Nearly half of Minot's rental households are now cost- burdened for housing, a portion that has increased in part because of disaster-related damage to available affordable housing. The city hopes to restore rental housing units by using CDBG–DR funds to rehabilitate those units that were damaged by the flood. The SRRRP will commence more than three years after the flood, and many of the residential occupants occupying the housing units at the time of the disaster have since obtained permanent housing elsewhere. The Department has determined that without a statutory waiver and the establishment of alternative requirements for the application of Section 414, the city's SRRRP is unlikely to achieve its goals of contributing to the restoration of the city's affordable housing stock because former residential occupants that left the properties long ago could be eligible to receive replacement housing payments under the URA because of Section 414, reducing amounts that would otherwise be directed toward SRRRP activities.

Due to the specific circumstances of Minot's recovery process, the Department is providing a statutory waiver and establishing alternative requirements in the application of Section 414 of the Stafford Act. For the program covered by this waiver (SRRRP), the city must adhere to the requirements specified in this Notice. In addition to the following requirements, the Department strongly encourages the city to offer low and moderate income former residential occupants preferred status in the residential application process once rehabilitation is complete.

1. For residential occupants that have vacated housing units damaged by the flood, prior to provision of funds for SRRRP activities, the city of Minot must:

a. Establish a publicly available re-housing plan for the program and ensure that it is provided in accessible formats, as necessary, to ensure effective communication with persons with disabilities and those who are limited English proficient. This plan must include, at minimum, the following:

i. A regularly updated registry of the units and/or complexes to be rehabilitated with CDBG–DR funds and those persons eligible for residence so that displaced households and other interested residential occupants may apply to live in these units;

ii. Contact information and a description of any applicable application process, including any deadlines;

iii. A description of other services to be made available, including, at minimum, outreach efforts to eligible persons, housing counseling providing information about available housing resources, and placement services for former and prospective residential occupants;

iv. Operating procedures requiring the city to collect from property owners the contact information of former residential occupants to inform them of the availability of units rehabilitated under the program.

b. In order to contact residential occupants that were displaced from their homes due to the flood, the city must require owners to meet with the city to fill out the site occupant record which will provide information on the residential occupants that occupied the structure at the time of the flood. This information is to be in the agreement to provide assistance to property owners participating in the SRRRP. The city must ask the owner for the residential occupants' latest contact information, and the city must make a good faith effort to contact the residential occupants. The city should also make utilize newspaper and other public media advertisements to locate displaced households.

c. The city must, where necessary, refer former residential occupants to housing counseling programs.

2. In its request, the city has committed to ensure that all units restored with CDBG–DR funds meet the affordability requirements defined by HUD's HOME Program Rents for a period of five years, as described in the SRRRP's published program information.

Justification for Waiver

The Department's basis for this waiver and alternative requirements are unique to the city of Minot as documented in its request to the Department. The Department has considered the city's request and determined that good cause exists and that the waiver and alternative requirements are not inconsistent with the overall purposes of Title I of the HCD Act.

1. The 2011 flood caused unprecedented destruction in the city of Minot. Twenty to 30 percent of the rental housing stock was damaged, which was concentrated in an area of the city that had the highest percentage of affordable housing. The destruction has contributed to an increase in housing cost burden for nearly half of all rental households. Based on information from the city's 2012

Assessment, there are 837 fewer affordable homes in Minot today then there were in 2010, a shortage contributing to the widespread lack of affordable housing in the city.

2. The SRRRP will commence three years after the units in question were rendered uninhabitable. According to the city, 2,328 households were displaced as a result of the flood, 2,062 were provided with temporary housing, but only 20 households continue to reside in temporary housing units which are assisted through other programs with other forms of assistance.

3. In the absence of this waiver, any assistance provided to former residential occupants under the URA might duplicate insurance proceeds and federal, state, or local housing assistance that has already been disbursed.

4. The waiver will simplify the administration of a disaster recovery program (SRRRP) initiated years following the disaster and expedite recovery in a location where rehabilitation activities are restricted to a very short building season due to the region's climate. This waiver does not apply to persons in physical occupancy of real property who are displaced by the SRRRP or other HUD-funded disaster recovery programs or projects. Such persons will continue to be eligible for relocation assistance and payments under the URA. Additionally, persons displaced by the effects of the disaster may continue to apply for assistance under the city's approved disaster recovery programs. This waiver does not address programs or projects receiving other HUD funding or funding from other federal sources. The city or the State of North Dakota may already be performing some elements of a re-housing plan, such as providing a public rental registry or undertaking outreach and placement services to those former residents still receiving FEMA housing assistance. The city will provide a description in the re-housing plan of how those existing efforts will be available for the SRRRP to satisfy the requirements of this Notice.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice is as follows: 14.269; 14.218; 14.228.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: October 1, 2014.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2014–23967 Filed 10–6–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5811–N–01]

Section 184 Indian Housing Loan Guarantee Program New Annual Premium

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

ACTION: Notice.

SUMMARY: The Section 184 Indian Housing Loan Guarantee program (Section 184 program) provides access to sources of private financing for Indian families, Indian housing authorities, and Indian tribes that otherwise could not acquire housing financing because of the unique legal status of Indian land, by guaranteeing loans to eligible persons and entities. Over the last 5 years, the Section 184 program has doubled the number of loans and eligible families being assisted by the program. For HUD to continue to meet the increasing demand for participation in this program, HUD is exercising its new statutory authority to implement an annual premium to the borrower in the amount of 0.15 percent of the remaining loan balance until the unpaid principal balance, excluding the upfront loan guarantee fee, reaches 78 percent of the lower of the initial sales price or appraised value based on the initial amortization schedule. Effective November 15, 2014 the new annual premium of 0.15 percent of the remaining loan balance will apply to all new loan guarantees, including refinances. This notice also provides guidance on the cancellation of the annual premium when the loan reaches the 78 percent loan-to-value ratio.

DATES: *Effective Date:* November 15, 2014.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4126, Washington, DC 20410; telephone number 202–401–7914 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 184 of the Housing and Community Development Act of 1992 (Public Law 102–550, approved October 28, 1992), as amended by the Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104–330, approved October 26, 1996), established the Section 184 program to provide access to sources of private financing to Indian families, Indian housing authorities, and Indian tribes that otherwise could not acquire housing financing because of the unique legal status of Indian land. Because title to trust or restricted land is inalienable, title cannot be conveyed to eligible Section 184 program borrowers. As a consequence, financial institutions cannot utilize the land as security in mortgage lending transactions. The Section 184 program addresses obstacles to mortgage financing on trust land and in other Indian and Alaska Native areas by giving HUD the authority to guarantee loans to eligible persons and entities to construct, acquire, refinance, or rehabilitate one-to-four family dwellings in these areas.

The Section 184 Loan Guarantee Fund (the Fund) receives annual appropriations to cover the cost of the program. Guarantee fees and any other amounts, claims, notes, mortgages, contracts, and property acquired by the Secretary under the Section 184 program reduce the amount of appropriations needed to support the program, and together with appropriations are used to fulfill obligations of the Secretary with respect to the loans guaranteed under this section.

In recent years, rapidly growing demand has increased the need for subsidy appropriations to support new loan guarantees. HUD issued loan

guarantee commitments for $308 million in 2008, $501 million in 2009, $536 million in 2010, $577 million in 2011, $792 million in 2012, and $642 million in 2013.[1] Additionally, expenses have increased for acquisitions, insurance, and other program costs, and HUD has seen higher losses now that the Fund has guaranteed over $4 billion in current loans.

The 2013 Consolidated and Further Continuing Appropriations Act (Pub. L. 113–6, approved March 26, 2013) amended section 184(d) of the Housing and Community Development Act of 1992, by authorizing the Secretary to increase the upfront fee for the guarantee of loans up to 3 percent of the principal obligation of the loan and to establish and collect annual premium payments in an amount not exceeding one percent of the remaining guaranteed balance (excluding the portion of the remaining balance attributable to the fee collected at the time of the issuance of the guarantee) by publishing a notice in the **Federal Register**. On April 4, 2014, HUD exercised its larger loan guarantee fee authority to increase the one-time, loan guarantee fee that borrowers pay at loan closing from 1 percent to 1.5 percent of a mortgage (79 FR 12520). This increase ensured that there would be enough funding to meet borrower demand for all of fiscal year 2014, and reduce the amount of subsidy needed to meet demand in future years.

II. New Annual Premium

To meet projected demand for participation in the Section 184 program for fiscal year 2015, HUD is establishing an annual premium of 0.15 percent of the remaining loan balance until the unpaid principal balance, excluding the upfront loan guarantee fee, reaches 78 percent of the lower of the initial sales price or appraised value based on the initial amortization schedule on all new loans, including refinances. With the establishment of the annual premium, the Section 184 program will now have two sources of funds derived from the borrower (the other being the one-time, up-front loan guarantee fee). Without an annual premium, an appropriation of $8 million for Fiscal Year (FY) 2015 [2] would support only about $318 million in new loan guarantee commitments, less than half of the amount the program guaranteed in 2013. This may force HUD to limit access to the program for otherwise eligible program participants. If HUD were to limit access to the loan guarantee program, HUD predicts that some lenders currently participating in the Section 184 program may choose to no longer partner with HUD to provide mortgage lending through the Section 184 program. Without those lenders, the Section 184 program would be unable to meet the demand for mortgage lending on trust land and in Indian and Alaska Native areas and tribal lands, potentially causing a further reduction in program activity.

By establishing an annual premium paid by borrowers, the credit subsidy rate [3] will go down, and HUD expects the program will be able to guarantee the volume of loans predicted for FY 2015. Establishing a 0.15 percent annual premium would cost a borrower with a $175,000 mortgage (the average loan size for the program) an extra $22 a month on the borrower's monthly payment or $264 annually. Since the 0.15 percent annual premium is tied to the loan balance, the annual premium will decrease for the borrower every year as the loan balance declines and then disappears after the loan-to-value ratio reaches 78 percent of the lower of the initial sales price or appraised value based on the initial amortization schedule. Even with these additional costs to borrowers, the Section 184 program will still be affordable. While paying an annual premium may be a hardship for some borrowers, HUD does not believe that the extra cost is prohibitive and believes it will have a limited impact on the demand for the program. However, the new annual premium will allow HUD to continue to meet the demand for mortgage lending transactions in fiscal year 2015 so that more Indian and Alaska Native families have the opportunity for homeownership.[4] To reduce some of the hardship accompanying the annual premium, HUD provides that payment of the annual premium can be made through monthly payments, to spread out the cost for borrowers, or annual and lump sum payments, to keep a borrower's monthly payment lower.

III. Cancelling the Section 184 Annual Premium at 78 Percent Loan-to-Value.

The new Section 184 annual premium applies only while the unpaid principal balance, excluding the upfront loan guarantee fee, exceeds 78 percent of the lower of the initial sales price or appraised value based on the initial amortization schedule. Once the mortgage amortizes to a loan-to-value (LTV) ratio of 78 percent, collection of the annual premium will cease. HUD will determine when the mortgage reaches the amortized 78 percent LTV threshold based on the contract interest rate and the LTV information provided to HUD's mortgage processing system by the originating lender, and will cease billing the servicing lender accordingly. HUD's calculation of the 78 percent threshold will be predicated on the loan amount excluding the upfront loan guarantee fee.

The LTV ratio on streamline refinances performed without appraisals will be based on data regarding the mortgage being refinanced, including sales price and appraised value amounts residing in the HUD's Office of Native American Program's (ONAP) mortgage processing system. HUD will compute a new LTV ratio by dividing the new loan amount, excluding any upfront guarantee fee, by the lower of the sales price or appraised value amount residing in ONAP's mortgage processing system. From this computed loan-to-value ratio, HUD will determine when the 78 percent threshold is to be reached based on the scheduled amortization. If a computed LTV ratio is not possible, due to missing data or previous refinancing without an appraisal, the new LTV will default to 89.99 percent unless a new appraisal is provided.

In addition to the HUD initiated annual premium cancellation process, borrowers can also request through their lenders cancellation of the collection of the annual premium for those mortgages that reach the 78 percent threshold due to prepayments (principal curtailment). Those loans reaching the 78 percent loan to value threshold sooner than projected due to advanced payments of principal will have the annual premium collections canceled upon the servicing lender submitting supporting information to HUD following the borrower's request. As part of their annual disclosures to homeowners, servicers are to notify borrowers of their option to cancel the annual premium in advance of the projected date by making additional payments of mortgage principal and requesting the lender cancel the collection of the annual premium.

[1] The volume in 2013 does not represent program demand because during FY 2013, the program was shut down for 8 weeks and did not guarantee refinances, which typically accounts for 30 percent of the Section 184 program's business.

[2] Requested by the President in his FY 2015 HUD at *http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/hud.pdf.*

[3] Credit Subsidy Rate as defined in the Federal Credit Reform Act (FCRA) of 1990, as amended by the Balanced Budget Act of 1997.

[4] In its Congressional Justifications for HUD's FY 2015 budget, HUD announced that it would pursue a .15 percent annual premium payment in the Section 184 program. Please see page M–5 of HUD's Congressional Justification for the ''Indian Housing Loan Guarantee Fund (Section 184)'' at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/reports/fy15_CJ.*

This notice establishes the annual premium of 0.15 percent of the remaining loan balance for all new case numbers assigned on or after November 15, 2014 until the unpaid principal balance, excluding the upfront loan guarantee fee, reaches 78 percent of the lower of the initial sales price or appraised value based on the initial amortization schedule.

IV. Tribal Consultation

HUD's policy is to consult with Indian tribes early in the process on matters that have tribal implications. Accordingly, on July 31, 2014, HUD sent letters to all tribal leaders participating in the Section 184 program, informing them of the nature of the forthcoming notice and soliciting comments. A summary of comments received and responses can be found on HUD's Web site at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/homeownership/184.*

V. Environmental Impact

This notice involves the establishment of a rate or cost determination that does 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 (U.S.C. 4321).

Dated: October 2, 2014.

Jemine A. Bryon,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 2014–23969 Filed 10–6–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD05000, L10200000.EE000.14X]

Notice of Intent To Amend the Caliente Resource Management Plan for the Bakersfield Field Office, and the California Desert Conservation Area Plan, California and Prepare an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Ridgecrest Field Office, Ridgecrest, California, and Bakersfield Field Office, Bakersfield, California intend to prepare Resource Management Plan (RMP) amendments with an associated Environmental Assessment (EA) for the Bakersfield Field Office and the Ridgecrest Field Office and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the Plan Amendment with an associated EA. Comments on issues may be submitted in writing until November 6, 2014. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/ridgecrest.html.* In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to Kelso Peak Plan Amendments by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/ridgecrest.html.*
- *Email: stfitton@blm.gov.*
- *Fax:* (760)–384–5499.
- *Mail:* 300 S. Richmond Rd., Ridgecrest, CA 93555.

Documents pertinent to this proposal may be examined at the Ridgecrest Field Office, Ridgecrest, California 93555.

FOR FURTHER INFORMATION CONTACT: Sam Fitton, Natural Resource Specialist, telephone: (760) 384–5432; address: 300 S. Richmond Rd., Ridgecrest, CA 93555; email: *stfitton@blm.gov.* Contact Mr. Fitton to have your name added to our mailing list. 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: This document provides notice that the BLM Field Office, Ridgecrest, CA, intends to prepare RMP amendments with an associated EA for the Bakersfield Field Office and the Ridgecrest Field Office. This notice announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives development, and to guide the planning process. The Kelso Peak grazing allotment is located in Kern County, California and encompasses approximately 2,718 acres of public land. This allotment formerly consisted of three parcels administered by the BLM Bakersfield Field Office, of which the southern parcel is wholly within the Bright Star Wilderness area. Grazing on the allotment is subject to the 1997 Caliente Resource Management Plan. In 2006, the Bakersfield Field Office divided the allotment, retaining the northern parcel and transferring the central and southern parcels, totaling 2718 acres, to the Ridgecrest Field Office because they are physically located within the Ridgecrest Resource Area and California Desert Conservation Area.

The BLM is considering a plan amendment to determine the appropriate level of grazing, if any, on the Kelso Peak Allotment. If the BLM determines that the area should be available for grazing, it will consider issuing a grazing permit, which would include allotment-specific grazing management practices and livestock forage amounts. Through this EA, the BLM will consider a range of alternatives for the management of the Kelso Peak Allotment, including maintaining current management, changing the season of use, altering the number of Animal Unit Months (AUMs), permitting grazing with resource protection measures, or making grazing unavailable.

Preliminary issues for the Plan Amendment area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. The issues include: Cultural resources; livestock grazing; Native American religious concerns; socioeconomics; soils, water quality; wetlands/riparian zones; wilderness; wildlife, including threatened or endangered species; and vegetation, including invasive species.

Preliminary planning criteria include: Developing the Plan Amendment(s) in compliance with FLPMA and all other applicable laws, regulations, executive orders, and BLM supplemental program guidance; developing an EA in the planning process that will comply with NEPA standards; initiating government to government consultation, including tribal interests; incorporating by reference the Standards for Rangeland Health and Guidelines for Livestock Grazing Management into the Plan Amendment/EA; complying with

Appendix C of BLM's Planning Handbook (H–1601–1) in making resource specific determinations; and assuring that the Plan Amendment(s) is compatible, to the extent possible, with existing plans and policies of adjacent local, State, Tribal, and Federal agencies.

You may submit comments to the BLM on issues and planning criteria in writing to the BLM at any public scoping meeting, or using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later.

The BLM will use the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency. 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. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft RMP/Draft EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the Plan Amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, wilderness management, wildlife habitat, vegetation and invasive species, cultural resources, and outdoor recreation.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Dated: July 18, 2014.

Jack L. Hamby,

Acting Deputy State Director.

[FR Doc. 2014–23889 Filed 10–6–14; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–906]

Certain Standard Cell Libraries, Products Containing or Made Using the Same, Integrated Circuits Made Using the Same, and Products Containing Such Integrated Circuits; Commission Decision Not To Review an Initial Determination Terminating the Investigation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 36) of the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation as to all respondents based on a settlement agreement. The Commission has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 24, 2014, based on a complaint filed by Tela Innovations, Inc. (''Tela'') of Los Gatos, California. 79 FR 4175–76. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain standard cell libraries, products containing or made using the same, integrated circuits made using the same, and products containing such integrated circuits by reason of infringement of certain claims of U.S. Patent No. 8,490,043. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Taiwan Semiconductor Manufacturing Company, Limited of Hsinchu, Taiwan and TSMC North America of San Jose, California (collectively, ''TSMC'') as respondents. The Office of Unfair Import Investigations (''OUII'') was also named as a party.

On April 1, 2014, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 10) granting Tela's motion to amend the complaint and notice of investigation to add allegations of violation of section 337 by reason of infringement of certain claims of U.S. Patent No. 8,635,583. On September 2, 2014, Tela and TSMC jointly moved for termination of the investigation based on a settlement agreement. OUII supported the motion.

The ALJ issued the subject ID on September 9, 2014, granting the joint motion for termination of the investigation. He found that the joint motion for termination satisfies

Commission rules 210.21(a)(2), (b)(1). The ALJ also found that there is no indication that termination of the investigation in view of the settlement agreement would have an adverse impact on the public interest. No party petitioned for review of the ID. The Commission has determined not to review the ID and has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 1, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–23843 Filed 10–6–14; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on Rules of Civil Procedure

Federal Register Citation of Previous Announcement: 79FR 48250

AGENCY: Advisory Committee on Rules of Civil Procedure, Judicial Conference of the United States.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Civil Procedure has been canceled: Civil Rules Hearing, October 31, 2014, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: October 1, 2014.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2014–23819 Filed 10–6–14; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[Docket No. 2014R–25T]

Commerce in Explosives; 2014 Annual List of Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); Department of Justice.

ACTION: Notice of list of explosive materials.

SUMMARY: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et seq.* The list covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in 18 U.S.C. 841(c). The Department further seeks to clarify that ''pyrotechnic fuses'' are explosives; and has, therefore, added this term to the List of Explosive Materials. This notice publishes the 2014 Annual List of Explosive Materials.

DATES: The list becomes effective October 7, 2014.

FOR FURTHER INFORMATION CONTACT: Paul Brown, Chief, Explosives Industry Programs Branch; Firearms and Explosives Industry Division; Bureau of Alcohol, Tobacco, Firearms, and Explosives; United States Department of Justice; 99 New York Avenue NE., Washington, DC 20226; 202 648–7120.

SUPPLEMENTARY INFORMATION: The list includes all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all-inclusive. The fact that an explosive material is not on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in 18 U.S.C. 841. Explosive materials are listed alphabetically by their common names followed, where applicable, by chemical names and synonyms in brackets.

The Department has added one new term, ''Pyrotechnic fuses'' that will appear after ''Pyrotechnic compositions'' on the List of Explosive Materials. The addition of this term will clarify that ''pyrotechnic fuses'' (e.g. black match, ignition fuse, quick match) that are not otherwise exempt as a component of ammunition or as black powder articles intended for the sporting, recreational, or cultural purposes in antique firearms or devices, are regulated explosive materials regardless of their size or specific energetic composition. The addition of this term will not expand the list to include any materials not already covered under other names. ATF generally classifies pyrotechnic fuse as low explosives subject to the Federal explosives laws and implementing explosives regulations at 27 CFR Part 555—Commerce in Explosives and the U.S. Department of Transportation classifies them as Class 1 explosives. External burning pyrotechnic fuses that are components of small arms ammunition will remain exempt pursuant to 18 U.S.C. 845(a)(4); and safety and pyrotechnic fuses intended only for sporting, recreational, or cultural purposes in antique firearms (as defined in 18 U.S.C. 921(a)(16)), or antique devices, as exempted from the term ''destructive devices'' in 18 U.S.C. 921(a)(4)), will remain exempt pursuant to 18 U.S.C. 845(a)(5). The Department has not removed any listing since its last publication of the List of Explosive Materials.

This list supersedes the List of Explosive Materials dated October 28, 2013 (Docket No. 2013R–6T, 78 FR 64246).

Notice of the 2014 Annual List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as explosive materials covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate explosive mixtures (excluding ammonium perchlorate composite propellant (APCP)).
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B

Baranol.
Baratol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.

Black powder based explosive mixtures.
Black powder substitutes.
*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMTD [hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
Pyrotechnic fuses.
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.

Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].
TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

Dated: September 26, 2014.

B. Todd Jones,

Director.

[FR Doc. 2014–23870 Filed 10–6–14; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Johnson Matthey, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before December 8, 2014.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, and dispensers of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR pt. 0, subpt. R, App.

In accordance with 21 CFR 1301.33(a), this is notice that on June 26, 2014, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, applied to be registered as a bulk manufacturer of marihuana (7360), a basic class of controlled substance listed in schedule I.

In reference to drug code 7360, the company plans to manufacture a synthetic version cannabidiol in bulk for sale to its customers, who are final dosage manufacturers. No other activity for this drug code is authorized for this registration.

Dated: September 25, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–23833 Filed 10–6–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Noramco, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before December 8, 2014.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION:

The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, and dispensers of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR pt. 0, subpt. R, App.

In accordance with 21 CFR 1301.33(a), this is notice that on July 16, 2014, Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Gamma Hydroxybutyric Acid (2010).	I

Controlled substance	Schedule
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Morphine-N-oxide (9307)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium tincture (9630)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Dated: September 26, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–23831 Filed 10–6–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Cerilliant Corporation

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before November 6, 2014. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before November 6, 2014.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of importers of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part. 0, subpart. R, App.

In accordance with 21 CFR 1301.34(a), this is notice that on June 23, 2014, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
3-Fluoro-N-methylcathinone (3–FMC) (1233).	I
Cathinone (1235)	I
Methcathinone (1237)	I
4-Fluoro-N-methylcathinone (4–FMC) (1238).	I
Pentedrone (*a*-methylaminovalerophenone (1246).	I
Mephedrone (4-Methyl-N-methylcathinone) (1248).	I
4-Methyl-N-ethylcathinone (4–MEC) (1249).	I
Naphyrone (1258)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Fenethylline (1503)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
JWH–250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole) (6250).	I
SR–18 and RCS–8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole) (7008).	I
5-Flouro-UR–144 and XLR11 [1-(5-Fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl) methanone (7011).	I
AB–FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide) (7012).	I
JWH–019 (1-Hexyl-3-(1-naphthoyl)indole) (7019).	I
ADB–PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide) (7035).	I
APINACA and AKB48 N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide (7048).	I
JWH–081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole) (7081).	I
SR–19 and RCS–4 (1-Pentyl-3-[(4-methoxy)-benzoyl] indole (7104).	I
JWH–018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole) (7118).	I
JWH–122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole) (7122).	I
UR–144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (7144).	I
JWH–073 (1-Butyl-3-(1-naphthoyl)indole) (7173).	I
JWH–200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl) indole) (7200).	I
AM–2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole) (7201).	I
JWH–203 (1-Pentyl-3-(2-chlorophenylacetyl) indole) (7203).	I
PB–22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate) (7222).	I
5F–PB–22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-. carboxylate) (7225)	I
Alpha-ethyltryptamine (7249)	I
Ibogaine (7260)	I
CP–47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol) (7297).	I
CP–47497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol) (7298).	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) (7348).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Parahexyl (7374)	I
Mescaline (7381)	I
2-(4-Elthylthio-2,5-dimethoxyphenyl) ethanamine (2C–T–2) (7385).	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
JWH–398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole (7398).	I
3,4-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylendioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I

Controlled substance	Schedule
4-Methoxyamphetamine (7411)	I
5-Methoxy-N-N-dimethyltryptamine (7431).	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
N-Benzylpiperazine (7493)	I
4-Methyl-alphapyrrolidinopropiophenone (4–MePPP) (7498).	I
2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C–D) (7508).	I
2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C–E) (7509).	I
2-(2,5-Dimethoxyphenyl) ethanamine (2C–H) (7517).	I
2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C–I) (7518).	I
2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C–C) (7519).	I
2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C–N) (7521).	I
2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C–P) (7524).	I
2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C–T–4) (7532).	I
MDPV (3,4-Methylenedioxypyrovalerone) (7535).	I
2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B–NBOMe) (7536).	I
2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C–NBOMe) (7537).	I
2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I–NBOMe) (7538).	I
Methylone (3,4-Methylenedioxy-N-methylcathinone) (7540).	I
Butylone (7541)	I
Pentylone (7542)	I
alpha-pyrrolidinopentiophenone (*a*-PVP) (7545).	I
alpha-pyrrolidinobutiophenone (*a*-PBP) (7546).	I
AM–694 (1-(5-Fluropentyl)-3-(2-iodobenzoyl) indole) (7694).	I
Desomorphine (9055)	I
Etorphine (except HCl) (9056)	I
Codeine methylbromide (9070)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Dextromoramide (9613)	I
Dipipanone (9622)	I
Hydroxypethidine (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Racemoramide (9645)	I
Trimeperidine (9646)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
Tilidine (9750)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-Methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Poppy Straw Concentrate (9670)	II
Racemethorphan (9732)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards and distribution to their research and forensic customers.

In reference to drug codes 7360 and 7370, the company plans to import a synthetic cannabidiol and a synthetic tetrahydrocannabinol. No other activity for these drug codes are authorized for this registration.

Comments and requests for hearing on applications to import narcotic raw material are not appropriate. 72 FR 3417, (January 25, 2007).

Dated: September 25, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–23832 Filed 10–6–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: R & D Systems, Inc.

ACTION: Notice of registration.

SUMMARY: R & D Systems, Inc., applied to be registered as an importer of certain basic classes of controlled substances. The DEA grants R & D Systems, Inc., registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated May 28, 2014, and published in the **Federal Register** on June 4, 2014, FR 79 32318, R & D Systems, Inc., 614 McKinley Place NE., Minneapolis, Minnesota 55413, applied to be registered as an importer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of R & D Systems, Inc., to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by: Inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance

with 21 CFR 1301.34, the above-named company is granted registration as an importer of the basic classes of controlled substances:

Controlled substance	Schedule
Mephedrone (4-Methyl-N-methylcathinone) (1248).	I
1-Pentyl-3-(1-naphthoyl)indole) (7118).	I
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol) (7297).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Dimethyltryptamine (7435)	I
Psilocyn (7438)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Oxycodone (9143)	II
Thebaine (9333)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances in dosage form to distribute to researchers.

In reference to drug codes 7360 and 7370, the company plans to import a synthetic cannabidiol and a synthetic tetrahydrocannabinol. No other activity for these drug codes is authorized for this registration.

The import of the above listed basic classes of controlled substances would be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished Food and Drug Administration approved or non-approved dosage form for commercial distribution in the United States.

Dated: September 26, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–23829 Filed 10–6–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Meda Pharmaceuticals, Inc.

ACTION: Notice of registration.

SUMMARY: Meda Pharmaceuticals, Inc., applied to be registered as an importer of a certain basic class of controlled substance. The DEA grants Meda Pharmaceuticals, Inc., registration as an importer of this controlled substance.

SUPPLEMENTARY INFORMATION: By notice dated June 10, 2014, and published in the **Federal Register** on June 17, 2014, 79 FR 34552, Meda Pharmaceuticals, Inc., 705 Eldorado Street, Decatur, Illinois 62523, applied to be registered as an importer of a certain basic class of controlled substance. No comments or objections were submitted for this notice.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Meda Pharmaceuticals, Inc., to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above-named company is granted registration as an importer of nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the FDA approved listed controlled substance as a finished drug product in dosage form for distribution to its customers.

Dated: September 26, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–23828 Filed 10–6–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Chattem Chemicals, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before November 6, 2014. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before November 6, 2014.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of importers, of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR pt. 0, subpt. R, App.

In accordance with 21 CFR 1301.34(a), this is notice that on June 23, 2014, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Chattanooga, Tennessee 37409, applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Methamphetamine (1105)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Phenylacetone (8501)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers. The company plans to import an intermediate form of Tapentadol (9780), and Thebaine (9333), for the manufacture of other bulk controlled substances and distribution to its customers.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

Dated: September 26, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–23827 Filed 10–6–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Alltech Associates, Inc.

ACTION: Notice of registration.

SUMMARY: Alltech Associates, Inc., applied to be registered as an importer of certain basic classes of controlled substances. The DEA grants Alltech Associates, Inc., registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated May 28, 2014, and published in the **Federal Register** on June 3, 2014, 79 FR 31986, Alltech Associates, Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, applied to be registered as an importer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Alltech Associates, Inc., to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above-named company is granted registration as an importer of the basic classes of controlled substances listed:

Controlled substance	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
Heroin (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import these controlled substances for the manufacture of reference standards.

Dated: September 25, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–23830 Filed 10–6–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0189]

Servicing Multi-Piece and Single Piece Rim Wheels; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177). The paperwork provisions of the Standard includes a requirement that the manufacturer or a Registered Professional Engineer certify that repaired restraining devices and barriers meet the strength requirements specified in the Standard and a requirement that defective wheels and wheel components be marked or tagged.

DATES: Comments must be submitted (postmarked, sent, or received) by December 8, 2014.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0189, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier services) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0189) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the docket without change and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled ''**SUPPLEMENTARY INFORMATION**.''

Docket: To read or download comments or other materials in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and

accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Certification of repair (§ 1910.177(d)(3)(iv)). This paragraph requires that when restraining devices and barriers are removed from service because they are defective, they shall not be returned to service until they are repaired and reinspected. If the repair is structural, the manufacturer or a Registered Professional Engineer must certify that the strength requirements specified in (§ 1910.177(d)(3)(i) of the Standard have been met.

The certification records are used to assure that equipment has been properly repaired. The certification records also provide the most efficient means for OSHA compliance officers to determine that an employer is complying with the Standard.

Marking or tagging of wheel components (§ 1910.177(e)(2)). This paragraph requires that defective wheels and wheel components ''be marked or tagged unserviceable and removed from the service area.'' Under this requirement, OSHA is providing employers with sufficient information from which they can derive the wording to use in marking the object or constructing a tag. Therefore, this provision imposes no paperwork burden because it falls within the portion of 5 CFR 1320(c)(2) that states, ''The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition [of 'collection of information']''.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177). OSHA is proposing to retain its current burden hour estimate of one (1) hour. The Agency will summarize any comments submitted in response to this notice and will include this summary in its request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177).

OMB Control Number: 1218–0219.

Affected Public: Business or other for-profits.

Number of Respondents: 80.

Frequency of Responses: On occasion.

Average Time per Response: Three (3) minutes (.05 hour) to maintain a certificate verifying proper repair of a restraining device or barrier and to disclose the repair certificate to an OSHA Compliance Officer.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the Agency name and the OSHA docket number (Docket No. OSHA–2011–0189) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled ''**ADDRESSES**''). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publically available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. 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 the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on October 1, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–23898 Filed 10–6–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0047]

Bloodborne Pathogens Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Bloodborne Pathogens Standard (29 CFR 1910.1030).

DATES: Comments must be submitted (postmarked, sent, or received) by December 8, 2014.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0047, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2010–0047) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled ''**SUPPLEMENTARY INFORMATION**.''

Docket: To read or download comments 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 (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Bloodborne Pathogens Standard require employers to: develop and maintain exposure control plans; develop a housekeeping schedule; provide workers with Hepatitis B Virus (HBV) vaccinations, as well as post-exposure medical evaluations and follow-ups; maintain medical and training records for specified periods; and provide OSHA, the National Institute for Occupational Safety and Health, workers and their authorized representatives with access to these records, HIV and HBV research laboratories and production facilities must also adopt or develop, and review at least once a year, a biosafety manual, and establish and maintain a sharps injury log for the recording of percutaneous injuries from contaminated sharps.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting an adjustment decrease in the number of burden hours from 14,518,778 to 5,528,994 hours. The Agency updated the industry profile and estimates that the number of facilities and workers affected by the Standard has increased. However, the Agency calculates an overall decrease in burden hours. This is primarily related to an administrative error found in the previous ICR which overestimated the burden hours and costs related to healthcare professional time associated with the Hepatitis B vaccination. Also, part of the decrease in burden hours is related to the determination that the training provision of the Standard, although still in effect, is not considered to be a collection of information. The operation and maintenance cost increased from $34,342,534 to $46,093,897 due to the increase in the cost of medical expenses associated with the Standard.

Type of Review: Extension of a currently approved collection.

Title: Bloodborne Pathogens Standard (29 CFR 1910.1030).

OMB Control Number: 1218–0180.

Affected Public: Business or other for-profits.

Number of Respondents: 691,669.

Frequency of Response: On occasion.

Total Responses: 17,815,712.

Average Time per Response: Time per response varies from 5 minutes (.08 hour) to maintain records to 1.5 hours for employees to receive training or medical evaluations.

Estimated Total Burden Hours: 5,528,994.

Estimated Cost (Operation and Maintenance): $46,093,897.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number (Docket No. OSHA–2010–0047) for this ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you

must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. 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 the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on October 1, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–23896 Filed 10–6–14; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that three meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference from Constitutuion Center, 400 7th St. SW., Washington, DC 20506, as follows (ending time is approximate):

Design (application review): This meeting will be closed.

Dates: October 27, 2014. 11:00 a.m. to 1:30 p.m. Eastern Time.

Design (application review): This meeting will be closed.

Dates: October 27, 2014. 2:00 p.m. to 4:30 p.m. Eastern Time.

Design (application review): This meeting will be closed.

Dates: October 28, 2014. 2:00 p.m. to 4:30 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: October 1, 2014.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2014–23821 Filed 10–6–14; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 6, 2014. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. Applicant

Permit Application: 2015–009

Christopher Linder, 6548 31st Ave. NE., Seattle, WA 98115

Activity for Which Permit Is Requested

ASPA entry; Two person photographer and writer team collaborating with the seabird ecology team seeks to enter ASPA 139, Biscoe Point, and ASPA 113, Litchfield Island, under the supervision of at least one member of the seabird ecology team, for photo-documentation of research.

Location

ASPA 139, Biscoe Point, and ASPA 113, Litchfield Island.

Dates

January 1 through February 28, 2015.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2014–23899 Filed 10–6–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[EA–12–189; EA–13–196; NRC–2014–0218]

Confirmatory Order in the Matter of Chicago Bridge and Iron Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a confirmatory order to Chicago Bridge and Iron Company (CB&I) confirming agreements reached in an Alternative Dispute Resolution session held on May 30, 2014. As part of the agreement, CB&I will take a number of actions to strengthen its safety culture monitoring program, employee concerns program, employee training, and communications. These actions are in addition to the actions being taken in response to the September 16, 2013 confirmatory order issued by the NRC.

DATES: *Issue Date:* September 25, 2014.

ADDRESSES: Please refer to Docket ID NRC–2014–0218 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

• Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0218. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For questions about this Order, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Robert Fretz, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; Telephone: 301–415–1980; email: *Robert.Fretz@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 25th day of September 2014.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Office of Enforcement.

Confirmatory Order

(Effective Immediately)

I

Chicago Bridge and Iron (CB&I), is a large multinational conglomerate engineering, procurement and construction company serving various industries in the United States and overseas, some of which are regulated by the U.S. Nuclear Regulatory Commission (NRC). CB&I's main office is located in The Woodlands, Texas.

II

This Confirmatory Order (referenced as Confirmatory Order or Order) is the result of agreements reached during two separate alternative dispute resolution (ADR) mediation cases. The first case (EA–12–189) involved two mediation sessions conducted on June 11, 2013, and July 29, 2013, and the second case (EA–13–196) involved one session that was conducted on May 30, 2014. All ADR mediation sessions were held in Rockville Maryland.

Report of Investigation 2–2011–047 (EA–12–189)

On June 4, 2011, the NRC's Office of Investigations (OI) issued its report of investigation (OI Report No. 2–2011–047). The investigation related to a nuclear construction site in South Carolina, operated by CB&I, formerly known as Shaw Nuclear Services, Inc. and hereafter referred to as Shaw. Based upon evidence developed during its investigation, the NRC identified an apparent violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 52.5, ''Employee protection,'' involving a former Shaw employee who was terminated, in part, for notifying Shaw and Louisiana Energy Service (at the direction of the individual's supervisor, a Shaw official), of a potential 10 CFR Part 21 issue regarding selected heats of rebar that had failed the ASME bend test and may have been shipped to the Louisiana Energy Service facility. In addition, the NRC found Shaw's Code of Corporate Conduct to be overly restrictive and may prevent employees from raising nuclear safety concerns.

By letter dated October 19, 2012, the NRC identified to CB&I the apparent violation of 10 CFR 52.5 and offered CB&I the opportunity to provide a response in writing, attend a pre-decisional enforcement conference (PEC), or to request ADR in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and CB&I, and if possible, assist the NRC and the parties in reaching an agreement on resolving the concerns. In a letter dated January 15, 2013, CB&I provided a written response to the apparent violation. In the letter, CB&I denied it had violated 10 CFR 52.5, contending that the individual did not engage in a legally protected activity and was terminated solely for violating the company's Code of Conduct, which prohibited disclosing company confidential material to an unauthorized third party.

Based upon the information gathered through the NRC's investigation and the information provided in the written response, the NRC issued a Notice of Violation (Notice) and Proposed Imposition of Civil Penalties to CB&I on April 18, 2013. As part of the Notice, the NRC required CB&I to either reply in writing to the Notice or to request ADR. CB&I continued to oppose the violation and, in lieu of continuing the enforcement process and eventually requesting a hearing on the violation, requested ADR.

On June 11, 2013 and July 29, 2013, the NRC and CB&I met in Rockville, Maryland for ADR sessions mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR sessions resulted in the issuance of a Confirmatory Order in September 2013. This Confirmatory Order is issued, in part, pursuant to the agreement reached during these ADR mediation sessions.

Report of Investigation 2–2011–036 (EA–13–196)

On August 7, 2013, OI issued its report of investigation (OI Report No. 2–2011–036). The investigation related to a nuclear modular construction site located in Lake Charles, Louisiana, currently operated by CB&I and formerly known as Shaw Modular Solutions, Inc. (SMS). Based upon evidence developed during its investigation, the NRC identified an apparent violation of 10 CFR 52.4, ''Deliberate misconduct,'' involving former SMS employees who deliberately subverted welder qualifications requirements when: (1) A welder took a welder qualifications test on behalf of a coworker; (2) the coworker allowed the welder to take the qualifications tests on his behalf; and (3) the weld test

administrator certified that the coworker passed his welder qualifications tests when he knew that the tests were performed by another person.

In a letter to CB&I dated February 20, 2014, the NRC identified the apparent violation of 10 CFR 52.4 and offered CB&I the opportunity to provide a response in writing, attend a PEC, or to request ADR in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and CB&I, and if possible, assist the NRC and the parties in reaching an agreement on resolving the concerns. By letter dated March 17, 2014, CB&I provided a written response to the apparent violation and requested a PEC. CB&I later amended its response and requested ADR in a letter dated April 22, 2014.

On May 30, 2014, the NRC and CB&I met in Rockville, Maryland for an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. This Confirmatory Order is issued, in part, pursuant to the agreement reached during this ADR mediation session, and supersedes Confirmatory Order (EA–12–189) issued on September 16, 2013.

III

The NRC acknowledges that CB&I had already undertaken actions related to a chilled work environment at its site in Lake Charles, Louisiana, formerly known as SMS. These actions were agreed to by CB&I in their May 17, 2013, letter in response to the NRC's chilling effect letter dated April 18, 2013. These actions include:

1. Perform an independent focused assessment to determine if effective programmatic controls are in place at CB&I Lake Charles in the following five areas: control of special processes; inspections; personnel training and qualification; instructions, procedures, and drawings; and corrective actions.

2. Review the independent contractor's 2012 nuclear safety culture assessment report and initiate corrective actions, as necessary.

3. Enter the conditions associated with the Chilling Effect Letter into its corrective action program (CAP), characterize it as a significant condition adverse to quality (SCAQ), and complete a root cause analysis. CB&I shall evaluate the potential for similar issues at other CB&I nuclear facilities.

Pursuant to the September 16, 2013, Confirmatory Order (EA–12–189), CB&I also agreed to take additional actions within CB&I's business groups where nuclear related activities take place including:

1. Communicating CB&I's strategy to improve its nuclear safety culture recognizing that efforts to date have not been fully effective. This communication is to include a brief summary regarding employee protection, the NRC's concerns expressed in its April 18, 2013, Chilling Effect Letter regarding CB&I's Lake Charles site, and CB&I's experience, insights, lessons learned, and corrective actions both taken and planned. This communication will be followed by all-hands meetings for management to discuss the importance of the above written communication; and to allow employees to provide feedback and ask questions of management.

2. Ensuring that its nuclear safety culture and safety conscious work environment policies, guidance and related materials are in place, updated, and consistent with: (1) the NRC's March 2011 Safety Culture Policy Statement and associated traits; and (2) the NRC's May 1996 Safety Conscious Work Environment Policy Statement; and is informed by: (1) the NRC's Regulatory Issue Summary 2005–18, ''Guidance for Establishing and Maintaining a Safety Conscious Work Environment''; and (2) the industry's common language initiative (*i.e.,* INPO 12–012, Revision 1, April 2013).

3. Sharing the company's experience and insights with respect to improving nuclear safety culture, including lessons learned and actions taken in a presentation to other nuclear vendors in the industry at an NRC sponsored vendor conference; and if requested by the NRC, as a panelist in a breakout session at the 2014 Regulatory Information Conference.

4. Hiring a third-party, independent consultant to assist CB&I to develop and/or revise its employee protection, nuclear safety culture and safety conscious work environment training for CB&I nuclear employees.

5. Establishing a uniform Executive Review Board (ERB) process to ensure independent management review of all proposed significant adverse actions for all of its nuclear employees to ensure these actions comport with applicable employee protection requirements and nuclear safety culture traits, and to assess and mitigate the potential for any chilling effect.

6. Developing a single Employee Concerns Program (ECP) for CB&I nuclear employees.

7. Developing individual performance appraisal assessment criteria for individual supervisor's appraisals to evaluate if these individuals are meeting CB&I's expectations with regards to employee protection, Nuclear Safety Culture and Safety Conscious Work Environment.

8. Establishing, where applicable, an active corrective action program (CAP) trending process to include the ability to trend root and contributing causes related to CB&I's nuclear safety culture and incorporate trending information in a process similar to that in NEI 09–07.

9. Developing a process by which personnel engaged in work associated with NRC-regulated activities departing the company are given the opportunity to participate in an Employee Concerns Program Exit Interview/Survey to facilitate identification of nuclear safety issues, resulting trends and conclusions.

10. Establishing a nuclear safety culture oversight program, including one or more committees advised by external consultants with extensive nuclear experience.

11. Establishing a CB&I Nuclear Safety Officer function to address company-wide nuclear safety culture and safety conscious work environment activities.

12. Hiring a third-party, independent consultant to perform tailored comprehensive nuclear safety culture assessments, including site surveys, of all CB&I nuclear business entities not already assessed by a licensee and perform assessments or surveys to ensure effectiveness of the Nuclear Safety Culture and Safety Conscious Work Environment programs. Follow-up assessments or surveys shall be conducted every two years for a total of 4 years.

13. Revising its Code of Corporate Conduct to include a provision stating that all employees have the right to raise nuclear safety and quality concerns to CB&I, the NRC, and Congress, or engage in any other type of protective activity without being subject to disciplinary action or retaliation.

Subject to the satisfactory completion of the conditions of the September 16, 2013, Confirmatory Order by CB&I, the NRC exercised its enforcement discretion and withdrew the Notice of Violation and Proposed Imposition of Civil Penalties issued on April 18, 2013.

As a result of the second ADR mediation session (EA–13–196) held on May 30, 2014, the NRC acknowledges that CB&I has taken corrective actions related to the apparent willful violations described in the NRC's letter dated February 20, 2014. These actions are documented in a CB&I letter dated June 16, 2014, following the second mediation session, and include:

1. The issues surrounding the apparent violations (EA–13–196) were entered into CB&I's CAP. The resulting condition report was classified as a

SCAQ and a root cause investigation was performed.

2. CB&I promptly notified the NRC of the apparent violations and the potential willful actions by some of its employees.

3. The employment of the individuals involved in the apparent violations was terminated after an internal investigation determined that their actions were willful and unacceptable.

4. CB&I verified that no materials impacted by this issue were shipped from Lake Charles.

The NRC further acknowledges the following corrective actions taken and planned by CB&I to address willful violations of NRC requirements as described in the June 16, 2014, letter:

1. Corrective actions to prevent recurrence of the apparent violations were identified. This includes training focused on the meaning of one's signature and the significance of deliberate/willful violations. This content was added to the new employee orientation at Lake Charles. A signature verification process was also implemented.

2. All-Hands meetings were held to discuss the significance of deliberate and/or willful violations.

3. CB&I implemented improvements to the weld production completion process, increased Quality Assurance oversight of weld test controls, and implemented additional verification activities by supervision and Quality Assurance.

4. Extent of cause and extent of condition reviews were performed and identified issues were corrected.

5. To support the monitoring and oversight of deliberate/willful misconduct at its facilities, CB&I implemented trend codes in its CAP related to the ability to trend procedure related issues/violations. Additionally, CB&I implemented an Executive Nuclear Safety Council comprised of senior facility and business line leaders and external consultants with extensive nuclear industry experience. This Council will assess nuclear safety performance across all locations and ensure corrective actions are taken company wide as needed for common or significant performance issues (such as deliberate/willful violations).

Additionally, as a result of the second ADR mediation case (EA–13–196), an agreement in principle was reached in which CB&I agreed to take further actions within its business groups where nuclear related activities take place, including:

1. Adding willful violations and deliberate misconduct training to the scope of the training required by the September 16, 2013, Confirmatory Order. Training shall note that employees could be subject to individual enforcement action and/or sanctions for deliberate misconduct. The training shall also include a case study on willful violations and deliberate misconduct. The purpose of this training is also to familiarize CB&I employees with relevant NRC regulations (*e.g.,* Appendix B to 10 CFR Part 50), and how NRC regulations are incorporated into CB&I policies, procedures and work practices in order to ensure that all CB&I employees understand their roles and responsibilities regarding compliance with NRC requirements.

2. Revising CB&I's safety culture monitoring program to include focused questions on willful violations and deliberate misconduct. CB&I will also include willful violations and deliberate misconduct in CB&I's ECP effectiveness reports and assessments, and ERB tracking. CB&I will also revise the ECP exit interview form to include questions relating to whether or not the departing employee is aware of any deliberate/willful misconduct.

3. Reinforcing CB&I's expectations regarding wrongdoing, and compliance with procedures and NRC requirements through various forms of communication at Lake Charles. Site managers and/or supervisors will periodically convey the lessons learned from relevant example wrongdoing cases during organizational meetings.

On September 22, 2014, CB&I consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV below. CB&I further agreed in its September 22, 2014, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing. In view of this Confirmatory Order, consented by CB&I thereto as evidenced by their signed ''Consent and Hearing Waiver Form'' and subject to the satisfactory completion of the conditions of this Confirmatory Order by CB&I, the NRC is exercising its enforcement discretion and will not pursue the issuance of a Notice of Violation and Proposed Imposition of a Civil Penalty. In addition, the Confirmatory Order dated September 16, 2013, is hereby rescinded and replaced with this Confirmatory Order.

The NRC has concluded that its concerns can be resolved through effective implementation of CB&I's commitments. I find that CB&I's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that CB&I's commitments be confirmed by this Order. Based on the above and CB&I's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 52, *it is hereby ordered, effective immediately, that:*

Note: For purposes of this Confirmatory Order, the term ''employees'' shall mean persons employed by CB&I and its contractors and subcontractors, excluding (a) short term (less than ninety (90) days) contractors, and subcontractors, and (b) suppliers, who are engaged in work associated with NRC-regulated activities at or directly related to a CB&I site or project.

A. Communication

1. By no later than November 30, 2013, the CB&I Chief Executive Officer shall:

(a) Communicate, in writing, to its current employees CB&I's strategy to improve its nuclear safety culture recognizing that efforts to date have not been fully effective. This communication shall include a brief summary of the subject of this settlement agreement regarding employee protection, the NRC's concerns expressed in its April 18, 2013, Chilling Effect Letter regarding CB&I's Lake Charles site, and CB&I's experience, insights, lessons learned, and corrective actions both taken and planned.

i. CB&I shall provide a copy of this communication to the NRC for prior review.

(b) Require copies of the communication described above to be posted for forty-five (45) days in prominent locations where employees congregate.

(c) Require all CB&I business units associated with NRC-regulated activities to hold all-hands meetings: (1) For management to discuss the importance of the above written communication; and (2) to allow employees to provide feedback and ask questions of management related to the communication listed above.

2. By no later than December 31, 2013, CB&I shall ensure that its nuclear safety culture and safety conscious work environment policies, guidance, and related materials (*e.g.,* brochures, posters) are in place, updated, and consistent with: (1) the NRC's March

2011 Safety Culture Policy Statement and associated traits; and (2) the NRC's May 1996 Safety Conscious Work Environment Policy Statement; and is informed by: (1) the NRC's Regulatory Issue Summary 2005–18, ''Guidance for Establishing and Maintaining a Safety Conscious Work Environment''; and (2) the industry's common language initiative (INPO 12–012, Revision 1, April 2013).

(a) Copies of these materials shall be provided to the NRC for review at least two (2) weeks prior to issuance.

(b) CB&I shall maintain and implement the materials in Section A.2.

(c) CB&I will distribute copies of these updated policies and brochures to employees, and inform employees where all related materials can be located. These policies and brochures shall be maintained and provided to all new employees during initial orientation.

3. A senior CB&I manager shall share the company's experience and insights with respect to improving nuclear safety culture, including lessons learned and actions taken in a presentation:

(a) To other nuclear vendors in the industry at the next NRC vendor workshop currently scheduled for June 2014. The presentation shall be submitted to the NRC for review within one (1) month of the scheduled workshop.

(b) If requested by the NRC, as a panelist in a breakout session at the 2014 Regulatory Information Conference.

4. For the following eighteen (18) months after issuance of this Confirmatory Order, CB&I supervisors at Lake Charles shall periodically reinforce expectations regarding safety conscience work environment and wrongdoing to their respective work units such that employees receive a relevant message on one or more of these topics at least once per quarter. The periodic reinforcement may be accomplished as part of a routine pre-job brief or through other forms of communication, such as the use of company-wide posters or site supervisors conveying company values and/or lessons learned from relevant example wrongdoing cases during organizational meetings.

B. Training

1. By no later than December 31, 2013, CB&I shall hire a third-party, independent consultant, unrelated to the proceedings at issue, who is experienced with NRC employee protection regulations, Section 211 of the Energy Reorganization Act, as amended, and nuclear safety culture and safety conscious work environment policies, to assist CB&I to develop and/or revise its employee protection, nuclear safety culture and safety conscious work environment training for all CB&I employees.

(a) Training shall include case studies of discriminatory practices.

(b) Training shall define key terms included in employee protection regulations, nuclear safety culture and safety conscious work environment policy statements, and be informed by the industry's common language initiative (e.g., nuclear safety issue, protected activity, adverse action, nuclear safety culture traits).

(c) Training shall include topics such as behavioral expectations with regard to each nuclear safety culture trait. Training shall also include expectations for demonstrating support for raising nuclear safety and quality concerns, and all available avenues without fear of retaliation.

(d) Training on CB&I's Corrective Action Program will also be incorporated, and will emphasize the low threshold for reporting, employee's rights, responsibilities and expectations for raising nuclear safety and quality issues and initiating corrective action documentation.

(e) By July 15, 2014, the training shall include willful violations of NRC requirements and deliberate misconduct. Training shall note that employees could be subject to individual enforcement action and/or sanctions for violations of NRC requirements involving deliberate misconduct. This training shall also include a case study on willful violations of NRC regulations and deliberate misconduct.

(f) By September 16, 2014, CB&I shall revise new employee orientation training to include the subject of willful violations of NRC regulations and deliberate misconduct. This training shall note that employees could be subject to individual enforcement action and/or sanctions for violations of NRC requirements involving deliberate misconduct. Training shall include an overview of how NRC regulations (specifically, at minimum, 10 CFR 52.4, ''Deliberate misconduct,'' and 10 CFR Part 50, Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants'') apply to work being performed by CB&I and shall include a statement that NRC regulations are incorporated into CB&I policies, procedures and work practices to ensure that all CB&I employees understand their roles and responsibilities regarding compliance with NRC requirements.

(g) The training material shall be made available to the NRC upon request.

2. *Supervisory Training:* Initial training, developed in paragraph B.1 above, for supervisors shall be piloted at least in part by a team consisting of the independent consultant and CB&I employees with expertise in these areas. Once finalized, this training will be conducted by the independent consultant at CB&I's Lake Charles site and may be conducted by CB&I employees trained by the team who developed and piloted the training at the other CB&I sites.

(a) The training shall commence no later than April 1, 2014.

(b) All training must be completed by December 31, 2014, and shall include a message from senior management.

(c) Refresher training:

i. Shall be primarily instructor led and be provided at least every two years for a period of four (4) years. This training may be provided by CB&I training staff.

ii. Thereafter, refresher training may be computer-based and shall be provided annually.

(d) Training records shall be retained consistent with applicable CB&I record retention policies and be made available to the NRC upon request.

3. CB&I shall conduct primarily instructor-led employee protection, nuclear safety culture, safety conscious work environment training and willfulness training twice per year for any new supervisors hired after the initial training conducted as described in paragraphs 1 and 2 above.

4. *Employee (Non-Supervisory) Training:* Initial training, developed in paragraph B.1, for employees shall be piloted at least in part by a team consisting of the independent consultant and CB&I employees with expertise in these areas. Once finalized, this training will be conducted by the independent contractor at CB&I's Lake Charles site and may be conducted by CB&I employees trained by the team who developed and piloted the training at other CB&I sites.

(a) All employees training shall commence within six (6) months following completion of their designated line managements' training.

(b) All training must be completed by March 31, 2015, and shall include a message from senior management.

(c) Refresher training may be computer-based and shall be provided annually.

(d) Training will be primarily instructor led for new employees as part of their orientation program/process.

(e) Training records shall be retained consistent with applicable CB&I record retention policies and be made available to the NRC upon request.

5. *Short-term Employee Training:* Employees employed by CB&I for less than ninety (90) days will receive a ''one pager'' that captures the key elements of the training developed in Section B.1 above.

C. Work Processes

1. By no later than March 31, 2014, where not already required by the applicable nuclear facility licensee, CB&I shall establish and maintain a uniform Executive Review Board (ERB) process to ensure independent management review of all proposed significant adverse actions (defined as three or more days off without pay up to and including termination for cause, but excluding reductions-in-force and other ordinary layoffs) for all of its employees below the level of Vice President to ensure these actions comport with applicable employee protection requirements and nuclear safety culture traits, and to assess and mitigate the potential for any chilling effect. The ERB shall review significant adverse actions prior to their execution.

(a) The ERB process and procedure(s) shall be informed by benchmarking at least 2 organizations in the nuclear industry with developed processes. The ERB process shall be included as a topic in the training developed in Section B.1.

(b) Each ERB shall be comprised of management personnel, including legal and/or human resources participation. The ERB shall be informed of any known relevant protected activity engaged in by the subject employee, including via the Employee Concerns Program (ECP), but ECP personnel shall not be a participating member of the ERB.

(c) Upon request, CB&I shall make available copies of the ERB process and procedure, including documentation of ERB decisions made after the Confirmatory Order, to the NRC. CB&I shall maintain documentation of each ERB decision for a minimum of 5 years.

(d) By no later than December 31, 2014, willful violations of NRC regulations and deliberate misconduct will be added to ERB tracking as part of the safety culture monitoring and oversight program scope.

2. By no later than March 31, 2014, CB&I shall develop and maintain a single Employee Concerns Program (ECP) for all CB&I employees.

(a) The ECP, including position descriptions, shall be informed by benchmarking at least 2 organizations in the nuclear industry with developed processes.

(b) The ECP Functional Manager will report to the Vice President, Nuclear Safety for these activities, with day-to-day reporting and oversight by the Director of Nuclear Compliance.

(c) ECP personnel shall receive appropriate training, including investigative techniques.

(d) By no later than September 30, 2014, ECP effectiveness reports and assessments shall include all instances of willful violations of NRC regulations and deliberate misconduct discovered by, or otherwise made known to, ECP personnel.

3. CB&I shall develop and maintain individual performance appraisal assessment criteria for individual supervisor's appraisals to evaluate if these individuals are meeting CB&I's expectations with regards to employee protection, Nuclear Safety Culture and Safety Conscious Work Environment. Implementation will begin in the performance appraisal cycle in the year following completion of the supervisory training in B.2 above.

4. CB&I shall enhance or establish, where applicable, an active CAP trending process to include the ability to trend root and contributing causes related to CB&I's nuclear safety culture and incorporate trending information in an NEI 09–07 like process; implementation will begin in concert with the implementation of the activities as described in C.7. By no later than September 30, 2014, CB&I's CAP shall have the ability to trend procedure-related issues and violations. Any trends in wrongdoing identified through ECP and ERB monitoring shall be entered into the Corrective Action Program.

5. By no later than March 31, 2014, CB&I shall develop and implement a process by which personnel engaged in work associated with NRC-regulated activities departing the company are given the opportunity to participate in an Employee Concerns Program (ECP) Exit Interview/Survey to facilitate identification of nuclear safety issues, resulting trends and conclusions. These assessments and any actions resulting from the exit interviews shall be made available to the NRC for review upon request. By no later than September 30, 2014, the ECP exit interview process shall include content related to willful violations of NRC regulations and deliberate misconduct.

6. CB&I shall maintain a toll-free anonymous reporting service manned by an independent company for use by all its employees to raise nuclear safety and quality concerns.

7. By no later than March 31, 2014, CB&I shall establish and maintain a nuclear safety culture oversight program, including one or more committees advised by external consultants with extensive nuclear experience. This program will provide input to CB&I facility and site management as described below.

(a) The Program will assess at least twice a year the nuclear safety culture trends in process inputs that could be early indications of a nuclear safety culture weakness.

(b) The Program shall be informed by NEI's 09–07 guidance and by benchmarking at least 2 organizations in the nuclear industry with developed processes.

(c) The Program shall be directed by the Vice President Nuclear Safety/ Nuclear Safety Officer who shall oversee actions as appropriate.

(d) By no later than September 30, 2014, the identification and tracking of willful violations of NRC regulations and deliberate misconduct shall be incorporated into the safety culture oversight monitoring program.

8. By no later than October 31, 2014, CB&I shall enter the conditions associated with the wrongdoing event described in the NRC's February 20, 2014, letter into its CAP, characterized as a significant condition adverse to quality (SCAQ), and complete a root cause analysis. CB&I shall evaluate the potential for similar issues at other CB&I nuclear facilities and, if appropriate, initiate additional corrective actions to address the cause of the wrongdoing.

9. By September 30, 2014, CAP guidance shall be revised as needed to ensure future wrongdoing events are evaluated to determine if they are SCAQ and require a root cause analysis. Wrongdoing-related SCAQs will be reviewed for applicability at other CB&I nuclear-related facilities.

10. By September 30, 2014, CB&I shall revise applicable procedures on procedure use and adherence to reinforce the requirements of 10 CFR 52.6. Specifically, CB&I shall ensure that the ''Roles and Responsibilities'' section clearly articulates: (1) the use and purpose of an individual's signature; (2) that procedural requirements are expected to be met; and (3) that complete and accurate information is to be documented. Additionally, the ''Roles and Responsibilities'' section of the procedure shall include a warning about the significance of falsification of documents in relation to nuclear safety and violation of NRC requirements.

D. Assess and Monitor Nuclear Safety Culture and Safety Conscious Work Environment

1. CB&I had previously established a CB&I Nuclear Safety Officer function to address company-wide nuclear safety culture and safety conscious work environment activities. The Vice President of Nuclear Safety has been assigned the duties of the Nuclear Safety Officer.

2. By no later than March 31, 2014, CB&I shall hire a third-party, independent consultant to perform tailored comprehensive nuclear safety culture assessments, including site surveys, of all CB&I nuclear business entities not already assessed by a licensee and perform assessments or surveys within twelve (12) months to ensure effectiveness of the Nuclear Safety Culture and Safety Conscious Work Environment programs.

(a) Follow-up assessments or surveys shall be conducted every 2 years for a total of 4 years. These future nuclear safety culture assessments or surveys shall be comparable to one another to allow for effective evaluation of trends.

(b) CB&I shall make available to the NRC, upon request, the results of the assessments or surveys, CB&I's analysis of the trends, results, and proposed corrective actions, if any, CB&I will take to address the results in order to verify that a healthy nuclear safety culture and safety conscious work environment exists at CB&I nuclear business entities.

(c) The results of each assessment or survey and CB&I's plan to address the results shall be communicated to employees within three (3) months of receiving the assessment/survey results.

(d) By no later than September 16, 2014, focused questions on willful violations of NRC regulations and deliberate misconduct shall be incorporated into safety culture assessments.

3. As committed to in CB&I's May 17, 2013, response to the NRC's April 18, 2013, Chilling Effect Letter, CB&I shall:

(a) By September 20, 2013, perform an independent focused assessment to determine if effective programmatic controls are in place at CB&I Lake Charles in the following five areas: Control of special processes; inspections; personnel training and qualification; instructions, procedures, and drawings; and corrective action. The assessment team will include, but will not be limited to, representatives from Southern Nuclear Operating Company, South Carolina Electric and Gas Company, and CB&I Power.

(b) Evaluate the results of the independent focused assessment and take corrective actions as appropriate by October 31, 2013.

4. As committed to in CB&I's May 17, 2013, response to the NRC's April 18, 2013, Chilling Effect Letter, CB&I reviewed the independent contractor's 2012 nuclear safety culture assessment report and initiated corrective actions, as necessary. The results of this report were communicated to the Lake Charles workforce at an all hands meeting on July 24, 2013.

E. Other

1. As committed to in CB&I's May 17, 2013, response to the NRC's April 18, 2013, Chilling Effect Letter, CB&I Lake Charles has entered the conditions associated with the Chilling Effect Letter into its corrective action program, characterized it as a significant condition adverse to quality, and completed a root cause analysis. By no later than six (6) months after issuance of the Confirmatory Order, CB&I shall evaluate the potential for similar issues at other CB&I nuclear sites.

2. By no later than December 31, 2013, CB&I will revise and maintain its Code of Corporate Conduct to include a provision stating that all employees have the right to raise nuclear safety and quality concerns to CB&I, the NRC, and Congress, or engage in any other type of protected activity without being subject to disciplinary action or retaliation and that no other corporate policy may supersede, limit, or otherwise discourage an employee's right to raise a nuclear safety or quality concern.

(a) By no later than December 31, 2014, CB&I shall revise its Code of Conduct Policy to incorporate ''Deliberate Misconduct'' requirements and its applicability to employees engaged in NRC-regulated activities.

(b) By no later than March 1, 2015, the new section must be included, and explained, in the training conducted in Section IV.B above.

In consideration for the actions and/or initiatives that CB&I agrees to undertake, as outlined above, the NRC agrees to the following:

1. The NRC agrees to exercise enforcement discretion and withdraw the Notice of Violation and Proposed Imposition of Civil Penalties relating to employee protection and the Shaw Code of Conduct (EA–2012–189).

2. The NRC agrees to exercise enforcement discretion and not pursue a Notice of Violation and Proposed Imposition of Civil Penalties relating to violations of 10 CFR 52.4, ''Deliberate misconduct,'' as documented in OI Report 2–2011–036 (EA–2013–196).

3. This Confirmatory Order does not affect other potential escalated enforcement actions, including ongoing investigations by the NRC's Office of Investigations. However, as part of its deliberations and consistent with the philosophy of the Enforcement Policy, Section 3.3, ''Violations Identified Because of Previous Enforcement Action,'' the NRC will consider enforcement discretion for violations with similar root causes (i.e., EA–2012–189 and EA–2013–196) that occur prior to or during implementation of the corrective actions aimed at correcting that specific condition as specified in the Confirmatory Order. However, in the event that CB&I does not demonstrate that the work environment at its domestic sites and projects has improved as a result of the agreed-to corrective actions, the NRC may consider escalated enforcement action beyond the base civil penalty as provided for in the NRC Enforcement Policy.

4. Confirmatory Order EA–12–189, dated September 16, 2013, is rescinded in its entirety, and is replaced by this Confirmatory Order.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by CB&I of good cause.

V

In accordance with 10 CFR 2.202, CB&I and any other person adversely affected by this Order may submit an answer to this Order within 30 days of issuance. In addition, any other person adversely affected by this Order may request a hearing on this Order within 30 days of issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended by 77 FR 46562, August 3, 2012), codified in pertinent part at 10 CFR Part 2, Subpart C. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media.

Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through EIE, users will be required to install a web browser plug-in from the NRC Web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than CB&I requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the date of issuance of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 25th day of September 2014.

For the Nuclear Regulatory Commission.

Patricia K. Holahan, Ph.D.,

Acting Director, Office of Enforcement.

[FR Doc. 2014–23939 Filed 10–6–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305; NRC–2014–0219]

Environmental Assessment and Finding of No Significant Impact: Dominion Energy Kewaunee, Kewaunee Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions in response to a request from Dominion Energy Kewaunee (DEK, the licensee), which would permit the licensee to reduce its emergency planning (EP) activities at the Kewaunee Power Station. Kewaunee Power Station has been permanently shut down and defueled since May of 2013. The licensee is seeking exemptions that would eliminate the requirements to maintain offsite radiological emergency plans and reduce some of the onsite emergency planning activities based on the reduced risks at the permanently shutdown and defueled reactor. Offsite emergency planning provisions would still exist using a comprehensive emergency management plan process. The NRC staff is issuing a final Environmental Assessment (EA) and final Finding of No Significant Impact (FONSI) associated with the proposed exemptions.

ADDRESSES: Please refer to Docket ID NRC–2014–0219 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0219. 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.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: William Huffman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2046; email: *William.Huffman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Kewaunee Power Station (KPS) is a permanently shutdown and defueled power reactor in the process of decommissioning. The KPS is located on approximately 900 acres in Carlton (Kewaunee County), Wisconsin, 27 miles southeast of Green Bay Wisconsin. Dominion Energy Kewaunee is the holder of Renewed Facility Operating License No. DPR–43 for KPS. On May 7, 2013, the KPS reactor was permanently shut down. On May 14, 2014, the KPS reactor was permanently defueled. As a permanently shutdown and defueled facility, and pursuant to § 50.82(a)(2) of Title 10 of the *Code of Federal Regulations* (10 CFR), KPS is no longer authorized to operate the reactor or emplace fuel into the reactor vessel, but is still authorized to possess and store irradiated nuclear fuel. Irradiated fuel is currently stored onsite at KPS in a spent fuel pool (SFP) and in Independent Spent Fuel Storage Installation dry casks. The licensee has requested exemptions from certain EP requirements in 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' for KPS. The NRC's regulations concerning EP do not recognize the reduced risks after a reactor is permanently shutdown and defueled. A permanently shutdown reactor must continue to maintain the same EP requirements as an operating reactor. To establish a level of EP commensurate with the reduced risks, DEK requires exemptions from certain EP regulatory requirements before it can change its emergency plans.

The NRC is considering issuance of exemptions to DEK from portions of 10 CFR 50.47 and 10 CFR part 50, appendix E, which would permit DEK to modify its emergency plan to eliminate most licensee required offsite radiological EP activities at KPS. Consistent with 10 CFR 51.21, the NRC has reviewed the requirements in 10 CFR 51.20(b) and 10 CFR 51.22(c) and determined that an environmental assessment is the appropriate form of environmental review for the requested action. Based on the results of the environmental assessment, which is provided in Section II below, the NRC is issuing this final finding of no significant impact.

II. Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt DEK from meeting certain requirements set forth in 10 CFR 50.47, ''Emergency plans,'' and appendix E to 10 CFR part 50, ''Emergency Planning and Preparedness for Production and Utilization Facilities.'' More specifically, DEK requested exemptions from certain requirements in 10 CFR 50.47(b) regarding onsite and offsite emergency response plans for nuclear power reactors; from certain requirements in 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway EP zones for nuclear power reactors; and from certain requirements in 10 CFR part 50, appendix E, section IV, which establishes the elements that make up the content of emergency plans. The proposed action would result in the elimination of the requirements for the licensee to maintain offsite radiological emergency plans and reduce some of the onsite emergency planning activities at KPS based on the reduced risks at the permanently shutdown and defueled reactor. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities will be retained. If necessary, offsite protective actions could still be implemented using a comprehensive emergency management plan (CEMP) process. A CEMP in this context, also referred to as an emergency operations plan (EOP), is addressed in the Federal Emergency Management Agency's (FEMA) Comprehensive Preparedness Guide 101, ''Developing and

Maintaining Emergency Operations Plans.'' Comprehensive Preparedness Guide 101 is the foundation for State, territorial, tribal, and local emergency planning in the United States. It promotes a common understanding of the fundamentals of risk-informed planning and decision making and helps planners at all levels of government in their efforts to develop and maintain viable, all-hazards, all-threats emergency plans. An EOP is flexible enough for use in all emergencies. It describes how people and property will be protected; details who is responsible for carrying out specific actions; identifies the personnel, equipment, facilities, supplies and other resources available; and outlines how all actions will be coordinated. A comprehensive emergency management plan is often referred to as a synonym for ''all hazards planning.''

The proposed action is in accordance with the licensee's application dated July 31, 2013, ''Request for Exemptions from Portions of 10 CFR 50.47 and 10 CFR part 50, appendix E'' (ADAMS Accession No. ML13221A182), as supplemented by letters dated December 11, 2013 and January 10, 2014. In its letter dated December 11, 2013 (ADAMS Accession No. ML13351A040), DEK provided responses to the NRC staff's request for additional information concerning the proposed exemptions. In its letter dated January 10, 2014 (ADAMS Accession No. ML14016A078), DEK provided supplemental information applicable to inventory makeup strategies for mitigating the loss of water in the SFP.

The Need for the Proposed Action

The proposed action is needed for DEK to revise the KPS emergency plan to reflect the permanently shutdown and defueled status of the facility. The EP requirements currently applicable to KPS are for an operating reactor. Because the 10 CFR part 50 license for KPS no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible. Analyses of the remaining credible accidents, as documented in the KPS Updated Safety Analysis Report, show that any releases beyond the site boundary would be below the Environmental Protection Agency (EPA) Protective Action Guides (PAGs) exposure levels, as detailed in EPA's ''Protective Action Guides and Planning Guidance for Radiological Incidents,'' dated March 2013, which was issued as a Draft for Interim Use and Public Comment.

In addition, DEK analyzed certain beyond design basis accidents that were used as criteria by the NRC staff in granting similar exemptions to previous permanently shutdown and defueled reactors transitioning to decommissioning. An analysis by DEK concluded that as of September 20, 2014, KPS could lose the designed SFP heat removal systems for 26 days and still maintain three feet of water over the fuel with no operator action. Another DEK analysis concluded that, as of October 30, 2014, if water in the SFP were drained, such that all possible modes of cooling were lost (convection, conduction, and thermal radiation), there would be at least 10 hours of time available to: (1) Initiate actions to mitigate the event and preclude any offsite radiological release or; (2) initiate appropriate protective actions for the public.

Based on these analyses, the licensee states that application of the regulation in its particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Dominion Energy Kewaunee also states that it would incur undue costs in the application of operating plant EP requirements for the maintenance of an emergency response organization in excess of that actually needed to respond to the diminished scope of credible accidents.

Environmental Impacts of the Proposed Action

The staff concluded that the exemptions, if granted, will not significantly increase the probability or consequences of accidents at KPS in its permanently shutdown and defueled condition. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are also no known socioeconomic or environmental justice impacts associated with the proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Kewaunee Power Station, Final Report,'' NUREG–1437, Supplement 40, dated August 2010 (ADAMS Accession No. ML102150106).

Agencies or Persons Consulted

The NRC staff did not enter into consultation with any other Federal Agency or with the State of Wisconsin regarding the environmental impact of the proposed action. On September 16, 2014, the Wisconsin State's representative was notified of this EA and FONSI and did not provide any comments on the proposed action.

III. Finding of No Significant Impact

The licensee has proposed exemptions from certain requirements in 10 CFR 50.47(b) regarding onsite and offsite emergency response plans for nuclear power reactors; from certain requirements in 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway EP zones for nuclear power reactors; and from certain requirements in 10 CFR part 50, appendix E, section IV, which establishes the elements that make up the content of emergency plans. The proposed action would result in the elimination of the requirements for the licensee to maintain offsite radiological emergency plans and reduce some of the onsite emergency planning activities at KPS based on the reduced risks at the permanently shutdown and defueled reactor. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities will be retained.

The NRC staff decided not to prepare an Environmental Impact Statement for the proposed action. On the basis of the environmental assessment included in Section II above and incorporated by

reference in this finding, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC staff has determined that a finding of no significant impact is appropriate.

This assessment is based on the licensee's letter dated July 31, 2013, as supplemented by letters dated December 11, 2013, and January 10, 2014. The KPS Supplemental Generic Environmental Impact Statement for License Renewal, dated August 2010, was also considered in this review. Otherwise, there are no other environmental documents associated with this review. These documents are available for public inspection as indicated above.

Dated at Rockville, Maryland, this 26th day of September, 2014.

For the Nuclear Regulatory Commission.

Douglas A. Broaddus,

Chief, Plant Licensing IV–2 and Decommissioning Transition Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–23945 Filed 10–6–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0205]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of three amendment requests. The amendment requests are for Columbia Generating Station; Waterford Steam Electric Station, Unit 3; and Seabrook Station, Unit 1. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by November 6, 2014. A request for a hearing must be filed by December 8, 2014. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by October 17, 2014.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0205. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Sandra Figueroa, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1262, email: *Sandra.Figueroa@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0205 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0205.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0205 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in

accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Energy Northwest, Docket No. 50–397, Columbia Generating Station, (Columbia) Benton County, Washington

Date of amendment request: June 25, 2014. A publicly-available version is in ADAMS under Accession No. ML14188C091.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise the Columbia Generating Station Cyber Security Plan (CSP) Milestone 8 full implementation date as set forth in the CSP Implementation Schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Columbia CSP Implementation Schedule is administrative in nature. This change does not alter any accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. Although implementation of the CSP may require modifications involving digital assets, the proposed change does [not] affect the nature, function, or configuration of those modifications, only the timing of their required completion. Similarly, the manner in which other activities involve in CSP implementation, such as performance of assessments, update of existing procedures, preparation of new procedures, and changes to, or development of, programs, will not be affected; only their required completion date. Measures have or will be taken in the interim to provide adequate protection of critical digital assets.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Columbia CSP Implementation Schedule is administrative in nature. The proposed change does not add any accident initiators. Although implementation of the CSP may alter plant systems or components or the manner in which systems and components are operated, maintained, modified, tested, or inspected, the proposed change only affects the completion date for such alterations.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the Technical Specifications which are part of the plant license. The proposed change to the Columbia CSP Implementation Schedule is administrative in nature in that it only affects the required completion date for certain activities, and does not affect the nature of those activities nor does it affect any safety margins.

Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

Acting NRC Branch Chief: Eric R. Oesterle.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, (Waterford 3), Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 4, 2014. A publicly-available version is in ADAMS under Accession Nos. ML14217A498, ML14217A496, and ML14217A497.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would change the Waterford 3, Cyber Security Plan (CSP) Implementation Schedule Milestone 8 full implementation date and revise the existing operating license physical protection license condition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the CSP Implementation Schedule is administrative in nature. In addition, the milestone date delay for full implementation of the CSP has no substantive impact because other measures have been taken which provide adequate protection during this period of time. Because there is no change to established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, LA 70113.

NRC Branch Chief: Douglas A. Broaddus.

NextEra Energy Seabrook LLC, Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: July 10, 2014, as supplemented by letter dated July 22, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML14198A085 and ML14205A421, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the Seabrook Station, Unit 1, Cyber Security Plan (CSP) Milestone 8 full implementation date, as set forth in the Cyber Security Plan Implementation Schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan implementation schedule is administrative in nature. The change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability or the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan implementation schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability or the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions of operation, limiting safety systems settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan implementation schedule is administrative in nature. Because there is no change in these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, Florida 33408–0420.

Acting NRC Branch Chief: Robert Schaaf.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, Charles Parish, Louisiana

NextEra Energy Seabrook LLC, Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within five days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within five days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

IT IS SO ORDERED.

Dated at Rockville, Maryland, this 25th day of September, 2014.

Annette L. Vietti-Cook,

Secretary, Nuclear Regulatory Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of Federal Register notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/Activity
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2014–23428 Filed 10–6–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293; NRC–2014–0202]

Entergy Nuclear Operations, Inc.; Pilgrim Nuclear Power Station; Extension of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene; extension of public comment period.

SUMMARY: This document modifies a notice appearing in the **Federal Register** on September 22, 2014 (79 FR 56608), by extending the original public comment period from October 22, 2014, to October 26, 2014. This action was requested by concerned stakeholders who sought additional time to provide comments.

FOR FURTHER INFORMATION CONTACT: Nadiyah S. Morgan, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1016, email: *Nadiyah.Morgan@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 56608, in the third column, in the paragraph entitled, **DATES**, the closing of the public comment period was October 22, 2014. This date has been extended to October 26, 2014.

Dated in Rockville, Maryland, this 30th day of September 2014.

For the Nuclear Regulatory Commission.

Benjamin G. Beasley,

Chief, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–23934 Filed 10–6–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meeting Notice

DATED: Weeks of October 6, 13, 20, 27, November 3, 10, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 6, 2014

Tuesday, October 7, 2014

9:00 a.m. Briefing on the Status of Near-Term Task Force Recommendation 2 for Seismic Hazard Reevaluations (Public Meeting) (Contact: Nicholas DiFrancesco, 301–415–1115)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 13, 2014—Tentative

There are no meetings scheduled for the week of October 13, 2014.

Week of October 20, 2014—Tentative

There are no meetings scheduled for the week of October 20, 2014.

Week of October 27, 2014—Tentative

Wednesday, October 29, 2014

9:00 a.m. Briefing on Security Issues (Closed—Ex. 1)

1:30 p.m. Briefing on Security Issues (Closed—Ex. 1)

Thursday, October 30, 2014

9:00 a.m. Briefing on Watts Bar Unit 2 License Application Review (Public Meeting) (Contact: Justin Poole, 301–415–2048)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of November 3, 2014—Tentative

There are no meetings scheduled for the week of November 3, 2014.

Week of November 10, 2014—Tentative

Thursday, November 13, 2014

9:00 a.m. Strategic Programmatic Overview of the Nuclear Material Users and the Fuel Facilities Business Lines (Public Meeting) (Contact: Cinthya Roman, 301–287–9091)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Rochelle Bavol at (301) 415–1651 or via email at *Rochelle.Bavol@nrc.gov.*

* * * * *

Additional Information

The Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6) previously scheduled for October 15 at 11:00 a.m. will be rescheduled.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Patricia.Jimenez@nrc.gov* or *Brenda.Akstulewicz@nrc.gov.*

Dated: October 2, 2014.

Richard J. Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2014–23991 Filed 10–3–14; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a meeting on Thursday, October 9, 2014, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC. The meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:30 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov*.

On September 17, 2014, the Commission issued notice of the Committee meeting (Release No. 33–9647), indicating that the meeting is open to the public (except during portions of the meeting reserved for meetings of the Committee's subcommittees), and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a quorum of the Commission may attend the meeting. It was determined that no earlier notice thereof was possible.

The agenda for the meeting includes: Remarks from Commissioners; a discussion of a recommendation of the Investor as Purchaser subcommittee and Investor Education subcommittee on the definition of accredited investor; a discussion of a recommendation of the Investor as Owner subcommittee on impartiality in the disclosure of preliminary voting results; an update on possible recommendations of the Market Structure subcommittee on the settlement cycle; a briefing by Commission staff on municipal finance bond market transparency; a discussion of issuer adoption of fee-shifting bylaws for intra-corporate litigation; and nonpublic subcommittee meetings.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: October 3, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23990 Filed 10–3–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, October 9, 2014 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution settlement of administrative proceedings;

Litigation matter

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: October 2, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23989 Filed 10–3–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73279; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 33 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

October 1, 2014.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on September 12, 2014, the operating committee (''Operating Committee'' or ''Committee'') [3] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq/UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan.[4] This

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The Plan Participants (collectively, ''Participants'') are the: BATS Exchange, Inc.; BATS Y-Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; Nasdaq Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc.

[4] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007).

amendment represents Amendment No. 33 (''Amendment No. 33'') to the Plan and modifies the Plan's fee schedule without the expectation of incremental revenue to the Participants. The Participants voted in accordance with the requirements of the Plan [5] to make the following changes to the Plan's fee schedule: (1) Decrease the Professional Subscriber Fee from $23 to $22 per month per interrogation device; (2) Increase the per-query charge from $0.005 to $0.0075; and (3) Establish Non-Display fees for three categories of Non-Display use. These ''2015 Fee Changes'' respond to long-term changes in data-usage trends. In formulating the proposed fee changes, the Participants formed a subcommittee to study trends among market data users and consulted with the industry representatives that sit on the Plans' Advisory Committees and with other industry Participants. The Participants also met with the Securities Industry and Financial Markets Association (''SIFMA'').

Pursuant to Rule 608(b)(3)(i) under Regulation NMS, the Participants hereby designate the proposed Amendment 33 as establishing or changing a fee or other charge collected on their behalf in connection with access to, or use of, the facilities contemplated by the Plans. As a result, Amendment 33 becomes effective upon filing with the Commission. The changes will be implemented on January 1, 2015.

At any time within 60 days of the filing of Amendment No. 33, the Commission may summarily abrogate Amendment No. 33 and require that the Amendment be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons.

[5] Section IV(C)(2) of the Plan provides that ''the affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to'' establish new fees or increase existing fees relating to Quotation Information and Transaction Reports in Eligible Securities. A unanimous affirmative vote of the Operating Committee was conducted on August 13, 2014 and recorded in the official minutes of that meeting.

I. Rule 608(a)

A. Purpose of the Amendments

(a) Background

The Participants made several changes to the fee schedule effective as of January 1, 2014.[6] Those changes introduced reporting by redistributors on a ''net'' basis, increased the Professional Subscriber device fee, the Enterprise Maximum for Nonprofessional Subscriber usage, and the Direct Access fee, and established Real-Time and Delayed Redistributor fees (collectively, the ''January 2014 Fee Changes''). They also complied with industry requests that the participants in the several national market system plans strive to harmonize fee structures under those plans. In submitting the January 2014 Fee Changes to the Commission, the Participants identified past attrition and the expectation of continued attrition in the reporting and consumption of consolidated market data. They anticipated that the January 2014 Fee Changes would generate enough revenue to offset the revenue declines resulting from that attrition. Actual experience with the January 2014 Fee Changes shows that, for the first six months of 2014, revenues under the Plan rose five percent relative to the second half of 2013, but not enough to recover from attrition losses over the past three years.

Prior to the January 2014 Fee Changes, the Participants last increased the Professional Subscriber device fees in 1997. Since then, significant change has characterized the industry, stemming in large measure from technological advances, the advent of trading algorithms and automated trading, new investment patterns, new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research. Measures of Plan inputs and outputs have expanded dramatically, including the number of exchange participants, messages per period, message speed, and total shares and dollar volume of trading. Related measures of value to the industry have improved and related industry costs have fallen, including the cost per message, the cost per trade, and the cost per share and dollar volume traded.

The 2015 Fee Changes would realign the Plans' fees more closely with the ways in which Data Feed Recipients consume market data today. Although Professional Subscriber Display Device fees still account for a majority of Plan revenues, the industry's use of Professional Subscriber Display Devices continues to decline and the gap between Professional Subscriber device rates and Nonprofessional Subscriber fees remains large. The proposed fee changes would reduce the rates that Professional Subscribers pay for each of their Display Devices. To offset the revenue losses attributable to the reduction in Professional Subscriber device rates, the Participants propose to establish fees for Non-Display consumption of market data and to raise the fee payable in respect of per-quote services.

The 2015 Fee Changes also move in the direction of continuing to harmonize fee structures under the Plan with fee structures under the CTA Plan, the CQ Plan and the OPRA Plan. This would further reduce administrative burdens for broker-dealers and other market data users and further simplify usage reporting and calculations related to the unit of count.

While the 2015 Fee Changes will rebalance the fee schedule, the Participants anticipate that the proposed 2015 Fee Changes would have only a small impact on Plan revenues, increasing those revenues by approximately two to three percent over the prior year. Of course, that number is hard to estimate, given the uncertainties of Non-Display use revenues and declining Level 1 Professional populations.

(b) The Proposed Changes

i. Professional Subscriber Fee

Prior to the January 2014 Fee Changes, the Professional Subscriber device fee had remained at $20 per month since 1997. The January 2014 Fee Changes raised it to $23 per month. Amendment 33 would reduce the Professional Subscriber device fee from $23 per month to $22 per month. At $22 per month, the increase amounts to an increase of one-half of one percent per year over a 17-year period. During that period, the amount of market data and the categories of information distributed through the UTP Level 1 Service have grown dramatically. Since then, the securities information processor under the Plan (the ''SIP'') has made hundreds of modifications to the UTP Trade Data Feed and the UTP Quotation Data Feed (''UQDF'') to keep up with changes in market structure, regulatory requirements and trading needs. These modifications have added elements such as new messages, new fields, and new values within designated fields to the UTP Level 1 Service. These

[6] *See* Release No. 34–70953; File No. S7–24–89 (December 4, 2013), *http://www.gpo.gov/fdsys/pkg/FR-2013-12-04/html/2013-28970.htm.*

modifications have caused the UTP Level 1 Service to support such industry developments as Regulation NMS, decimalization, limit up/limit down, and many other changes.

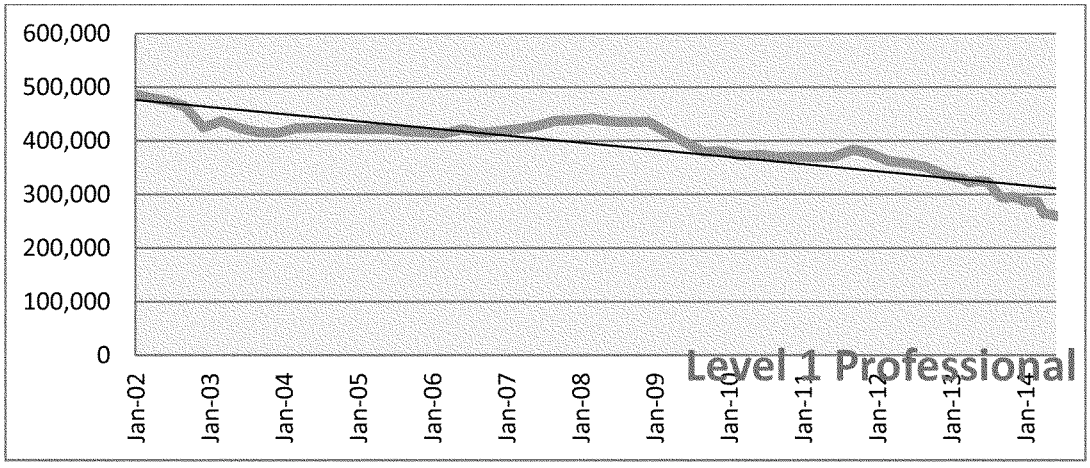
In addition to the many modifications, the number of quotes and trades that the Participants have reported under the Plan has grown dramatically. As an example of the growth in quotes distributed over the UTP Level 1 Service, from the fourth quarter of 2010 to the second quarter of 2014, UTP UQDF Peak Quotes Per Second has increased by 130% from 119,347 to 273,996. Over that period, the Average Quotes Per Day has increased more than 32% to 112,621,874 [*www.utpplan.com*].

Tape C quote metrics	Q2 2014	Q4 2010	Difference (percent)
Peak Quotes Per Second	273,996	119,347	130
Avg. Quotes Per Day	112,621,874	85,402,614	32
Avg. Quote Latency (ms)	0.59	4.5	−87

As an example of the growth in trades distributed over the UTP Level 1 Service, from the fourth quarter of 2010 to the second quarter of 2014, UTP UTDF Peak Trades Per Second has increased by a 221% from 30,292 to 97,232. Over that period, the Average Trades Per Day has increased more than 76% to 11,027,210 [*www.utpplan.com*].

Tape C trade metrics	Q2 2014	Q4 2010	Difference (percent)
Peak Trades Per Second	97,232	30,292	221
Avg. Trades Per Day	11,027,210	6,251,074	76
Avg. Quote Latency (ms)	0.72	6	−88

At the same time, Professional Subscribers' usage of Level 1 data has been declining:



Professional Subscriber fees collected have declined as well. For example, as of September 30, 2011, the Plan's 382,862 Professional Subscribers paid $7,657,240 per month.[7] As of September 30, 2012, the Plan's 351,106 Professional Subscribers paid $7,022,120. As of September 30, 2013, the Plan's 295,192 Professional Subscribers paid $5,903,890. As of June, 2014, the Plan's 259,728 Professional Subscribers paid only $5,973,744 (which reflects the rate increase established in the January 2014 Fee Changes). In sum, monthly revenues from Professional Subscriber device fees for June 2014 remain more than $1,683,486 below the level of Professional usage fees collected in September 2011, notwithstanding the rate increase established in the January 2014 Fee Changes.

Fees for UTP Level 1 compare favorably to fees for comparable Network A and B data. Under the CT/CQ Network A tiered structure, a firm reports how many Display Devices the Professional Subscriber employs; that number then is used to determine the tier within which the firm falls. Until last September, the Network A fees for Professional Subscribers ranged from $18.75 per device for firms employing Professional Subscribers who use more than 10,000 devices to $127.25 per device for an individual Professional Subscriber. In June of 2013, Network A lowered that range to $20 to $50 per device. The Participants understand that Network A intends to lower that range in the near future to $19 to $45.[8] Also

[7] Professional Subscriber counts are calculated and published quarterly and posted on utpplan.org. The latest quarterly figures reflect a 15 percent annual decline in Professional Subscribers. *See http://www.utpplan.com/.*

[8] Specifically, the Network A monthly fees for Professional Subscriber devices would become $45 per month for users with 1 or 2 devices, $27 per month for users with 3 to 999 devices, $23 per month for users with 1,000 to 9,999 devices, and

in June of 2013, Network B combined the fees payable for a Professional Subscriber's receipt of quotation information and last sale price information and set the combined monthly fee at $24 per month. The combined $24 rate reduced costs for most Professional Subscribers, with the exception of a small number of Data Feed Recipients who receive last sale or quotation information, but not both. The Participants understand that Network B intends to lower that rate in the near future from $24 to $23. Under the OPRA Plan, the device fee is currently $27 per month.

The Participants anticipate that the revenue losses that would result from the reduction in Professional Subscriber device rate from $23 to $22 would be offset by the other proposed amendments to the fee schedule and that, in the aggregate, the 2015 Fee Changes would not result in a material change in overall revenues under the Plans.

ii. Per-Query Fee

As an alternative to monthly professional subscriber and nonprofessional subscriber fees, a vendor may respond to end-user queries for quote and trade information and pay a fee for each such response. The Participants first established the per-query fee in 1992 as a pilot at $0.015 per query. In 1995, it was noted that the Nasdaq/UTP per-query fee was three times that of the Network A and Network B counterparts. Subsequently, the Nasdaq/UTP per-query fee was made a permanent part of the fee schedule and was lowered to $0.01 per query to be more in line with Networks A and B. In April 1999, a pilot at a reduced rate of $.005 per query was filed and in April 2001, it was approved as the permanent fee structure. The fee has remained at $0.005 per query ever since. The Participants are now proposing to increase the fee to $0.0075 per query. This increase would help to offset the revenue loss that will result from the decrease in the Professional Subscriber device fee.

Effective June 1, 2013, the Participants in the OPRA Plan increased their per-query fee to $0.0075.[9] In addition, the Participants understand that the Network A Participants and the Network B Participants are contemplating similar increases to $0.0075 per query under the CTA Plan and the CQ Plan.

The Participants note that increasing the per-query fee to $0.0075 would continue to harmonize the per-query fee structure under the national market system plans and would contribute toward restoring a more appropriate balance of fees in recognition of the declining significance of revenues derived from Professional Subscriber device fees. The increase in revenues resulting from the proposed increase in the per-query fees would represent an appropriate contribution for that service to covering the overall costs of the Participants in collecting, processing and distributing market data under the Plans.

iii. Non-Display Fees

A. *Background.* Changes in regulation and advances in technology have had an impact on market data usage in recent years. Automated and algorithmic trading has proliferated, the numbers of quotes and trades have increased significantly and Data Feeds have become exponentially faster. Today, Non-Display Devices consume large amounts of data, and can process the data far more quickly than any human being looking at a terminal. Today, such devices are responsible for a majority of trading. Many firms incorporate Non-Display data into trading applications, without the need for their employees to have widespread access to the data. It enables them to generate considerable profits.

These changes in market data consumption patterns show that Non-Display use now constitutes a significant portion of the industry's consumption of market data and that market data adds considerable value to many firms' business model.

As a result, the Participants have determined that the establishment of fees for Non-Display uses of data, along with a reduction in the Professional Subscriber device fee and the increase in the per-query fee, would provide an equitable allocation of fees to the industry, would facilitate the administration of Non-Display uses of market data and would equitably reflect the value of Non-Display and display data usage. The Participants believe that the proposed fees reflect the value of the data provided and note that Non-Display fees have become commonplace in the industry. Several exchanges impose Non-Display fees for their proprietary data products, as does the OPRA Plan. In addition, the Participants understand that the Network A Participants and the Network B Participants are also contemplating the establishment of fees for Non-Display uses of data.

B. *Definition of Non-Display Use.* For purposes of the proposed fees, Non-Display use refers to accessing, processing or consuming data, whether received via direct and/or redistributor Data Feeds, for a purpose other than solely facilitating the delivery of the data to the Data Feed Recipient's display or for the purpose of further internally or externally redistributing the data. Further redistribution of the data refers to the transportation or dissemination to another server, location or device. In instances where the Data Feed Recipient is using the data in Non-Display to create derived data and use the derived data for the purposes of solely displaying the derived data, then the Non-Display fee schedule does not apply, but the data may be fee liable under the regular fee schedule.

C. *Categories of Non-Display Use.* The Participants recognize three types of Non-Display Uses as follows:

(a) The *Non-Display fee for Electronic Trading Systems* applies when a datafeed recipient makes a Non-Display of data in an electronic trading system, whether the system trades on the datafeed recipient's own behalf or on behalf of its customers. This fee includes, but is not limited to, use of data in any trading platform(s), such as exchanges, alternative trading systems (''ATS's''), broker crossing networks, broker crossing systems not filed as ATS's, dark pools, multilateral trading facilities, and systematic internalization systems.

An organization that uses data in electronic trading systems must count each platform that uses data on a non-display basis. For example, an organization that uses quotation information for the purposes of operating an ATS and also for operating a broker crossing system not registered as an ATS would be required to pay two Electronic Trading System fees.

(b) Non-Display Enterprise Licenses. The Participants recognize two types of Non-Display Licenses as follows:

(i) The *Non-Display fee for Internal Use* applies when a datafeed recipient's Non-Display usage is on its own behalf (other than for purposes of an electronic trading system).

(ii) The *Non-Display fee for External Use* applies when a datafeed recipient's Non-Display usage is on behalf of its customers (other than for purposes of an electronic trading system).

The two types of Non-Display Enterprise Licenses include, but are not limited to, use of data for automated order or quote generation and/or order

$19 per month for users with 10,000 or more devices.

[9] *See* Release No. 34–69448; File No. SR–OPRA–2013–01 (April 25, 2013), *http://www.sec.gov/rules/sro/nms/2013/34-69448.pdf.*

pegging, price referencing for algorithmic trading, price referencing for smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance or portfolio valuation.

D. *Examples of Non-Display Uses of Market Data.* Examples of the Non-Display Electronic Trading System Fee include, but are not limited to:

- Any trading in any asset class
- Exchanges
- Alternative trading systems (ATSs)
- Broker crossing networks
- Broker crossing systems not filed as ATSs
- Dark pools
- Multilateral trading facilities
- Systematic internalization systems

Examples of Non-Display Use for *Non-Display fee for Internal Use* and *Non-Display fee for External Use* include, but are not limited to:

- Automated order or quote generation and/or order pegging
- Price referencing for algorithmic trading
- Price referencing for smart order routing
- Operations control programs
- Investment analysis
- Order verification
- Surveillance programs
- Risk management
- Compliance
- Portfolio valuation

E. *Non-Display Fee.* For each of type of fee, the Participants propose to impose a monthly fee of $3500 for the Non-Display use of the combined last sale price information and quotation information.

By way of comparison, the Participants understand that Network A intends to establish separate monthly Non-Display Fees of $2,000 for last sale prices plus $2,000 for quotation information and that Network B intends to establish monthly Non-Display Fees of $1,000 for last sale prices plus $1,000 for quotation information.

In addition, the Non-Display fee for Electronic Trading Systems applies once to each Data Feed Recipient's account for each of the firm's electronic trading systems. If a firm uses quotes solely to operate a dark pool for its customers' orders and makes no other Non-Display use of market data, it would pay the Non-Display fee for Electronic Trading Systems (and not the other Non-Display Licenses). If that firm also uses quotes to operate an ATS, but still makes no other Non-Display uses of market data, it would pay two Non-Display fees for Electronic Trading Systems fees (and no other Non-Display Licenses).

The fees for Non-Display Enterprise Licenses are enterprise licenses for the Non-Display uses that fall within either Internal or External usage. Only one Non-Display Enterprise License fee applies to each Data Feed Recipient's account regardless of the number of Non-Display uses of data the firm makes within that category (either Intenral or External). For instance, if a firm makes Non-Display uses of data to analyze investments for its own portfolio, to value that portfolio, to verify the firm's proprietary orders and to run compliance programs for the firm, the firm would pay only one *Non-Display fee for Internal Use* fee. Similarly, if a firm makes Non-Display uses of data to analyze investments for customers, to verify customer orders, to surveil the market it conducts for customers, to provide risk management services to customers and to value its customers' portfolios, the firm would pay only one *Non-Display fee for External Use* fee. Finally, if a firm makes Non-Display uses of data to analyze investments for its own portfolio and to analyze investments for customers, the firm would pay both the *Non-Display fee for Internal Use* and the *Non-Display fee for External Use* fee.

The fees apply to each of a Data Feed Recipient's accounts that uses market data for Non-Display purposes. The Participants would only invoice Data Feed Recipients that make Non-Display uses of real-time market data on a monthly basis.

A firm may use data for each of Non-Display fees and thereby subject itself to the Non-Display fee for each category. For example, if a broker-dealer operates an ATS (Non-Display fee for Electronic Trading Systems), operates a trading desk to trade with its own capital (Non-Display fee for Internal Use), and operates a separate trading desk to trade on behalf of its clients (Non-Display fee for External Use), then the Non-Display fee would apply in respect of all three categories. If, in addition to the ATS, the firm also operates a broker crossing system not registered as an ATS, then two Non-Display fees for Electronic Trading Systems would apply in respect of each market data product. That is, a firm must count each electronic trading system that uses data for payment of the Non-Display fee for Electronic Trading Systems.

F. *Administrative Requirements for Non-Display Uses.* In response to feedback received from SIFMA, the Participants seek to minimize the administrative burden attendant to Non-Display fees and, therefore, have determined not to impose a monthly reporting requirement. Instead, the Participants would require each recipient of a real-time Data Feed to make an annual declaration of its Non-Display use to the Participants. They would require each Data Feed Recipient to complete and submit the declaration upon its initial receipt of a Data Feed under the UTP Plan. In addition, if a Data Feed Recipient's use of data changes at any time after the Data Feed Recipient submits its declaration or annual confirmation or update, the Participants would require the Data Feed Recipient to update its declaration at the time of the change to reflect the change of use.

The Participants believe that use of the declaration would keep administrative burdens at a minimum, as SIFMA requested.

The Participants reserve the rights:

(a) To audit Data Feed Recipients' Non-Display use of market data in accordance with the terms of their market data agreements with vendors and others; and

(b) charge Non-Display fees to Data Feed Recipients that do not report any display activity, and do not return a completed declaration in accordance with the requirements specified above.

B. Impact of the Proposed Fee Changes

As with any rebalancing of fees, these 2015 Fee Changes may result in some Data Feed Recipients paying higher total market data fees and in others paying lower total market data fees. The Participants anticipate that the 2015 Fee Changes will not generate enough revenue to offset past and future attrition in reported consolidated market data activity data. That attrition (''Attrition'') takes two primary forms.

First, the reduction in Professional Subscriber device fees will reduce revenues under the Plan. They estimate that the percentage of total Plan revenues derived from Professional Subscriber device fees will fall as a result of the reduction in the fee from 59 percent to 54 percent.

Second, several customer-usage trends have declined year-over-year since 2008, particularly declines in Professional Subscriber's consumption of consolidated market data. (More information on these declines can be found in the Participants' Consolidated Data Quarterly Operating Metrics Reports. Those reports can be found at *http://www.utpplan.com*). The decline in Professional Subscriber data usage has resulted from a challenging financial environment, and corporate downsizing, as well as a liberalization of the SEC's Vendor Display Rule that has permitted substitution of lower-cost and

lower-value proprietary data product offerings.

As a result of these declines, revenues generated under the Plans have declined significantly. Since 2008, CTA/UTP market data revenue has declined 16 percent from approximately $463 million in 2008 to $388 million annualized through March of 2014. The Participants will review the impact of the 2015 Fee Changes on an on-going basis and reserve the right to further amend fees in the future, subject to filing any such amended fees with the Commission in accordance with Regulation NMS.

Because the Non-Display fee would be new, it is difficult to estimate the impact they would have on revenues. A best guess is that they would account for approximately 5 percent of revenues. If current usage levels remain the same, the increase in the per-query fee would raise revenues by approximately 1 percent. The decline in the Professional fee would decrease revenues by 5 percent, assuming there was no additional attrition.

Most firms would be impacted only slightly by the 2015 Fee Changes, though a small number of firms would see a more significant impact. Some of the largest firms would realize sizable savings or a large increase in costs.

The Participants estimate that the changes would increase Plan revenues by approximately two to three percent over the prior year, though that number is hard to estimate, given the uncertainties of Non-Display use revenues and declining Level 1 Professional populations.

The Participants note that the 2015 Fee Changes would contribute to stemming the significant loss of revenues under the Plans in recent years as a result of large multi-year declines in Display Devices that Professional Subscribers use. Furthermore, the rise in off-exchange trading has meant that a smaller portion of those revenues have been allocated to exchanges. Thus, the Participants believe that the 2015 Fee Changes would not result in a material increase in overall revenues under the Plans, but would help to stem the tide of declining revenues caused by trends in the use of Display Devices by Professional Subscribers.

C. Governing or Constituent Documents

Not applicable.

D. Implementation of the Amendments

Rule 608(b)(3)(i) of Regulation NMS (the ''Rule'') permits the Participants to designate a proposed plan amendment as establishing or changing fees and other charges, and to place such an amendment into effect upon filing with the Commission. As mentioned above, the Participants have made that designation. The Rule does not place any limitations on which particular fee changes qualify for immediate effectiveness. Rather, if the Commission believes that a longer comment period is appropriate for a particular filing, it may extend the comment period or abrogate the filing. Ample precedents exist for the filing of multiple or even complex fee changes to NMS Plans on an immediately effective basis over the past thirty years.[10]

Pursuant to the Rule, the Participants have designated Amendment 33 as establishing or changing fees, and will have notified the industry of the proposed Fee Changes well in advance of Amendment 33's effective date. The Participants anticipate implementing the proposed 2015 Fee Changes on January 1, 2015, and intend to give further notice to Data Feed Recipients and end-users of the 2015 Fee Changes.

E. Development and Implementation Phases

See Item I(C) above.

F. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed fee changes reflect the Participants' views that it is appropriate to rebalance the allocation of market data fees and to better track the changing trends in the ways in which the industry uses market data. The proposed fee changes comport with the proliferation of the use of data for dark pools and other Non-Display trading applications. They recognize industry changes that have evolved as a result of numerous technological advances, the advent of trading algorithms and automated trading, different investment patterns, a plethora of new securities products, unprecedented levels of trading, and developments in portfolio analysis and securities research.

In addition, the 2015 Fee Changes would simplify firms' administrative burdens by harmonizing the Plans' fee structures with those under the CTA Plan, the CQ Plan and the OPRA Plan. The use of an annual declaration for Non-Display Use reporting purposes would alleviate the burden of counting devices used for non-trading purposes.

The Participants note that the list of exchanges that have previously implemented Non-Display fees includes the London Stock Exchange, Nasdaq BX, Nasdaq PSX, Nasdaq, NYSE, NYSE MKT LLC and NYSE Arca. They note that the OPRA Plan imposes Non-Display fees and that they understand that the Participants in the CTA Plan and the CQ Plan anticipate doing so shortly.

The Participants hope that the reductions in the Professional Subscriber Display Device rate will foster the widespread availability of real-time market data. At the same time, the new fees for Non-Display uses of market data would cause firms making Non-Display use of data to make appropriate contributions to the costs of collecting, processing and redistributing the data.

In addition, the proposed fee changes would cause the Plan's fees to sync more closely with fee structures under the CTA Plan, the CQ Plan and the OPRA Plan. The proposed reductions in the Professional Subscriber device fee would allow that fee to compare even more favorably with the Professional Subscriber device fees payable under those other Plans and with the Professional Subscriber device fees charged for market data by the largest stock exchanges around the world. The proposed Non-Display fees compare favorably with the comparable fees that the Participants understand the Participants in the CTA Plan and the CQ Plan intend to establish and with the Non-Display fees that individual exchanges charge for their proprietary products. The proposed increase in the per-query fees would harmonize those fees with the per-query fees paid under the OPRA Plan and the comparable fee that the Participants understand the Participants in the CTA Plan and the CQ Plan intend to set.

As a result, the 2015 Fee Amendments would promote consistency in fee structures among the national market system plans, as well as consistency with the preponderance of other market data providers. This would make market data fees easier to administer for Data Feed Recipients.

[10] *See, e.g.,* Fifth Charges Amendment to the First Restatement of the CTA Plan, File No. S7–433, Release No. 34–19342, 47 FR 57369 (December 23, 1982); Fourteenth Charges Amendment to the First Restatement of the CTA Plan and Fifth Charges Amendment to the original CQ Plan, File No. S7–30–91, Release No. 34–29863, 56 FR 56429 (November 4, 1991); Second Charges Amendment to the CTA Plan and First Charges Amendment to the CQ Plan, SR–CTA/CQ–97–2, Release No. 34–39235, 62 FR 54886 (October 14, 1997); OPRA Plan amendment SR–OPRA–2004–01, Release No. 34–49382, 69 FR 12377 (March 16, 2004); OPRA Plan amendment SR–OPRA–2007–04, Release No. 34–56950, 72 FR 71722 (December 18, 2007); OPRA Plan amendment SR–OPRA–2012–02, Release No. 34–66564, 77 FR 15833 (March 16, 2012).

In the Participants' view, the proposed fee schedule would result in each category of Data Feed Recipient and data user contributing an appropriate amount for their receipt and use of market data under the Plan. The proposed fee schedule would provide for an equitable allocation of dues, fees, and other charges among broker-dealers, vendors, end-users and others receiving and using market data made available under the Plan by recalibrating the fees to more closely correspond to the different benefits different categories of users derive from their different uses of the market data made available under the Plan.

The Participants propose to apply the revised fee schedule uniformly to all constituents (including members of the Participant markets and non-members). The Participants do not believe that the proposed fee changes introduce terms that are unreasonably discriminatory.

The Participants note that fees under the CTA and CQ Plan compare very favorably with the fees that individual exchanges charge for their proprietary data products.

G. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

H. Approval by Sponsors in Accordance With Plan

In accordance with Section IV(C)(2) of the Plan, more than two-thirds of the Participants have approved the 2015 Fee Change.

I. Description of Operation of Facility Contemplated by the Proposed Amendments

Not applicable.

J. Terms and Conditions of Access

See Item I(A) above.

K. Method of Determination and Imposition, and Amount of, Fees and Charges

1. In General

The Participants took a number of factors into account in deciding to propose the 2015 Fee Changes. To begin, the Participants' market data staff communicates on an on-going basis with all sectors of the Participants' constituencies and assesses and analyzes the different broker/dealer and investor business models. The staff has expertise in the information needs of the Participants' constituents and used their experience and judgment to form recommendations regarding the 2015 Fee Changes, vetted those recommendations with constituents and revised those recommendations based on the vetting process.

Most significantly, the Participants went back and carefully listened to the recommendations of their Advisory Committee. The Plan requires the Advisory Committee to include, at a minimum, a broker-dealer with a substantial retail investor customer base, a broker-dealer with a substantial institutional investor customer base, an alternative trading system, a data vendor, and an investor. Advisory Committee members attend and participate in meetings of the Participants and receive meeting materials. Members of the Advisory Committee gave valuable input that the Participants used in crafting the proposed 2015 Fee Changes. At several meetings of the Plan's Operating Committee, Advisory Committee members gave valuable input into the formulation of the 2014 Fee Amendments.

In reassessing and rebalancing market data fees as proposed in the amendments, the Participants took a number of factors into account in addition to the views of its constituents, including:

(a) Examining the impact that they expect attrition to have on revenues;

(b) crafting fee changes that will not have a significant impact on total revenues generated under the Plans;

(c) setting fees that compare favorably with fees that the biggest exchanges around the globe and the CT/CQ Plan and the OPRA Plan charge for similar services;

(d) setting fees that require each category of market Data Feed Recipient and end-user to contribute market data revenues that the Participants believe are appropriate for that category;

(e) crafting fee changes that appropriately differentiate between constituents in today's environment (e.g., Non-Display firms vs. registered representative firms; large firms vs. small firms; redistributors vs. end-users); and

(f) crafting fees that reduce administrative burdens of Data Feed Recipients and, in the case of the new Non-Display Use fees, minimizes administrative requirements.

2. An Overview of the Fairness and Reasonableness of Market Data Fees and Revenues Under the Plans

a. The Fee Changes Will Have No Impact on Most Individual Investors

The vast majority of Nonprofessional Subscribers (i.e., individual investors) receive market data from their brokers and vendors. The Participants impose Nonprofessional Subscriber fees on the brokers and vendors (rather than the investors) and set those fees so low that most brokers and vendors tend to absorb the fees, meaning that the vast majority of individual investors do not pay for market data. The Participants anticipate that the changes to the per-query fee would not have a significant impact on the willingness of broker-dealers to continue to pay the fee on behalf of their customers. The 2015 Fee Changes, including the proposed increase in the per-query fee, will thus have almost no impact on Nonprofessional investors.

b. The Fee Changes Respond to Customer Wishes

The Fee Changes are fair and reasonable because they offer a resolution to the call by industry participants for a simplified, updated fee schedule that harmonizes with fee schedules under other national market system plans and reduces administrative burdens, a resolution that industry representatives on the Plans' Advisory Committee have warmly embraced.

c. Long-Term Trend of Rate Reduction

The existing constraints on fees for core market data under the Plan have generally succeeded in reducing market data rates over time. For example, when the effects of inflation are taken into account, the average monthly rate payable for Professional Subscriber device has consistently and dramatically fallen in real terms over the past 16 years. When inflation is taken into account, the real monthly cost of a Professional Subscriber device was $20 in 1997; $17.84 in 2002; $15.48 in 2007 and $13.98 in 2012. Put differently, had price increases kept pace with inflation, the cost of Professional usage of Level 1 data would have increased from $20 in 1997 to $21.94 in 2001; $23.94 in 2005; $27.86 in 2009; and $29.80 in 2014.[11]

d. Explosion of Data

Although the device fees have fallen after taking inflation into account, the amount of data message traffic that end-users receive by subscribing has skyrocketed, as has the speed at which the data is transmitted.

i. New Data Added to Consolidated Feeds

The Participants have continually enhanced the consolidated feeds. The enhancements provide significant value. They are critical to the industry in that

[11] Based on COLA changes, as found at *www.ssa.gov.*

they permit end-users to do such things as view new markets and implement new regulation. Below is a list of the more significant recent enhancements, including the addition of new Participants, new indicators, new sale conditions, new reason codes and dedicated test symbols.

	Milestones
	2014
January	Implemented January 2014 bid rate changes: • Quotes: 379,500mps • Trades: 77,960mps
	Cleaned SAN fiber cable ends to resolve intermittent connectivity issue.
	Reset network interface on monitoring server to resolve connectivity issue.
	Implemented socket handler fixes and ACE library upgrade in primary OMDF.
	Backend in primary production environment.
	Implemented miscellaneous bug fixes for several internal components.
February	Implemented socket handler fixes and ACE library upgrade in secondary OMDF.
	Backend in primary production environment and disaster recovery environment.
	Implement bandwidth increase for OMDF to 12,000mps.
	Implemented daily .csv file with 100ms peak traffic rate data.
	Increased OMDF database transaction log backup frequency from 2 hours to 5 minutes.
	Replaced faulty LUN for SRA 2011 historical data.
	Implemented load balancer upgrade (primary production site).
	Implemented peak traffic statistics spreadsheet automation.
March	Implemented FEP upgrade (primary production site).
April	Implemented Reference Price Calculator fix for price band clearing.
	Implemented trade FEP fix for regional reference number return.
	Implemented penalty report generation fix for arithmetic overflow.
	Implemented quote FEP fix for regional reference number return.
	Implemented fix for internal acknowledgement issue from April 3.
	Implemented back end server tuning changes.
May	Removed CBSX bid rates in UQ/UT resulting from their deactivation request.
	Implemented database server tuning changes.
	Extended Limit Up/Limit Down price band publication to market close.
	Upgraded firmware on server in D/R environment to resolve reboot issues.
June	Implemented disaster recovery build-out, including F5 load balancer and automatic quote wipeout on D/R failover.
	Upgraded firmware on server in primary production environment to resolve reboot issues.
	Upgraded BLU and Back End components in primary production environment with D/R build-out software versions.
	Upgraded FEP components in primary production environment with D/R build-out software versions.
	Implemented UQDF and UTDF bandwidth upgrade
	Implemented Republisher server tuning changes.
July	Implemented July 2014 bid rate changes: • Quotes: 483,400mps • Trades: 117,000mps
	Implemented penalty software using 100ms measurement interval.
	Implemented new Supervisory Console page.
	Implemented retransmission handling fix for all primary UQDF and UTDF dissemination components.
	2013
January	Implemented January 2013 bid rate changes: • Quotes: 227,701mps • Trades: 38,300mps
	Reconfigured UQDF, UTDF, and OMDF servers to restore network switch diversity for primary and backup services.
	Implemented Limit Up/Limit Down Software (no stocks eligible).
	Implemented secure FTP server for SRA.
	Implemented UTP Data Feed bandwidth increase: • UQDF 256Mb—400,000 MPS • UTDF 101 Mb—150,000 MPS • OMDF 2 MB—2,800 MPS
February	Implemented reference price calculator/price band dissemination.
	Enabled test stocks for limit up/limit down.
March	Implemented reference price calculator changes.
	Implemented software fix for rejected 'A4' quote inputs.
	Submitted as-of trade reports for January 3rd issue.
	Implemented new front end software version (fixes & enhancements).
	Implemented enhanced reference price calculator module.
	Implemented patch for memory growth issue on one server.
	Implemented patch for memory growth issue on three servers.
	Implemented new front end software version (memory growth issue).
	Implemented fix for LULD indicator value during trading pause.
	Changed UTP feed start of day time from 4:00am to 3:58am.

	Milestones
April	Implemented Market Wide Circuit Breaker interface.
	Retired legacy Emergency Market Conditions Halt/Resume functions.
	Enabled limit up/limit down for 10 NASDAQ-listed tier 1 securities.
	Submitted additional as-of trade reports for January 3rd issue.
	Enabled limit up/limit down for 19 NASDAQ-listed tier 1 securities.
	Implemented information security recommendations for internal browser-based applications (monitoring and console).
	Enabled limit up/limit down for 65 NASDAQ-listed tier 1 securities.
	Enabled limit up/limit down for 77 NASDAQ-listed tier 1 securities.
May	Enabled limit up/limit down for 97 NASDAQ-listed tier 1 securities.
	Implemented reference price calculator disaster recovery handling.
	Changed time source for servers running reference price calculators.
	Resized ISG column to handle full UQDF session close recap message.
	Disabled ''Auto-run'' feature on all SIP servers.
June	Disabled hyper-threading on servers running reference price calculators.
	Implemented software fix for incorrect high price calculation resulting from trade correction.
	Manually failed over primary UQDF5 dissemination component to its backup after market close (to service pending retransmission requests).
	Updated multicast port restriction range on all SIP servers.
	Implemented LULD limit state release.
July	Implemented July 2013 bid rate changes: • Quotes: 194,102mps • Trades: 36,102mps
	Completed a participant connectivity request.
	Implemented throttling statistics collection changes.
August	Enabled limit up/limit down for 50 NASDAQ-listed tier 2 securities.
	Extended the price band calculation and dissemination period (9:30am–3:45pm); double-wide bands calculated from 9:30am–9:45am and 3:35pm–3:45pm.
September	Rolled out UTDF connectivity fix.
	Enabled limit up/limit down for 10% of NASDAQ-listed tier 2 securities.
	Enabled limit up/limit down for an additional 30% of NASDAQ-listed securities.
	Enabled limit up/limit down for all eligible NASDAQ-listed securities.
	Implemented FEP emergency fix on quote server 'A' in primary site.
	Implemented FEP emergency fix on quote server 'C' and trade server 'A' in primary site.
	Replaced DIMM and motherboard for primary UQDF channel 5 server.
October	Implemented FEP emergency fix on quote server 'E' and trade server 'C' in primary site.
November	Implemented FEP emergency fix on all remaining quote and trade servers in primary site.
	Implemented FEP emergency fix on all servers in disaster recovery environment.
December	Implemented capacity staging release.
	Implemented retransmission fix on UQDF channel 6 in primary site.
	Implemented retransmission fix on UQDF channels 4 and 5 in primary site.
	Implemented retransmission fix on UQDF channels through 3 in primary site.
	Implemented retransmission fix on all UQDF channels in disaster recovery environment.
	Replaced end-of-life switch chassis ('A' side).
	Replaced failed power supply for UTDF 5 primary server.
	Implemented a browser incompatibility fix for the SIP monitoring application.
	Implemented socket handler fixes and ACE library upgrade in all primary quote and trade BLUs in the primary production environment.
	Upgraded power supply and added a module to 'B' side switch.
	Implemented socket handler fixes and ACE library upgrade in all secondary quote BLUs in the primary production environment.
	Implemented socket handler fixes and ACE library upgrade in all secondary trade BLUs in the primary production environment.
	Implemented socket handler fixes and ACE library upgrade in all quote and trade BLUs in the disaster recovery environment.
	Implemented trade reporting enhancements (odd lots).
2012	
February	Implemented UQDF bandwidth increase to 175 Mbps.
	Implemented a connectivity request for BATS and BATS–Y.
April	Implemented UTDF Capacity Phase III changes on UTDF channel 1.
	Implemented a connectivity request for NASDAQ.
May	Implemented UTDF Capacity Phase III changes on UTDF channels 2–6.
October	Implemented significant UQDF, UTDF, and OMDF message format changes in preparation for the Limit Up/Limit Down and Market-Wide Circuit Breaker initiatives.
	Implemented support for participants' Retail Liquidity programs.
2011	
January	UQDF bandwidth increased to 96 Mbps, approximately 175,000 messages per second (MPS).
	UTDF bandwidth increased to 33.5 Mbps, approximately 60,000 mps.
May	Installed quote processing improvements for UQDF channel 1.
June	Installed quote processing improvements for UQDF channel 2–6.

	Milestones
October	Implemented UQDF Capacity Phase III changes (throughput and latency improvements). Implemented a network-based end-to-end latency measurement solution.
November	Implemented UQDF and UTDF symbol redistribution.
2010	
January	Updated quote and trade capacity thresholds based on capacity study.
February	Modified As Of trade processing for instruments trading in a round lot of less than 100 (e.g. preferred stock, convertible notes).
March	Implemented dynamic throttling communication improvements. Implemented quote Front End enhancements to reduce CPU usage and increased throughput. Retired unused participant input lines.
April	Facilitated a request from NASDAQ OMX PHLX for input connectivity. Facilitated a request from Bats–Y for input connectivity.
May	Implemented UTDF improvements to increase throughput and reduce latency.
June	Implemented single-stock circuit breaker halt reason codes. Activated participants EDGA Exchange, Inc. and EDGX Exchange, Inc.
July	Updated quote and trade capacity thresholds based on capacity study.
August	Implemented short sale trading restriction messaging. Enhanced market center-specific non-regulatory halts to support liquidity imbalances. Increased UTDF bandwidth to 12.5 Mbps in order to accommodate approximately 22,500 peak messages per second. Implemented daily peak traffic rate CSV files on SRA FTP site.
September	Implemented daily peak traffic rate spreadsheet on SRA FTP site. Upgraded quote input servers in the primary production environment.
October	Activated BATS–Y Exchange. Upgraded trade input servers in the primary production environment. Upgraded participant input servers in the disaster recovery environment.
November	Implemented performance improvements in preparation for bandwidth increases in January 2011.
December	Implemented ''Consolidator'' model performance improvements for UTDF.
2009	
January	Expanded bandwidth for UQDF to handle 53,600 messages per second and UTDF to handle 8400 mps. Modified quarterly statistics report to include date and time of 5 minute peak messaging.
February	Implemented aberrant/erroneous trade tool to allow the SIP operator to cancel or error large quantities of trades at a participant's request.
March	Enabled dynamic throttling for quotes. Started beta phase for penalty reports.
May	Implemented a latency reduction enhancement for quotes and trades.
June	Implemented SRA and ISG changes in preparation for expansion of UQDF and UTDF multicast channels.
August	Expanded UQDF and UTDF from three to six multicast channels. Increased UQDF bandwidth to 56 Mbps in order to accommodate approximately 100,000 peak messages per second. Increased UTDF bandwidth to 8 Mbps in order to accommodate approximately 15,000 peak messages per second.
September	Implemented three new participants (EDGA, EDGX, and BYX) with test quote and trade ports. Implemented metrics-collection software to improve performance monitoring.
October	Implemented Front End performance enhancements to reduce CPU usage.
November	Facilitated requests from EDGA and EDGX for input connectivity.
December	Implemented further performance enhancements to reduce CPU usage. Completed setup of a NASDAQ-hosted website for the UTP Plan Administrator: *http://www.utpplan.com/*.
2008	
January	Support for new stock option ''V'' Trade modifier.
February	Expanded UQDF bandwidth from 7.8 to 12.5 megabits per second (mbps) to support approximately 23,300 messages per second (mps).
March	Increased the field size for participant inbound sequence number from 7 to 8 digits to support increasing messaging rates.
April	Facilitated a request from BSX for input connectivity.
June	Implemented change to support a new Emergency Market Condition quote resume message.
July	Expanded UQDF bandwidth from 12.5 to 28.0 mbps to support approximately 48,000 mps. UTDF bandwidth was expanded from 3.0 to 4.0 mbps to support approximately 7,200 mps.
September	Facilitated a request from BATS Exchange Inc. for input connectivity.
October	Activation of the BATS Exchange as a new participant in UQDF and UTDF.
November	Implemented a participant quote throttling mechanism to protect the system against instability and high latency during periods of heavy traffic, while guaranteeing each participant full access to its projected peak rate.
December	Upgraded SQL database servers to SQL Server 2008 to enhance database performance.
2007	
January	Support one, two, and three character stock symbols for NASDAQ listed issuers, in addition to the currently used four- and five-character symbols.

	Milestones
February	Regulation NMS compliance for quotes and trades— Quotes: Replace existing NASD quote message with new message that adds a new 1 byte FINRA appendage indicator. Supports a new appendage that identifies FINRA best bid Market Participant ID (MPID) and FINRA best offer MPID. Trades: Support new trade through exempt flag and new 4 byte sale condition field. This resulted in new message formats for long form trade reports, trade cancellations, and trade corrections. Introduce new Prior Day As-Of Trade message to allow reporting a trade that occurred prior to the current business day or to cancel an erroneously reported trade from a previous day.
April	Facilitated a request from NSX for input connectivity.
June	Facilitated a request from NSX for input connectivity.
July	Implemented changes to allow Cash Settlement (C), Next Day (N), and Seller Sale Days Settlement (R) sale conditions for trade reports that are not exempt from the trade-through rule.
August	Facilitated a request from ISE for input connectivity.
September	Support for new Price Variation (H) and Cross (X) trade modifiers. Dissemination of the bid tick indicator is now inhibited.
December	Enhancement to Quote Wipeout processing to improve processing times.

ii. Significant Improvements in Latency and Capacity

The Participants have made numerous investments to improve system speed and capacity, investments that are often overlooked by the industry. The Participants regularly monitor and review the performance of their SIP and make performance statistics available publicly on a quarterly basis. They make investments to upgrade technology, upgrades that enable the SIP to collect and disseminate the data ever more quickly, even as the number of quotes and trades continues to rise. The Participants will make future investments to handle the expected continued rise in message traffic, and at even faster data dissemination speeds.

The information below shows that customers are getting the quote and trade Data Feeds faster, as the latency of consolidated tape quote and trade feeds has improved significantly in recent years. Average quote feed latency declined from over 5 milliseconds at the end of 2009 to 0.520 milliseconds in July 2014 and average trade feed latency declined from over 6 milliseconds at the end of 2009 to 0.565 milliseconds in July 2014, as shown below. Latency is measured from the time a message received from a Participant is time-stamped by the system, to the time that processing the message is completed.

Month	Average quote latency (milliseconds)	Average trade latency (milliseconds)
Dec 2009	5.2497	6.2685
Dec 2010	4.3267	5.6796
Dec 2011	2.5378	7.8491
Dec 2012	1.6837	1.6328
Dec 2013	1.1700	1.2490
Jan 2014	1.129	1.237
Feb 2014	1.282	1.255
Mar 2014	1.160	1.313
Apr 2014	0.894	1.093
May 2014	0.564	0.641
Jun 2014	0.589	0.717
Jul 2014	0.520	0.565

iii. Significant Improvements in System Throughput, Measured by Messages Per Second

Investments in hardware and software have increased processing power and enabled the systems to handle increasing throughput levels. This is measured by peak capacity messages per second and is monitored by looking at actual peak messages per second. SIP throughput continues to increase in order to push out the increasing amounts of real-time quote and trade data.

Given the constant rise in peak messages, the SIP significantly increased system capacity. As shown below, the system could handle peak quotes per second of approximately 175,000 in 2010 and 707,000 in 2014, an increase of more than 304 percent. The capacity for trades per second increased from 36,000 in 2010 to 393,000 in 2014, an increase of more than 990 percent. To better manage the rise in message traffic, the Participants anticipate that capacity planning will move from measuring messages per second to measuring messages per millisecond.

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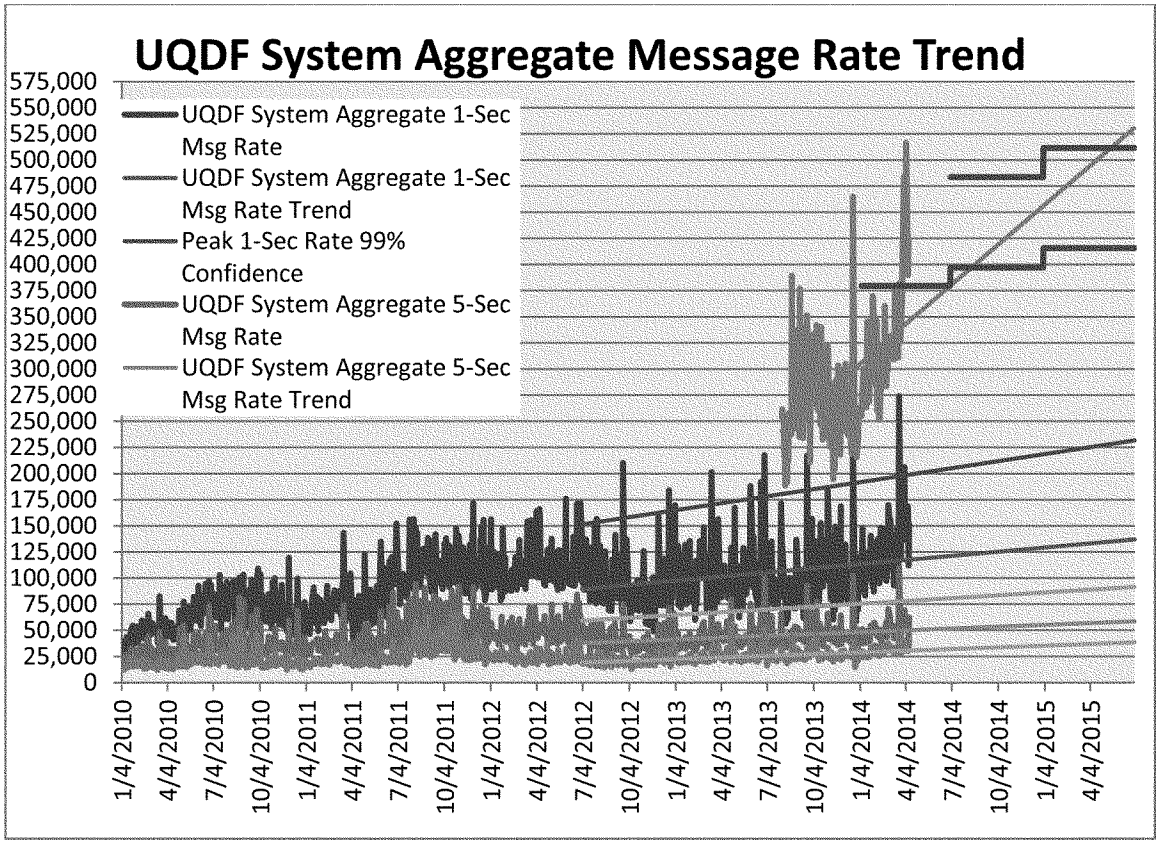
UQDF System Aggregate Message Rate Trend
UQDF System Aggregate 1-Sec Msg Rate
UQDF System Aggregate 1-Sec Msg Rate Trend
Peak 1-Sec Rate 99% Confidence
UQDF System Aggregate 5-Sec Msg Rate
UQDF System Aggregate 5-Sec Msg Rate Trend
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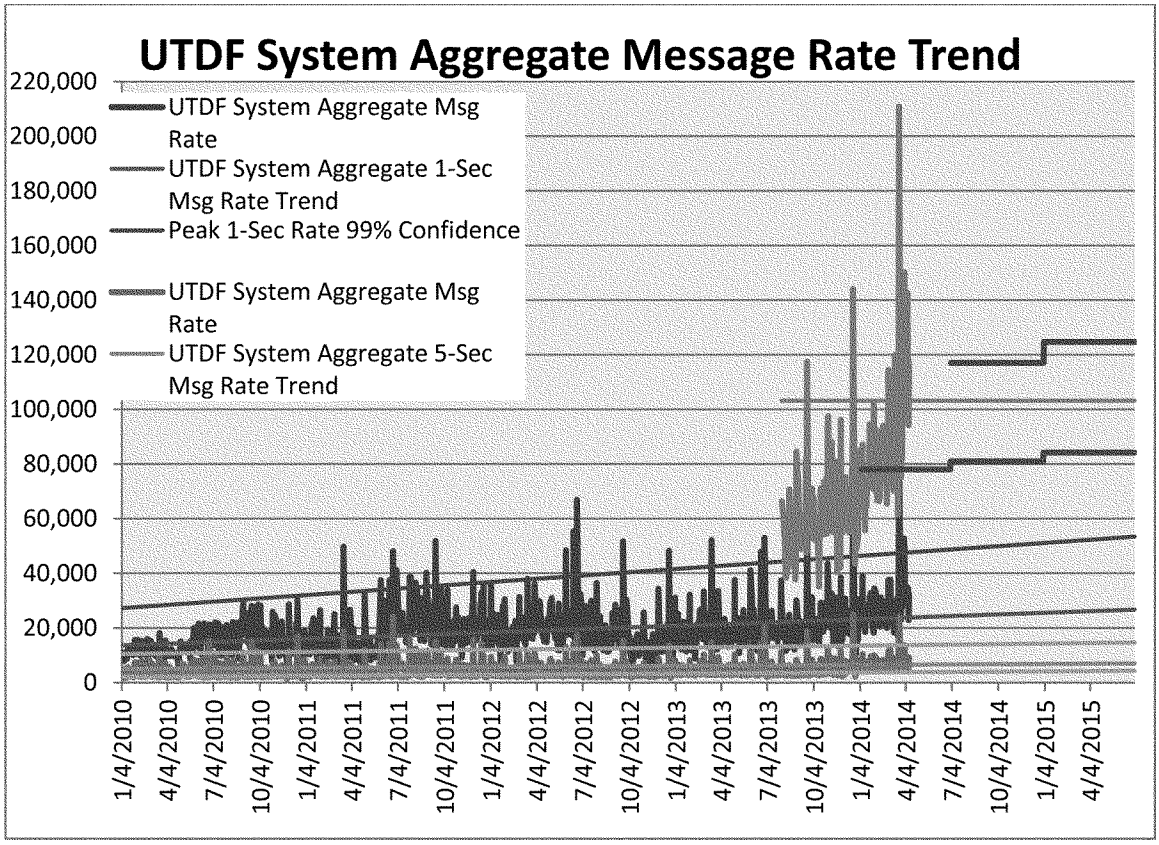
UTDF System Aggregate Message Rate Trend
UTDF System Aggregate Msg Rate
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Peak 1-Sec Rate 99% Confidence
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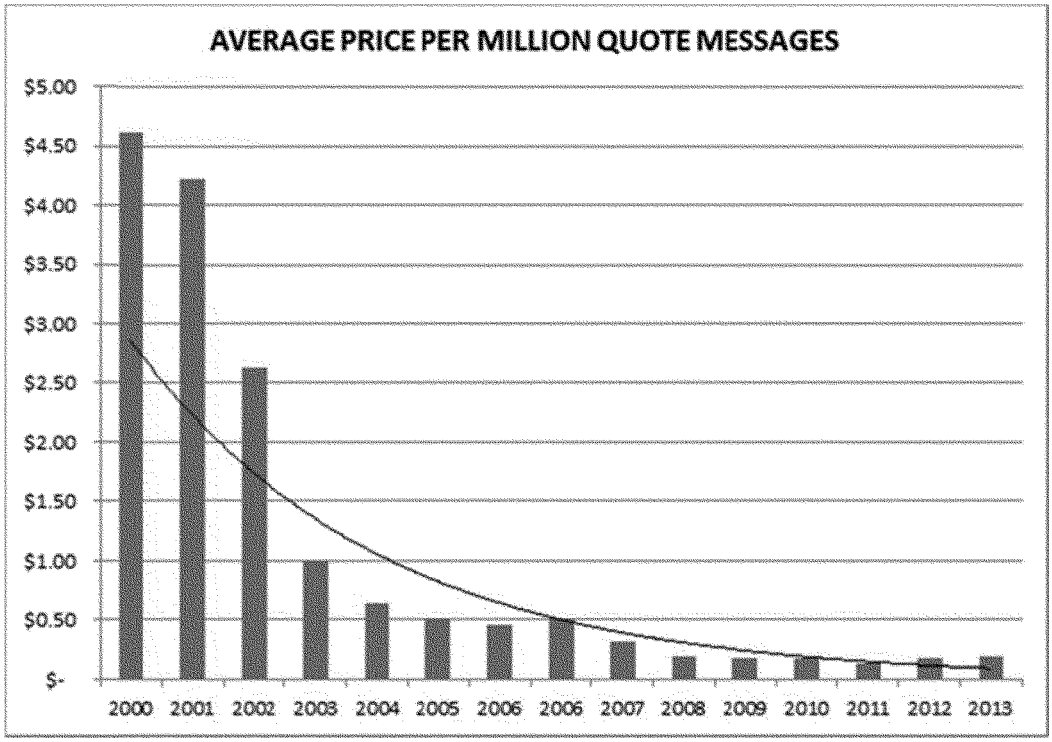
e. Vendor Fees

Fees imposed by data vendors, whom the Commission does not regulate, account for a vast majority of the global market data fees incurred by the financial industry, according to Burton Taylor Associates, cited in a research study by Atradia.[12] In addition to charging monthly subscription fees for end-users, market data vendors may apply significant administration mark-up fees on top of exchange market data fees. These mark-ups are not regulated and there is limited transparency into how the rates are applied. These mark-ups do not result in any additional revenues for the Participants; the vendors alone profit from them.

f. Declining Unit Purchase Costs for Customers

Despite consolidated tape investments in new data fields, additional capacity demands and latency improvements, users' unit purchase costs for trade and quote data have declined significantly, increasing the value of the data they receive from their subscriptions. The amount of quote and trade data messages has increased significantly while fees have remained unchanged, as shown below for the 2000 to 2013 timeframe.

The average purchase cost of Plan quotes has steadily declined since 2000. During that period, the average number of quotes per day increased over 2,500 percent between 2000 and mid-2014, rising from 4.3 million in 2000 to 112 million in 2014. As a result, the average unit purchase cost per one million quote messages for a customer incurring a monthly Professional Subscriber fee of $20 in 2000 or $23 in 2014 declined over 95 percent during this period, falling from $4.61 in 2000 to $0.20 in 2014.



The average cost of last sale transaction reports also declined over that period. For instance, in 1998, the Plan Processor received reports for 155 million trades. By 2014, those numbers had increased to over 11 million per day or over 2.2 billion trades. At the same time, Professional Subscriber fees remained fairly constant and the introduction of a Nonprofessional Subscriber fee and an enterprise maximum reduced fees dramatically for whole categories of users and expanded data distribution to thousands of other users.

Of course, these calculations exclude entirely the high indirect costs of producing consolidated data represented by the costs of each exchange collecting and contributing data to create the consolidated feeds. With respect to indirect costs, the Commission has previously noted that ''any attempt to calculate the precise cost of market information presents severe practical difficulties.'' [13] In commenting on the 1999 Concept Release, NYSE summarized many of the ''severe practical difficulties'' attendant to each Participant's calculation of its data production and collection costs and we incorporate that discussion here.[14] In 1997, the indirect costs of the Participants would have included the data production and collection costs of eight national securities exchanges and one national securities association. In 2014, that calculation would have to include the data production and collection costs of the 15 Participants, including 14 national securities exchanges and the Alternative Display Facility and two Trade Reporting Facilities that FINRA, the lone national securities association, maintains.

In addition to those indirect costs, the costs of administering market data

[12] Atradia, The Cost of Access to Real Time Pre and Post Trade Order Book Data in Europe, August 2010 (available at *www.siia.net*).

[13] *See* SEC 1999 Concept Release on ''Regulation of Market Information Fees and Revenues'' (the ''1999 Concept Release'') located at *http://www.sec.gov/rules/concept/34–42208.htm.*

[14] *See* footnote 11 of letter from James E. Buck, Senior Vice President and Secretary, NYSE, April 10, 2000, located at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*>

distribution under the Plan have increased dramatically, as the administrator has rolled out new and enhanced tracking, data management, and invoice management systems to accommodate vendors and the industry and has enhanced its compliance-review capabilities.

3. Adequate Constraints on Fees

Constituent boards, customer control and regulatory mechanisms constrain fees for core market data now just as they have since Congress established the fair-and-reasonable standard in 1975. Under the Plan, NASDAQ, the listing market, typically takes the lead on pricing and administrative proposals, vetting new proposals with the other Participants, various Data Feed and end-users, and trade and industry groups, and making modifications which improve or reevaluate the original concept. Proposals are then taken to each Participant for approval. However, significant market data user and regulatory requirements constrain the Participant's ability to simply impose fee changes, as demonstrated by the failed attempts earlier this year.

The governing body of each Participant consists of representatives of constituent firms and a large quotient of independent directors. The Participants' constituent board members have the ultimate say on whether the UTP Plan Operating Committee should submit fee proposals to the Commission and whether the costs of operating the markets and the costs of the market data function are fairly allocated among market data users. That is, the users of market data and non-industry representatives who sit on Participant boards get to determine whether to support market data fee proposals. They also get to determine how the various types of data users should pay their fair share and they make decisions about funding technical infrastructure investments needed to receive, process and safe-store the orders, quotations and trade reports that give rise to the data. This cost allocation by consensus is buttressed by Commission review and is superior to cost-based rate-making.

Indeed, in recent decades, Congress and federal agencies, including the Commission, have increasingly moved away from intrusive, cost-based ratemaking in favor of more market-oriented approaches to pricing. For example, it was the intent of Congress in creating the national market system to rely on competitive forces, where possible, to set the price of market information.[15] Consistent with this intent, an Advisory Committee appointed by the Commission in 2001 to review market data issues concluded that ''the 'public utility' cost-based ratemaking approach is resource-intensive, involves arbitrary judgments on appropriate costs, and creates distortive economic incentives.'' [16] In response, and consistent with the purposes of the Exchange Act, the Commission has increasingly permitted competitive forces to determine the prices of market data fees.[17] This conclusion mirrors the experience of other federal agencies that have come to reject cost-of-service ratemaking as a cumbersome and impractical process that stifled, rather than fostered, competition and innovation.[18]

Market forces are plainly adequate to constrain the prices for market data proposed herein by the Plan and its Participants. Constituent Board members are the Participants' market data customers. When a critical mass of them voices a point of view, they can direct the Participants how to act. This is part of what motivated the Participants to propose the 2015 Fee Changes. The Commission's process, including public comment as appropriate and when permitted by the statutory language, then acts as an additional constraint on pricing. Also, developments in technology make possible another important constraint on market data prices for core data: There is nothing to prevent one or more vendors, broker-dealers or other entities from gathering prices and quotes across all Participants and creating a consolidated data stream that would compete with the Plans' data streams. The technology to consolidate multiple, disparate data streams is readily available, and multiple markets have already introduced products that compete with core data.

[15] *See* Conference Report, H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 92 (1975), at 92 (''It is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[16] Report of the Advisory Committee on Market Information: A Blueprint for Responsible Change, at § VII.D.3 (SEC Sept. 14, 2001); see also Stephen G. Breyer, Analyzing Regulatory Failure: Mismatches, Less Restrictive Alternatives, and Reforms, 92 Harv. L. Rev. 547, 565 (1979) (''[I]nsofar as one advocates price regulation . . . as a 'cure' for market failure, one must believe the market is working very badly before advocating regulation as a cure. Given the inability of regulation to reproduce the competitive market's price signals, only severe market failure would make the regulatory game worth the candle.'').

[17] *See* generally *NetCoalition* v. *SEC,* 615 F.3d 525, 533–35 (D.C. Cir. 2010).

[18] *See, e.g., Elizabethtown Gas Co.* v. *FERC,* 10 F.3d 866, 870 (D.C. Cir. 1993).

K. Method and Frequency of Processor Evaluation

No Change.

L. Dispute Resolution

No Change.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

No Change.

B. Reporting Requirements

No Change.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

No Change.

D. Manner of Consolidation

No Change.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

No Change.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

No Change.

G. Terms of Access to Transaction Reports

See Item I(A).

H. Identification of Marketplace of Execution

No Change.

III. Solicitation of Comments

The Commission seeks general comments on Amendment No. 32. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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* S7–24–89 *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 S7–24–89. 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 Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all written statements with respect to the proposed Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan Amendment 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of NASDAQ. 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 S7–24–89 and should be submitted on or before October 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23838 Filed 10–6–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73278; File No. SR–CTA/CQ–2014–03)

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Twenty-First Charges Amendment to the Second Restatement of the CTA Plan and Twelfth Charges Amendment to the Restated CQ Plan

October 1, 2014.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on September 12, 2014, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'')[3] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the ''Plans'').[4] The amendments (''2014 Fee Amendments'') respond to long-term changes in data-usage trends. In formulating the proposed fee changes, the Participants formed a subcommittee to study the optimum allocation of fees among market data users and consulted with the industry representatives that sit on the Plans' Advisory Committees and with other industry participants. The Participants also met with the Securities Industry and Financial Markets Association (''SIFMA'').

Pursuant to Rule 608(b)(3)(i) under Regulation NMS,[5] the Participants designated the 2014 Fee Amendments as establishing or changing a fee or other charge collected on their behalf in connection with access to, or use of, the facilities contemplated by the Plans. As a result, the 2014 Fee Amendments became effective upon filing with the Commission. At any time within 60 days of the filing of the 2014 Fee Amendments, the Commission may summarily abrogate the 2014 Fee Amendments and require that the 2014 Fee Amendments be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

The Commission is publishing this notice to solicit comments from interested persons on the proposed 2014 Fee Amendments.

I. Rule 608(a)

A. Purpose of the Amendments

1. In General

The Participants made significant changes to the fee schedule effective as of September 1, 2013.[6] Those changes compressed the long-standing 14-tier Network A device rate schedule into just four tiers, consolidated the Plans' eight fee schedules into one, updated that fee schedule, and realigned the Plans' charges more closely with the services the Plans provide (collectively, the ''2013 Fee Changes''). They also complied with industry requests that the participants in the several national market system plans strive to harmonize fees under those plans. In submitting the 2013 Fee Changes to the Commission, the Participants represented that the changes would not materially change the revenues that the Participants collect under the Plans. However, since the 2013 Fee Changes were implemented in September 2013, Network A revenues have declined 5.43 percent and Network B revenues have declined 11.13 percent.

Prior to the 2013 Fee Changes, the Participants last filed a fee structure change in 1986. However, as the 2013 Fee Amendments described, significant change has characterized the industry, stemming in large measure from technological advances, the advent of trading algorithms and automated trading, new investment patterns, new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research.

The 2014 Fee Amendments would realign the Plans' charges more closely with the ways in which data recipients consume market data today. Although professional subscriber display device fees still account for a majority of Network A and Network B revenues, the industry's reliance on professional subscriber display devices continues to decline and the gap between professional subscriber device rates and nonprofessional subscriber fees remains large. The proposed fee changes would reduce the rates that professional subscribers pay for each of their display

[19] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc. (''BATS''), BATS–Y Exchange, Inc. (BATS–Y), Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc. (''CHX''), EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange, LLC (''ISE''), NASDAQ OMX BX, Inc. (''Nasdaq BX''), NASDAQ OMX PHLX, Inc. (''Nasdaq PSX''), Nasdaq Stock Market LLC (''Nasdaq''), National Stock Exchange (''NSX''), New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca'').

[4] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

[5] 17 CFR 242.608(b)(3)(i).

[6] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (the ''2013 Fee Amendments'').

devices. To offset the revenue losses attributable to the reduction in professional subscriber device rates, the Participants propose:

- To establish fees for non-display consumption of market data;
- to subject firms that receive access to data feeds from extranet providers to direct access fees rather than indirect access fees;
- to raise the fees payable in respect of firms that receive access to data feeds by means of multiple data feeds; and
- to raise the fee payable in respect of per-quote services.

The 2014 Fee Amendments also move in the direction of harmonizing fees between Network A and Network B and of harmonizing fees under the Plans with fees under two other national market system plans: The Joint Self-Regulatory Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (the ''Nasdaq/UTP Plan'') and the OPRA Plan. This would reduce administrative burdens for broker-dealers and other market data users and simplify fee calculations.

The proposed 2014 Fee Amendments rebalance the fee schedule without increasing the overall market data revenue pools generated under the Plans in a significant way. The Participants estimate that, assuming no change in customer behavior and no attendant diminution of customer usage, the 2014 Fee Amendments could increase the market data revenue pool for Network A and Network B by approximately two percent.

2. The Proposed Fee Schedule Changes

a. Professional Subscriber Charges

Data consumption through professional subscriber display devices has declined in recent years. Information regarding the magnitude of the declines can be found in the Participants' Consolidated Data Quarterly Operating Metrics Reports.[7] Those reports show that Network A professional devices declined from 379,885 at the end of the first quarter of 2011 to 289,620 devices at the end of the first quarter of 2014. Similarly, Network B professional devices declined from 286,400 at the end of the first quarter of 2011 to 215,145 devices at the end of the first quarter of 2014. Furthermore, the rise in off-exchange trading has meant that a smaller portion of those revenues is allocated to exchanges. Largely as a result, since 2008, CTA/UTP market data revenue has declined 18 percent from approximately $463 million in 2008 to $379 million annualized through March of 2014, of which about $317 million was allocated to exchanges and $62 million to FINRA.

The Participants also note the significant difference between monthly professional subscriber device fees and nonprofessional subscriber fees. The former currently range from $50 to $20 for Network A and are set at $24 for Network B. The latter are set at $1 for both Network A and Network B. The Participants propose to reduce that significant gap.

The proposed changes seek to address both concerns. The Participants propose to revise the four-tier monthly Network A fee structure for the display units of professional subscribers, as follows:

	Currently	Proposed
1. 1–2 devices:	$50.00	$45
2. 3–999 devices:	30.00	27
3. 1,000–9,999 devices:	25.00	23
4. 10,000 devices or more:	20.00	19

The proposed narrowing of the gap between the highest rates and the lowest rates would benefit both individuals who have not qualified as nonprofessional subscribers and smaller firms. In particular, individuals and firms having one or two devices would see their monthly Network A rate drop from $50 per device to $45, a 10 percent decrease. Firms whose professional subscriber employees use between 3 and 999 devices would see their monthly Network A rate drop from $30 per device to $27, also a 10 percent decrease. Firms whose professional subscriber employees use between 1,000 and 9,999 devices would see their monthly Network A rate drop from $25 per device to $23, an eight percent decrease. Firms whose professional subscriber employees use 10,000 devices or more would see their monthly Network A rate drop from $20 per device to $19, a five percent decrease.

For Network B, the Participants note that the 2013 Fee Changes combined separate rates for Network B last sale information and for Network B quotation information into a single $24 rate for both quotation information and last sale information. They also eliminated the differential between members and non-members. For Network B, the Participants propose to reduce the monthly Network B professional subscriber device rate from $24 to $23, a decrease of more than four percent. They note that the Nasdaq/UTP Plan imposes a fee of $20 for each device and that the OPRA Plan imposes a fee of $27 for each device.

The Participants anticipate that the revenue losses that would result from the decreases in the professional subscriber rates would be offset by the other proposed amendments to the fee schedule, perhaps resulting in an aggregate revenue increase of approximately two percent (assuming no change in customer behavior and no attendant diminution of customer usage).

b. Nonprofessional Subscriber Charges

The 2013 Fee Changes harmonized the treatment of large and small firms by applying a $1.00 per month rate in respect of all Network A nonprofessional subscribers, regardless of the number of nonprofessional subscribers. This harmonized the Network A nonprofessional subscriber fee with the Network B nonprofessional subscriber fee, as well as the $1.00 nonprofessional subscriber fee payable under the Nasdaq/UTP Plan. The fee applicable to nonprofessional subscribers under the OPRA Plan is $1.25.

The Participants propose to retain the monthly $1.00 nonprofessional subscriber fee for both Network A and Network B because they believe it is a reasonable and cost-effective rate for retail investors.

c. Non-Display Use Fees

i. *Background.* Changes in regulation and advances in technology have had an impact on market data usage in recent

[7] Those reports can be found at *http://www.nyxdata.com/CTA.*

years. Automated and algorithmic trading has proliferated, the numbers of quotes and trades have increased significantly and data feeds have become exponentially faster. As a result, data feeds have increased in value and non-display devices consume large amounts of data. Some firms' business models incorporate data feeds into black boxes and application programming interfaces that apply trading algorithms to the data without widespread data access by the firm's employees. These firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses. They can process the data far more quickly than any human being looking at a terminal. Today, such devices are responsible for a majority of trading. The use of market data for purposes of electronic trading systems provides great value to firms and allows them to generate considerable profit. Yet that usage contributes little to market data revenues.

Non-display uses of data for non-trading purposes benefits data recipients by allowing users to automate functions, to achieve greater speed and accuracy, and to reduce costs of labor. While some non-trading uses do not directly generate revenues, they can substantially reduce a data recipient's costs by automating many functions. Those functions can be carried out in a more efficient and accurate manner, with reduced errors and labor costs. The use of an annual declaration for reporting purposes, as described below, would alleviate the burden of counting devices used for non-trading purposes.

As a result, the Participants have determined that the establishment of fees for non-display uses of data, along with a reduction in the device fees assessed on professional subscribers, would provide an equitable allocation of fees to the industry, would facilitate the administration of non-display uses of market data and would equitably reflect the value of non-display and display data usage. The Participants believe that the proposed fees reflect the value of the data that they provide. They note that non-display fees have become commonplace in the industry. Several exchanges impose them for non-display use of their proprietary data products, as does the OPRA Plan.

ii. *Definition of Non-Display Use.* For purposes of the proposed fees, non-display use refers to accessing, processing or consuming real-time Network A or Network B quotation information or last sale price information, whether delivered via direct and/or redistributor data feeds, for a purpose other than in support of a data recipient's display or further internal or external redistribution. It does not include the use of such data to create and use derived data.

iii. *Categories of Non-Display Use.* The Participants propose to recognize three categories of non-display uses of market data.

- Category 1 applies when a data recipient makes non-display uses of real time market data on its own behalf.
- Category 2 applies when a data recipient makes non-display uses of real time market data on behalf of its clients.
- Category 3 applies when a data recipient makes non-display uses of real time market data for the purpose of internally matching buy and sell orders within an organization.

Matching of buy and sell orders includes matching customer orders on a data recipient's own behalf and/or on behalf of its clients. Category 3 includes, but is not restricted to, use in trading platform(s), such as exchanges, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, and systematic internalization systems.

iv. *Examples of Non-Display Uses of Market Data.* Examples of Non-Display Use are, but are not limited to:

- Trading in any asset class
- Automated order or quote generation and/or order pegging
- Price referencing for algorithmic trading
- Price referencing for smart order routing
- Operations control programs
- Investment analysis
- Order verification
- Surveillance programs
- Risk management
- Compliance
- Portfolio Valuation

As mentioned above, the proposed non-display fees do not apply to the creation and use of derived data.

v. *Non-Display Use Fees.* For each of the three categories of non-display uses:

(a) The Participants under the CTA Plan propose to impose monthly fees of $2000 for the non-display use of Network A last sale price information and $1000 for the non-display use of Network B last sale price information; and

(b) the Participants under the CQ Plan propose to impose monthly fees of $2000 for the non-display use of Network A quotation information and $1000 for the non-display use of Network B quotation information.

The fees apply to each of a data feed recipient's accounts with the Participants that uses market data for non-display purposes. The Participants would invoice data feed recipients that make non-display uses of real-time market data on a monthly basis.

For Category 1 and Category 2 non-display uses of data, the fee applies in respect of each market data product (*i.e.,* Network A last sale price information, Network A quotation information, Network A last sale price information and Network B quotation information). The fees for Category 1 and Category 2 amount to enterprise licenses for the non-display uses that fall within those categories. Only one Category 1 or Category 2 fee applies regardless of the number of non-display uses of data the firm makes within that category. For instance, if a firm uses Network A quotation information to analyze investments for its own portfolio, to value that portfolio, to verify the firm's proprietary orders and to run compliance programs for the firm, the firm would pay only one Category 1 fee in respect of Network A last sale price information. Similarly, if a firm uses Network A last sale price information to analyze investments for customers, to verify customer orders, to surveil the market it conducts for customers, to provide risk management services to customers and to value its customers' portfolios, the firm would pay only one Category 2 Network A fee in respect of Network A last sale price information.

For Category 3, the fees apply for each of the firm's platforms and for each market data product that each such platform uses. If a firm uses Network A quotation information solely to operate a dark pool for its customers' orders and makes no other non-display use of market data, it would pay a Category 3 fee in respect of Network A quotation information (and no other non-display fee for that information). If that firm also uses Network A quotation information to operate an ATS, but still makes no other non-display uses of quotation information, it would pay two Category 3 fees in respect of Network A quotation information (and no other non-display fee for that information).

A firm may use data for one, two or all three categories and thereby subject itself to the non-display fees for each category. For example, if a broker-dealer uses Network A quotation information to run compliance programs for the firm (Category 1), to surveil the market it conducts for customers (Category 2), and to operate an ATS that matches buy and sell orders (Category 3), then the firm would be required to pay the Network A quotation information non-display use fee in respect of all three categories. If, in addition to the ATS, the firm also operates a broker crossing system not registered as an ATS, then

two Category 3 fees would apply. (That is, a firm must count each platform that uses data for Category 3 non-display purposes.) The non-display fees would apply separately in respect of each market data product that the broker-dealer uses for non-display purposes (*i.e.,* Network A last sale price information, Network A quotation information, Network A last sale price information and Network B quotation information).

vi. *Administrative Requirements for Non-Display Uses.* In response to feedback received from SIFMA, the Participants seek to minimize the administrative burden attendant to non-display use fees and, therefore, have determined not to impose a monthly reporting requirement. Instead, the Participants would require each recipient of a real-time data feed to make an annual declaration of its non-display use to the Participants. They would require each data feed recipient to complete and submit the declaration upon its initial receipt of a data feed under the CTA Plan or the CQ Plan. In addition, if a data feed recipient's use of data changes at any time after the data feed recipient submits its declaration or annual confirmation or update, the Participants would require the data feed recipient to update its declaration at the time of the change to reflect the change of use. The Participants believe that use of the declaration would keep administrative burdens at a minimum. The Participants reserve the rights:

(a) To audit data feed recipients' non-display use of market data in accordance with the terms of their market data agreements with vendors and others; and

(b) to charge non-display use fees to data feed recipients that do not report any display activity, and do not return a completed declaration in accordance with the requirements specified above.

d. Per-Query Charges

Previously, Network A and Network B imposed identical three-tiered per-query rates as follows:

1 to 20 million quotes	$.0075 each
20 to 40 million quotes	$.005 each
Over 40 million quotes	$.0025 each

The 2013 Fee Changes modified the Network A and Network B per-query rate structure by replacing a three-tier structure with the same one-tier rate as the Nasdaq/UTP Plan and the OPRA Plan imposes: $.005 for each inquiry for both Network A and Network B. Effective June 1, 2013, the Participants in the OPRA Plan increased their per-query fee to $0.0075.[8] In addition, the Participants understand that the Participants in the Nasdaq/UTP Plan are contemplating a similar increase to $0.0075 per query.

The Participants believe that increasing the per-query fee to $0.0075 would harmonize the per-query fees under the national market system plans and would contribute toward restoring a more appropriate balance of fees in recognition of the declining significance of revenues derived from professional subscriber device fees. The increase in revenues resulting from the proposed increase in the per-query fees would represent an appropriate contribution for that service to covering the overall costs of the Participants in collecting, processing and distributing market data under the Plans. As before, a vendor's per-query fee exposure for any nonprofessional subscriber is limited to $1.00 per month (*i.e.,* the nonprofessional subscriber rate.) At $0.0075 per query, a vendor would need to receive fewer query requests from a nonprofessional subscriber before it hits the monthly nonprofessional subscriber cap of $1.00.

e. Access Fees

Access fees are charged to those who obtain Network A and Network B data feeds. Consistent with current practice, within each of a firm's billable accounts, the Participants only charge one access fee for last sale information and one access fee for quotation information, regardless of the number of data feeds that the firm receives for that account. The Participants are not proposing to modify the current rates for direct and indirect access. However, the Participants are proposing to amend the application of those rates to firms that receive access to data feeds from extranet providers.

The Participants under the Nasdaq/UTP Plan historically have deemed a firm that receives access to data feeds from an extranet provider to receive direct access to the data feeds and have therefore subjected those firms to direct access charges. In contrast, the Participants under the Plans historically have deemed a firm that receives access to data feeds from an extranet provider to receive indirect access to the data feeds and have therefore subjected those firms to indirect access charges.

The Participants have reviewed this disparity and have determined that the nature of extranet access is closer to direct access than to indirect access. Extranet access to the facilities by which the Participants make market data available provides substantially the same benefits as does direct access to those facilities and provides advantages and incremental value relative to traditional means of indirect access. As a result, the Participants believe that subjecting firms that receive extranet access to direct access fees rather than indirect access fees would be fair and reasonable.

The Participants estimate the revenues resulting from this change would have only a small impact on total Network A and Network B revenues. However, it would make for a more equitable allocation of access fees among data feed recipients.

f. Multiple Data Feed Charges

The 2013 Fee Changes established new monthly fees for firms that take more than one primary data feed and one backup data feed, as follows:

$50 for Network A last sale information data feeds
$50 for Network A quotation information data feeds
$50 for Network B last sale information data feeds
$50 for Network B quotation information data feeds.

For both last sale and bid-ask data feeds, the charge applies to each data feed that a data recipient receives in excess of the data recipient's receipt of one primary data feed and one backup data feed. The fees do not necessitate any additional reporting obligations. The fees encourage firms to better manage their requests for additional data feeds and to monitor their usage of data feeds.

The Participants have now had experience with the new fees and an opportunity to assess the value that additional data feeds add to the business models of data feed recipients. As part of the process of rebalancing market data fees in a way that deemphasizes revenues from professional subscriber device fees, the Participants have determined to propose raising the four multiple access feed fees from $50 to $200. The Participants note that the installation and maintenance of data feed lines come at a cost. Increasing the fees for multiple access feeds data feed lines would encourage firms to choose their lines more selectively and to seek greater efficiency in their consumption of data.

3. Impact of the Proposed Fee Changes

As with any reorganization of a fee schedule, these changes may result in some data recipients paying higher total market data fees and in others paying lower total market data fees. The

[8] *See* Securities Exchange Act Release No. 69448 (April 25, 2013), 78 FR 25500 (May 1, 2013).

Participants have assessed the loss in revenues that the reduction in professional subscriber device rates would generate on the one hand and, on the other hand, the gain in revenues that the non-display use fees, the increases in the per-query fees and multiple access feed fees, and the change in characterization of extranet access would generate. The Participants estimate that the net result of the changes could increase the market data revenue pool for Network A and Network B by approximately two percent, assuming no change in customer behavior and no attendant diminution of customer usage. Of course, the absence of prior experience with non-display use fees makes estimates of future revenues particularly uncertain. A more specific breakdown of the impact of the proposed fee changes on revenues under the Plans is as follows:

- If current usage levels remain the same, the decline in professional subscriber device rates would decrease revenues by approximately five percent.
- Because the Non-Display Use fees would be new, it is difficult to estimate the impact they would have on revenues. A best guess is that they would raise revenues by approximately four percent.
- If current usage levels remain the same, the increase in the per-query fee would raise revenues by approximately one percent. That estimate includes as a mitigating factor the failure to gain a certain portion of the revenue increase because the per-query fees fall under the Plans' enterprise caps.
- If current usage levels remain the same, the change relating to extranet access to data feeds would raise revenues by approximately seven-tenths of a percent.
- If current usage levels remain the same, the increases in the multiple data feed charges would raise revenues by approximately one percent. That estimate excludes the potential reduction in data feeds that would result insofar as the charges cause firms to make more efficient use of data feeds.

The Participants note that the fee changes would contribute to stemming the significant loss of revenues under the Plans in recent years as a result of large multi-year declines in display devices that professional subscribers use. Furthermore, the rise in off-exchange trading has meant that a smaller portion of those revenues have been allocated to exchanges. Since 2008, CTA/UTP market data revenue has declined 18 percent from approximately $463 million in 2008 to $379 million annualized through March of 2014. For these reasons, the Participants believe that the 2014 Fee Amendments would help to stem the tide of declining revenues caused by trends in the use of display devices by professional subscribers.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of the Amendments

Pursuant to Rule 608(b)(3)(i) under Regulation NMS, the Participants have designated the 2014 Fee Amendments as establishing or changing fees and are submitting the 2014 Fee Amendments for immediate effectiveness. The Participants anticipate implementing the proposed fee changes on January 1, 2015, after giving notice to data recipients and end users of the 2014 Fee Amendments.

The Participants note that they have vetted the 2014 Fee Amendments with the representatives that sit on the Advisory Committee and have modified certain aspects of the amendments based on the Advisory Committee's recommendations.

D. Development and Implementation Phases

Please see Item I(C) above.

E. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed fee changes reflect the Participants' views that it is appropriate to rebalance the allocation of market data fees and to meet the changing trends in the ways in which the industry uses market data. The proposed fee changes comport with the proliferation of the use of data for dark pools and other non-display trading applications. They recognize industry changes that have evolved as a result of numerous technological advances, the advent of trading algorithms and automated trading, different investment patterns, a plethora of new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research.

In addition, the 2014 Fee Amendments would simplify firms' administrative burdens by harmonizing the Plans' fee structures with those under the Nasdaq/UTP Plan and the OPRA Plan and would impose only a minimal administrative burden on the use of data for non-display purposes.

The Participants note that the list of exchanges that have previously implemented non-display use fees includes the London Stock Exchange, Nasdaq BX, Nasdaq PSX, Nasdaq, NYSE, NYSE MKT LLC and NYSE Arca. They note that the OPRA Plan imposes non-display use fees and that they understand that the Participants in the Nasdaq/UTP Plan anticipate doing so shortly.

The Participants hope that the reductions in rates for professional subscriber display devices would foster the widespread availability of real-time market data. At the same time, the new fees for non-display uses of market data would allow those who make non-display uses of data to make appropriate contributions to the costs of collecting, processing and redistributing the data. In addition, the proposed fee changes would cause Network A and Network B fees to sync more closely with fees payable under the Nasdaq/UTP Plan and the OPRA Plan. The proposed reductions in the professional subscriber device fees would allow those fees to compare even more favorably with the professional subscriber device fees payable under those other Plans and with the professional subscriber device fees charged by the largest stock exchanges around the world. The proposed non-display use fees compare favorably with the comparable fees that the Participants understand the Participants in the Nasdaq/UTP Plan intend to establish and with the non-display use fees that individual exchanges charge for their proprietary products. The proposed increase in the per-query fees would harmonize those fees with the per-query fees paid under the OPRA Plan and the comparable fee that the Participants understand the Participants in the Nasdaq/UTP Plan intend to set.

As a result, the 2014 Fee Amendments would promote consistency in price structures among the national market system plans, as well as consistency with the preponderance of other market data providers. This would make market data fees easier to administer. In the Participants' view, the proposed fee schedule would rebalance the allocation of market data fees to meet the changing trends in the ways in which the industry uses market data and allow each category of data recipient and data user (i.e., professional subscribers vs. nonprofessional subscribers, non-display firms vs. registered representative firms, large firms vs. small firms and redistributors vs. end users) to contribute an appropriate amount for its receipt and use of market data under the Plans. The proposed fee schedule would provide for an equitable

allocation of dues, fees, and other charges among broker-dealers, vendors, end users and others receiving and using market data made available under the Plans by recalibrating the fees to more closely correspond to the different benefits different categories of users derive from their different uses of the market data made available under the Plans.

The Participants estimate that the 2014 Fee Amendments would allow more than 19,000 firms to pay less for Network A data and for Network B data than they do now, with most firms paying saving up to $500 per month for each network. The Participants predict that approximately 300 firms would pay more for Network A data, with most of those firms paying between $500 and $1000 per month. They predict that approximately 275 firms would pay more for Network B data, with most of those firms paying between $1000 and $5000 per month. A small number of outliers exist and the impact on them would be more significant. Within each category of data recipient and data user, the Participants propose to apply the revised fee schedule uniformly (including members of the Participant markets and non-members). The Participants do not believe that the proposed fee changes introduce terms that are unreasonably discriminatory. The Participants note that fees under the CTA and CQ Plan compare very favorably with the fees that individual exchanges charge for their proprietary data products.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, the Plans

Not applicable.

G. Approval by Sponsors in Accordance With Plan

The Participants have approved the 2014 Fee Amendments in accordance with Section XII(b)(iii) of the CTA Plan and Section IX(b)(iii) of the CQ Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Please see Item I(A) above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

1. In General

The Participants took a number of factors into account in deciding to propose the amendments. To begin, the Participants' market data staffs communicate on an on-going basis with all sectors of their constituencies and assess and analyze the different broker/dealer and investor business models. They have expertise in the information needs of the Participants' constituents and used their experience and judgment to form recommendations regarding the 2014 Fee Changes, vetted those recommendations with constituents and revised those recommendations based on the vetting process.

Most significantly, the Participants discussed the recommendations with their Advisory Committee. The CTA and CQ Plans require the Advisory Committee to include, at a minimum, a broker-dealer with a substantial retail investor customer base, a broker-dealer with a substantial institutional investor customer base, an alternative trading system, a data vendor, and an investor. Advisory Committee members attend and participate in meetings of the Participants and receive meeting materials. At several meetings of CTA and the CQ Plan's Operating Committee, Advisory Committee members gave valuable input into the formulation of the 2014 Fee Amendments.

In reassessing and rebalancing market data fees as proposed in the amendments, the Participants took a number of factors into account in addition to the views of its constituents, including:

(A) Crafting fee changes that will not have a significant impact on total revenues generated under the Plans;

(B) setting fees that compare favorably with fees that the biggest exchanges around the globe and the Nasdaq/UTP Plan and the OPRA Plan charge for similar services;

(C) setting fees that allow each category of market data recipient and user to contribute market data revenues that the Participants believe is appropriate for that category;

(D) crafting fee changes that appropriately differentiate between constituents in today's environment (e.g., professional subscribers vs. nonprofessional subscribers, non-display firms vs. registered representative firms, large firms vs. small firms, and redistributors vs. end users); and

(E) crafting fees that reduce the administrative burdens of data recipients.

2. An Overview of the Fairness and Reasonableness of Market Data Fees and Revenues Under the Plans

a. *The 2014 Fee Changes Will Have No Impact on Most Individual Investors.* The vast majority of nonprofessional subscribers (*i.e.,* individual investors) receive market data from their brokers and vendors. Network A and Network B impose their nonprofessional subscriber fees on the brokers and vendors (rather than the investors) and set those fees so low that most brokers and vendors absorb the fees, meaning that the vast majority of individual investors do not pay for market data. The Participants anticipate that the changes to the per-query fee would not have a significant impact on the willingness of broker-dealers to continue to pay the fee on behalf of their customers. The Fee Changes will thus have no impact on most individual investors.

b. *The 2014 Fee Changes Take into Account Customer Feedback.* The Fee Changes are fair and reasonable because they offer a resolution to the call by industry participants for a simplified, updated fee schedule that harmonizes with fee schedules under other national market system plans and reduces administrative burdens, a resolution that industry representatives on the Plans' Advisory Committee have warmly embraced. And, the Fee Changes do so in a manner that is approximately revenue neutral.

c. *Long-Term Trend of Rate Reduction.* The existing constraints on fees for core market data under the Plans have generally succeeded in reducing market data rates over time. For example, when the effects of inflation are taken into account, the average monthly rate payable for a Network A professional subscriber device has consistently and dramatically fallen in real terms over the past 25 years. When inflation is taken into account, the average monthly cost of a Network A professional device was:

- $25.00 in 1987.
- $21.73 in 1990.
- $18.63 in 1995.
- $16.89 in 2000.
- $14.54 in 2005.
- $13.02 in 2010.
- $12.37 in 2013.

Also of interest is that NYSE charged approximately $25 per month for the NYSE ticker service in the 1880's.

d. *Explosion of Data.* Although the device fees have fallen after taking inflation into account, the amount of data message traffic that data users receive by subscribing has skyrocketed, as has the speed at which the data is transmitted.

i. *Significant Improvements in Latency.* The Participants have made numerous investments to improve system speed and capacity, investments that are often overlooked by the industry. The Participants regularly monitor and review the performance of

their securities information processor (''SIP'') and make performance statistics available publicly on a quarterly basis. Information can be found in the Participants' Consolidated Data Quarterly Operating Metrics Reports.[9] They make investments to upgrade technology, upgrades that enable the SIP to collect and disseminate the data ever more quickly, even as the number of quotes and trades continues to rise. The Participants will make future investments to handle the expected continued rise in message traffic, and at even faster data dissemination speeds.

The information below shows that customers are getting the quote and trade data feeds faster, as the latency of consolidated tape quote and trade feeds has improved significantly in recent years. Average quote feed latency declined from 800 milliseconds at the end of 2006 to 0.4 milliseconds in June 2014 and average trade feed latency declined from about one second at the end of 2006 to 0.5 milliseconds in June 2014, as shown below. Latency is measured from the time a message received from a Participant is time-stamped by the system, to the time that processing the message is completed.

Average Quote Latency for Network A/B:

- About 800 milliseconds at the end of 2006.
- About 20 milliseconds at the end of 2008.
- About 2.5 milliseconds at the end of 2010.
- Under 1 millisecond at the end of 2011.
- Under 1 millisecond at the end of 2012.
- About 0.6 millisecond in April 2013.
- About 0.4 millisecond in June 2014.

Average Trade Latency for Network A/B:

- About 1 second at the end of 2006.
- About 50 milliseconds at the end of 2008.
- About 2.7 milliseconds at the end of 2010.
- Under 1 millisecond at the end of 2011.
- Under 1 millisecond at the end of 2012.
- About 0.4 millisecond in April 2013.
- About 0.5 millisecond in June 2014.

ii. *New Data Added to Consolidated Feeds.* The Participants have continually enhanced the consolidated feeds. The enhancements provide significant value. They are critical to the industry in that they permit data users to do such things as view new markets and implement new regulation. Below is a list of the more significant recent enhancements, including the addition of new Participants, new indicators, new sales conditions, new reason codes and dedicated test symbols.

CTS/CQS New/Reactivated Participants:

- NASDAQ OMX—Reactivation February 2007
- BATS—Activation April 2008
- NASDAQ OMX BX (formerly the Boston Stock Exchange)—Reactivation January 2009
- BATS Y—Activation October 2010
- Direct Edge A—Activation July 2010
- Direct Edge X—Activation July 2010
- NASDAQ OMX PSX (formerly the Philadelphia Stock Exchange)—Reactivation October 2010
- FINRA—Reactivation February 2014

CTS/CQS New Indicators:

- New CTS/CQS indicator to identify Primary Listing Market—January 2007
- New CTS Trade-Through Exempt indicator—January 2007
- New CTS/CQS Trade Reporting Facility indicator—February 2007
- New CTS Negative Index Value indicator—September 2007
- New CTS Consolidated High/Low/Last Price indicator 'H'—High/Low—July 2007
- New CTS Participant Open/High/Low/Last Price Indicator codes—July 2007
  - 'L'—Open/Last
  - 'M'—Open/High/Low
  - 'N'—Open/High/Last
  - 'O'—Open/Low/Last
  - 'P'—High/Low
  - 'Q'—High/Low/Last
- New CTS/CQS Short Sale restriction indicator—February 2011
- New CQS SIP-generated message identifier indicator—February 2013 (denote that CQS was the originator of the Quote message, e.g., republished quotes, closing quote, price bands)
- New CTS/CQS Limit Up/Limit Down indicator fields and codes—February 2013 (Dedicated Test Symbols), April 2013 (Phase I production symbol rollout commencement). The processor calculates and distributes the Limit Up/Limit Down price bands.
- New CTS/CQS Limit Up/Limit Down Phase 1—May 2013; Phase 2A—August 2013; Phase 2B—February 2014
- New CQS ''Retail Interest Indicator'' field—March 2012
- New CTS/CQS ''Market-Wide Circuit Breaker'' messages—April 2013

CTS Sale Conditions:

- New CTS Sale Condition 'V'—Stock-Option Trade indicator—January 2008
- New CTS Sale Condition '4'—Derivatively Priced Trade indicator—April 2008
- New CTS Sale Condition 'O'—Market Center Opening Trade—September 2007
- New CTS Sale Condition 'Q'—Market Center Official Open Trade—September 2007
- New CTS Sale Condition 'M'—Market Center Official Close Trade—September 2007
- Redefined CTS Sale Condition 'H' from Intraday Trade Detail to Price Variation Trade—September 2007
- New CTS Sale Condition 'X'—Cross Trade—September 2007
- Redefined CTS Sale Condition 'I'—Odd Lot Trade—scheduled for implementation in December 2013
- New CTS Sale Condition '9'—Official Consolidated Last as per Listing Market—scheduled for implementation in December 2013

Regulatory/Non-Regulatory Halts Reasons:

- ''Non-Regulatory'' Trading Halt Reasons
- CTS/CQS indicator 'Y' to denote 'Sub-Penny Trading'—August 2007
- ''Regulatory'' Trading Halt Reasons
- CTS/CQS indicator 'M' to denote 'Volatility Trading Pause'—June 2010

Other:

- CTS/CQS Dedicated ''Test'' symbols—October 2010

iii. *Significant Improvements in System Throughput, Measured by Messages Per Second.* Investments in hardware and software have increased processing power and enabled the systems to handle increasing throughput levels. This is measured by peak capacity messages per second and is monitored by looking at actual peak messages per second. SIP throughput continues to increase in order to push out the increasing amounts of real-time quote and trade data.

Given the constant rise in peak messages, the SIP significantly increased system capacity. As shown below, the system could handle peak quotes per second of 11,250 in 2006 and 3.25 million in July 2014, an increase of more than 25,000 percent. The Participants have a target of handling 4 million peak quotes per second by January 2015. The capacity for trades per second increased from 2,500 in 2006

[9] Those reports can be found at *http://www.nyxdata.com/CTA.*

to 650,000 in July 2014, an increase of more than 25,000 percent. The Participants have a target of handling 700,000 trades per second by January 2015.[10]

Supported Quotes per Second Capacity for Network A/B:
- 11,250 in 2006.
- 120,000 in 2008.
- 500,000 in 2010.
- 1,500,000 in 2011.
- 2,500,000 in 2012.
- 3,000,000 in 2013.
- 3,250,000 in July 2014.
- 4,000,000 targeted for September 2014.

Actual Peak Quotes per Second for Network A/B:
- 8,673 in 2006.
- 88,249 in 2008.
- 308,705 in 2010.
- 580,870 in 2011.
- 567,321 in 2012.
- 574,891 through April 2013.
- 558,520 year-to-date through June 2014.

Supported Trades per Second Capacity:
- 2,500 in 2006.
- 20,000 in 2008.
- 100,000 in 2010.
- 300,000 in 2011.
- 500,000 in 2012.
- 600,000 in 2013.
- 650,000 in July 2014.
- 1,000,000 targeted for September 2014.

Actual Peak Trades per Second for Network A/B:
- 2,240 in 2006.
- 15,058 in 2008.
- 49,570 in 2010.
- 77,841 in 2011.
- 80,747 in 2012.
- 91,120 in 2013.
- 111,774 year-to-date through June 2014.

e. *Vendor Fees.* Fees imposed by data vendors (which the Commission does not regulate), rather than the fees imposed under the national market system plans or by national securities exchanges, account for a significant majority of the global market data fees incurred by the financial industry.[11] Market data vendors may apply significant administration mark-up fees on top of exchange market data fees. These mark-ups are not regulated and there is limited transparency into how the rates are applied. These mark-ups do not result in any additional revenues for the Participants; the vendors alone profit from them.

f. *Declining Unit Purchase Costs for Customers.* Despite consolidated tape investments in new data items, additional capacity demands and latency improvements, data users' unit purchase costs for trade and quote data has declined significantly, increasing the value of the data they receive from their subscriptions. The amount of quote and trade data messages has increased significantly while fees have remained unchanged, as shown below for the 2006 to 2013 timeframe.

- *Average purchase cost of Network A quotes:* The average number of quotes per day increased over 530 percent during this timeframe, rising from 44.2 million in 2006 to 281.6 million in 2013. As a result, the average unit purchase cost of a quote for a customer incurring a monthly Network A indirect access fee of $700 declined approximately 84 percent during this period, falling from $0.0000158 in 2006 to $0.0000025 in 2013.
- *Average purchase cost of Network B quotes:* The average number of quotes per day increased over 1850 percent, rising from 7.0 million in 2006 to 129.5 million in 2013. As a result, the average unit purchase cost of a trade for a customer incurring a monthly Network A indirect access fee of $250 declined an estimated 95 percent during this period, falling from $0.0000357 in 2006 to $0.0000019 in 2013.
- *Average purchase cost of Network A trades:* The average number of trades per day increased over 73 percent, rising from 8.1 million in 2006 to 14.0 million in 2013. As a result, the average unit purchase cost of a quote for a customer incurring a monthly Network B indirect access fee of $500 declined an estimated 42 percent during this period, falling from $0.0000617 in 2006 to $0.0000357 in 2013.
- *Average purchase cost of Network B trades:* The average number of trades per day increased 296 percent, rising from 659,337 in 2006 to 2.61 million in 2013. As a result, the average unit purchase cost of a trade for a customer incurring a monthly Network B indirect access fee of $200 declined an estimated 75 percent during this period, falling from $0.000303 in 2006 to $0.000077 in 2013.

3. Increase in Costs

The direct costs that the Plans incur for the services of the securities information processor and network administrators to process the data and administer the networks, as well as the cumulative total of the indirect costs that each Participant incurs in producing and collecting its data, have increased substantially since the Participants last restructured their fees in 1986.

Since 1987, the first full year for which the 14-tier fee structure was in effect, the direct costs of the securities information processor and the network administrators have increased 99 percent, or 2.59 percent per year when compounded on an annual basis. When taken over 27 years, this annual increase in direct costs is likely to exceed the estimated two percent increase in revenues that the Participants estimate the 2014 Fee Amendments will produce (especially once decreased customer usage as a result of the 2014 Fee Amendments is taken into account) as a percentage and to approximately match the increase in revenues that the Participants estimate the 2014 Fee Amendments will produce. Further, the Participants estimate that the increase in the direct costs of the securities information processor and the network administrators over the past year will slightly exceed the increase in revenues that the Participants estimate the 2014 Fee Amendments will produce (exclusive of decreased usage as a result of the 2014 Fee Amendments).

With respect to indirect costs, the Commission has previously noted that ''any attempt to calculate the precise cost of market information presents severe practical difficulties.'' [12] In commenting on the 1999 Concept Release, NYSE summarized many of the ''severe practical difficulties'' attendant to each Participant's calculation of its data production and collection costs and we incorporate that discussion here.[13] In 1987, the indirect costs of the Participants would have included the data production and collection costs of seven national securities exchanges [14] and one national securities association [15]. In 2014, that calculation would have to include the data production and collection costs of the 15 Participants, including 14 national securities exchanges and the Alternative Display Facility and two Trade Reporting Facilities that FINRA, the

[10] To better manage the rise in message traffic, the Participants anticipate that capacity planning will move from measuring messages per second to measuring messages per millisecond.

[11] *See,* for example, ''A Research Study'' published by Atradia. It can be found at the Software and Information Industry Association Web site at *www.siia.net.*

[12] *See* SEC 1999 Concept Release on ''Regulation of Market Information Fees and Revenues'' (the ''1999 Concept Release''). It can be found at *http://www.sec.gov/rules/concept/34-42208.htm.*

[13] *See* footnote 11 of letter from James E. Buck, Senior Vice President and Secretary, NYSE, April 10, 2000. It can be found at *http://www.sec.gov/rules/concept/s72899/buck1.htm*

[14] American Stock Exchange, Inc., Boston Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., Midwest Stock Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.,

[15] National Association of Securities Dealers, Inc.

lone national securities association, maintains.

4. Adequate Constraints on Fees

Constituent boards, customer control and regulatory mechanisms constrain fees for core market data now just as they have since Congress established the fair-and-reasonable standard in 1975.

With respect to Network A and Network B, NYSE typically takes the lead on pricing proposals, vetting new proposals with the other Participants, various users, and trade and industry groups, and making modifications which improve or reevaluate the original concept. Proposals are then taken to each Participant for approval. But there are significant market data user and regulatory constraints on NYSE's ability to simply impose price changes.

The governing body of each Participant consists of representatives of constituent firms and a large quotient of independent directors. The Participants' constituent board members have the ultimate say on whether CTA and the CQ Plan Operating Committee should submit fee proposals to the Commission and whether the costs of operating the markets and the costs of the market data function are fairly allocated among market data users. That is, the users of market data and non-industry representatives who sit on Participant boards get to determine whether to support market data fee proposals. They also get to determine how the various types of data users should pay their fair share and they make decisions about funding technical infrastructure investments needed to receive, process and safe-store the orders, quotations and trade reports that give rise to the data.

Constituent Board members are the Participants' market data customers. When a critical mass of them voices a point of view, they can direct the Participants how to act. This is exactly what has happened here.

This cost-allocation-by-consensus process also is buttressed by the Commission's own review and public comment procedures, which also operate as an additional constraint on pricing.

Also, developments in technology make possible another important constraint on market data prices for core data: There is nothing to prevent one or more vendors, broker-dealers or other entities from gathering prices and quotes across all Participants and creating a consolidated data stream that would compete with the Plans' data streams. The technology to consolidate multiple, disparate data streams is readily available, and other markets have already begun introducing products that compete with core data (such as Nasdaq Basic).[16]

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a) (Solely in Its Application to the Amendments to the CTA Plan)

A. Equity Securities for Which Transaction Reports Shall be Required by the Plan

Not applicable.

B. Reporting Requirements

Please see Item I(A)(2)(c)(vi).

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not Applicable.

G. Terms of Access to Transaction Reports

Please see Item I(A).

H. Identification of Marketplace of Execution

Not Applicable.

III. Solicitation of Comments

The Commission seeks general comments on CTA/CQ–2014–03. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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* CTA/CQ–2014–03 *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 CTA/CQ–2014–03. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan Amendment 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of CTA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number CTA/CQ–2014–03 and should be submitted on or before October 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[16] In a context in which a trading or order-routing decision can be implemented, Regulation NMS Rule 603(c)(1) prevents a broker, dealer or securities information processor from providing a display of market data unless it also provides a consolidated display, such as the consolidated displays made available under the Plans. Yet, despite this rule, the Participants have seen reductions of customer activity at the same time that competing non-consolidated products have seen increases.

[17] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73276; File No. SR–ISE–2014–41]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

October 1, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 17, 2014, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend the Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 6, 2013 the ISE implemented a temporary Managed Data Access Service program that established a new pricing and distribution model for the sale of a number of real-time market data products.[3] On December 20, 2013, the Exchange extended this program until May 30, 2014, and the program lapsed on that date.[4] The Exchange now proposes to institute another temporary Managed Data Access Service program on the same terms, for an additional one year period ending August 31, 2015, so that the Exchange can continue to provide this alternative delivery option for ISE data feeds.[5] Managed Data Access Service is a pricing and administrative option whereby the ISE assesses fees to Managed Data Access Distributors,[6] who redistribute market data to Managed Data Access Recipients.[7] Managed Data Access Distributors are required to monitor the delivery of the data retransmitted to their clients, and must agree to reformat, redisplay and/or alter the data feeds prior to retransmission without affecting the integrity of the data feeds and without rendering any of the feeds inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory.

The proposed fees for the Managed Data Access Service are as follows:

The Exchange proposes to charge a fee to each Managed Data Access Distributor of $2,500 per month for the Depth Feed, $1,500 for each of the Top Quote Feed and Spread Feed, and $1,000 per month for the Order Feed. The Exchange also proposes to charge a fee for each IP address at Managed Data Access Recipients that receive market data redistributed by a Managed Data Access Distributor, which is $750 per month for the Depth Feed, $500 per month for each of the Top Quote Feed and Spread Feed, and $350 per month for the Order Feed.[8] In addition, the Exchange proposes to charge a controlled device fee for each controlled device permitted to access market data redistributed by a Managed Data Access Distributor to a Market Data Access Recipient that is a Professional user,[9] which is $50 per month for the Depth Feed, $20 per month for the Top Quote Feed, $25 per month for the Spread Feed, and $10 per month for the Order Feed.[10] Finally, the Exchange proposes to charge a controlled device fee of $5 per month for each controlled device permitted to access information in the Depth Feed redistributed by a Managed Data Access Distributor to a Market Data Access Recipient that is a Non-Professional user.[11] For each of the above ISE data feeds, Market Data Access Distributors are subject to a minimum fee, which is $5,000 per month for the Depth Feed, $3,000 per month for each of the Top Quote Feed and Spread Feed, and $2,000 per month for the Order Feed.

These fees are the same as fees previously charged under the lapsed the Managed Data Access Service program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act,[12] and the rules and regulations thereunder that are applicable to a national securities exchange, including the requirements of Section 6(b) of the Act.[13] In particular,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69806 (June 20, 2013), 78 FR 38424 (June 26, 2013) (ISE–2013–39). The Exchange also offers a similar Managed Data Access Service program for its Implied Volatility and Greeks Feed. *See* Securities Exchange Act Release No. 65678 (November 3, 2011), 76 FR 70178 (November 10, 2011) (ISE–2011–67). This filing does not apply to the Managed Data Access Service program for the Implied Volatility and Greeks Feed, which is a permanent program.

[4] *See* Securities Exchange Act Release No. 71230 (January 2, 2014), 79 FR 1405 (January 8, 2014) (ISE–2013–74).

[5] The Managed Data Access Service program provides an alternative delivery option for the Real-time Depth of Market Raw Data Feed (''Depth Feed''), the Order Feed, the Top Quote Feed, and the Spread Feed.

[6] A Managed Data Access Distributor redistributes ISE data feeds and permits access to the information in those data feeds through a controlled device. A Managed Data Access Distributor can also redistribute a data feed solution to specific IP addresses, including an Application Programming Interface (''API'') or similar automated delivery solutions, with only limited entitlement controls (*e.g.,* usernames and/or passwords) to a recipient of the information.

[7] A Managed Data Access Recipient is a subscriber to the Managed Data Access Distributor who receives a reformatted data feed in a controlled device or at a specific IP address. Market Data Access Recipients may be Professional or Non-Professional users.

[8] This fee is charged per IP address, which covers both primary and back-up IP addresses at a Managed Data Access Recipient.

[9] A ''Professional user'' is an authorized end-user of the ISE data feeds that has not qualified as a Non-Professional user.

[10] A controlled device is any device that a distributor of an ISE data feed permits to access the information in that data feed.

[11] There is no controlled device fee for Non-Professional users of the Top Quote Feed, Spread Feed, or Order Feed. A ''Non-Professional user'' is an authorized end-user of the ISE data feeds who is a natural person and who is neither: (a) Registered or qualified with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an ''investment advisor'' as that term is defined Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act); nor (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b).

the proposal is consistent with Section 6(b)(5) of the Act,[14] because is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is consistent with the provisions Section 6(b)(4) of the Act [15] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed program is consistent with the protection of investors and the public interest as the terms of the program are substantially similar to managed data programs offered by other options exchanges,[16] and will provide a competitive fee model for subscribers to ISE market data. The Exchange initially established a managed data program for a six month period, later extended to a year, in order gauge the level of interest in this new pricing and distribution model, and now wishes to institute another temporary program so that it may continue to offer an attractive pricing program that competes with programs offered by other options exchanges. The Managed Data Access Service promotes broader distribution of controlled data, while offering a pricing option that should result in lower fees for subscribers. The Exchange continues to believe that the fees for this program are fair and equitable as they are consistent with fees previously charged under this program, and as explained above are intended to offer a pricing model that should result in lower fees for ISE market data subscribers. The Exchange is constrained in pricing the Managed Data Access Service as these services are entirely optional, and firms may choose whether or not to purchase proprietary ISE market data products or to utilize any specific pricing alternative. Moreover, the program is not unfairly discriminatory because it provides an opportunity for all distributors and subscribers, both Professional and Non-Professional, to access the ISE data feeds at a potentially lower cost.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[17] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change will promote competition as it allows the ISE to continue to offer a temporary program that provides an attractive alternative pricing model for ISE market data that is similar to pricing programs in place on other options exchanges. The vigor of competition for market data is significant and the Exchange believes that this proposal clearly evidences such competition. ISE proposes to offer this optional Managed Access Data Service pricing model in order to keep pace with changes in the industry and evolving customer needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 [18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number *SR*–ISE–2014–41 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*–ISE–2014–41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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*–ISE–

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] A number of other exchanges have adopted managed data access services to distribute their proprietary market data. *See e.g.* Securities Exchange Act Release Nos. 63276 (November 8, 2010), 75 FR 69717 (November 15, 2010) (SR–NASDAQ–2010–138); and 69182 (March 19, 2013), 78 FR 18378 (March 26, 2013) (SR–PHLX–2013–28). ISE also currently offers managed data access service on a permanent basis for the ISE Implied Volatility and Greeks Feed. *See* supra note 3.

[17] 15 U.S.C. 78f(b)(8).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The ISE has satisfied this requirement.

2014–41, and should be submitted on or before October 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23835 Filed 10–6–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73282; File No. SR–NYSEArca–2014–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca, Inc.'s Rules by Revising the Order of Priority of Bids and Offers When Executing Orders in Open Outcry

October 1, 2014.

I. Introduction

On January 15, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the order of priority of bids and offers when executing orders in open outcry. The proposed rule change was published for comment in the **Federal Register** on February 3, 2014.[3] On March 18, 2014, the Commission extended the time period for Commission action on the proposal to May 2, 2014.[4] The Commission received ten comment letters from seven commenters regarding the proposal,[5] as well as a response to the comment letters from NYSE Arca.[6] On April 29, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[7] On May 2, 2014, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the proposed rule change.[9] The Order Instituting Proceedings was published for comment in the **Federal Register** on May 8, 2014.[10] The Commission received an additional response letter and data submission from NYSE Arca.[11] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

NYSE Arca proposed to amend its rules governing the priority of bids and offers on its Consolidated Book by revising the order of priority in open outcry to afford priority to bids and offers represented by Market Makers [12] and Floor Brokers [13] (collectively, ''Crowd Participants'') [14] over certain equal-priced bids and offers of non–Customers [15] on the Consolidated Book [16] during the execution of an order in open outcry on the Floor [17] of the Exchange.[18]

Current Rule 6.75(a) provides that any bids displayed on the Consolidated Book have priority over same-priced bids represented in open outcry. Such priority also is described in current Rule 6.47, which governs crossing orders in open outcry. Floor Broker crossing transactions, as described in Rule 6.47(a)(3), may not trade ahead of bids or offers on the Consolidated Book that are priced equal to or better than the proposed crossing price. The Exchange stated that, because of this priority afforded to the Consolidated Book, Crowd Participants who have negotiated a large transaction ultimately might not be able to participate in its execution.[19]

The Exchange proposed to restructure its priority rules so that bids and offers of Crowd Participants would have priority over equal-priced bids and offers of non-Customers on the Consolidated Book that are ranked in time priority behind any equal-priced Customer bids and offers on the Consolidated Book. Equal-priced Customer [20] interest would continue to be afforded priority over Crowd Participants in the execution of an open outcry transaction. In addition, consistent with the existing price/time priority presently applicable to bids and offers on the Consolidated Book, equal-priced non-Customer bids and offers ranked in time priority ahead of Customer interest also would be

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71425 (January 28, 2014), 79 FR 6258 (''Notice'').

[4] *See* Securities Exchange Act Release No. 71733 (March 18, 2014), 79 FR 16072 (March 24, 2014).

[5] *See* Letter from Darren Story, dated January 29, 2014 (''Story Letter I''); Letter from Abraham Kohen, AK FE Consultants LLC, dated January 31, 2014 (''Kohen Letter I''); Letter from David Spack, Chief Compliance Officer, Casey Securities, LLC, dated February 3, 2014 (''Casey Letter''); Letter from Abraham Kohen, AK FE Consultants LLC, dated February 4, 2014 (''Kohen Letter II''); Letter from Angel Alvira, dated February 12, 2014 (''Alvira Letter''); Letter from Donald Hart, dated February 12, 2014 (''Hart Letter I''); Letter from Doug Patterson, Chief Compliance Officer, Cutler Group, LP, dated February 13, 2014 (''Cutler Letter''); Letter from Donald Hart, dated February 18, 2014 (''Hart Letter II''); Letter from Gerald D. O'Connell, Chief Regulatory Officer, Susquehanna International Group, LLP (''SIG''), dated March 14, 2014 (''SIG Letter''); and Letter from Darren Story, dated March 21, 2014 (''Story Letter II'').

[6] *See* Letter from Martha Redding, Chief Counsel, NYSE Euronext, dated April 4, 2014 (''NYSE Arca Response I'').

[7] In Amendment No. 1, the Exchange revised the rule text for proposed Rule 6.47: (1) To clarify that Floor Brokers, when crossing two orders in open outcry, may not trade through any non-Customer bids or offers on the Consolidated Book that are priced better than the proposed execution price; and (2) to conform the term ''bids and offers'' to ''bids or offers'' in paragraphs (a) and (c) thereunder. Amendment No. 1 has been placed in the public comment file for SR–NYSEArca–2014–04 at *http://www.sec.gov/comments/sr-nysearca-2014-04/nysearca201404.shtml* (*see* letter from Martha Redding, Chief Counsel, NYSE Euronext, to Kevin M. O'Neill, Deputy Secretary, Commission, dated April 30, 2014) and also is available on the Exchange's Web site at *http://www.nyse.com/nysenotices/nysearca/rule-filings/pdf.action;jsessionid=FACF4F6772B1316D973F5D4E2D258ACE?file_no=SR-NYSEArca-2014-04&seqnum=2*.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 72081 (May 2, 2014), 79 FR 26474 (''Order Instituting Proceedings'').

[10] *See* Order Instituting Proceedings at 79 FR 26474. The comment period closed on May 29, 2014, and the rebuttal period closed on June 12, 2014. On July 29, 2014, the Commission extended the time period for the proceedings for the Commission to determine whether to approve or disapprove the proposed rule change to October 1, 2014. *See* Securities Exchange Act Release No. 72703 (July 29, 2014), 79 FR 45535 (August 5, 2014).

[11] *See* Letter from Martha Redding, Chief Counsel, New York Stock Exchange, dated September 11, 2014 (''NYSE Arca Response II''). The response letter included summary data concerning participation and competition in non-Customer-to-Customer open outcry crossing transactions on NYSE Arca and NYSE Amex Options and is available at *http://www.sec.gov/comments/sr-nysearca-2014-04/nysearca201404.shtml*.

[12] *See* Rule 6.32 (Market Maker Defined).

[13] *See* Rule 6.43 (Options Floor Broker Defined).

[14] The term ''Crowd Participants'' means the Market Makers appointed to an option issue under Rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series. *See* Rule 6.1(b)(38).

[15] A non-Customer is a market participant who does not meet the definition of Customer as defined in paragraph (c)(6) of Rule 15c3–1 under the Securities Exchange Act of 1934, 17 CFR 240.15c3–1. *See* Rule 6.1(b)(29).

[16] The term ''Consolidated Book'' means the Exchange's electronic book of limit orders for the accounts of Public Customers and broker-dealers, and Quotes with Size. *See* Rule 6.1(b)(37).

[17] *See* Rule 1.1(i).

[18] The Exchange also proposed to make non-substantive changes to existing rule text contained in Rules 6.47 and 6.75. *See* Notice, 79 FR at 6260 for a description of these non-substantive changes.

[19] *See* Notice, 79 FR at 6258. The Exchange stated that Crowd Participants could negotiate a transaction with an understanding of the make-up of bids and offers on the Consolidated Book at the beginning of open outcry. However, as the trade is executed, the Consolidated Book could update with newly-arriving electronically-entered bids and offers that have priority under current Rule 6.75(a). The Exchange noted that, given the speed at which quotes can flicker in the Consolidated Book, Crowd Participants who have agreed to a transaction in open outcry do not know if they will actually participate on the trade until after execution. *Id.* at 6258–59.

[20] *See supra* note 15.

afforded priority over Crowd Participants in the execution of an open outcry transaction. In the Exchange's view, the proposed rule change strikes the appropriate balance between encouraging larger negotiated transactions in open outcry, while at the same time protecting Customer interest on the Consolidated Book, and any interest that has time priority over such protected Customer interest.[21]

To effect this change to its floor priority rules, the proposal would amend the Exchange's rules as follows. As noted above, Rule 6.75(a) presently states that the highest bid shall have priority but where two or more bids for the same option contract represent the highest price and one such bid is displayed on the Consolidated Book, such bid shall have priority over any bid at the post (*i.e.,* the Trading Crowd[22]). The Exchange proposed to amend Rule 6.75(a)[23] by limiting the priority of bids in the Consolidated Book over bids in the Trading Crowd solely to those bids for Customers along with non-Customers that are ranked in time priority ahead of such Customers.[24]

Rule 6.76 presently governs order ranking, display and allocation of orders on the NYSE Arca Options platform (''OX system''). The Exchange proposed new paragraph (d) to Rule 6.76 that would set forth the priority of bids and offers on the Consolidated Book against orders executed through open outcry in the Trading Crowd. The proposed text provides a step-by step-description of the order of priority to be afforded bids and offers of both Customers and non-Customers on the Consolidated Book. The Exchange noted that the priority scheme described in proposed Rule 6.76(d) is consistent with the proposed changes to Rule 6.75.[25]

The Exchange also proposed to include language in Rule 6.76(d)(4) that sets forth certain OTP Holder[26] obligations under Section 11(a) of the Act.[27] The proposed rule text states that, notwithstanding the priority scheme set forth in proposed Rule 6.76(d)(2), an OTP Holder effecting a transaction on the Floor for its own account, the account of an associated person, or an account with respect to which it or an associated person has investment discretion pursuant to the ''G Rule'' must still yield priority to any equal-priced non-OTP Holder bids or offers on the Consolidated Book.[28]

Rule 6.47 outlines the procedures used when a Floor Broker attempts to cross two orders in open outcry. Currently, Floor Brokers must trade against all equal-priced Customer and non-Customer bids and offers in the Consolidated Book before effecting a cross transaction in the Trading Crowd. The Exchange proposed to revise Rule 6.47 to conform the priority rules applicable to open outcry cross transactions to the proposed changes described above. Accordingly, the Exchange proposed to amend the procedures for the crossing scenarios described in Rule 6.47[29] by stating that Floor Brokers, when crossing two orders in open outcry, must yield priority to: (1) Any Customer bids or offers on the Consolidated Book that are priced equal to or better than the proposed execution price and to any non-Customer bids or offers on the Consolidated Book that are ranked ahead of such equal or better-priced Customer bids or offers; and (2) to any non-Customer bids or offers on the Consolidated Book that are priced better than the proposed execution price.[30] The Exchange noted that Floor Brokers would be required to trade against equal and better-priced Customer bids or offers on the Consolidated Book, any better-priced bids or offers of non-Customers on the Consolidated Book and any non-Customer bids or offers that are ranked ahead of equal-priced Customer bids or offers, before attempting a cross transaction.[31] Consistent with proposed Rule 6.75(a), Floor Brokers would not be required to trade against equal-priced non-Customer bids and offers that are ranked behind such Customer and non-Customer bids and offers.[32]

The Exchange stated that it would announce the implementation date of the proposed rule change by Trader Update to be published no later than 90 days following approval[33] and the implementation date would be no later than 90 days following the issuance of the Trader Update.

III. Comment Letters and NYSE Arca's Responses

The Commission received ten comment letters from seven commenters.[34] NYSE Arca submitted a response to the comment letters and an additional letter and data submission in response to the Order Instituting Proceedings.[35]

Five of the commenters, four of whom identified themselves as Crowd Participants on NYSE Arca,[36] generally were supportive of the proposal to revise the order of priority of bids and offers when executing orders in open outcry.[37] Four of these commenters stated a view that the proposal would

[21] *See* Notice, 79 FR at 6259.

[22] The term ''Trading Crowd'' means all Market Makers who hold an appointment in the option classes at the trading post where such trading crowd is located and all Market Makers who regularly effect transactions in person for their Market Maker accounts at that trading post, but generally will consist of the individuals present at the trading post. *See* Rule 6.1(b)(30).

[23] The Exchange noted that the changes made to Rule 6.75(a) dealing with the priority of ''bids'' also would effect a corresponding change to the meaning of Rule 6.75(b) dealing with ''offers,'' although there would be no change to the rule text in Rule 6.75(b). *See* Notice, 79 FR at 6259.

[24] *See* Notice, 79 FR at 6259–60 for examples illustrating how the Exchange's priority and allocation rules would be applied under the proposed rule change.

[25] *See* Notice, 79 FR at 6259. According to the Exchange, the inclusion of a description of open outcry priority procedures in Rule 6.76 would serve as a useful cross reference to Rule 6.75. The Exchange stated that including such a cross reference is consistent with similar rule structures by the Chicago Board Options Exchange, Inc. (''CBOE'') and NYSE MKT LLC (''NYSE MKT''). *See id.* (citing CBOE Rule 6.45A(b) and NYSE MKT Rule 964NY(e)).

[26] *See* Rule 1.1(q).

[27] Specifically, pursuant to Section 11(a)(1)(G) of the Exchange Act and Rule 11a1–1(T) thereunder (the ''G Rule''), an OTP Holder may effect transactions on the Floor for its own account, the account of an associated person, or an account with respect to which it or an associated person has investment discretion, provided that such transaction yields priority in execution to orders for the account of persons who are not OTP Holders or associated with OTP Holders. *See* 15 U.S.C. 78k(a)(1)(G) and 17 CFR 11a1–1(T). The Exchange stated that the proposed rule text is based on the rules of the CBOE and NYSE MKT on behalf of NYSE Amex Options. *See* Notice, 79 FR at 6259 (citing CBOE Rule 6.45A(b)(i)(D) and NYSE MKT Rule 910NY).

[28] According to the Exchange, at this time, no OTP Holder that currently operates on the Exchange's Floor as a Floor Broker enters orders for its own account, the account of an associated person, or an account with respect to which it or an associated person has investment discretion. The Exchange stated, however, that the Financial Industry Regulatory Authority, Inc. on behalf of NYSE Regulation, Inc., monitors whether Floor Brokers comply with Section 11(a) of the Act. *See id.*

[29] The crossing scenarios described in Rule 6.47 are: (a) Non-Facilitation (Regular Way) Crosses; (b) Facilitation Procedures; (c) Crossing Solicited Orders; (d) Mid-Point Cross; and (e) Customer-to-Customer Cross. The Exchange did not propose any change to Rule 6.47(d) relating to Mid-Point Cross, and thus Mid-Point Cross transactions would not be affected by the proposed rule change. Telephone conversation between Glenn Gsell, Managing Director, NYSE Arca and Commission staff, dated April 23, 2014.

[30] *See* Notice, 79 FR at 6259–60 for examples illustrating the proposed priority changes as applicable for Non-Facilitation and Facilitation Crosses. *See also* Amendment No. 1, *supra* note 7.

[31] *See* Notice, 79 FR at 6259.

[32] The Exchange stated its belief that affording priority to Crowd Participants ahead of such non-Customer interest on the Consolidated Book would create an increased incentive for block-sized transactions on the Floor. *See* Notice, 79 FR at 6259.

[33] *See* Notice, 79 FR at 6260.

[34] *See supra* note 5.

[35] *See supra* notes 6 and 11.

[36] *See* Casey Letter (Floor Broker); Alvira Letter (Market Maker); Hart Letters I and II (Market Maker); Cutler Letter (Crowd Participant), *supra* note 5.

[37] *See* Story Letters I and II; Casey Letter; Alvira Letter; Hart Letter I and II; and Cutler Letter.

allow NYSE Arca to compete with other exchanges that currently have similar priority rules.[38] Three of these commenters stated that the proposal would allow Crowd Participants to compete with bids and offers of non-Customers on the Consolidated Book,[39] and two of them stated that Crowd Participants were the market participants most likely to provide services during times of market duress.[40] Two commenters also noted that the rule change would maintain priority for Customer orders resting on the Consolidated Book.[41]

Two commenters stated their belief that the proposal would increase competition on the floor for orders,[42] and one of these commenters noted that this competition would benefit the investing public.[43] Similarly, two commenters stated their view that the proposal would improve investor executions on the floor.[44] One commenter noted that the proposal would create an advantage for price improving customers.[45]

Two commenters expressed concerns about the proposal.[46] One commenter stated its view that the proposal would disenfranchise and disadvantage certain market participants, and suggested instead that the Exchange give size preference for equal bid prices.[47] The commenter believed that such preference would be a more fair way of revising the priority of bids and offers.[48] This commenter further noted that, under the Exchange's proposal, even small bids from Crowd Participants would take priority over electronic non-Customer bids.[49] The same commenter also noted its belief that best execution is not enhanced by allowing more exchanges to disadvantage other traders.[50] The commenter suggested that, regardless of the merits of high frequency trading, there was no reason to disadvantage all non-Customers by giving priority to one class of traders that would allow them to jump ahead of the queue.[51] One commenter who supported the proposal took issue with views expressed by this commenter and noted that current NYSE Arca rules are structured so as to disadvantage on-floor market makers.[52]

Another commenter also raised concerns with the proposal.[53] The commenter acknowledged that the proposal would reduce the number of instances where high-frequency, non-Customer orders arriving on to the book could cause Crowd Participants to be ''scaled-back'' from agreed-upon negotiated amounts. The commenter acknowledged that this ''scaling back'' currently presented certain operational and hedging challenges to Crowd Participants.[54] The commenter remarked, however, that the proposal apparently was focused on attracting block cross volume to the Exchange.[55]

The commenter noted that when NYSE Arca uses the term ''Crowd Participants,'' it appears to refer to off-floor trading houses that attempt to internalize, in large part, block orders from institutional customers (*i.e.,* clean cross orders). The commenter acknowledged that this term also includes option market makers on the NYSE Arca Floor, but stated its view that the market maker participation in such orders is often minimal as a percentage of the total order size.[56] The commenter stated that the majority of available market maker liquidity at the Exchange is represented by a group of off-floor market maker firms that are collectively responsible for over 90% of displayed liquidity in multiply traded options, rather than on-floor market makers.[57]

The commenter further stated its view that the proposal would attract more clean-cross type orders that it believes would further insulate customer interest from competition by parties other than crowd participants.[58] In its view, because such negotiations usually occur outside the view of off-floor market makers, the crosses often occur at prices that have not been sufficiently vetted by those most likely to offer price improvement.[59] Given its concerns, the commenter believed that the proposal would be detrimental to investors, as the opportunity for price improvement would be significantly diminished.[60]

The commenter stated that the proposal did not provide an explanation regarding how more crowd participation in larger-sized block floor crosses would benefit customers or the market in general.[61] The commenter acknowledged that, as other floor exchanges have rules that place booked

[38] *See* Casey Letter (''The Proposal would still leave Arca Crowd Participants at a slight disadvantage to crowd participants on CBOE and Amex, but would go a long way towards leveling the playing field''); Alvira Letter (''I would like to see us in a competitive balance with the AMEX who have already implemented the change''); Cutler Letter (''AMEX and CBOE currently have similar rules in place''); and Hart Letter II (''This would enable the PCX to level the rules with other exchanges''). *See also* SIG Letter (''the proposal at least relates in part to a legitimate competitive concern'').

[39] *See* Casey Letter (''The current market structure leaves NYSE Arca Crowd Participants and their customers at a distinct disadvantage . . . to non-customer professional traders, including High Frequency Traders''); Hart Letter I (''This rule disadvantages floor based market makers, which are the only ones providing liquidity when the markets are under duress''); and Cutler Letter (''This Proposed Rule change will level the competitive balance between floor market makers and electronic non-customer professional traders'').

[40] *See* Hart Letter I (''market makers . . . are the only ones providing liquidity when the markets are under duress'') and Story Letter II (''Perhaps one of the most compelling arguments for floor based market-makers is that they are required to stand in and make two-sided markets in volatile environments. They cannot just turn off the machines and walk away'').

[41] *See* Story Letter I (''It will allow for price discovery and improvement, but at the same time maintaining protection for customer orders resting on the order book'') and Casey Letter (''As Crowd Participants will still be required to interact with any Customer orders in the Consolidated Book, public Customers will not be adversely affected'').

[42] *See* Casey Letter (''The Proposal, by creating more uniform open outcry priority rules across floors, will increase competition for execution of these negotiated transactions'') and Story Letter II (''This filing will create an advantage for price improving CUSTOMER orders'') (emphasis in original).

[43] *See* Casey Letter (''Increasing competition in financial markets is nearly always beneficial for investors; the Proposal would increase competition among options floor brokers, and would ultimately benefit the investing public'').

[44] *See* Story Letter I (''This rule change will allow market participants to IMPROVE fills for customers without creating any disadvantage for other market participants'') and Casey Letter (''The execution of sizeable negotiated transactions in listed options is an important service provided to investors almost exclusively by the few remaining options Floor Brokers. The Proposal . . . will provide investors with greater flexibility, greater access to liquidity, and lower execution costs'') (emphasis in original).

[45] *See* Story Letter II.

[46] *See* Kohen Letters I and II; and SIG Letter.

[47] *See* Kohen Letter I.

[48] *See* Kohen Letter I.

[49] *See* Kohen Letter I (''otherwise Crowd Participants' 1 contract or 100 share bid will always take priority'').

[50] *See* Kohen Letter II.

[51] *See* Kohen Letter II.

[52] *See* Story Letter II.

[53] *See* SIG Letter.

[54] *See* SIG Letter at 1.

[55] *See* SIG Letter at 1 (''This focus is made apparent by Arca when it asserts that the new rule . . . will provide greater opportunity for bids and offers of crowd participants to participate in open outcry transaction [sic] and therefore promote larger-sized negotiated transactions'').

[56] *See* SIG Letter at 2.

[57] *See* SIG Letter at 2. The commenter remarked that, due to the off-floor market makers, electronic crossing systems for block sized orders generally have shown to be a better alternative to floor crosses, at least on a transparency and price competition basis. *Id.*

[58] *See* SIG Letter at 2.

[59] *See* SIG Letter at 2. The commenter also noted that it had submitted a Petition for Rulemaking filed with the Commission in April 2013. The commenter represented that, in that petition, several market making firms (including the commenter) asserted their belief that exchanges with trading floors would generate better priced executions for customers if they required crosses to be auctioned through electronic systems that included off-floor registered market makers in the respective option classes. *See* Petition for Rulemaking Regarding Option Floor Crosses, File No. 4–662 (April 22, 2013), available at *http://www.sec.gov/rules/petitions/2013/petn4-662.pdf.*

[60] *See* SIG Letter at 2–3.

[61] *See* SIG Letter at 3.

parity interest behind crowd participants, NYSE Arca's proposal at least relates in part to a legitimate competitive concern for the Exchange.[62] However, the commenter stated that it was important that exchanges give sufficient reason why a proposed rule is not injurious to customers or the market in general, and that the Exchange's proposal fails to give such reasons, perhaps, as the commenter opined, because there were none to give.[63] The commenter requested that the Commission establish the reasoning behind the Exchange's desire to increase block-cross volume and the reasons, if any, for NYSE Arca's belief that more (and cleaner) block floor crosses were good for investors.[64]

One commenter who supported the proposal raised issues with the arguments made by the commenter who expressed several concerns regarding the proposal.[65] The commenter who supported the proposal stated that the other commenter's concerns were misguided and unfounded because the proposal would allow for price improvement on any size order, whether large or not. The commenter who supported the proposal also noted that the proposal would allow large market-making groups like itself to continue to provide inside markets and actually trade at those prices on NYSE Arca.[66] The commenter who supported the proposal disagreed with the suggestion that the proposal was necessarily about attracting clean-crosses outside the view of off-floor market makers, and stated its belief that the rule was designed to provide opportunity to improve markets.[67]

NYSE Arca provided a response letter addressing issues raised by the commenters.[68] NYSE Arca emphasized that the proposal would align the rules of the Exchange with other U.S. options exchange trading floors, but with a unique caveat that any non-Customer electronic interest with time priority over a Customer order in the Book also would maintain priority over floor participants.[69]

In response to one commenter's suggestion that the Exchange adopt a pure size priority model,[70] NYSE Arca stated that a wholesale restructuring of its priority model was beyond the scope of the current proposal.[71] NYSE Arca further noted its view that such a model would unduly disadvantage small size retail customer orders by allowing later-arriving professional participants willing to trade a larger quantity to be accorded priority.[72]

In response to one commenter who expressed several concerns regarding the proposal, NYSE Arca stated that the concerns about the practice of crossing institutional orders without electronic participants providing price improvement was unrelated to the proposal to allocate priority among participants at the same price.[73] NYSE Arca noted that its rules would continue to give priority to participants who display an improved price.[74]

NYSE Arca disagreed with that commenter's suggestion that the proposal would attract more clean-cross type orders, noting that the proposal was intended to promote liquidity and price discovery, and stated that nothing would ''insulate customer interest from competition by parties other than crowd participants.'' [75] NYSE Arca stated that the proposal is intended to promote liquidity and price discovery on the Exchange by adopting a priority structure that would be similar to, but more favorable for electronic non-Customer participants than, the priority structure that exists on other U.S. options trading floors.[76] The Exchange pointed out that the execution price would have to be equal to or better than the NBBO and that Crowd Participants would have to yield to superior electronic bids or offers.[77] NYSE Arca stated further that the proposal would not reduce the ability or incentive for any participant to improve its displayed quote electronically, as the proposal only would impact the allocation of orders among multiple participants at the same price.[78]

In response to the commenter's request that the Exchange explain why more (and cleaner) block floor crosses are good for investors, the Exchange noted its view that institutional trading desks provide a valuable service by providing liquidity to their customers for block-size orders.[79] The Exchange stated, however, that it did not believe that the total level of larger-size block floor crosses in the industry would increase as a result of its proposal.[80] The Exchange noted that other trading floors currently execute existing institutional block cross volume, and the Exchange's goal was to offer an alternative venue for such executions.[81]

After the Commission issued the Order Instituting Proceedings, NYSE Arca submitted a second comment letter, which concerned participation in open outcry crossing transactions on NYSE Arca.[82] According to the Exchange, it believed that comparing data relating to non-Customer-to-Customer Floor crossing transactions on NYSE Arca with similar data for NYSE Amex Options, the Exchange's affiliated options market that provides priority to Floor participants over non-Customers on its electronic book, would support the argument that the proposed rule change would create a more robust open outcry market and benefit investors who choose to send orders to the Exchange.[83]

IV. Discussion and Commission Findings

After careful review of the proposed rule change as well as the comment letters and the NYSE Arca response letter received on the proposal, 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 exchange and, in particular, with Section 6(b) of the Act.[84] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[85] which requires, among other things, that the rules of a national securities exchange be designed to

[62] *See* SIG Letter at 3 (''No doubt, Arca relies heavily on open outcry crosses for transaction volume. And, no doubt, the more often that high-frequency professional booked orders break-up 'matched' floor crosses, the more likely it becomes that off-floor facilitating firms will send their orders to other exchanges to be crossed'').

[63] *See* SIG Letter at 3.

[64] *See* SIG Letter at 3.

[65] *See* Story Letter II.

[66] *See* Story Letter II.

[67] *See* Story Letter II.

[68] *See* NYSE Arca Response Letter I.

[69] *See* NYSE Arca Response Letter I at 1–4.

[70] *See* Kohen Letters I and II.

[71] *See* NYSE Arca Response Letter I at 2.

[72] *See* NYSE Arca Response Letter I at 2.

[73] *See* NYSE Arca Response Letter I at 2.

[74] *See* NYSE Arca Response Letter I at 2.

[75] *See* NYSE Arca Response Letter I at 2–3.

[76] *See* NYSE Arca Response Letter I at 3.

[77] *See* NYSE Arca Response Letter I at 3.

[78] *See* NYSE Arca Response Letter I at 3.

[79] *See* NYSE Arca Response Letter I at 3.

[80] *See* NYSE Arca Response Letter I at 3.

[81] *See* NYSE Arca Response Letter I at 3. The Exchange also provided examples where a firm looking to facilitate its customer order might choose to send the order to an exchange other than NYSE Arca under the Exchange's current priority rules. *Id.*

[82] *See* NYSE Arca Response Letter II.

[83] *See* NYSE Arca Response Letter II at 1–2. The data provided by the Exchange showed that floor market makers and/or book participants participated in only 34.5% of the total crossing contracts executed on the NYSE Arca Floor, whereas on NYSE Amex Options, such participants participated in 53.4% of the total crossing contracts executed. *See id.* at 2. Although the data did not describe the actual contract execution participation percentages for either floor market makers or book participants, the Exchange believed that the data showed that, if it had rules similar to other options exchange trading floors, the Exchange would see an increase in Floor market maker participation in Floor crossing transactions. *See id.*

[84] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[85] 15 U.S.C. 78f(b)(5).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.[86]

As noted above, the Commission received ten comment letters from seven commenters in response to the proposed rule change.[87] Five of the commenters supported the proposed rule change,[88] while two other commenters raised concerns about whether the Exchange's proposed revisions to its rules governing priority during open outcry were appropriate, as more fully described above.[89] In its review of the proposal, the Commission has carefully considered all of the comments received. The Commission acknowledges the concerns raised by one commenter, as detailed above,[90] about the potential impact on competition resulting from the proposed change in the Exchange's rules governing priority and order allocation for open outcry transactions. At the same time, the Commission also acknowledges the Exchange's belief that this proposal will lead to greater competition for orders and will create a more robust open outcry market and its belief that, without the proposal, the Exchange would be at a competitive disadvantage compared to other exchanges that operate trading floors.[91]

Rule 6.75(a), as proposed to be revised, describes NYSE Arca's priority and order allocation for open outcry transactions, including procedures to be followed when there is interest at the same price in the Consolidated Book as on the Floor. Rule 6.76(d), as proposed to be revised, describes NYSE Arca's order ranking, display and allocation of orders on the OX system, and the priority described in proposed Rule 6.76(d) is consistent with the changes to Rule 6.75(a). The proposed rules governing priority during open outcry transactions on the Exchange's floor are similar to the priority rules at other exchanges with trading floors.[92] Rule 6.47, as proposed to be revised, describes priority and order allocation for crossing orders in open outcry transactions. The proposed rules governing open outcry during crossing transactions on the Exchange floor are similar to the rules governing priority in crossing transactions at other exchanges.[93] Given that other options exchanges currently have rules that provide lower priority to non-priority customer orders on the electronic book during floor transactions on those exchanges, including during crossing transactions, the Exchange's proposed revisions to its priority scheme for floor transactions will allow NYSE Arca to compete with other floor-based exchanges that have substantially similar rules. Accordingly, the Commission believes that it would be appropriate and consistent with the Act to approve the Exchange's proposed rule change.[94]

As noted above, one commenter remarked that it had submitted a Petition for Rulemaking with the Commission that asserts that exchanges with trading floors would generate better priced executions for customers if they required crosses to be auctioned through electronic systems that included off-floor registered market makers in their respective option classes.[95] Although the Petition for Rulemaking raises concerns involving how orders are crossed on options exchange floors, the recommendations in the Petition for Rulemaking[96] are beyond the scope of the Commission's consideration in connection with the instant proposed rule change. However, Commission staff will evaluate the Petition for Rulemaking and how best to address the concerns raised therein.

[86] The Exchange represented that the proposed rule change is consistent with Section 11(a) of the Act and the rules thereunder and would not limit in any way the obligations of OTP Holders to comply with Section 11(a) or the rules thereunder. *See* Notice, 79 FR at 6261. The Exchange also represented that the proposed rule change raises no novel issues under Section 11(a) and the rules thereunder from a compliance, surveillance or enforcement perspective. *See id.* The Commission notes that each member of the Exchange is responsible for ensuring that its conduct is in compliance with the requirements of Section 11(a) of the Act and the rules promulgated thereunder.

[87] *See supra* note 5.

[88] *See* Story Letters I and II; Casey Letter; Alvira Letter; Hart Letters I and II; and Cutler Letter.

[89] *See* Kohen Letters I and II; and SIG Letter. *See also* notes 46–64 and accompanying text describing the issues and concerns raised by these comments.

[90] *See supra* notes 53–64 and accompanying text.

[91] *See* Notice, 79 FR at 6261.

[92] *See, e.g.,* CBOE Rule 6.45A; NYSE MKT Rules 963NY and 964NY. CBOE Rule 6.45A(b)(i) provides that, after public customer orders in the electronic book, in-crowd market participants shall have second priority and broker-dealer orders in the electronic book and electronic quotes of Market-Makers shall have third priority. NYSE MKT Rule 963NY(a)–(b) provides that, after Customer orders displayed on the Consolidated Book, an order in the crowd shall have priority over a non-Customer order displayed in the Consolidated Book. NYSE MKT Rule 964NY(e) further requires that for Floor Brokers manually representing orders in the trading crowd, Customer orders in the Consolidated Book have first priority, ATP Holders of the trading crowd have second priority and broker-dealers, Professional Customers (including Quotes with Size and orders of Market Makers) in the Consolidated Book have third priority.

[93] *See, e.g.,* CBOE Rule 6.74; NYSE MKT Rule 934NY. CBOE Rule 6.74 provides that for purposes of establishing priority at the same price, bids and offers of In Crowd Market Participants have first priority, except with respect to public customer orders resting in the electronic book; and all other bids and offers (including bids and offers of broker-dealer orders in the electronic book and electronic quotes of Market-Makers) have second priority. NYSE MKT Rule 934NY(b)(3) provides that, for a non-facilitation cross, if there are bids or offers in the Consolidated Book better than the proposed execution price or Customer Orders in the Consolidated Book priced at the proposed execution price, the Floor Broker must trade against such bids or offers in the Consolidated Book. Once bids or offers in the Book are satisfied, the Floor Broker may cross the balance of the orders, if any, to be crossed.

[94] As noted above, the Exchange's proposal is intended to bring its floor priority rules for crossing orders in line with the floor priority rules of certain other options exchanges. However, the Commission is aware of the concerns, as expressed by commenters, that the rules of an options trading floor should allow for sufficient competition for orders. This concern is one that the Commission staff intends to continue to evaluate in the context of its ongoing empirical consideration of market structure. For example, there currently is relatively little information available about the extent and nature of floor crossing transactions. The Commission staff, however, expects that an exchange with a trading floor, as part of its regulatory obligations, will monitor the extent to which competition is maintained in floor crossing transactions. One way an exchange could do so would be to assess periodically the level of participation in such crossing transactions by market makers and other market participants, aside from the firm that initiated the cross, and review whether its rules appropriately allow for such competition. In addition, the Commission reminds broker-dealers that the duty of best execution requires them to assess periodically the quality of competing markets to assure that order flow is directed to the markets providing the most beneficial terms for their customer orders. *See, e.g.,* Order Execution Obligations, Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 at 48322–33 (September 12, 1996). Broker-dealers must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices. *See id.* at 48323. In doing so, broker-dealers must take into account price improvement opportunities, and whether different markets may be more suitable for different types of orders or particular securities. *See id.*

[95] *See supra* note 59 and accompanying text.

[96] The Petition for Rulemaking requests, among other things, that the Commission require each floor-based U.S. options exchange to provide an electronic-cross auction mechanism for all multiply-listed options traded on its trading floor and ensure that the mechanism is made electronically accessible from on and off the trading floor by qualified members and that all block-sized matched option crosses involving customer orders be auctioned through such mechanism. *See* Petition for Rulemaking regarding Option Floor Crosses, *supra* note 59.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[97] that the proposed rule change, as modified by Amendment No. 1, (SR–NYSEArca–2014–04) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[98]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23841 Filed 10–6–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73281; File No. SR–NYSEArca–2014–110]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 6.2A To Authorize the Exchange To Share Any User-Designated Risk Settings in Exchange Systems With the Clearing Member That Clears Transactions on Behalf of the User

October 1, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 19, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.2A (Access to and Conduct on OX) to authorize the Exchange to share any User-designated risk settings in Exchange systems with the Clearing Member that clears transactions on behalf of the User. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.2A (Access to and Conduct on OX) to authorize the Exchange to share any User-designated risk settings in Exchange systems with the Clearing Member that clears transactions on behalf of the User.

Rule 6.2A states that ''[u]nless otherwise provided in the Rules, no one but a User shall effect any transaction on OX.'' [4] OX is ''the Exchange's electronic order delivery, execution and reporting system for designated option issues through which orders and quotes of Users are consolidated for execution and/or display.'' [5] The Exchange proposes to amend the current rule by adding the following sentence: ''The Exchange may share any User-designated risk settings in OX with the Clearing Member that clears transactions on behalf of the User.'' [6] A ''User'' is ''any OTP Holder, OTP Firm or Sponsored Participant that is authorized to obtain access to OX pursuant to Rule 6.2A.'' [7]

Each User that transacts through a Clearing Member on the Exchange executes a Clearing Letter of Consent, which ''shall be deemed a letter of guarantee, letter of authorization, or notice of consent pursuant to NYSE Arca Rules and may be relied upon by NYSE Arca, Inc., the [National Securities Clearing Corporation], the [Options Clearing Corporation], and their respective members.'' [8] The Exchange believes that because Clearing Members that execute a Clearing Letter of Consent guarantee all transactions of those Users, and therefore bear the risk associated with those transactions, it is appropriate for Clearing Members to have knowledge of what risk settings a User may utilize within Exchange systems.

At this time, the risk settings covered by this proposal are set forth in Rule 6.40 (Risk Limitation Mechanism).[9] Pursuant to Rule 6.40(b)–(d), Users may set certain risk control thresholds in the Risk Limitation Mechanism, which are designed to mitigate the potential risks of multiple executions against a User's trading interest that, in today's highly automated and electronic trading environment, can occur simultaneously across multiple series and multiple option classes. As proposed, the Exchange may share a User's Risk Limitation Mechanism settings with the Clearing Member that guarantees the User's transactions on the Exchange, and therefore has a financial interest in understanding the risk tolerance of the User.

Because the Clearing Letter of Consent codifies relationships between each User and Clearing Member, the Exchange is on notice of which Clearing Members have relationships with which Users. The proposed rule change would simply provide the Exchange with authority to directly provide Clearing Members with information that may otherwise be available to such Clearing Members by virtue of their relationship with the respective Users.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[10] which requires the rules of an exchange to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by codifying that the Exchange can directly

[97] 15 U.S.C. 78s(b)(2).

[98] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rule 6.2A.

[5] *See* Rule 6.1A(13) [sic].

[6] *See* proposed Rule 6.2A.

[7] *See* Rule 6.1A(19) [sic].

[8] *See* NYSE Arca Options OTP Application, Section 8 (Clearing Letter of Consent), available here, *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_OTP_Firm_Application.pdf.*

[9] The Exchange may adopt additional rules providing for User-enabled risk settings that would be covered under this proposal. The Exchange will announce via Trader Update any additional risk settings (*i.e.,* other than Rule 6.40(b)–(d)) that are adopted and covered by proposed Rule 6.2A.

[10] 15 U.S.C. 78f(b)(5).

furnish to Clearing Members that guarantee that User's transactions on the Exchange the User-designated risk settings in OX, including Risk Limitation Mechanism settings, which are designed to mitigate the potential risks of multiple executions against a User's trading interest that, in today's highly automated and electronic trading environment, can occur simultaneously across multiple series and multiple option classes. The Exchange believes that the proposal is consistent with the protection of investors and the public interests because it will permit Clearing Members with a financial interest in a User's risk settings to better monitor and manage the potential risks assumed by Users with whom the Clearing Member has entered into a Clearing Letter of Consent, thereby providing Clearing Members with greater control and flexibility over setting their own risk tolerance and exposure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but would provide authority for the Exchange to directly share risk settings with Clearing Members regarding the Users with whom the Clearing Member has executed a Clearing Letter of Consent so the Clearing Member can better monitor and manage the potential risks assumed by these Users, thereby providing them with greater control and flexibility over setting their own risk tolerance and exposure. Nonetheless, the proposal does not pose an undue burden on non-Clearing Members because, unlike Clearing Members, non-Clearing Members do not guarantee the execution of the User transactions on the Exchange. The proposal is structured to offer the same enhancement to all Clearing Members, regardless of size, and would not impose a competitive burden on any participant.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2014–110. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–110, and should be submitted on or before October 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73280; File No. SR–NYSEMKT–2014–81]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 902.1NY To Authorize the Exchange To Share Any User-Designated Risk Settings in Exchange Systems With the Clearing Member That Clears Transactions on Behalf of the User

October 1, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on September 19, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 902.1NY (Admission to the System) to authorize the Exchange to share any User-designated risk settings in Exchange systems with the Clearing Member that clears transactions on behalf of the User. The text of the

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 902.1NY (Admission to the System) to authorize the Exchange to share any User-designated risk settings in Exchange systems with the Clearing Member that clears transactions on behalf of the User.

Rule 902.1NY states that ''[u]nless otherwise provided in the Rules, no one but a User shall effect any transaction on the System.'' [4] ''System'' refers to the Exchange System facility.[5] The Exchange proposes to amend the current rule by adding the following sentence: ''The Exchange may share any User-designated risk settings in the System with the Clearing Member that clears transactions on behalf of the User.'' [6] A ''User'' is ''any ATP Holder that is authorized to obtain access to the System pursuant to Rule 902.1NY.'' [7]

Each User that transacts through a Clearing Member on the Exchange executes a Clearing Letter of Consent, which ''shall be deemed a letter of guarantee, letter of authorization, or notice of consent pursuant to NYSE MKT Rules and may be relied upon by NYSE Amex Options, the [National Securities Clearing Corporation], the [Options Clearing Corporation], and their respective members.'' [8] The Exchange believes that because Clearing Members that execute a Clearing Letter of Consent guarantee all transactions of those Users, and therefore bear the risk associated with those transactions, it is appropriate for Clearing Members to have knowledge of what risk settings a User may utilize within Exchange systems.

At this time, the risk settings covered by this proposal are set forth in Rule 6.40 [sic] (Risk Limitation Mechanism).[9] Pursuant to Rule 928NY(b)–(d), Users may set certain risk control thresholds in the Risk Limitation Mechanism, which are designed to mitigate the potential risks of multiple executions against a User's trading interest that, in today's highly automated and electronic trading environment, can occur simultaneously across multiple series and multiple option classes. As proposed, the Exchange may share a User's Risk Limitation Mechanism settings with the Clearing Member that guarantees the User's transactions on the Exchange, and therefore has a financial interest in understanding the risk tolerance of the User.

Because the Clearing Letter of Consent codifies relationships between each User and Clearing Member, the Exchange is on notice of which Clearing Members have relationships with which Users. The proposed rule change would simply provide the Exchange with authority to directly provide Clearing Members with information that may otherwise be available to such Clearing Members by virtue of their relationship with the respective Users.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[10] which requires the rules of an exchange to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by codifying that the Exchange can directly furnish to Clearing Members that guarantee that User's transactions on the Exchange the User-designated risk settings in OX, including Risk Limitation Mechanism settings, which are designed to mitigate the potential risks of multiple executions against a User's trading interest that, in today's highly automated and electronic trading environment, can occur simultaneously across multiple series and multiple option classes. The Exchange believes that the proposal is consistent with the protection of investors and the public interests because it will permit Clearing Members with a financial interest in a User's risk settings to better monitor and manage the potential risks assumed by Users with whom the Clearing Member has entered into a Clearing Letter of Consent, thereby providing Clearing Members with greater control and flexibility over setting their own risk tolerance and exposure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but would provide authority for the Exchange to directly share risk settings with Clearing Members regarding the Users with whom the Clearing Member has executed a Clearing Letter of Consent so the Clearing Member can better monitor and manage the potential risks assumed by these Users, thereby providing them with greater control and flexibility over setting their own risk tolerance and exposure. Nonetheless, the proposal does not pose an undue burden on non-Clearing Members because, unlike Clearing Members, non-Clearing Members do not guarantee the execution of the User transactions on the Exchange. The proposal is structured to offer the same enhancement to all Clearing Members, regardless of size, and would not impose a competitive burden on any participant.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal**

[4] *See* Rule 902.1NY.

[5] *See* Rule 900.1NY.

[6] *See* proposed Rule 902.1NY.

[7] *See* Rule 900.2NY(87).

[8] *See* NYSE Amex Options ATP Application, Section 8 (Clearing Letter of Consent), available here, *https://www.nyse.com/publicdocs/nyse/markets/amex-options/ATP_Application.pdf.*

[9] The Exchange may adopt additional rules providing for User-enabled risk settings that would be covered under this proposal. The Exchange will announce via Trader Update any additional risk settings (*i.e.,* other than Rule 928NY(b)–(d)) that are adopted and covered by proposed Rule 902.1NY.

[10] 15 U.S.C. 78f(b)(5).

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–81. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–81, and should be submitted on or before October 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23839 Filed 10–6–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73285; File No. SR–CTA/CQ–2014–02]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Twentieth Substantive Amendment to the Second Restatement of the CTA Plan and Fourteenth Substantive Amendment to the Restated CQ Plan

October 1, 2014.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on August 06, 2014, the Chicago Board Options Exchange, Incorporated, on behalf of Participants in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and the Restated Consolidated Quotation (''CQ'') Plan (collectively the ''Participants'') [3] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the ''Plans'').[4] These amendments represent Substantive Amendment No. 20 to the CTA Plan and Substantive Amendment No. 14 to the CQ Plan (collectively ''the Amendments''). The Amendments propose to change certain of the voting requirements under the CTA Plan and the CQ Plan.

The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

I. Rule 608(a)

A. Description and Purpose of the Amendments

The Amendments propose (a) to change the vote required under both the CTA Plan and the CQ Plan to amend the capacity planning process from a unanimous vote to the affirmative vote of a majority of all Participants entitled to vote, (b) to change the voting requirement needed to reduce a fee under both the CTA Plan and the CQ Plan from unanimity to the affirmative vote of two-thirds of all Participants entitled to vote, and (c) to change the voting requirement needed to establish a new fee or to delete an existing fee under the CQ Plan from unanimity to the affirmative vote of two-thirds of all Participants entitled to vote.

In the Participants' view, a majority vote, rather than unanimity is the appropriate requirement for changes to the capacity plan, as it provides greater flexibility to CTA and the CQ Plan's Operating Committee to revise the capacity plan when they find it beneficial to do so. The Participants note that the Nasdaq/UTP Plan subjects changes to capacity planning to a majority vote.

Similarly, the Participants view a two-thirds vote, rather than unanimity, as the appropriate requirement to reduce or eliminate an existing fee or to establish a new fee. Both plans subject raising an existing fee to a two-thirds vote and currently subject reducing an existing fee to a unanimous vote. The CTA Plan currently subjects establishing a new fee or eliminating an existing fee to a two-thirds vote. The CQ Plan currently provides for a two-thirds vote to reduce the Network B interrogation device fee, but requires unanimity to reduce other CQ Plan fees or to eliminate a fee. The Amendments

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc., BATS–Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange, LLC, NASDAQ OMX BX, Inc. (''Nasdaq BX''), NASDAQ OMX PHLX, Inc. (''Nasdaq PSX''), Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. and NYSE MKT LLC (formerly NYSE Amex, Inc.).

[4] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

would harmonize the voting requirements under the two plans in respect of fee-setting. As a result of the proposed Amendments, a two-thirds vote would be required under both plans to establish or increase a fee or to eliminate or reduce a fee. These changes would provide the Participants with greater flexibility in respect of the plans' fee schedule.

The Participants understand that the Participants in the Nasdaq/UTP Plan expect to file changes to voting requirements that would subject votes on these same matters to the same requirements as the Participants in the CTA Plan and the CQ Plan are proposing in these Amendments. In addition, subjecting fee reductions to a two-thirds vote would harmonize the CTA Plan and the CQ Plan with the counterpart requirement under the OPRA Plan.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

All of the Participants have manifested their approval of the proposed Amendments by means of their execution of the Amendments. The Amendments would become operational upon approval by the Commission.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The proposed Amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed plan Amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

See Item I.C above.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I.A above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I.A above.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a) (Solely in Its Application to the Amendments to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not Applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–CTA/CQ–2014–02 *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–CTA/CQ–2014–02. 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 Amendments that are filed with the Commission, and all written communications relating to the Amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of the CTA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CTA/CQ–2014–02 and should be submitted on or before October 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–23849 Filed 10–6–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73277; File No. SR–FINRA–2014–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator

October 1, 2014.

I. Introduction

On June 17, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act

[5] 17 CFR 200.30–3(a)(27).

of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend provisions in the FINRA rulebook to ''refine and reorganize the definitions of 'non-public arbitrator' and 'public arbitrator.' '' [3] The proposed rule change was published for comment in the **Federal Register** on July 3, 2014.[4] On August 4, 2014, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to October 1, 2014. The Commission received three hundred sixteen (316) comment letters in response to the proposed rule change.[5] On September 30, 2014, the Commission received a letter from FINRA responding to the comment letters.[6] The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input from interested parties on the issues presented by the proposal.

II. Description of the Proposed Rule Change

Currently, FINRA Rule 12100(p) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and FINRA Rule 13100(p) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') (collectively, ''Codes'') define the term ''non-public arbitrator;'' and FINRA Rule 12100(u) of the Customer Code and Rule 13100(u) of the Industry Code'' define the term ''public arbitrator.'' [8] In general, the Codes classify arbitrators as ''non-public'' or ''public'' based on their professional and personal affiliations. Individuals affiliated with the financial industry are typically considered ''non-public arbitrators.'' Individuals unaffiliated with the financial industry are typically considered ''public arbitrators.'' [9]

FINRA is now proposing to amend the Codes to revise and reorganize the definitions of ''non-public arbitrator'' and ''public arbitrator.'' The amendments would, among other matters, provide that persons who worked in the financial industry for any duration during their careers would always be classified as non-public arbitrators. The amendments would also provide that persons who represent investors or the financial industry as a significant part of their business would also be classified as non-public arbitrators, but could become public arbitrators after a cooling-off period. The amendments would also reorganize the definitions to make it easier for arbitrator applicants and parties, among others, to determine the correct arbitrator classification.[10]

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. In addition, you may also find a more detailed description of the proposed rule changes in the Notice of Filing.[11]

III. Summary of Comments

Five of the commenters expressed support for the proposed rule change in its entirety.[12] Two commenters opposed the proposed rule change in its entirety.[13] The other commenters (including the independent financial advisors) generally supported the proposed rule change in part, but raised concerns about various aspects of the proposal (discussed below).

A. Permanent Classification of Industry Employees as Non-Public Arbitrators

In general, the proposal would result in the permanent classification (or reclassification of current public arbitrators) of individuals who worked in the financial industry (a) in any capacity, (b) at any point, and (c) for any duration, (''Industry Affiliates'') as non-public arbitrators. Many commenters opposed the permanent classification of Industry Affiliates as non-public arbitrators for varying reasons.[14]

1. Elimination of the Cooling-Off Period

Six commenters supported this provision as providing a workable ''bright-line'' test that would address criticism regarding bias (perceived or actual) in favor of industry.[15]

Many commenters opposed the elimination of the five-year cooling-off period for Industry Affiliates.[16] For instance, some commenters expressed concern that eliminating the cooling-off period could exclude arbitrators with industry experience who could be useful on a panel to, among other things, educate the other panelists on industry practice.[17] Two other commenters who opposed the proposed elimination of the cooling-off period suggested that FINRA should adopt a proportional cooling-off period for industry employees that would be

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–72491 (Jun. 27, 2014), 79 FR 38080 (Jul. 3, 2014) (Notice of Filing of Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator) (''Notice of Filing'').

[4] *Id.* The comment period closed on July 24, 2014.

[5] Of the 316 letters, 21 were unique letters, and 295 of the letters followed a form designated as the ''Type A'' letter, submitted by self-identified independent financial advisors (''independent financial advisors'') (''Type A Letter''). The unique letters were submitted by: Philip M. Aidikoff, Aidikoff, Uhl & Bakhtiari, dated July 1, 2014 (''Aidikoff Letter''); Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated July 1, 2014 (''Caruso Letter''); Ryan K. Bakhtiari, Aidikoff, Uhl and Bakhtiari, dated July 2, 2014 (''Bakhtiari Letter''); Richard A. Stephens, Attorney at Law, dated July 6, 2014 (''Stephens Letter''); Daniel E. Bacine, Barrack, Rodos & Bacine, dated July 18, 2014 (''Bacine Letter''); Blossom Nicinski, dated July 20, 2014 (''Nicinski Letter''); Christopher L. Mass, dated July 21, 2014 (''Mass Letter''); Glenn S. Gitomer, McCausland Keen & Buckman, dated July 23, 2014 (''Gitomer Letter''); Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated July 24, 2014 (''SIFMA Letter''); J. Burton LeBlanc, President, American Association for Justice, dated July 24, 2014 (''AAJ Letter''); George H. Friedman, Esquire, George H. Friedman Consulting, LLC, dated July 24, 2014 (''Friedman Letter''); Andrea Seidt, President, North American Securities Administrators Association, and Ohio Securities Commissioner, dated July 24, 2014 (''NASAA Letter''); CJ Croll, Student Intern, Elissa Germaine, Supervising Attorney, and Jill I. Gross, Director, Investor Rights Clinic at Pace Law School, dated July 24, 2014 (''PIRC Letter''); Jason Doss, President, Public Investors Arbitration Bar Association, dated July 24, 2014 (''PIABA Letter''); David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, dated July 24, 2014 (''FSI Letter''); Richard P. Ryder, Esq., President, Securities Arbitration Commentator, Inc., dated July 24, 2014 (''SAC Letter''); Gary N. Hardiman, dated July 24, 2014 (''Hardiman Letter''); Thomas J. Berthel, CEO, Berthel Fisher & Company, dated July 24, 2014 (''Berthel Letter''); Robert Getman, dated July 28, 2014 (''Getman Letter''); Barry D. Estell, Attorney at Law (retired), dated August 13, 2014 (''Estell Letter''); and Walter N. Vernon III, Esq., dated August 21, 2014 (''Vernon Letter'').

[6] Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Brent J. Fields, Secretary, SEC, dated September 30, 2014 (''FINRA Letter'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Where this order refers only to rules in the Customer Code, please note that the changes and discussion would also apply to the same rules of the Industry Code.

[9] Notice of Filing.

[10] *Id.*

[11] *See supra* note 3.

[12] *See* Aidikoff Letter, Bakhtiari Letter, Caruso Letter, Gitomer Letter, and SIFMA Letter.

[13] *See* SAC Letter and Friedman Letter. The SAC Letter indicates that the proposed rule should be disapproved until a cost-benefit analysis is provided. The Friedman Letter indicates that FINRA should ''go back to the drawing board.''

[14] *See e.g.,* Type A Letter, FSI Letter, Getman Letter, and Vernon Letter.

[15] *See* Aidikoff Letter; *see also* Bakhtiari Letter, SIFMA Letter, NASAA Letter, PIABA Letter, and AAJ Letter.

[16] *See e.g.,* Type A Letter, FSI Letter, Getman Letter, Berthel Letter and Vernon Letter.

[17] *See* Type A Letter and Berthel Letter; *see also* FSI Letter.

proportional to the number of years they were Industry Affiliates.[18]

In its response, FINRA stated that investor advocates have a stated preference for using expert witnesses and making their own arguments rather than relying on members of the arbitration panel that have industry experience to explain and influence matters. It also indicated that its constituents agreed that a cooling off period for financial industry employees would ''always leave a perception of unfairness for some advocates.'' [19] In addition, FINRA stated that it is more workable and preferable to use a bright-line test than a pro rata cooling-off period for industry employees. For these reasons, FINRA declined to amend the proposal as suggested.[20]

2. All Employees, Regardless of Capacity, To Be Categorized as Non-Public Arbitrators

Four commenters stated that, as proposed, the rule would improperly characterize certain individuals without true financial industry experience as non-public arbitrators.[21] One of these commenters expressed concern that individuals performing solely clerical or ministerial functions for a financial industry firm would be classified as non-public arbitrators because they would be considered ''associated persons'' as defined by Rule 12100(p).[22] Accordingly, this commenter suggested FINRA amend the definition of the term ''associated person'' in the proposal to track the language of the definition of the term ''associated person'' in Section 3(a)(18) of the Act, which excludes individuals performing solely clerical or ministerial functions. Another commenter suggested that the proposal should only classify individuals who ''worked for [a financial industry firm] in a capacity for which testing and registration is required'' as non-public arbitrators to address this concern.[23]

In its response letter, FINRA stated that its staff believes that ''investor concerns about the neutrality of the public roster apply to all industry employees, including those who serve in clerical or ministerial positions.'' Accordingly, FINRA declined to amend the proposed rule change.[24]

B. Classification of Professionals

1. Classifying Investor Advocates as Non-Public Arbitrators

In general, the proposed rule change would classify attorneys, accountants, expert witnesses, or other professionals who (a) devote 20 percent or more of their professional time (b) in any single calendar year within the past five calendar years (c) to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the industry (''Investor Advocates'') as non-public arbitrators. Currently, individuals meeting this description are classified as public arbitrators.

Three commenters supported this provision.[25]

Eight commenters opposed this provision.[26] In general, they stated that the distinction between the public and non-public arbitrators has always been based on whether the arbitrators had industry experience and argued for keeping this distinction.[27] Similarly, some of these commenters noted that the proposal would create confusion since that U.S. courts, the American Arbitration Association, and the general public generally view professionals who represent investors to be ''public arbitrators.'' [28] One commenter noted that past NASD response letters, as well as the FINRA Web site, also make this distinction.[29]

In its response letter, FINRA noted that industry constituents have expressed concern about the neutrality of the public arbitrator roster because of the presence on the roster of Investor Advocates. Specifically, FINRA stated that these industry constituents believe that Investor Advocates should not serve as public arbitrators. FINRA further stated that it designed the proposal to address this concern by classifying these individuals as non-public arbitrators thereby excluding them from the public arbitrator roster. Accordingly, FINRA declined to amend the proposed rule change.[30]

2. Five-Year Cooling-Off Period for Professionals Representing Industry

In general, the proposed rule change would extend the cooling-off period from two years to five years for attorneys, accountants, expert witnesses, or other professionals who (a) devote 20 percent or more of their professional time (b) in any single calendar year within the past five calendar years (c) to representing or providing services to financial industry firms (''Industry Advocates'').

Four commenters generally supported this provision as fair and acknowledged the consistency of approach towards professionals representing investors and those representing industry.[31] One commenter opposed this provision of the proposal.[32] In particular, this commenter stated that Industry Advocates should be permanently classified as non-public arbitrators like financial industry employees (*i.e.,* the commenter suggested that FINRA eliminate the cooling-off period rather than lengthening it).[33]

In its response letter, FINRA stated that it has drawn a distinction between individuals who work in the financial industry and individuals who provide services to the financial industry. It also believes that it needed to take a consistent approach to cooling-off periods for service providers to both investors and the financial industry. Accordingly, FINRA declined to amend the proposed rule change.[34]

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[18] *See* PIRC Letter and FSI Letter.

[19] *See FINRA Letter.*

[20] *See FINRA Letter.*

[21] *See* Stephens Letter, FSI Letter, Getman Letter, and Vernon Letter.

[22] *See* Stephens Letter.

[23] *See* Vernon Letter (expressing concern that under the proposal he could be characterized as a non-public arbitrator based solely on his capacity as a ''trainee'' for Merrill Lynch in 1983).

[24] *See* FINRA Letter.

[25] *See* SIFMA Letter (stating that the proposal ''strike[s] an appropriate balance in the interests of fairness, perceptions of fairness, and arbitrator neutrality for all parties''), FSI Letter, and Bethel Letter. In addition to these three letters, the commenters who used the Type A Letter also supported this provision.

[26] *See* NASAA Letter, PIABA Letter, Stephens Letter, PIRC Letter, Bacine Letter, Mass Letter, Hardiman Letter, and Friedman Letter.

[27] *See* PIRC Letter, Bacine Letter, and Friedman Letter. *See also* NASAA Letter (arguing that FINRA should classify as non-public arbitrators only persons ''representing or providing services to non-retail parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry''); PIABA Letter (arguing that there is no need or basis for classifying Investor Advocates as non-public arbitrators because FINRA has no evidence to support the conclusion that they are biased for or against the securities industry); Stephens Letter (arguing that FINRA should only classify as non-public arbitrators only persons ''. . . representing or providing services to parties in disputes [other than customers] concerning investment accounts . . .''); Mass Letter (asserting that lawyers who represent investors or claimants are public arbitrators because they work on behalf of the public at large against industry); and Hardiman Letter (stating that classifying Investor Advocates as non-public arbitrators would be ''burying professionals who represent the investing public in the industry non-public side'').

[28] *See e.g.,* Stephens Letter, NASAA Letter, PIABA Letter, PIRC Letter, and Bacine Letter.

[29] *See* PIRC Letter.

[30] *See* FINRA Letter.

[31] *See* SIFMA Letter, NASAA Letter, PIABA Letter, and Berthel Letter.

[32] *See* NASAA Letter.

[33] *Id.; but see* SIFMA Letter, NASAA Letter, PIABA Letter, and Berthel Letter (each letter generally supporting this provision of the proposal as fair and acknowledging the consistent approach towards Investor Advocates and Industry Advocates).

[34] *See* FINRA Letter.

3. Using Professional Time To Quantify Professional Work

As stated above, the proposal would classify attorneys, accountants, expert witnesses, or other professionals as either public arbitrators or non-public arbitrators depending on, among other things, the amount of time those individuals devoted to representing either the financial industry or investors. One commenter opposed this provision of the proposal.[35] Specifically, this commenter questioned the appropriateness of classifying individuals as public or non-public arbitrators based on the ''amount of time'' an individual devotes to a client. Alternatively, this commenter suggested FINRA base this determination on the amount of revenue generated by the professional relationship. The commenter believes that revenue is a better measurement since not all professionals track their work in terms of time, but all professionals would have a record of revenue.[36]

In its response letter, FINRA stated that it discussed this matter with its National Arbitration and Mediation Committee (''NAMC''). FINRA stated that based on these discussions, FINRA believes that using the term ''professional time'' ''added clarity to the rule text, was simpler to apply, and would result in more accurate calculations by arbitrator applicants and arbitrators reviewing their business mix.'' [37] Accordingly, FINRA declined to amend the proposed rule change.[38]

C. Impact to the Number of Available Public Arbitrators

Four commenters expressed concerns that the proposed rule change would reduce the number of public arbitrators to an amount that would be insufficient to meet future needs.[39] One of these commenters stated that permanently classifying certain individuals as non-public arbitrators would negatively impact the effective administration of the FINRA arbitration forum.[40] Two of these commenters expressed concern that the proposal would reduce the supply of available public arbitrators at a time when more claimants are selecting all-public panels.[41] Another one of these commenters suggested that the potential shortages of public arbitrators may be more concentrated in some locations more than others.[42] Two of these commenters also suggested that FINRA would need to devote resources to recruit additional public arbitrators.[43]

In its response letter, FINRA stated that, based on a preliminary analysis of its data, including a review of the public arbitrator roster, it estimated that approximately 474 arbitrators (out of 3,567) might be reclassified from public arbitrators to non-public arbitrators under the proposed rule change. FINRA also stated, however, that if the proposal was approved, it would conduct a more detailed analysis to determine whether additional arbitrator recruitment efforts were necessary in any particular geographic area and would deploy the necessary resources to avoid any undue delay in the arbitration process.[44]

D. Cost-Benefit/More Data Intensive Analysis

Three commenters stated that the proposed rule change should not be approved until FINRA obtained additional data and published a detailed cost-benefit analysis justifying the proposal.[45] More specifically, two of these commenters expressed concern that the proposal would result in a reduction in the pool of public arbitrators and chair-eligible arbitrators and suggested that FINRA seek additional data to analyze the likelihood of this outcome.[46] Another one of these commenters suggested FINRA make information about each arbitrator publicly available, particularly to academic researchers.[47] This commenter stated that this data could provide FINRA with statistical proof of bias or lack of bias upon which to base its proposal instead of relying on perceptions of bias.[48]

In its response letter, FINRA stated that a cost-benefit analysis would be helpful, but would require a survey of every public arbitrator on its roster and that such a review would be time-intensive. As an interim step, FINRA performed a preliminary analysis of databases currently available to it. FINRA also stated that if the proposal was approved, it would conduct a more robust cost-benefit analysis.[49]

E. General Comments

Two commenters suggested alternatives to characterizing arbitrators as either public or non-public.[50] Two other commenters objected to broker-dealers' used of pre-dispute mandatory arbitration agreements.[51] Other commenters suggested ways to improve the quality of arbitration panels.[52] Another commenter suggested that FINRA's Arbitration Task Force [53] should review the proposal.[54]

In its response letter, FINRA stated that each of these suggestions was either outside the scope of, or would cause undue delay to, the proposed rule change. Accordingly, FINRA declined to amend the proposed rule change.[55]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–FINRA–2014–028 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.[56]

[35] *See* PIRC Letter.

[36] *Id.*

[37] FINRA Letter.

[38] *Id.*

[39] *See* Friedman Letter, SAC Letter, NASAA Letter, and FSI Letter.

[40] *See* FSI Letter; *see also* Bacine Letter (expressing concern that classifying professionals who provide services to customers as non-public arbitrators would negatively impact the quality of chairman-eligible arbitrators).

[41] *See* FSI Letter and Friedman Letter; *see also* Release No. 34–63799 (Jan. 31, 2011); 76 FR 6500 (Feb. 4, 2011) (order approving a proposed rule change to provide customers with the option to choose an all-public arbitration panel in all cases); Release No. 34–70442 (Sept. 18, 2013); 78 FR 58580 (Sept. 24, 2013) (order approving a proposed rule change to, among other things, permit all parties to select an all-public panel).

[42] *See* SAC Letter.

[43] *See* SAC Letter and NASAA Letter.

[44] *See* FINRA Letter.

[45] *See* SAC Letter, Friedman Letter, and Estell Letter.

[46] *See* SAC Letter (expressing concern that a decrease in the number of public arbitrators could result in greater delays in arbitrating claims, particularly (1) during declines in the financial markets (when the number of arbitration claims filed increases) or (2) in certain hearing locations with smaller rosters of arbitrators) and Friedman Letter.

[47] *See* Estell Letter.

[48] *Id.*

[49] *See* FINRA Letter.

[50] *See* Friedman Letter (suggesting the following categories: (1) Affiliated with the financial industry, (2) not affiliated with the financial industry, and (3) a ''no-man's land,'' which would preclude an individual from acting as an arbitrator); and Nicinski Letter (suggesting the discontinuance of all categories of arbitrators).

[51] *See* AAJ Letter and Estell Letter.

[52] *See e.g.,* Nicinski Letter (recommending that arbitrators be required to display some knowledge of the investment products likely to be discussed during an arbitration); and Berthel Letter (recommending (1) that every panel include arbitrators with a strong background in securities laws and (2) that the Chair be a judge or hold a law degree).

[53] *See* FINRA News Release, FINRA Announces Arbitration Task Force (Jul. 17, 2014), available at *http://www.finra.org/Newsroom/NewsReleases/2014/P554192* (announcing the formation of an Arbitration Task Force to consider possible enhancements to improve transparency, impartiality and efficiency of FINRA's securities arbitration forum for all participants).

[54] *See* Friedman Letter.

[55] *See* FINRA Letter.

[56] 15 U.S.C. 78s(b)(2). Section 19(b)(2)(B) of the Act provides that proceedings to determine whether

Continued

Institution of such proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the issues presented by the proposed rule change and provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Act,[57] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15A(b)(6) of the Act [58] 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. In addition, Section 15A(b)(9) of the Act [59] requires that FINRA rules not impose any unnecessary or inappropriate burden on competition.

The Commission believes FINRA's proposed rule change raises questions as to whether it is consistent with the requirements of Sections 15A(b)(6) and 15A(b)(9) of the Act.

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues raised by the proposed rule change. In particular, the Commission invites the written views of interested persons on whether the proposed rule change is inconsistent with Sections 15A(b)(6) and 15A(b)(9), or any other provision, of the Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[60]

Interested persons are invited to submit written data, views, and arguments by November 6, 2014 concerning whether the proposed rule change should be approved or disapproved. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 21, 2014. 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–2014–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–028. 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 principle 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 publicly available. All submissions should refer to File Number SR–FINRA–2014–028 and should be submitted on or before November 6, 2014. If comments are received, any rebuttal comments should be submitted by November 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23836 Filed 10–6–14; 8:45 am]

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to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension.

[57] 15 U.S.C. 78s(b)(2)(B).

[58] 15 U.S.C. 78*o*–3(b)(6).

[59] 15 U.S.C. 78*o*–3(b)(9).

[60] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[61] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73284; File No. SR–NYSEMKT–2014–84]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 900.2NY To Codify the Terms Complex BBO and Complex NBBO and To Amend Exchange Rule 900.3NY(w) To Revise the Definition of a PNP Plus Order

October 1, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 24, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 900.2NY to codify the terms Complex BBO and Complex NBBO and to amend Exchange Rule 900.3NY(w) to revise the definition of a PNP Plus order. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,*

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 900.2NY to adopt definitions for the terms Complex BBO and Complex NBBO. Additionally, the Exchange proposes to amend Rule 900.3NY(w) by revising the definition of PNP Plus orders, to specify that the order type is available solely for Electronic Complex Orders,[4] and describe the processing of an Electronic Complex Order designated as PNP Plus.

Complex BBO and Complex NBBO

The term BBO is defined in Exchange Rule 900.2NY(7) as the best bid or offer on the System,[5] and the term NBBO is defined in Exchange Rule 900.2NY(41) as the national best bid or offer. In both cases the best bid and offer represents the best price available in an individual option series as disseminated by either the Exchange (in the case of the BBO) or the Options Price Reporting Authority (''OPRA'') (in the case of the NBBO). Unlike bids and offers for each individual option series, derived bids and offers for Complex Orders are not disseminated by either the Exchange or OPRA.

Even though there is not a published bid or offer for every complex order strategy, there are situations where it is necessary to derive a (theoretical) bid or offer for a particular strategy.[6] In order to derive the best bid or best offer for a given complex order strategy the Exchange takes the best bid and best offer in the individual leg markets comprising the complex order strategy, that when aggregated create either a derived Complex BBO or derived Complex NBBO for that same strategy. The Exchange uses the best quotes available on the Exchange in each component series (as shown in the System) to create the Complex BBO and the best quotes available nationally in each component series (as disseminated by OPRA) to establish the Complex NBBO. When deriving the Complex BBO or Complex NBBO the Exchange only factors in the best prices available in the individual leg markets and does not take into consideration prices of individual Complex Orders that may be resting on the Exchange or in another exchange's complex order book (spread book, contingency book).

The Exchange proposes to add definitions of the terms Complex BBO and Complex NBBO in Rule 900.2NY. The term ''Complex BBO'' would be defined in Rule 900.2NY(7)(ii) as the BBO for a given complex order strategy as derived from the best bid on the System and best offer on the System for each individual component series of a Complex Order. The term ''Complex NBBO'' would be defined in Rule 900.2NY(41)(ii) as the NBBO for a given complex order strategy as derived from the national best bid and national best offer for each individual component series of a Complex Order.

An example of how the Complex BBO and Complex NBBO is derived for a given strategy is shown below;

Jan 20 calls BBO 2.00 × 2.20 NBBO 2.05 − 2.20

Jan 25 calls BBO 1.00 × 1.20 NBBO 1.05 − 1.20

To derive the bid side of the Complex BBO for the Jan 20/25 call spread using the markets available on the Exchange, the Exchange takes the best bid in the Jan 20 calls coupled with the best offer in the Jan 25 calls. The result is an .80 bid (2.00 − 1.20 = .80). To derive the offer side of the Complex BBO for the same call spread the Exchange take [sic] the best offer in the Jan 20 calls coupled with the best bid in the Jan 25 calls. The result is an offer of 1.20 (2.20 − 1.00 = 1.20). In this example, the resulting Complex BBO is .80 − 1.20.

To derive the bid side of the Complex NBBO for the Jan 20/25 call spread using the markets as disseminated by OPRA, the Exchange takes the national best bid in the Jan 20 calls coupled with the national best offer in the Jan 25 calls. This results in an .85 bid (2.05 − 1.20 = .85). To derive the offer side of the Complex NBBO for the same call spread the Exchange take [sic] the national best offer in the Jan 20 calls coupled with the national best bid in the Jan 25 calls. This results in an offer of 1.15 (2.20 − 1.05 = 1.15). In this example, the resulting Complex NBBO is .85 − 1.15.

PNP Plus

As defined in Rule 900.3NY(w) an order designated as PNP Plus is a limit order that is automatically re-priced by the Exchange to a price that is one minimum price variation (''MPV'') higher (lower) than the NBBO bid (offer) if it were to lock or cross the NBBO. The re-priced order is then posted in the Consolidated Book. PNP Plus orders continue to be re-priced and re-posted in the Consolidated Book, with each change in the NBBO, until such time as the NBBO has moved to a price where the original limit price of the PNP Plus order no longer locks or crosses the NBBO, at which time the PNP Plus order will revert to the original limit price of such order. Orders designated as PNP Plus are ranked in the Consolidated Book pursuant to Rule 964NY and assigned a new price time priority as of the time of each reposting. Because an order designated as PNP Plus would be posted at a price that is higher (lower) that [sic] the best contra-side market, by designating an order as PNP Plus, a market participant could guarantee that if its order were to be executed, it would be executed at a price that is better than the disseminated contra-side market Complex BBO. Accordingly, PNP Plus provides ATP Holders with additional processing capability to control the circumstances under which their orders are executed. The Exchange notes that the PNP Plus designation is currently not operable for single-leg orders nor does the Exchange intend to introduce such functionality in the near future. However, ATP Holders are able to and do use the PNP Plus designation when submitting Electronic Complex Orders. Accordingly, the Exchange is proposing to amend the definition of the PNP Plus order type and to make it applicable solely to Electronic Complex Orders.

In addition, the revised rule would explain that the net debit/credit price[7] of an Electronic Complex Order designated as PNP Plus is re-priced

[4] *See* Rule 980NY

[5] ''System'' refers to the Exchange's electronic order delivery, execution and reporting system for options through which orders and quotes are consolidated for execution and/or display.

[6] For example, the Complex Matching Engine utilizes a Complex NBBO when establishing the acceptable price range applicable to the opening auction process for Electronic Complex Orders. *See* Rule 980NY(c)(i)(B).

[7] Bids and offers for Electronic Complex Orders are entered based on the net debit/credit of prices of the individual component series comprising the complex order strategy.

based on the Complex BBO for the same complex order strategy. An Electronic Complex Order designated as PNP Plus would follow existing PNP Plus processing in that the order will be automatically be [sic] re-priced by the Exchange to a price that is one MPV lower (higher) than the displayed contra-side market for buy (sell) orders if it were to lock or cross that market. However, because the leg prices of an Electronic Complex Order are bound by the best bid or offer on the Exchange and not the national best bid or offer [8] as is the case with single-leg orders, when re-pricing an Electronic Complex Order designated as PNP Plus, the order would be re-priced one MPV lower (higher) than the Complex BBO if it were to lock or cross the Complex BBO.

Accordingly, as amended, Rule 900.3NY(w) would state that an Electronic Complex Order designated as PNP Plus is automatically re-priced by the Exchange to an MPV higher (for sell orders) than the Complex BBO bid for that same Complex Order strategy or at an MPV lower (for buy orders) than the Complex BBO offer for that same Complex Order strategy for any unexecuted portion of the order that would otherwise lock or cross the Complex BBO. The Exchange notes that because bids and offers for Electronic Complex Orders are priced on a net debit/credit basis and may be expressed in any decimal price, and the legs(s) of an Electronic Complex Order may be executed in one cent increments regardless of the MPV otherwise applicable to the individual legs of the order,[9] the MPV applicable to Electronic Complex Order designated as PNP Plus will always be .01 cent. The re-priced order would then be posted in the Consolidated Book pursuant to Rule 980NY(b).

Finally, the Exchange proposes to change the existing cross reference in Rule 900.3NY(w) from Rule 964NY to 980NY(b). This is a non-substantive change as both rules call for orders to be ranked according to price/time priority with orders on behalf of Customers being ranked ahead of same price orders for non-Customers. The Exchange believes Rule 980NY(b) is the more appropriate rule to reference because it is specific to Electronic Complex Orders. For the purposes of ranking in the Consolidated Book, Electronic Complex Order designated as PNP Plus shall initially be ranked based on their original time of entry and will be assigned a new price time priority as of the time of each reposting. From there, with the exception of the use of the Complex BBO as opposed to the NBBO, all other PNP Plus functionality remains unchanged.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[10] which requires the rules of an exchange 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. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency in Exchange rules that the PNP Plus is a designation applicable to Electronic Complex Orders. The Exchange further believes that revising the PNP Plus definition to describe how an Electronic Complex Order designated as PNP Plus is re-price [sic] based off the Complex BBO and not the NBBO would align the rule with existing functionality and rules governing Electronic Complex Orders.

The Exchange also believes that [sic] proposed rule change would perfect the mechanism of a free and open market because by revising the PNP Plus order type to make the designation available solely for Electronic Complex Orders, and not for single leg orders, the rule would clearly describe the applicability of the PNP Plus order type and eliminate any suggestion of an order type for which there is no demonstrated demand and is not supported by Exchange systems.

The Exchange also believes that defining the terms Complex BBO and Complex NBBO will help to remove impediments to and perfect the mechanism of a free and open market and a national market system, in general because it would provide all market participants with additional clarity in how the Exchange calculates the Complex BBO and Complex NBBO in connection with the processing of Complex Orders

In addition, the Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the orders types available for trading on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather revise an existing a [sic] rule, that can be seen as inaccurate or incomplete, by accurately describing functionality applicable to the PNP Plus order type and describing the processing of an Electronic Complex Order designated as PNP Plus, thereby reducing confusion and making the Exchange's rules easier to understand and navigate. Also, adopting Complex BBO and Complex NBBO as defined terms is intended to add clarity into Exchange rules regarding the methodology of how a Complex BBO and a Complex NBBO is derived and therefore does not raise any competitive concerns.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if

[8] *See* Rule 980NY(c).

[9] *See* Rule 980NY Commentary .01.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–84. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–84 and should be submitted on or before October 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–23848 Filed 10–6–14; 8:45 am]

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[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73283; File No. SR–CME–2014–28]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 2, Related to Enhancements to Its Risk Model for Credit Default Swaps

October 1, 2014.

On August 8, 2014, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–CME–2014–28 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 18, 2014.[3] On September 2, 2014, CME filed Amendment No. 2 to the proposed rule change.[4] Notice of Amendment No. 2 to the proposed rule change was published for comment in the **Federal Register** on September 08, 2014.[5] The Commission did not receive comments on the proposed rule change or Amendment No. 2 thereto.

Section 19(b)(2) of the Act [6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is October 2, 2014. The Commission is extending this 45-day time period.

CME is proposing significant changes to its risk model for the clearing of broad-based index credit default swaps (''CDS''), which share the same Guaranty Fund with single-name CDS in the event CME launches clearing of single-name CDS. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the complex issues under the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates November 16, 2014, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CME–2014–28).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–23847 Filed 10–6–14; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–72834 (Aug. 13, 2014), 79 FR 48805 (Aug. 18, 2014) (SR–CME–2014–28).

[4] On August 18, 2014, CME filed Amendment No. 1 to the proposed rule change. CME withdrew Amendment No. 1 on August 29, 2014.

[5] Securities Exchange Act Release No. 34–72959 (Sep. 2, 2014), 79 FR 53234 (Sep. 8, 2014) (SR–CME–2014–28).

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73275; File No. SR–CME–2014–31]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 2, Related to Clearing of Certain iTraxx Europe Index Untranched CDS Contracts on Indices Administered by Markit

October 1, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4

thereunder,[2] notice is hereby given that on September 2, 2014, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 2 (the ''iTraxx Filing Amendment'') to its previously submitted proposed rule change [3] related to the clearing of certain iTraxx Europe index credit default swaps (''CDS'').[4] The iTraxx Filing Amendment is intended to provide further description and detail of certain aspects of the proposed rule change, as described in Items I, II and III below, which Items have been prepared primarily by CME. The Commission is publishing this notice to solicit comments on the iTraxx Filing Amendment from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On August 11, 2014, CME submitted to the Commission the iTraxx Filing, pursuant to which, CME proposes to revise its clearing rules (the ''CDS Product Rules'') to enable CME to offer clearing of certain iTraxx Europe index untranched CDS contracts on indices administered by Markit (''iTraxx Contracts''). The iTraxx Filing is currently under review by the Commission. The purpose of the iTraxx Filing Amendment is to provide further description and detail of certain aspects of the proposed rule change contained within the iTraxx Filing. The iTraxx Filing Amendment should be read in conjunction with the iTraxx Filing. All capitalized terms not defined herein shall have the meaning given to them in the iTraxx Filing or the CDS Product Rules. The text of the proposed amendment is also available at the CME's Web site at *http://www.cmegroup.com,* at the principal office of CME, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose and basis for the proposed amendment and discussed any comments it received on the proposed amendment. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to this iTraxx Filing Amendment, CME intends to provide further description and detail of certain aspects of the proposed amendments to the Manual of Operations for CME Cleared Credit Default Swaps (the ''CDS Manual'') contained within the iTraxx Filing as further discussed below. Additionally, CME intends to provide further description and detail relating to risk management for certain iTraxx Contracts based on the 2003 ISDA Definitions under CME's proposed risk model framework as described in File Number SR–CME–2014–28, as amended (the ''CDS Risk Model Filing'').[5]

1. CDS Manual of Operations

In connection with the proposed rule changes in this iTraxx Filing Amendment and in the iTraxx Filing, CME also proposes to make administrative changes to its CDS Manual in connection with the clearance of iTraxx Contracts. Specifically, amendments are proposed where CDX Contracts are described as the only CDS Contracts which CME clears and deletions are proposed to reflect that iTraxx Contracts have differing transaction types and standard currencies to the CDX Contracts which CME currently clears, and also to reflect the fact that restructuring will be a credit event for iTraxx Contracts. Also, a reference which relates to outdated aspects of the CDS risk model is proposed to be deleted.

2. Risk Management

Certain iTraxx Contracts which CME proposes to clear will, following the implementation date of the 2014 ISDA Definitions, be bifurcated such that certain iTraxx Component Transactions will continue to reference the 2003 ISDA Definitions and certain other iTraxx Component Transactions will reference the 2014 ISDA Definitions. Consistent with CME's treatment of CDS products with different product terms, CME will position iTraxx Component Transactions that do not incorporate the same set of credit derivatives definitions as separate cleared CDS Contracts upon the occurrence of a restructuring credit event in respect of such iTraxx Component Transactions.

The computation of the spread risk, interest rate risk, and liquidity and concentration risk components in CME's risk model framework is described in the CDS Risk Model Filing and will be agnostic to whether the 2003 ISDA Definitions or the 2014 ISDA Definitions are applicable, therefore allowing risk offsets across iTraxx Component Transactions that refer to the same reference entity but that do not incorporate the same set of credit derivatives definitions. No risk offsets will be provided for computation of idiosyncratic risk requirements for iTraxx Component Transactions which refer to the same reference entity but that do not incorporate the same set of credit derivatives definitions. The applicability of the post credit event risk requirement will be based on whether a credit event occurs by reference to the relevant credit derivatives definitions (2003 ISDA Definitions or the 2014 ISDA Definitions) and the relevant transaction type that is applicable to an iTraxx Component Transaction. The post credit event risk requirement will be computed on a net notional basis for a particular reference entity within an iTraxx index where a Credit Event has been determined under the relevant credit derivatives definitions. CME notes that this iTraxx Filing Amendment does not purport to make any changes to CME's risk management as proposed in the CDS Risk Model Filing or as described in the parts of the CDS Manual that are not proposed to be amended in accordance with the CDS Risk Model Filing.

CME has identified iTraxx Contracts as products that have become increasingly important for market participants to manage risk with respect to European corporate and financial entities' credit risk. CME believes the proposed changes to its CDS Product Rules are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act.[6] The proposed changes in conjunction with the CDS risk model changes described in the CDS Risk Model Filing will facilitate CME's clearance of iTraxx Contracts, which would expand CME's CDS index product offering and therefore provide investors with an expanded range of derivatives products for clearing. CME

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–72833 (Aug. 13, 2014), 79 FR 48797 (Aug. 18, 2014) (SR–CME–2014–31) (hereinafter referred to as the ''iTraxx Filing'').

[4] On August 18, 2014, CME filed Amendment No. 1 to the proposed rule change. CME withdrew Amendment No. 1 on August 29, 2014.

[5] *See* Securities Exchange Act Release No. 34–72834 (Aug. 13, 2014), 79 FR 48805 (Aug. 18, 2014) (SR–CME–2014–28) and Securities Exchange Act Release No. 34–72959 (Sep. 2, 2014), 79 FR 53234 (Sep. 8, 2014) (SR–CME–2014–28). The proposed rule change, as amended, is currently under review by the Commission.

[6] 15 U.S.C. 78q–1.

notes that the facilitation of clearance of iTraxx Contracts is of particular importance as the CFTC has determined that iTraxx Contracts that are subject to a 5Y or 10Y tenor are subject to mandatory clearing under Section 2(h) of the Commodity Exchange Act (''CEA'').[7] As such, the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule changes would have any impact, or impose any burden, on competition. On the contrary, the clearance of iTraxx Contracts will promote competition since some of CME's competitors, including ICE Clear Credit LLC, ICE Clear Europe Limited and LCH.Clearnet S.A., already offer clearing of iTraxx Contracts. CME will therefore be able to provide market participants with an expanded choice for clearing iTraxx Contracts.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Amendment Received From Members, Participants, or Others

Written comments relating to the iTraxx Filing Amendment have not been solicited or received. CME will notify the Commission of any written comments received by CME.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of notice of the iTraxx Filing[9] in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[7] 7 U.S.C. 2(h).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] *See supra* note 3.

IV. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 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–CME–2014–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2014–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CME–2014–31 and should be submitted on or before October 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23834 Filed 10–6–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14142 Disaster #ZZ–00010]

The Entire United States and U.S. Territories

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loan Program (MREIDL), dated 10/01/2014.

DATES: *Effective Date:* 10/01/2014.

MREIDL Loan Application Deadline Date: 1 year after the essential employee is discharged or released from active duty.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road Fort, Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of Public Law 106–50, the Veterans entrepreneurship and Small Business Development Act of 1999, and the Military Reservist and Veteran Small Business Reauthorization Act of 2008, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan Program (MREIDL).

Effective 10/01/2014, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict or have received notice of an expected call-up, and those employees are essential to the success of the small business daily operations.

The purpose of the MREIDL program is to provide funds to an eligible small business to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called-up or expects to be called-up to active duty in his or her role as a

military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active duty. For information/applications contact 1–800–659–2955 or visit *www.sba.gov.*

Applications for the Military Reservist Economic Injury Disaster Loan Program may be filed at the above address.

The Interest Rate for eligible small businesses is 4.000.

The number assigned is 14142 0.

(Catalog of Federal Domestic Assistance Number 59002)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–23954 Filed 10–6–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14140 and #14141]

Kentucky Disaster #KY–00051

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kentucky (FEMA–4196–DR), dated 09/30/2014.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 08/18/2014 through 08/23/2014.

DATES: *Effective Date:* 09/30/2014.

Physical Loan Application Deadline Date: 12/01/2014.

Economic Injury (Eidl) Loan Application Deadline Date: 06/30/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/30/2014, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Floyd, Johnson, Knott, Pike.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14140B and for economic injury is 14141B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–23976 Filed 10–6–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14138 and #14139]

California Disaster #CA–00225

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of CALIFORNIA dated 10/01/2014.

Incident: Boles Fire.

Incident Period: 09/15/2014 and continuing.

DATES: Effective Date: 10/01/2014.

Physical Loan Application Deadline Date: 12/01/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 07/01/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Siskiyou.

Contiguous Counties:

California: Del Norte; Humboldt; Modoc; Shasta; Trinity.

Oregon: Jackson; Josephine; Klamath.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14138 5 and for economic injury is 14139 0.

The States which received an EIDL Declaration # are California, Oregon.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 1, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–23975 Filed 10–6–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 01/71–0377 issued to GreenLeaf Capital, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Javier E. Saade,

Associate Administrator for Investment and Innovation.

[FR Doc. 2014–23804 Filed 10–6–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 8907]

In the Matter of the Designation of Mohammed Abdel-Halim Hemaida Saleh Also Known as Muhammad Abd-al-Halim Humaydah as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Mohammed Abdel-Halim Hemaida Saleh, also known as Muhammad Abd-al-Halim Humaydah, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 19, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23909 Filed 10–6–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 8903]

In the Matter of the Designation of Amru al-Absi, Also Known as Abu al-Arthir, Also Known as Abu al-Asir as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Amru al-Absi, also known as Abu al-Arthir, also known as Abu al-Asir, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

Dated: September 10, 2014.

This notice shall be published in the **Federal Register**.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23937 Filed 10–6–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 8902]

In the Matter of the Designation of Maalim Salman, Also Known as Mu'alim Salman, Also Known as Mualem Suleiman, Also Known as Ameer Salman, Also Known as Ma'alim Suleiman, Also Known as Maalim Salman Ali, Also Known as Maalim Selman Ali, Also Known as Ma'alim Selman, Also Known as Ma'alin Sulayman as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Maalim Salman also known as Mu'alim Salman also known as Mualem Suleiman also known as Ameer Salman also known as Ma'alim Suleiman also known as Maalim Salman Ali also known as Maalim Selman Ali also known as Ma'alim Selman also known as Ma'alin Sulayman, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 22, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23963 Filed 10–6–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8906]

In the Matter of the Designation of Salim Benghalem as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Salim Benghalem, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to

be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 19, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23910 Filed 10–6–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 8905]

In the Matter of the Designation of Muhannad al-Najdi, Also Known as 'Ali Manahi 'Ali al-Mahaydali al-'Utaybi, Also Known as Ghassan al-Tajiki as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Muhannad al-Najdi, also known as 'Ali Manahi 'Ali al-Mahaydali al-'Utaybi, also known as Ghassan al-Tajiki, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 23, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23926 Filed 10–6–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 8908]

In the Matter of the Designation of Harakat Sham al-Islam, Also Known as Haraket Sham al-Islam, Also Known as Sham al-Islam, Also Known as Sham al-Islam Movement as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Harakat Sham al-Islam, also known as Haraket Sham al-Islam, also known as Sham al-Islam, also known as Sham al-Islam Movement, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 23, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23908 Filed 10–6–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 8909]

In the Matter of the Designation of Abdessamad Fateh, Also known as Abu Hamza as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Abdessamad Fateh, also known as Abu Hamza, committed or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 23, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23906 Filed 10–6–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 8901]

In the Matter of the Designation of Abd al-Baset Azzouz, Also Known as Abdelbassed Azouz, Also Known as ''AA'', Also Known as Abdulbasit Azuz as a Specially Designated Global Terrorist Pursuant to Section 1(b) of E.O. 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, and E.O. 13284 of January 23, 2003, I hereby determine that the individual known as Abd al-Baset Azzouz also known as Abdelbassed Azouz also

known as ''AA'' also known as Abdulbasit Azuz, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 23, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23960 Filed 10–6–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8904]

In the Matter of the Designation of Jaish al-Muhajireen wal-Ansar, Also Known as Katiba al-Muhajireen, Also Known as Jaish al-Muhajireen wa Ansar, Also Known as Kateeb al Muhajireen wal Ansar, Also Known as Brigade of the Emigrants and Helpers, Also Known as Army of the Emigrants and Helpers, Also Known as Jaysh al-Muhajirin wal-Ansar, Also Known as Jaysh al-Muhajirin and al-Ansar Army, Also Known as Al-Muhajirin Brigade, Also Known as Muhajirin and Ansar Army, Also Known as Army of Foreign Fighters and Supporters as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Jaish al-Muhajireen wal-Ansar, also known as Katiba al-Muhajireen, also known as Jaish al-Muhajireen wa Ansar, also known as Kateeb al Muhajireen wal Ansar, also known as Brigade of the Emigrants and Helpers, also known as Army of the Emigrants and Helpers, also known as Jaysh al-Muhajirin wal-Ansar, also known as Jaysh al-Muhajirin and al-Ansar Army, also known as Al-Muhajirin Brigade, also known as Muhajirin and Ansar Army, also known as Army of Foreign Fighters and Supporters, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 23, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23935 Filed 10–6–14; 8:45 am]

BILLING CODE 4710–10–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at September 4, 2014, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on September 4, 2014, in Corning, New York, the Commission took the following actions: (1) Approved or tabled the applications of certain water resources projects; (2) accepted settlements in lieu of penalty from Carrizo (Marcellus), LLC; JKT Golf LLC; and Southwestern Energy Production Company; and (3) took additional actions, as set forth in the Supplementary Information below.

DATES: September 4, 2014.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Regulatory Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission Web site at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) An informational presentation from the Upper Susquehanna Coalition chairperson Jeffrey Parker on the current programs at the Upper Susquehanna Coalition; (2) release of proposed rulemaking to amend Commission regulations to clarify the water uses involved in hydrocarbon development that are subject to consumptive use regulations, as implemented by the Approval By Rule program; (3) rescission of unneeded or outdated policies; and (4) approval of a grant amendment ratification.

Compliance Matters

The Commission approved settlements in lieu of civil penalty for the following projects:

1. Carrizo (Marcellus), LLC (Meshoppen Creek), Washington Township, Wyoming County, Pa.—$9,000.

2. JKT Golf LLC, Four Seasons Golf Club—Exeter, Exeter Township, Luzerne County, Pa.—$7,000.

3. Southwestern Energy Production Company (Wyalusing Creek Withdrawal), Wyalusing Township, Bradford County, Pa.—$5,000.

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor and Facility: City of Aberdeen, Harford County, Md. Modification to extend the approval term of the surface water withdrawal approval (Docket No. 20021210) to be coterminous with the revised Maryland Department of the Environment State Water Appropriation and Use Permit for the Aberdeen Proving Ground-Aberdeen Area.

2. Project Sponsor and Facility: City of Aberdeen, Harford County, Md. Modification to extend the approval term of the consumptive water use approval (Docket No. 20021210) to be coterminous with the revised Maryland Department of the Environment State Water Appropriation and Use Permit for the Aberdeen Proving Ground-Aberdeen Area.

3. Project Sponsor and Facility: Anadarko E&P Onshore LLC (Lycoming Creek), McIntyre Township, Lycoming County, Pa. Surface water withdrawal of up to 0.499 mgd (peak day).

4. Project Sponsor and Facility: Anadarko E&P Onshore LLC (Pine Creek), McHenry Township, Lycoming County, Pa. Renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20100902).

5. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Tunkhannock Creek), Nicholson Township, Wyoming County, Pa. Surface water withdrawal of up to 2.000 mgd (peak day).

6. Project Sponsor and Facility: Carrizo (Marcellus), LLC (East Branch Wyalusing Creek), Jessup Township, Susquehanna County, Pa. Renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20100601).

7. Project Sponsor and Facility: Inflection Energy (PA) LLC (Loyalsock Creek), Upper Fairfield Township, Lycoming County, Pa. Surface water withdrawal of up to 1.700 mgd (peak day).

8. Project Sponsor: Lancaster County Solid Waste Management Authority. Project Facility: Susquehanna Resource Management Complex, City of Harrisburg, Dauphin County, Pa. Consumptive water use of up to 0.700 mgd (peak day).

9. Project Sponsor: Leola Sewer Authority. Project Facility: Upper Leacock Township, Lancaster County, Pa. Groundwater withdrawal of up to 0.075 mgd (30-day average) from Well 13.

10. Project Sponsor and Facility: Newport Borough Water Authority, Oliver and Howe Townships and Newport Borough, Perry County, Pa. Groundwater withdrawal of up to 0.065 mgd (30-day average) from Well 1.

11. Project Sponsor and Facility: Sunbury Generation LP, Shamokin Dam Borough and Monroe Township, Snyder County, Pa. Modification to project features and reduction of the surface water withdrawal from 354.000 mgd (peak day) to 10.000 mgd (peak day) (Docket No. 20081222).

12. Project Sponsor and Facility: Sunbury Generation LP, Shamokin Dam Borough and Monroe Township, Snyder County, Pa. Modification to project features and reduction of the consumptive water use from 8.000 mgd (peak day) to 6.500 mgd (peak day) (Docket No. 20081222).

13. Project Sponsor and Facility: Talisman Energy USA Inc. (Susquehanna River), Terry Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20100613).

14. Project Sponsor and Facility: Talisman Energy USA Inc. (Wappasening Creek), Windham Township, Bradford County, Pa. Surface water withdrawal of up to 0.999 mgd (peak day).

Project Applications Approved Involving Diversions

1. Project Sponsor and Facility: City of Aberdeen, Harford County, Md. Modification to extend the approval term of the out-of-basin diversion approval (Docket No. 20021210) to be coterminous with the revised Maryland Department of the Environment State Water Appropriation and Use Permit for the Aberdeen Proving Ground-Aberdeen Area.

2. Project Sponsor: DS Services of America, Inc. Project Facility: Bethany Children's Home, Heidelberg Township, Berks County, Pa. Into-basin diversion from the Delaware River Basin of up to 0.200 mgd (peak day) from Bethany Children's Home bulk spring water source (Boreholes PWA and PWB).

Project Applications Tabled

The Commission tabled action on the following project applications:

1. Project Sponsor and Facility: Heidelberg Township Municipal Authority, Heidelberg Township, Lebanon County, Pa. Application for renewal of groundwater withdrawal of up to 0.115 mgd (30-day average) from Well 5 (Docket No. 19820602).

2. Project Sponsor and Facility: IBM Corporation, Village of Owego, Tioga County, N.Y. Application for groundwater withdrawal of up to 0.002 mgd (30-day average) from Well 415.

3. Project Sponsor and Facility: Jay Township Water Authority, Jay Township, Elk County, Pa. Application for groundwater withdrawal of up to 0.265 mgd (30-day average) from Byrnedale Well #1.

4. Project Sponsor and Facility: LHP Management, LLC (Muncy Creek), Muncy Creek Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20120607).

5. Project Sponsor and Facility: Millersville University of Pennsylvania, Millersville Borough, Lancaster County, Pa. Application for renewal of consumptive water use of up to 0.253 mgd (peak day) (Docket No. 19820105).

6. Project Sponsor and Facility: Millersville University of Pennsylvania, Millersville Borough, Lancaster County, Pa. Application for renewal and modification to increase groundwater withdrawal by an additional 0.055 mgd (30-day average) from Well 1, for a total of up to 0.320 mgd (30-day average) from Well 1 (Docket No. 19820105).

7. Project Sponsor: Pennsylvania Department of Environmental Protection—South-central Regional Office, City of Harrisburg, Dauphin County, Pa. Facility Location: Leacock Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.590 mgd (30-day average) from Stoltzfus Well.

8. Project Sponsor: Pennsylvania Department of Environmental Protection—South-central Regional Office, City of Harrisburg, Dauphin County, Pa. Facility Location: Leacock Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.432 mgd (30-day average) from Township Well.

9. Project Sponsor and Facility: Somerset Regional Water Resources, LLC (Salt Lick Creek), New Milford Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20100905).

10. Project Sponsor and Facility: Sugar Hollow Trout Park and Hatchery, Eaton Township, Wyoming County, Pa. Application for renewal of groundwater withdrawal of up to 0.864 mgd (30-day average) from Wells 1, 2, and 3 (the Hatchery Well Field) (Docket No. 20100913).

11. Project Sponsor and Facility: SWEPI LP (Cowanesque River), Nelson Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.533 mgd (peak day) (Docket No. 20100604).

12. Project Sponsor and Facility: Upper Halfmoon Water Company, Halfmoon Township, Centre County, Pa. Application for groundwater withdrawal of up to 0.396 mgd (30-day average) from Well 6.

13. Project Sponsor and Facility: Warwick Township Municipal Authority, Warwick Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.288 mgd (30-day average) from Rothsville Well 2.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: September 30, 2014.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2014–23885 Filed 10–6–14; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2012–0165]

Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

AGENCY: Office of the Secretary, DOT.

ACTION: No FEAR Act notice.

SUMMARY: This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act of 2002). It is the annual obligation for Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Anti-discrimination and Whistleblower Protection Laws.

FOR FURTHER INFORMATION CONTACT: Yvette Rivera, Associate Director of Equal Employment Opportunity Programs, S–32, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W78–306, Washington, DC 20590, 202–366–5131 or by email at *Yvette.Rivera@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve this document online through the Federal Document Management System at *http://www.regulations.gov.* Electronic retrieval instructions are available under the help section of the Web site. An electronic copy is also available for download from the Government Printing Office's Electronic Bulletin Board at *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at *http://www.access.gpo.gov/nara.*

No FEAR Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' now recognized as the No FEAR Act (Pub. L. 107–174). One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' (Pub. L. 107–174, Summary). In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination'' (Pub. L. 107–174, Title I, General Provisions, section 101(1)). The Act also requires the United States Department of Transportation (USDOT) to provide this Notice to all USDOT employees, former USDOT employees, and applicants for USDOT employment. This Notice is to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment because of race, color, religion, sex, national origin, age, disability, marital status, genetic information, or political affiliation. One or more of the following statutes prohibit discrimination on these bases: 5 U.S.C. 2302(b)(1), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 206(d), 29 U.S.C. 791, 42 U.S.C. 2000e–16 and 2000ff.

If you believe you were a victim of unlawful discrimination on the bases of race, color, religion, sex, national origin, age, genetic information, and/or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within 45 calendar days of the effective date of the action to try and resolve the matter informally. This must be done before filing a formal complaint of discrimination with USDOT (See, e.g., 29 CFR part 1614).

If you believe you were a victim of unlawful discrimination based on age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. As an alternative to filing a complaint pursuant to 29 CFR part 1614, you can file a civil action in a United States district court under the Age Discrimination in Employment Act (ADEA), against the head of an alleged discriminating agency, after giving the EEOC not less than a 30 day notice of the intent to file such action. You may file such notice in writing with the EEOC via mail at P.O. Box 77960, Washington, DC 20013, personal delivery, or facsimile within 180 days of the occurrence of the alleged unlawful practice.

If you are alleging discrimination based on marital status or political affiliation, you may file a written discrimination complaint with the U.S. Office of Special Counsel (OSC) (See Contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the USDOT administrative or negotiated grievance procedures, if such procedures apply and are available. Form OSC–11 is available online at the OSC Web site *http://www.osc.gov/index.htm,* under the filing tab (*Contact Information*). Additionally, you can download the form under the same filing tab, under OSC Forms. Complete this form and mail it to the Complaints Examining Unit, U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505. You also have the option to call the Complaints Examining Unit at (800) 872–9855 for additional assistance.

If you are alleging compensation discrimination pursuant to the Equal Pay Act (EPA), and wish to pursue your allegations through the administrative process, you must contact an EEO counselor within 45 calendar days of the alleged discriminatory action as such complaints are processed under EEOC's regulations at 29 CFR part 1614. Alternatively, you may file a civil action in a court of competent jurisdiction within two years, or if the violation is willful, three years of the date of the alleged violation, regardless of whether you pursued any administrative complaint processing. The filing of a complaint or appeal pursuant to 29 CFR part 1614 shall not toll the time for filing a civil action.

Whistleblower Protection Laws

A USDOT employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take, or fail to take, or threaten to take, or fail to take a personnel action against an employee or applicant because of a disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless the disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against a USDOT employee or applicant for making a protected disclosure is prohibited (5 U.S.C. 2302(b)(8)). If you believe you are a victim of whistleblower retaliation, you may file a written complaint with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 202–036–4505 using Form OSC–11. Alternatively, you may

file online through the OSC Web site at *http://www.osc.gov.*

Disciplinary Actions

Under existing laws, USDOT retains the right, where appropriate, to discipline a USDOT employee who engages in conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection laws up to and including removal from Federal service. If OSC initiates an investigation under 5 U.S.C. 1214 according to 5 U.S.C. 1214(f), USDOT must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws, or permits an agency to take unfounded disciplinary action against a USDOT employee, or to violate the procedural rights of a USDOT employee accused of discrimination.

Additional Information

For more information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate office(s) within your agency (e.g., EEO/civil rights offices, human resources offices, or legal offices). You can find additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws at the EEOC Web site at *http://www.eeoc.gov* and the OSC Web site at *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Issued in Washington, DC, on October 1, 2014.

Camille Hazeur,

Director, Departmental Office of Civil Rights, United States Department of Transportation.

[FR Doc. 2014–23886 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–89]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 27, 2014.

ADDRESSES: You may send comments identified by Docket Number FAA–2014–0736 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 267–9521, 800 Independence Avenue SW., Washington, DC 20951.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 1, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0736.

Petitioner: First Flight Photography, LLC.

Section of 14 CFR: Parts 21 Subpart H, 45.23(b), 91.7(a), 91.9(b)(2), 91.103(b), 91.109, 91.119, 91.121, 91.151(a), 91.203(a) and (b), 91.405(a), 91.407(a)(1), 91.409(a)(2), and 91.417(a) and (b).

Description of Relief Sought: The petitioner is seeking an exemption to commercially operate their small unmanned aircraft systems (sUAS), weighing less than 55 pounds, in the service of aerial photography.

[FR Doc. 2014–23824 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–91]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 27, 2014.

ADDRESSES: You may send comments identified by Docket Number FAA–2014–0732 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 267–9521, 800 Independence Avenue SW., Washington, DC, 20951.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 1, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0732.

Petitioner: City of Roswell Coalition.

Section of 14 CFR: Parts 21 Subpart H, 45.23, 61.113(a) and (b), 61.133(a), 91.7(a), 91.9(b)(2) and (c), 91.103, 91.109(a), 91.119, 91.151(a), 91.203(a) and (b), 91.319(a)(1), 91.405(a), 91.407(a)(1), 91.409(a)(2), and 91.417(a).

Description of Relief Sought: The petitioner, a community based organization, is seeking an exemption to commercially operate their Aeryon Labs SkyRanger small unmanned aircraft systems (sUAS) to perform research and for development and delivery of formally constructed training curricula to include applications like operations of aerial inspections and surveys.

[FR Doc. 2014–23823 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–92]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 27, 2014.

ADDRESSES: You may send comments identified by Docket Number FAA–2014–0733 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 267–9521, 800 Independence Avenue SW., Washington, DC 20951.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 1, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0733.

Petitioner: Darling Geomatics.

Section of 14 CFR: Parts 21 Subpart H, 45.23, 45.29, 61.133(a), 91.7(a), 91.9(b)(2), 91.109(a), 91.119, 91.121, 91.151(a), 91.203(a) and (b), 91.319(a)(1), 91.401, 91.403, 91.405, 91.407, 91.409, 91.411, 91.413, 91.415, 91.417, 91.419, and 91.421.

Description of Relief Sought: The petitioner is seeking an exemption to commercially operate their eBee unmanned aircraft system (UAS) for mapping and survey applications.

[FR Doc. 2014–23825 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–90]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 27, 2014.

ADDRESSES: You may send comments identified by Docket Number FAA–2014–0727 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 267–9521, 800 Independence Avenue SW., Washington, DC, 20951.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 1, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0727.

Petitioner: SenseFly Ltd.

Section of 14 CFR: parts 21 Subpart H, 45.23, 45.29, 61.3, 61.23, 61.113(a) and (b), 61.133(a), 91.7(a), 91.9, 91.109(a), 91.119, 91.121, 91.151(a), 91.203, 91.401, 91.403, 91.405, 91.407, 91.409, 91.411, 91.413, 91.415, 91.417, 91.419, and 91.421.

Description of Relief Sought: The petitioner, manufacturer of the eBee unmanned aircraft system (UAS), is seeking an exemption to commercially operate their UAS for mapping and precision agriculture applications.

[FR Doc. 2014–23826 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Suffolk County, New York

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Revised notice of intent (NOI).

SUMMARY: The FHWA is issuing this notice to advise the public that the NOI to prepare an Environmental Impact Statement (EIS) for a proposed construction project for the reconstruction of NY 112 from the Long Island Expressway, I–495 North Service Road to NY 25 in Suffolk County, New York is being rescinded. On December 19, 2002, the FHWA issued an NOI to advise the public that an EIS would be prepared for a proposed construction project for the Reconstruction of NY Route 112, from I–495 to Skips Road (Mill Road Connector), Suffolk County, New York (67 FR 77823).

FOR FURTHER INFORMATION CONTACT: New York State Department of Transportation, State Building, 250 Veterans Memorial Highway, Hauppauge, New York 11788, Telephone: (631) 952–6632; or Jonathan D. McDade, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, Suite 719, 11A Clinton Avenue, Albany, New York 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) intended to prepare an EIS on the proposal to improve safety and traffic flow on NY 112 from I–495 to Skips Road. The scope of the project was to move the public through this area of the NY 112 corridor as safely and efficiently as possible. It is proposed to terminate the EIS for the following reasons:

• NYSDOT has delayed this project due to competing priorities and the inability to make a financial commitment to the 2012 estimated construction cost of $76M excluding the costs of right-of-way, construction inspection, and design.

• NYSDOT has implemented a system-wide preservation first strategy that will continue to impact the implementation of larger capital intensive projects such as the proposed reconstruction of NY112

• NYSDOT's adoption of both Smart Growth and Complete Streets makes the consideration of a significant capacity expansion of NY112 problematic in this area

• Since the original public hearing, the dedication of the 450 acre Overton Preserve (adjacent to NY 112) further precludes any substantial widening of NY 112 at the northerly end the project

• Studies performed to date indicate that a lower cost roadway section, not as wide as initially proposed, with resultant reduced environmental impact would produce an acceptable Level of Service throughout the corridor

• Reportable accidents have declined and continue to demonstrate a downward trend, further supporting the termination of the proposal to construct a four lane roadway section with continuous left turn lane or raised median as proposed in the draft EIS.

Termination of this EIS will enable NYSDOT to undertake smaller scoped transportation projects in the existing NY 112 corridor to address current transportation needs.

Jonathan D. McDade,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 2014–23881 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0108]

Request for Comment on Automotive Electronic Control Systems Safety and Security

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: This notice presents the National Highway Traffic Safety Administration's research program on vehicle electronics and our progress on examining the need for safety standards with regard to electronic systems in passenger motor vehicles. The agency undertook this examination pursuant to the requirements of the Moving Ahead for Progress in the 21st Century Act (MAP–21) Division C, Title I, Subtitle D, Section 31402, Subsection (a). In addition, and in accordance with MAP–21, we are seeking comment (through this document) on various components of our examination of the need for safety

standards in this area. As MAP–21 also requires this agency to report to Congress on our findings pursuant to this examination, we intend to submit a report to Congress based in part on our findings from this examination and public comments received in response to this document.

DATES: You should submit your comments early enough to ensure that Docket Management receives them no later than December 8, 2014.

ADDRESSES: Comments should refer to the docket number above and be submitted by one of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery: 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78). For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. David V. Freeman of NHTSA's Office of Vehicle Crash Avoidance & Electronic Controls Research at (202) 366–0168 or by email at *david.v.freeman@dot.gov.* For legal issues: Mr. Jesse Chang of NHTSA's Office of Chief Counsel at (202) 366–9874 or by email at *jesse.chang@dot.gov.*

SUPPLEMENTARY INFORMATION: In this document, the agency is presenting its progress in conducting an examination of the need for safety standards and seeking comments on its findings thus far. The agency is directed to conduct this examination and report its findings to Congress by the Moving Ahead for Progress in the 21st Century Act (MAP–21).[1]

I. MAP–21 and Examining the Need for Electronic System Safety Standards

In section 31402 of MAP–21, Congress directs this agency to ''complete an examination of the need for safety standards with regard to electronic systems in passenger motor vehicles.'' [2] In conducting this examination, the Act directed the agency to consider various topics:

(1) Electronic components;

(2) the interaction of electronic components;

(3) the security needs for those electronic components to prevent unauthorized access; and

(4) the effect of surrounding environments on the electronic systems.[3]

Finally, the Act also directed the agency to allow for public comment in conducting this examination.[4] Upon completing the examination, the Act also directs the agency to submit a report to Congress on the highest priority areas for safety with regard to the electronic systems.[5]

This document presents the agency's progress thus far in conducting the examination required in section 31402. We illustrate how we are examining each of the areas described by Congress in section 31402 and are seeking public comment on that examination. We intend to incorporate the comments received pursuant to this document in our report to Congress identifying the need for safety standards.

II. Background

a. NHTSA's Safety Role

The National Highway Traffic Safety Administration (NHTSA) is responsible for developing, setting, and enforcing regulations for motor vehicles and motor vehicle equipment. Many of the agency's regulations are Federal Motor Vehicle Safety Standards (FMVSSs) with which manufacturers must certify compliance when offering motor vehicles and motor vehicle equipment for sale in the United States. NHTSA also studies behaviors and attitudes in highway safety, focusing on drivers, passengers, pedestrians, and motorcyclists. We identify and measure behaviors involved in crashes or associated with injuries, and working with States and other partners develop and refine countermeasures to deter unsafe behaviors and promote safe alternatives. Further, the agency provides consumer information relevant to motor vehicle safety. For example, NHTSA's New Car Assessment Program (NCAP) provides comparative safety information for various vehicle models to aid consumers in their purchasing decisions (e.g., the 5-star crash test ratings). The purpose of the agency's programs is to reduce motor vehicle crashes and their attendant deaths, injuries, and property damage.

b. Growth in Automotive Electronics and Their Safety Challenges

The use of electronics in the design of modern automobiles is a rapid ongoing progression. The first common use of automotive electronics [6] dates back to 1970s and by 2009 a typical automobile featured over 100 microprocessors, 50 electronic control units, five miles of wiring and 100 million lines of code.[7] Use of electronics is not new. It has enabled safer and more fuel-efficient vehicles for decades. Electric and hybrid vehicles could not have been developed and produced without the extensive use of electronics and proven safety technologies such as electronic stability control could not have been implemented. Over time, growth of electronics use has accelerated and this trend is expected to continue as the automotive industry develops and deploys even more advanced automated vehicle features. This trend results in increased complexities in the design, testing, and validation of automotive systems. Those complexities also raise general concerns in the areas of reliability, security, and safety assurance of growingly networked vehicles leveraging electronics.

Electronics provide many safety, security, convenience, comfort, and efficiency functions for vehicle operators through interconnections and communications with other onboard electronics systems. Common communications networks and protocols allow for the exchange of information between sensors, actuators, and the electronic control units that execute software programs to accomplish specific functions. A vehicle will typically feature multiple networks.

[1] Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (Jul. 6, 2012), § 31402.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] Not including electronics use for radio purposes.

[7] ''This car runs on code,'' R.N. Charette, 2009, *http://spectrum.ieee.org/transportation/systems/this-car-runs-on-code.*

Those networks may be isolated from one another for a variety of reasons such as safety and security; however, in other cases different networks could be interconnected to enable exchange of information across a broader range of systems. Sharing data across multiple networks can be safeguarded against adverse influence over safety-critical systems; however, effectiveness of such approaches is only anecdotally known today. Growing system complexity and abundance of design variants even within one manufacturer over model years and across classes of vehicles pose general concerns over whether existing processes can ensure their functional safety. Further, anomalies associated with electronic systems—including those related to software programming, intermittent electronics hardware malfunctions, and effects of electromagnetic disturbances—may not leave physical evidence, and hence are difficult to investigate without a record of data from the electronic systems.

While there are challenges, progressively introduced safety technologies, such as Automatic Emergency Braking (AEB), have the potential to significantly reduce the many thousands of fatalities and injuries that occur each year as a result of motor vehicle crashes. Further, continued innovation into more advanced forms of vehicle automation could address other types of crashes where human driver error plays a role. In May 2013, NHTSA released a preliminary statement of policy [8] concerning automated vehicles where the agency outlined its planned research into emerging technologies. Given the complexity of these new systems in terms of the additional electronics software and hardware needed, electronic control systems safety will continue to grow in importance as these systems become more commonplace in production vehicles.

Along these lines, the Transportation Research Board (TRB) Special Report 308 [9] by the National Academies of Sciences (NAS) in 2012 identified five challenges for the safety of future electronic control systems:

- An increased amount of complex software that cannot be exhaustively tested;
- The highly interactive nature of the electronic control system—more interactions exist among system components, and the outcome may be difficult to anticipate;
- The growing importance of human factors consideration in automotive electronic control system design;
- The potentially harmful interaction with the external environment including electromagnetic interference; and
- The novel and rapidly changing technology.

Further, the study offered recommendations to NHTSA on the actions that the agency could take to meet the five challenges they identified. These include:

- becoming more familiar with and engaged in standard-setting and other efforts (involving industry) that are aimed at strengthening the means by which manufacturers ensure the safe performance of their automotive electronics systems;
- convening a standing technical advisory panel; undertaking a comprehensive review of the capabilities that the agency will need in monitoring for and investigating safety deficiencies in electronics-intensive vehicles;
- ensuring that Event Data Recorders (EDRs) become commonplace in new vehicles;
- conducting research on human factors issues informing manufacturers' system design decisions;
- initiating a strategic planning effort that gives explicit consideration to the safety challenges resulting from vehicle electronics that give rise to an agenda for meeting them; and
- making the formulation of a strategic plan a top goal in NHTSA's overall priority plan.

In addition to the challenges regarding electronic components and their ability to function reliably in spite of their complex interactions, NHTSA believes there are also challenges with regard to the ability of these systems to remain free of unauthorized access or malicious attacks. While documented demonstrations [10] [11] [12] of vehicle hacking to date have required some form of long-term physical access to the vehicle and our review has not identified any reported field incidents resulting in a safety concern, we recognize that lack of occurrence does not imply impossibility. As further discussed in this document, NHTSA is interested in gathering and evaluating information from the public (as part of its examination pursuant to MAP–21) to determine what additional work is needed in this area.

c. Industry's Existing Safety Assurance Processes

Notwithstanding the increased difficulty in the safety assurance of growingly more complex systems, the automotive industry uses a number of safety and quality assurance practices in the design of safety critical systems, which are not unique to but also cover electronic systems. As documented in a number of publications and also summarized in the NAS Report, these approaches include the:

- Establishment of system safety requirements;
- assessment of design hazards and risks at component, function, system, manufacturing and process levels such as by the use of failure mode and effects analysis [13] (FMEA) and fault tree analysis [14] (FTA);
- quality management systems such as ISO/TS 16949,[15] advanced product quality planning (APQP), and Design for Six Sigma (DFSS);
- design validation and verification testing such as electrical, environmental, lab, test track and limited field trials;
- variants of production part approval process (PPAP); and
- post deployment field data analysis.

Further, many automotive original equipment manufacturers (OEM) were actively engaged in the development and revision of the ISO 26262 [16] standard and some have already started to follow its principles. As further discussed in this document, NHTSA is interested in gathering and evaluating information from the public (as part of its examination pursuant to MAP–21) to determine whether there are emerging gaps in the functional safety assurance processes of motor vehicles.

d. Existing Safety Process Standards Research Overview

Sectors of the automotive industry currently consider electronics safety and cybersecurity as part of their design and quality control processes. Three process

[8] *http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Automated_Vehicles_Policy.pdf.*

[9] The Safety Promise and Challenge of Automotive Electronics, insights from unintended acceleration, National Research Council of the National Academies, ISBN 978–0–309–22304–1, 2012.

[10] ''Experimental Security Analysis of a Modern Automobile,'' K. Koscher et. al., IEEE Symposium on Security and Privacy, Oakland, CA, 2010.

[11] ''Comprehensive Experimental Analyses of Automotive Attack Surfaces,'' S. Checkoway et.al., USENIX Security, 2011.

[12] ''Adventures in Automotive Networks and Control Units,'' C. Miller, C. Valasek, DEF CON 21, Las Vegas, NV, 2013.

[13] IEC 60812 standard covers the process for conducting FMEA analysis.

[14] IEC 61025 standard covers the process for conducting FTA analysis.

[15] ISO/TS 16949:2002 covers particular requirements for the application of ISO 9001:2000 for automotive production and relevant service part organizations.

[16] International Organization for Standardization (ISO) standard for Road vehicles—Functional safety.

standards from the broader transportation industry are frequently mentioned as suitable and preferred methods also used in the design of road vehicles usually complementing existing safety assurance practices: ISO 26262, MIL–STD–882E, and DO–178C.

ISO 26262 is the first automotive industry specific standard [17] that addresses safety-related systems comprised of electrical, electronic, and software elements providing safety-related functions in the design of road vehicles. It is an adaptation to the International Electrotechnical Commission (IEC) 61508 [18] standard to road vehicles. The first publication of ISO 26262 was in November 2011. This standard seeks to address various important challenges facing today's road vehicle technologies including:

- The safety of new electrical, electronic, and software functionality in vehicles;
- the trend of increasing system complexity, software content, and use of electromechanical components; and
- the risk from both systematic failure and random hardware failure.

Typical concerns associated with the ISO 26262 standard may include that the

- Standard could be laborious to apply;
- hardware portions of the standard's coverage may be very similar to existing industry practices with limited incremental benefits;
- software portions of the standard may primarily recommend good systems engineering practices for software safety; and
- assessment of the automotive safety integrity levels (ASIL) may vary due to subjectivity in the process.

Due to some of these limitations, existing practices and ISO 262626 are sometimes augmented with more mature system engineering approaches that are outlined in MIL–STD–882E and DO–178C, particularly on the software engineering side.

MIL–STD–882E is the U.S. Department of Defense's systems engineering approach for eliminating hazards, where possible, and minimizing risks where those hazards cannot be eliminated. By taking a systems approach, this standard considers hazards in the entire lifecycle of systems, products, equipment, and infrastructure including design, development, test, production, use, and disposal stages. The principle of this standard is that system safety should follow the system engineering process, and is the responsibility of all functional disciplines, not just the system safety professionals. This standard has gone through a number of revisions in order to adapt to changes in technology and lessons learned through experience.

In the aviation industry, DO–178C [19] is an accepted guidance for software development. Conformance to this standard means the software satisfies airworthiness [20] requirements with an acceptable level of confidence. As part of the airworthiness certification process, DO–178C provides guidelines to produce the software lifecycle data needed in order to support the certification process (e.g. plans for software development, verification, configuration management, and quality assurance). It also provides a comprehensive list of considerations in order to avoid errors and mistakes that could be introduced into software. DO–178C considers system software development as a subset of the overall system development process. It assumes that safety-critical requirements for software systems are defined in the higher-level system engineering activities and are given at the beginning of the software development process. Some automotive companies indicated that the principles outlined in this more mature standard complement the software standard described in ISO 26262 Part 6,[21] which is still evolving.

As we discuss further in this document, NHTSA continues to investigate functional safety approaches for the automotive industry that may effectively address emerging concerns from the increased use of electronics and software in the design of automobiles.

e. Available Data [22] Sources Research Overview

For purposes of determining the capabilities of various datasets to categorize and rank vehicle electronics safety issues, we considered vehicle recall data, vehicle owner's questionnaire (VOQ) data, early warning reporting (EWR) data, and data from our field crash investigation databases such as National Automotive Sampling System (NASS), Fatality Analysis Reporting System (FARS), and Special Crash Investigation (SCI) database. Further, we considered event data recorder (EDR) capabilities. We briefly describe our findings on these various data sources in this section. While we believe that the sources of information available to NHTSA in this regard are useful in helping the agency begin to identify the highest priority areas with regard to electronic components (and their interactions), we also believe that they have certain limitations in ranking safety issues associated with vehicle electronics. This limitation is mostly driven from the lack of detailed information regarding specific electronic system failure types. Hence, in section V. we seek comment from the public as to what other sources of information and data are available.

The vehicle recall database is a publicly available resource that documents safety defects or failures to meet minimum performance standards set by the Federal Motor Vehicle Safety Standards (FMVSS) in a motor vehicle or item of motor vehicle equipment. When manufacturers decide a safety defect or a noncompliance exists in a motor vehicle or item of motor vehicle equipment they manufactured, they are required to notify NHTSA and furnish a report with particular information about the defect or noncompliance, the products involved, and additional information including the manufacturer's plan to remedy for free the defect or noncompliance (See U.S.C. 30118 and 49 CFR 573.6).

Defect and noncompliance notifications and information reports are reviewed by NHTSA analysts who enter them in the recall database. The database includes summaries of the defect description, consequences, and remedy for each recall. The number of vehicle recalls has increased significantly in the past 20 years, nearly tripling from 1993 (222) to 2013 (654). While the vehicle recall database contains a large amount of useful information, the database and underlying defect reports were not intended for detailed or precise statistical analyses of recalls by typology or root cause related to motor vehicle electronic systems. Any such analysis requires a manual review and classification process. However, this work can be limited by the amount of detail contained in the defect

[17] Van Eikema Hommes, Q., ''Review and Assessment of the ISO 26262 Draft Road Vehicle—Functional Safety,'' SAE Technical Paper 2012–01–0025, 2012, doi:10.4271/2012–01–0025.

[18] IEC 61508 is an international standard for functional safety of electrical/electronic/programmable electronic safety-related systems. This standard considers all of the environments that could result in an unsafe situation for the subject product, including shock, vibration, temperature, and electromagnetic fields and their induced voltages and currents.

[19] DO–178C: Software considerations in airborne systems and equipment certification.

[20] Airworthiness of an aircraft refers to meeting established standards for safe flight.

[21] ISO 26262–6:2011-Road vehicles; Functional safety; Part 6: Product development at the software level.

[22] Data for purposes of examining the need for safety standards with regard to automotive electronic systems does not include personally identifiable information about the operators.

information reports, which normally provide more general descriptions of the defect condition and potential safety consequences.

Vehicle Owner Questionnaires (VOQs) are voluntarily submitted by consumers to NHTSA to report a complaint in a vehicle or related equipment item. Each complaint (which is stored in a database and made available to the public redacted of personal identifiers) identifies the vehicle type, incident specifics, and includes a free form narrative to describe details. Complaint content and trends are helpful for general screening purposes but follow-up is sometimes necessary to verify and clarify complaints and incident specifics. Approximately 50,000 VOQs were filed in 2013.

Another source of data is the EWR system. Several data types are regularly reported to NHTSA by manufacturers. The data include non-dealer field reports (documents), listings of death/injury claims (records), and aggregated counts of certain claim types. The quarterly reporting interval, high level component coding of aggregate figures, and variability in manufacturer reporting are factors that are considered when analyzing certain EWR data sets to study safety critical embedded control systems. Field reports are the only EWR data sets available for evaluating specific defect conditions, including incidents in which the problem is intermittent or cannot be duplicated.

Separately, regarding our national crash databases, the National Automotive Sampling System (NASS) [23] is composed of two systems—the Crashworthiness Data System (CDS) and the General Estimates System (GES). These are based on cases selected from a sample of police crash reports. CDS data focus on passenger vehicle crashes, and are used to investigate crash circumstances, vehicle crash response and occupant injury and identify potential improvements in vehicle design. The GES database contains crash statistics on police-reported crashes involving all types of vehicles. The information comes from samples of police reports of the estimated six million crashes that occur annually. Each NASS database is weighted to characterize a nationally representative sample. Each crash must involve at least one motor vehicle traveling on a traffic way, which results in property damage, injury, or death, and it must be obtained from a police report.

The Fatality Analysis Reporting System (FARS) [24] is a nationwide census database on crashes involving fatalities containing similar information to NASS–GES. These two crash databases consist of approximately 120 data elements that describe the crash, which are derived from review of police crash reports by trained data entry personnel; however, similar to the case with VOQs, there may be challenges in using these databases to perform detailed analyses for purposes of ranking emerging electronics concerns because data elements were not established with this specific purpose in mind. In combination with other datasets, analysis of GES and FARS can still provide confirming or augmenting evidence in identifying potential priority areas in electronics reliability.

The Crash Injury Research and Engineering Network (CIREN) database consists of over 1,000 discrete fields of data concerning severe motor vehicle crashes, including crash reconstruction and medical injury profiles extending back to 1996. CIREN cases feature detailed data on occupant injury, vehicle damage and restraint technology and crash environment, as well as technical or human factors that are related to injury causation in motor vehicle crashes. Each CIREN case is reviewed together by both medical and engineering professionals, along with the crash investigator, to determine injury causation and data accuracy.

The Special Crash Investigations (SCI) [25] database contains a range of data collected from basic data contained in routine police and insurance crash reports to comprehensive data from special reports by professional crash investigation teams. Hundreds of data elements relevant to the vehicle, occupants, injury mechanisms, roadway, and safety systems are collected for each of the over 100 crashes designated for study annually. SCI cases are intended to be an anecdotal data set useful for examining special crash circumstances or outcomes from an engineering perspective. The SCI program's flexibility allows for investigations of new emerging technologies related to automotive safety.

Finally, Event Data Recorders [26] (EDRs) are devices that may be installed in a motor vehicle to record technical vehicle information for a few seconds leading up to the crash. For instance, EDRs may record vehicle speed, engine throttle position, brake use, driver safety belt status, and air bag warning lamp status. NHTSA has been using EDRs to support its crash investigation program for several years and EDR data is routinely incorporated into NHTSA's crash databases. This type of data could potentially play a role in finding when safety critical automotive electronics were not functioning properly.

III. Our Examination of the Areas Identified in MAP–21 to Date

NHTSA has been actively engaged in research (both internally and with outside parties) in automotive electronics reliability, cybersecurity, and emerging technologies in advanced vehicle automation for the past two years. The agency has established, per MAP–21,[27] a Council on ''Vehicle Electronics, Vehicle Software, and Emerging Technologies'' to coordinate and share information on a broad array of topics related to advanced vehicle electronics and emerging technologies. The Council is governed by senior NHTSA management and the mission of the group is to broaden, leverage, and expand the agency's expertise in motor vehicle electronics to continue ensuring that technologies enhance vehicle safety and review and advise on the research program established over electronics reliability, cybersecurity and automation topics.

With input from the Council, NHTSA has identified and funded initial research into the following areas:

- Hazard analyses of safety-critical electronic vehicle control systems, applying Hazard and Operability (HazOp) process referenced within the ISO 26262 standard as well as System Theoretic Process Analysis (STPA);
- Examination of process oriented functional safety and security standards for automotive electronics design and development;
- Automotive cybersecurity concerns, threats, and vulnerabilities, and potential countermeasures;
- Best practices in safeguarding against cybersecurity risks in related but in non-automotive industries; and

[23] *http://www.nhtsa.gov/NASS.*

[24] *http://www.nhtsa.gov/FARS.*

[25] *http://www.nhtsa.gov/SCI.*

[26] In 2006, NHTSA published a final rule creating a regulation (49 CFR Part 563, Event Data Recorders (Part 563)) that specifies the minimum data set that should be collected if a manufacturer decides to voluntarily install an EDR in their vehicle, along with requirements for the range and accuracy of EDR data, as well as requirements for storage and retrieval. Part 563 applies to vehicles manufactured on or after September 1, 2012. In December 2012, NHTSA proposed a standard that would mandate EDRs on all vehicles required to have frontal air bags. (77 FR 74144). No final rule publication date has been established.

[27] Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (Jul. 6, 2012), § 31401(a).

• Human factors and other emerging concerns associated with highly automated vehicles.

Because the agency was already investigating vehicle electronics as a new and emerging research area for vehicle safety prior to the passage of MAP–21, the agency has already completed some research and analyses that address some of the items listed by Congress in section 31402 of MAP–21. Research reports are available on the agency's Web site [28] and we expect to publish more reports as projects are completed over the 2015–16 timeframe. It should be noted that the research described in this notice represents research already underway and future research that the agency anticipates undertaking as resources permit. This section shows our initial progress on the areas that Congress directed the agency to consider in the examination required under section 31402. We further request comments on our research thus far and request specific comments on the issues identified in the following sections.

a. Electronics Components and the Interaction of Electronic Components

To examine the potential safety concerns associated with electronic components and interactions of electronic components, we initiated research in developing potential approaches to analyzing the automotive electronic control system architecture and their interconnections. In conjunction, we reviewed data sources available to NHTSA to assess datasets that would be useful to analyze for purposes of this initiative (as documented in section II.e.). Further, we initiated systematic hazard analyses on select safety-critical automotive control systems to better understand the vehicle level safety risks. In the following paragraphs, we provide further details on these research topics that enable us to begin examining the first two areas stated in MAP–21 systematically.

NHTSA is also conducting research to develop an electronics-related failure-typology.[29] As part of this research, we are evaluating the various sources of data described in section II. e. (defect data, crash databases, etc.) to determine if suitable data exists at this time to effectively utilize a detailed failure typology that would describe and categorize the hazards and causes of automotive electronic control system failures. Through such analysis, the agency would like to understand how trends in the underlying data for the chosen dataset change over time as a function of increased use of electronics. We expect to publish our failure-typology research in 2015 and continue our research on appropriate datasets into 2016.

Another approach we are taking is to study the automotive electronic system architecture. Functional safety assurance of modern automobiles requires a thorough understanding of electronic control systems' design under a variety of scenarios. These circumstances include systems' behavior under nominal conditions and also during failure conditions. Equally important are state-of-the-art capabilities in detecting failures (diagnostic/prognostic) and fault-tolerant and/or fail-safe strategies that can prevent errors from resulting in safety hazards. To this end, NHTSA funded initial research to perform hazard analyses in select safety-critical automotive control system areas, such as Accelerator Control Systems (ACS)/ Electronic Throttle Control (ETC), Rechargeable Energy Storage Systems (RESS), and steering and braking control systems within the context of automatic lane centering function. These studies apply the Hazard and Operability (HazOp) process referenced within the ISO 26262 standard as well as System Theoretic Process Analysis (STPA) approach to identify the system level hazards associated with potential failures in the subject control systems. The purpose of these studies is to better understand the critical automotive system functions, failures, and risks and identify safety goals and requirements. Further, another purpose is to compare and contrast results obtained from existing hazard analyses techniques. We are currently prioritizing our hazard analysis research to cover electronic throttle control, steering control, braking control and motive power areas. We expect to publish a series of research reports on hazard analyses starting in 2015.

A typical automotive electronic control system primarily relies on the following to perform its intended purposes:

• Sensors (measurements);

• Interpretation of sensed signals (e.g. conversion, configuration, classification);

• Estimations of parameters (when direct sensing may not be available, e.g., vehicle speed);

• Actuators (to carry out the intended motive);

• Communication networks (that facilitate electronic exchange of information between sensors, controllers and actuators);

• Design and programming of the control algorithm (conditions and respective actions) including:

a. Design and software coding that implement:

i. The intended functions; and

ii. system monitoring and malfunction detection logic; and

b. supervisory logic that arbitrates between multiple, potentially conflicting, subsystem commands; and

• Availability of motive power.

Interactions between electronic components (and distributed embedded systems) are facilitated primarily by communication networks and shared use of sensors, software logic and actuators. Prioritization of competing requests from the various control subsystems and the driver for safety-critical functions is a potential area of anticipated future research due to continued proliferation of safety and convenience functions.

Comments Requested

(1) NHTSA currently has research underway that is evaluating the hazards associated with electronic control systems that could impact a vehicle's steering, throttle, braking and motive power first because they can impact the fundamental control functions that a driver performs (such as providing lateral (via steering) and longitudinal (throttle, braking) control for the vehicle). This means, we would research safety hazards associated with other automotive electronic control systems (e.g. safety restraint systems control, power door lock control, lighting control) later. We seek comment on *this approach* from a need for standards research priority stand-point.

(a) Should the agency pursue alternative approaches to categorize and prioritize potential electronic control system hazards and impacts to support new standards?

(b) For hazard analysis research, the agency is currently pursuing HazOp and STPA. What other hazard analysis methods should the agency also consider and why?

(c) What other automotive electronics should we consider in our research that could affect the electronics in the safety critical systems we identified (steering, throttle, brakes, etc.)?

[28] Office of Vehicle Crash Avoidance & Electronic Control Research technical publications are posted on the NHTSA Web site at *http://www.nhtsa.gov/Research/Crash+Avoidance/Office+of+Crash+Avoidance+Research+Technical+Publications.*

[29] Establishing a failure typology refers to developing categories and data elements that can help the agency (and others) organize the types of failures relating to electronic control systems in vehicles. Establishing the typology is an important step in helping to create a structure to help analyze potential safety problems relating to electronics in vehicles.

(2) NHTSA currently has research underway that is evaluating system performance requirements for critical safety systems. We seek comment on *automotive electronic component and system performance requirements* for control systems that impact throttle, braking, steering, and motive power management:

(a) What performance-based tests, methods, and processes are now available for safety assurance of these types of automotive electronic control systems?

(b) What series of performance-based tests should the agency consider to ensure safe functionality of these types of automotive electronic control systems under *all* real-world conditions (e.g. nominal, expected, non-nominal, and failure conditions)?

(c) Performance tests would ideally be applicable regardless of any specific design choices. We surmise that electronic components may have a wider variety of manufacturer specific tuning and implementation variations. What types of challenges does this create for designing performance tests for electronic components? What methods are available for addressing those challenges?

(3) NHTSA currently has research underway that is evaluating diagnostics and prognostics for critical safety systems. We seek comment on vehicle *health monitoring, diagnostics, and prognostics* capabilities and fault-tolerant design alternatives for automotive safety applications.

(a) What methods are effective in identifying potential anomalous behavior associated with electronic components, systems, and communications reliably and quickly?

(b) What strategies do current vehicles have for activating a ''fail-safe'' mode when critical problems are detected? What types of problems are classified as ''critical'' and how does the vehicle detect these problems?

(c) What state-of-the-art detection and fail-safe response methods should the agency be aware of and further assess?

(4) NHTSA currently has research underway that is evaluating various process standards and their applicability to critical safety systems. We seek comment on *testing, validation, certification, and regulation* alternatives for vehicle electronics to these process standards:

(a) What are the pros and cons of utilizing a process—certification method (e.g., ISO 26262) where the manufacturer is asked to identify, categorize, and consider potential remedies for electronics safety problems?

(i) What approaches should be considered for manufacturers to demonstrate conformity with voluntary industry process standards such as ISO 26262?

(ii) How does one evaluate conformity to a process standard that uses an engineer's best judgment to identify, categorize, and consider potential remedies to electronics safety problems?

(iii) What verification steps may be appropriate to ensure that potential standards are met?

b. Security Needs To Prevent Unauthorized Access to Electronic Components

Cybersecurity, within the context of road vehicles, is the protection of vehicular electronic systems, communication networks, control algorithms, software, users, and underlying data from malicious attacks, damage, unauthorized access, or manipulation.

NHTSA has been actively researching existing cybersecurity standards and best practices in automotive and other industries. In reviewing the practices of other industries in dealing with cybersecurity issues, NHTSA has identified two general process-oriented approaches to addressing cybersecurity concerns. The first is design and quality control processes that focus on cybersecurity issues throughout the lifecycle of a product. The second is dealing with cybersecurity issues through establishing robust information sharing forums such as an Information Sharing and Analysis Center (ISAC). This section discusses the agency's findings regarding each of these strategies.

In regards to security design and quality assurance processes, the automotive manufacturers, suppliers, and other stakeholders are collaborating through SAE International to examine the emerging vehicle cybersecurity concerns and considering actions that could include the development of voluntary standards, guidelines, or best practices documents.

While there may be no readily-available *automotive* cybersecurity standards at this time, NHTSA's research identified general cybersecurity safeguarding approaches that can potentially be examined and adapted for use in the automotive industry. For example, the cybersecurity framework [30] developed and published by the National Institute of Standards and Technology (NIST) treats cybersecurity as a process integrated into the system, component, and device lifecycle. The guidelines referenced in this framework could allow the automotive industry to develop a security program for modern-day automobiles analogous to information security programs in place for information technology (IT) systems in general. Similarly, system security engineering could potentially be incorporated into the design process in a way similar to system safety engineering as specified in ISO 26262 and ''E-safety vehicle intrusion protected applications (EVITA).'' [31]

In regards to information sharing mechanisms, NHTSA studied [32] the ISAC model for safeguarding against cybersecurity risks and threats in other industries such as financial services, information technology, and communications. Our initial analyses indicate that an automotive sector specific information sharing forum, such as an ISAC, is beneficial to pursue. It could advance the cybersecurity awareness and countermeasure development effectiveness among public and private stakeholders. ISACs have a unique capability to provide comprehensive inter- and intra-sector coverage to share critical information pertaining to sector analysis, alert and intelligence sharing, and incident management and response. Our research across other industries indicates that prevention of cyber-threats would be impractical if not impossible. This fact and the successful use of ISACs in other industry sectors suggest that it might also be effective for the auto industry to have mechanisms in place to expeditiously exchange information related to cyber-threats, vulnerabilities, and countermeasures among industry stakeholders. Such a mechanism would enhance the ability of the automotive sector to prepare for, respond to, and recover from cyber threats, vulnerabilities and incidents. Related to the sector-wide cybersecurity information sharing topic, the Alliance of Automotive Manufacturers (Alliance) and the Association of Global Automakers (Global Automakers)

[30] ''Framework for Improving Critical Infrastructure Cybersecurity,'' Version 1.0, NIST, 2014. Accessible at *http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf.*

[31] EVITA is a project co-funded by the European Union that aims to design, verify, and prototype architecture for automotive on-board networks where security-relevant components are protected against tampering and sensitive data are protected against compromise (*http://www.evita-project.org/*).

[32] The study report ''An assessment of the information sharing and analysis center (ISAC) model'' can be accessed at the ''Automotive Cybersecurity Topics and Publications'' docket: NHTSA–2014–0071.

wrote [33] to NHTSA in July 2014 to inform about the new cybersecurity initiative they are undertaking with the goal of establishing a voluntary automobile industry sector information sharing and analysis center or other comparable program. In response,[34] NHTSA encouraged Alliance and Global Automakers (as well as automotive original equipment manufacturers) to proceed expeditiously with the outlined process and expressed Agency's hope that their plan would target a date in 2015 for an automotive industry ISAC to become operational.

Security process standards and information sharing forums fit in a larger, more comprehensive automotive cybersecurity assurance approach. In general terms, there are four major pieces to the agency's research approach:

1. *Preventive methods and techniques:* This group of techniques would seek to harden the design of automotive electronic systems and networks such that it would be difficult for malicious attacks to take place in newer generation systems. Deployment and use of structured security process standards could help identify vulnerabilities such that necessary design improvements can be identified and implemented. These vulnerabilities include possible entry points through accessible physical interfaces such as the OBD–II port, USB ports, CD/DVD players; short range wireless interfaces, such as Bluetooth, Wi-Fi, or Dedicated Short Range Communications (DSRC); and long-range wireless interfaces such as cellular or satellite-based connectivity to the vehicle. Examples of design improvements include potential use of:

a. Encryption and/or authentication on communication networks;

b. different communication approaches or protocols; segmentation/isolation of safety-critical system control networks;

c. strong authentication controls for remote access to vehicles;

d. gateway controls between interfaced vehicle networks; etc.

Other approaches in the field of prevention research include methods such as those investigated in the Defense Advanced Research Projects Agency's (DARPA) high-assurance cyber military systems (HACMS) [35] program. The primary intents of this category of activities are (1) to significantly reduce the probability of cyber risks; and (2) to limit the impact of a potential cybersecurity breach (e.g. one vehicle as opposed to an entire fleet). NHTSA initiated applied research into vulnerability assessment and preventive type measures in 2014 and expects to publish reports starting in 2016.

2. *Real-time intrusion detection methods:* Total security through preventive measures may not be realistically achievable. Thus, as a complement to the preventative measures, detecting intrusions into the system through communications networks would provide additional protection. A cybersecurity breach would take place on or through a communication network. From an intrusion detection perspective, vehicular network communications are considered fairly predictable and well-suited for real-time monitoring to detect anomalous activity with respect to nominal expected message flows. We are initiating research into this type of technologies in the automotive sector.

3. *Real-time response methods:* Once a potential intrusion is detected, the strategies to mitigate its potential harmful impacts would also need to be designed in a practical manner. Depending on the potential risks and level of intrusion detection confidence, the vehicle architecture could be designed to take a variety of actions such as: temporarily or permanently shut down the communication network(s) (at the potential cost of disabling various safety functions); inform the driver; record and transmit data before-and-after trigger point for further analysis and counter-measure development, etc. The purpose of this category of cybersecurity defense is to mitigate the potential harmful consequences of detected anomalous activity on the vehicle experiencing the potential breach. We expect to develop further research into this category of methods in 2016.

4. *Treatment methods:* While the previous paragraph discussed response methods (deal with ensuring fail-safe operation of the vehicle where an intrusion is detected), treatment methods deal with distributing information related to the subject risk to other potential vulnerable entities even before the compromise may be experienced by them. Treatment methods involve timely information extraction from impacted parties, their analysis, development of countermeasures and timely dissemination to all relevant stakeholders (such as through an ISAC). This approach allows for design of stronger preventive methods in future generations of electronics. As outlined earlier, automotive industry (through Alliance and Global Automakers) is actively exploring information sharing alternatives related to automotive cybersecurity and NHTSA is closely monitoring activities related to this initiative.

Comments Requested

(1) We seek comment on any technical areas of automotive cybersecurity *that the agency could focus on* in its further research.

(a) Specifically, are there particularly vulnerable or strong design architectures that the agency should further examine?

(b) What additional types of techniques (either in real world occurrences or as a part of research) have persons used to gain unauthorized access to vehicle systems? What types of systems were such persons able to gain access to?

(c) What is the public's view on the differences in cybersecurity risks associated with an intrusion that requires use of in-cab physical interfaces (e.g. OBD–II port) versus close-proximity wireless interfaces (e.g. Bluetooth) versus long-range wireless means (e.g. cellular/satellite links)?

(2) We seek comment on *security process standards.*

(a) What security process standard alternatives are available? How do these standards differ and are there standards that are more suitable for application to the automotive industry versus others?

(b) Could security assurance be handled within a modified framework of existing safety process standards (such as FMEAs, FTAs, ISO 26262) or does ''design for security'' require its own process?

(3) We seek comments on *security performance standards.* In contrast to the process standards (that establish methods for considering cybersecurity risks during product design), we use the term ''performance standard'' to mean standards that evaluate the cybersecurity performance (or resilience) of a system after production of the final product.

(a) What types of metrics are available to test a vehicle's ability to withstand a cyber-attack?

(b) Are there any common design characteristics that help ensure a minimum level of security from unauthorized access to a vehicle's electronic control systems?

(c) What performance-based tests, methods, and processes are available for security assurance of automotive electronic control systems?

[33] Correspondence related to this initiative can be viewed in the ''Automotive Cybersecurity Topics and Publications'' docket: NHTSA–2014–0071.

[34] *Id.*

[35] *http://www.darpa.mil/Our_Work/I2O/Programs/High-Assurance_Cyber_Military_Systems_(HACMS).aspx.*

(d) Are there hardware, software, watchdog algorithm, etc. requirements or criteria that would help differentiate algorithm designs that are more secure against cyber-attack?

c. Effects of the Surrounding Environment on Electronic Component Performance

In addition to malicious interference that may be artificially introduced (as covered under cybersecurity in section III.b.), the surrounding natural environment could affect the electronic components and systems in three primary ways:

1. By creating conditions that could cause electronic components to fail prematurely;
2. By creating conditions that could result in electronic control systems to act in unintended ways; and
3. By creating conditions for electronic sensors or systems to perceive the environment differently than reality.

Effects of the environment potentially causing electronic components to fail prematurely, such as through moisture, heat and corrosion, are typically handled by fail-safe strategies. Monitoring algorithms can detect sensors and components that fail and operate outside of the intended range and inform control algorithms to operate in fail-safe mode. Manufacturers take placement and environmental exposure into account in the design of electromechanical components.

Examples of the environment potentially causing electronic control systems to act in unintended ways are electromagnetic interference (EMI) and potential build-up of low-resistance paths on a circuit-board, such as a tin whisker.[36] OEMs very commonly perform electromagnetic compatibility (EMC) testing on their platforms in accordance with SAE International [37] and ISO [38] standards. NHTSA has investigated EMI effects on an electronic control system in a recent investigation. In 2010, NHTSA and National Aeronautics and Space Administration (NASA) conducted EMC testing as part of the inquiry into whether Unintended Acceleration (UA) was related to the electronic throttle control system in Toyota vehicles. In this study, EMC testing at exposure levels well above existing certification standards did not produce open throttle.[39]

Among the risks with EMI is for the electronic control unit's memory settings to be altered unintentionally. This could change the way the system behaves especially if the EMI's influence is not detected. Manufacturers utilize various methods to prevent unintended EMI influence, such as by retaining safety critical system parameters in more than one memory location (such that a random alteration could be detected and system shut down with warning). Formation of conductive tin whiskers on a circuit board could potentially result in low resistance paths and unintended system behavior, particularly if they cause a short between circuits resulting in unintended activation of an actuator. Most such issues result in electrical faults and safe shut-down of corresponding functions. Manufacturers use various techniques to mitigate the concern including changes to the manufacturing process, addition of elements like copper and nickel, and the use of surface coatings. Further, circuit board design takes into account the possibility of circuit-board shorts in trace placement.

Another possibility is for the environment to impact the advanced sensors (such as radar, lidar, cameras, GPS, etc.) on a contemporary vehicle in a way that could result in unintended engagement or non-operational status of system functions. To mitigate this risk, manufacturers utilize various forms of sensor fusion technologies to reduce reliance on any single sensor signal for safety-critical functions.

Related to 5.9 GHz DSRC, NHTSA is initiating research into analyzing potential communication interference impacts of devices that operate on and in neighboring spectrums of the DSRC band.[40] NHTSA expects to complete this study in 2015.

Comments Requested

(1) NHTSA has reviewed the state-of-the art with respect to environmental conditions and vehicle electronics. What other ways can the *environment impact electronic system performance* other than the ways that we have considered, above?

(2) NHTSA has done some testing on interference issues. We seek comment in the area of *EMI/EMC.*

(a) What could the agency do to further assess the electromagnetic interference (EMI) susceptibility impacts of growing use of electronics on automotive system safety and assess the adequacy of existing voluntary standards?

(b) Are there known EMI susceptibility differences in vehicles designed and sold in the U.S. versus in regions where EMC may be explicitly regulated?

(3) We seek comment in the area of the environment's potential impact on advanced automotive sensors.

(a) Are any particular sensing technologies more susceptible or less susceptible to such effects (including EMC and other environmental effects such as moisture, corrosion, etc.)?

IV. Additional Comments Requested

In addition to the comments requested in regards to the specific topics discussed above, we are also seeking comment on other general issues relating to electronic component safety and cybersecurity.

(1) One issue that we seek comment is the potential for voluntary safety process standards to help address challenges introduced by expanding use of electronics in automotive applications. In section II.d. above, we discuss the various design and quality control processes that the industry already uses to assess the safety and cybersecurity of their electronic components (e.g., ISO 26262).

(a) We seek public comment on the degree to which this type of safety process standard can provide an adequate level of protection from electronic component failures or potential cybersecurity breaches.

(i) What voluntary industry standards are best able to address safety assurance of electronics control system design for motor vehicles?

(ii) Specifically, what elements of the voluntary industry standards are best able to address electronics control systems and cybersecurity issues in motor vehicles?

(iii) What other standards than those described in this document are relevant for the agency to consider?

(b) What types of concerns with regard to electronic components safety and cybersecurity would *not* be addressed by voluntary safety process standards?

(i) What other standards are available that could address this type of safety concern?

(ii) What software development, validation and safety assurance methods and processes are suitable for safety critical automotive control systems?

(c) Are existing process standards such as ISO 26262, IEC 60812, IEC 61025, etc, suitable to address electronic

[36] A crystalline, hair-like structure of tin that can form on a tin-finished surface. (taken from NAS Report).

[37] SAE J551, SAE J1113.

[38] ISO 7637, ISO 10605, ISO 11451, ISO 11452.

[39] ''Technical Support to the National Highway Traffic Safety Administration (NHTSA) on the Reported Toyota Motor Corporation (TMC) Unintended Acceleration (UA) Investigation'', 2011, NASA. Section 6.8 of this report discusses the EMC testing and the full report can be accessed at *http://www.nhtsa.gov/staticfiles/nvs/pdf/NASA-UA_report.pdf.*

[40] DSRC band: 5.850–5.925 GHz.

control system design challenges for more advanced forms of vehicle automation?

(2) Another issue that we seek comment on is in regards to the available *information and data sources* for identifying and understanding the issues related to electronic component reliability and cybersecurity. We recognize that much of the data available to the agency captures retrospective data. Thus, the traditional sources of information available to the agency have various limitations in this rapidly-developing area of automotive technology. Information that shows historic data on electronic component issues may not necessarily give an accurate prediction of what future electronic component reliability and cybersecurity issues can be. We seek comment on the data sources that are identified for potential consideration in the categorization of priority focus areas for electronics reliability.

(a) We are especially interested in identifying any potential data sources that could assist the agency in identifying potential emerging electronic component failures in vehicles in a timely manner.

(b) Has the agency considered all the relevant data on this subject? What additional sources of information could the agency consider?

(3) We seek comment on what other information sources or strategies are available that can *enhance the ability to detect* potential electronics system related concerns in a timely fashion. What methods are available to improve *traceability of* potential electronic control system malfunctions?

V. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Office of the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you may submit a copy (two copies if submitting by mail or hand delivery), from which you have deleted the claimed confidential business information, to the docket by one of the methods given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR Part 512).

Will the agency consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under Comments. The hours of the docket are indicated above in the same location. You may also see the comments on the Internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

Authority: Sec. 31402, Pub. L. 112–141.

Issued in Washington, DC under authority delegated in 49 CFR part 1.95.

Nathaniel Beuse,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2014–23805 Filed 10–6–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee October 14, 2014, Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for October 14, 2014.

Date: October 14, 2014.

Time: 9:30 a.m. to 2:30 p.m.

Location: Conference Rooms B & C, United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review and consideration of candidate designs for the American Fighter Aces Congressional Gold Medal and the Doolittle Tokyo Raiders Congressional Gold Medal, and discussion of themes for the Monuments Men Recognition Congressional Gold Medal and the 2015 Mark Twain Commemorative Coin Program.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2014–23902 Filed 10–6–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0073]

Proposed Information Collection (VA Enrollment Certification) 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 for information needed to determine the amount of educational benefits payable to claimants pursuing approved programs of education.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 8, 2014

ADDRESSES: Submit written comments on the collection of information through the 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. 2900–0073'' 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: VA Enrollment Certification, VA Form 22–1999.

OMB Control Number: 2900–0073.

Type of Review: Revision of a currently approved collection.

Abstract: School officials and employers complete VA Form 22–1999 to report and certify a claimant's enrollment in an educational program. The data is used to determine the amount of benefits payable and whether the claimant requested an advanced or accelerated payment.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 398,844 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: 2 annually.

Estimated Number of Respondents: 1,424,443.

Dated: October 2, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23890 Filed 10–6–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0074]

Proposed Information Collection (Request for Change of Program or Place of Training) 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 the information needed to determine a claimant's eligibility for continued educational assistance when he or she requests a program change or place of training.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 8, 2014.

ADDRESSES: Submit written comments on the collection of information through the 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. 2900–0074'' 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: Request for Change of Program or Place of Training, VA Form 22–1995.

OMB Control Number: 2900–0074.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants receiving educational benefits complete VA Form 22–1995 to request a change in program or training establishment. VA uses the data collected to determine the claimant's eligibility for continued educational benefits.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Electronically—14,614 hours.

b. Paper Copy—45,465 hours.

Estimated Average Burden per Respondent:

a. Electronically—15 minutes.

b. Paper Copy—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Electronically—58,455.

b. Paper Copy—194,851.

Dated: October 2, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23891 Filed 10–6–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0156]

Proposed Information Collection (Notice of Change in Student Status) 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 for information needed to report changes in students' enrollment status.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 8, 2014.

ADDRESSES: Submit written comments on the collection of information through the 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. 2900–0156'' 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.

Titles: Notice of Change in Student Status, VA Form 22–1999b.

OMB Control Number: 2900–0156.

Type of Review: Revision of a currently approved collection.

Abstract: Educational institutions use VA Form 22–1999b to report a student's enrollment status. Benefits are not payable when a student interrupts or terminates a program. VA uses the information to determine a student's continued entitlement to educational benefits or if the benefits should be increased, decreased, or terminated.

Affected Public: Business or other for-profit, and Not-for-profit institutions.

Estimated Annual Burden: 91,086.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: 1 response per respondent annually.

Estimated Total Number of Responses Annually: 546,517.

Dated: October 2, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23894 Filed 10–6–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0548]

Proposed Information Collection (Board of Veterans' Appeals Customer Satisfaction With Hearing Survey Card) Activity; Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information used by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to assess the effectiveness of current procedures used in conducting hearings.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 8, 2014.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Sue Hamlin (01C2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email: *sue.hamlin@mail.va.gov.* Please refer to ''OMB Control No. 2900–0548'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Sue Hamlin at (202) 632–5100.

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, BVA invites

comments on: (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA'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: Board of Veterans' Appeals Customer Satisfaction with Hearing Survey Card, VA Form 0745.

OMB Control Number: 2900–0548.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 0745 is completed by appellants at the conclusion their hearing with the Board of Veterans' Appeals. The data collected will be used to assess the effectiveness of current hearing procedures used in conducting hearings and to develop better methods of serving Veterans and their families.

Affected Public: Individuals or households.

Estimated Annual Burden: 59 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 585.

Dated: October 2, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23901 Filed 10–6–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0718]

Proposed Information Collection (Yellow Ribbon Agreement) 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 request participation in the Yellow Ribbon Program and provide details of the manner in which the institutions of higher learning (IHL) will participate.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 8, 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. 2900–0718'' 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: Yellow Ribbon Agreement, VA Form 22–0839.

OMB Control Number: 2900–0718.

Type of Review: Revision of a currently approved collection.

Abstract: VA will use the information collected to determine which IHLs will be participating in the Yellow Ribbon Program, the maximum number of individuals for whom the IHL will make contributions in any given academic year, the maximum dollar amount of outstanding established charges that will be waived for each student based on student status (i.e., undergraduate, graduate, doctoral) or subelement (i.e., college or professional school).

Affected Public: Individuals or households.

Estimated Annual Burden: 31,710 hours.

Estimated Average Burden per Respondent: 14 hours.

Frequency of Response: One time.

Estimated Number of Respondents: 2,265.

Dated: October 2, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23868 Filed 10–6–14; 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 8, 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 accelerated 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: October 2, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23863 Filed 10–6–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0630]

Proposed Information Collection (Justification for Regulation on Application for Fisher Houses and Other Temporary Lodging, VA Forms 10–0408 and 10–0408a)

Activity: Comment Request.

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), 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 revised collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed for Veterans, Veteran Representatives and health care providers to request reimbursement from the federal government for emergency services at a private institution.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 8, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or Audrey Revere, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Audrey.revere@va.gov.* Please refer to ''OMB Control No. 2900–0630'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Audrey Revere at (202) 461–5694.

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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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.

Titles: Justification for Regulation on Application for Fisher Houses and Other Temporary Lodging.

OMB Control Number: 2900–0630.

Type of Review: Extension.

Abstract: VA is mandated to establish a program for providing temporary lodging under section 221(a) of the Veterans Benefits and Health Care Act of 2000 (Pub. L. 106–419). These statutory provisions have been codified at 38 U.S.C. 1708 and are administered by the Veterans Health Administration (VHA) of VA. This program provides temporary lodging by veterans receiving VA medical care or C&P examinations and by family members or other persons accompanying veterans to provide the equivalent of familial support. If the veteran is undergoing extensive treatment or procedures, such as an organ transplant or chemotherapy, eligible persons may be furnished temporary lodging for the duration of the episode of care. Data is collected during the application process to determine eligibility for temporary lodging.

Affected Public: Individuals or Households.

Estimated Annual Burden: 83,333 burden hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 250,000.

Dated: October 2, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23861 Filed 10–6–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Disability Compensation (Committee) will meet on October 20–21, 2014, at the U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. The Committee will meet in Room 730 on October 20, 2014, and Room 630 on October 21, 2014. The sessions will begin at 8:00 a.m. and end at 5:00 p.m. on both days. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans as related to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated to receive public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Written statement can also be submitted for the Committee's review to Nancy Copeland, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue NW., Washington, DC 20420 or email at *nancy.copeland@va.gov.*

Any member of the public wishing to attend the meeting should allow at least 15 minutes prior to the start of the meeting in order to clear security. As this is a government building, all individuals will be required to present photo identification to the Security Guard station at the entrance of the building, in order to gain access. To facilitiate an easier clearance of security, all individuals planning to attend the meeting should email Nancy Copeland or contact her at (202) 461–9685. Alternatively, please contact Brendan Sheedy at *brendan.sheedy@va.gov* or (202) 461–9297. Questions about the meeting may also be directed to these two points of contact.

Dated: October 2, 2014.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2014–23888 Filed 10–6–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Housing and Urban Development

24 CFR Parts 891 and 892

Supportive Housing and Services for the Elderly and Persons With Disabilities: Implementing Statutory Reforms; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 891 and 892

[Docket No. FR–5576–P–01]

RIN 2502–AJ10

Supportive Housing and Services for the Elderly and Persons With Disabilities: Implementing Statutory Reforms

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement amendments made by the Section 202 Supportive Housing for the Elderly Act of 2010 (Section 202 Act of 2010) and the Frank Melville Supportive Housing Investment Act of 2010 (Melville Act) to the authorizing statutes for HUD's supportive housing for the elderly program, known as the Section 202 program, and the supportive housing for persons with disabilities program, known as the Section 811 program. These two statutes were enacted on January 4, 2011, and made important reforms to the Section 202 and Section 811 programs, several of which have already been implemented through separate issuances, as discussed in the Supplementary Information section of this rule. In addition to proposing regulations to implement reforms of these two statutes, this proposed rule would implement several other changes to align with the amendments made by the January 4, 2011, statutes, and streamline the Section 202 and Section 811 programs to better provide supportive housing for the elderly and persons with disabilities. This proposed rule would establish the requirements and procedures for the use of new project rental assistance for supportive housing for persons with disabilities; the implementation of an enhanced project rental assistance contract; allowance of a set-aside for a number of units for elderly individuals with functional limitations or other category of elderly persons as defined in the notice of funding availability (NOFA); make significant changes for the prepayment of certain loans for supportive housing for the elderly; implement a new form of rental assistance called Senior Preservation Rental Assistance Contracts (SPRACs); modernize the capital advance for supportive housing for persons with disabilities; and provide grant assistance for applicants without sufficient capital to prepare a site for a funding competition. This rule also proposes to establish the regulations for the Service Coordinators in Multifamily Housing program and the Assisted Living Conversion program.

DATES: *Comment Due Date.* December 8, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Alicia Anderson, Grant Policy and Management Division, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6142, Washington, DC 20410–7000; telephone number 202–708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service, toll free, at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

This rule proposes to implement certain reforms to HUD's Section 202 program and Section 811 program made by statutory changes to the programs, enacted in January 2011, and which require regulations for implementation. The Section 202 Act of 2010 (Pub. L. 111–372) includes provisions to strengthen the availability of long-term, affordable supportive housing for very low-income elderly persons by: Streamlining the development procedures for new affordable housing units; supporting the preservation of existing units; preventing displacement of elderly project residents in the case of refinancing or recapitalization by establishing the Senior Preservation Rental Assistance Contracts; and supporting greater access to affordable supportive services for the elderly.

The Melville Act of 2010 (Pub. L. 111–374), will offer additional methods of financing new supportive housing for persons with disabilities, as well as support the preservation of affordable rental housing for individuals with disabilities and nonelderly disabled families. The amendments will increase the production of new affordable rental supportive housing units for persons with disabilities, while promoting and facilitating community integration for persons with significant and long-term disabilities. The availability of project rental assistance funds will stimulate and support innovative state approaches that will transform the provision of housing for extremely low-income persons with disabilities, while providing voluntary access to support and services that address the individual needs of persons occupying the HUD supported housing units. This rule would implement those components of

the statute that require regulations to make the new program features operable.

B. Summary of the Major Provisions of the Regulatory Action

This proposed rule, in addition to making conforming changes (those changes for which there is no exercise of discretion by HUD), would provide for grant assistance for applicants without sufficient capital to prepare a housing site in order to compete for funding under the Section 202 program or the Section 811 program; revise the development cost limits for the Section 811 program; amend the requirements for project rental assistance under the Section 811 program to allow for adjustments upon renewal and for increases in emergency situations; allow Section 811 owners to request the conversion of supportive housing units for very low-income persons with disabilities; offer voluntary services to persons with disabilities under the Section 811 program; allow Section 202 sponsors of projects to set aside a percentage of units for elderly individuals with functional limitations or other category of elderly persons, as defined in the notice of funding availability (NOFA), in order to better align the Section 202 program with Federal, state, and local health care initiatives that support very low-income elderly individuals and provide for enhanced project rental assistance contracts. These contracts would be available to a nonprofit organization submitting a new application under either the Section 811 or Section 202 program, and accessing private capital, to fund the construction or provide permanent financing for supportive housing units for the elderly or persons with disabilities.

C. Costs and Benefits

The primary impact of this proposed rule will result from implementation of the new Enhanced Project Rental Assistance Contracts (ePRAC) program. This program would allow future operating subsidy to pay debt service under specific circumstances not currently allowed. As provided in the accompanying regulatory impact analysis (RIA) for this rule, assuming a $20 million appropriations level, HUD estimates that there will be $15 million leveraged for new construction, which, under the assumptions used in HUD's RIA, is sufficient to fund an additional 76 units. The benefits from this proposed change are primarily to tenants who are able to receive improved housing services and/or additional budgetary flexibility from the additional units developed as a result of the increased production. While improved housing affordability is associated with greater budget flexibility, improved housing more generally is often associated with improvements in psychological and other health outcomes of tenants. However, HUD's RIA notes that no funding has been made available for the development of new units in Fiscal Years (FYs) 2012 and 2013; therefore, a significant economic impact will not result from new construction under the Section 202 and 811 programs. The ePRAC program will also be available to existing projects where the debt is used to make leveraged investments that reduce operating costs by more than the cost of the debt service.

The RIA assumes a reduction of 20 percent in owner paid utilities, which is an estimated savings of $7 million. Under the assumption that the costs savings translate into available resources to pay debt service over time, these savings could conceivably result in $96 million, using the same loan terms used for the estimate for new construction. However, the actual savings will depend upon the number of applications submitted for which HUD concludes the debt service would result in ongoing operating costs savings in an amount greater than the cost of the debt.

The benefit of the ePRAC program is the increased flexibility to use operating funds to pay debt service, which is intended to result in a net increase in capital funds available to construct and rehabilitate projects in the Section 202 and 811 programs. The costs of the ePRAC program are the additional debt service payments the owner must make, and the costs of additional risks inherent in any increase in leverage within a project. Though debt may increase the opportunity for up-front investment, the interest on the debt is the cost of this benefit, which increases the demands on operating funds in the future, and diminishes what is available for other operating expenses. However, underwriting seeks to ensure that the project's operations and finances remain viable even with the possibility of this additional burden.

The other changes proposed by this rule will not create any new costs or benefits. HUD is proposing to codify requirements for funded programs (service coordinators and assisted living conversion) that, to date, are found in NOFAs.

II. Background

A. Authorizing Statutes for Supportive Housing and Services for the Elderly and Persons With Disabilities

The Section 202 program and the Section 811 program are HUD's core programs for providing supportive housing to the elderly and persons with disabilities, respectively. The purpose of these programs is to allow elderly individuals and persons with disabilities to live as independently as possible, but in an environment that provides access to voluntary supportive services that may be needed. Section 202 of the Housing Act of 1959 (see Pub. L. 86–372, approved September 23, 1959) originally provided housing for the elderly and in the later years of the Section 202 program also provided housing for persons with disabilities. Under this public law, the Section 202 program was officially the Section 202 Direct Loan Program for Housing for the Elderly or Handicapped Families.[1] The Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990) amended Section 202 to provide for separate authorization for supportive housing for persons with disabilities. NAHA also changed the Section 202 program into what is now known as the supportive housing for the elderly program the differences between the old Section 202 program and the existing program is explained below. Section 202b of the Housing Act of 1959 authorizes the conversion of elderly housing to assisted living facilities, and the Housing and Community Development Act of 1992, as originally enacted (Pub. L. 102–550, as approved October 28, 1992) and subsequently amended, authorizes funding for service coordinators in multifamily housing for the elderly and persons with disabilities.

Section 202 of the Housing Act of 1959—Supportive Housing for the Elderly

Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) authorizes HUD's supportive housing program for the elderly (Section 202 program). The program enables elderly persons to live with dignity and independence by providing supportive housing that accommodates special needs and provides services tailored to the needs of such elderly persons. Originally, the Section 202 program began as a direct loan program, which provided low-interest construction loans to nonprofit

[1] The statutory name for this program uses the term ''handicapped families.''

developers to create moderate-income housing for the elderly.

HUD continues to administer Section 202 direct loans; however, they are no longer issued. In 1991, HUD transformed the program into one that provides capital advances instead of direct loans, where funds are given to nonprofit developers to construct and/or rehabilitate housing for very low-income elderly. Under this model, such Federal assistance requires no repayment and is interest free as long as the project is available for very low-income elderly persons, in accordance with the applicable Section 202 program requirements, for no less than 40 years. If the owner defaults on the terms and conditions of the Section 202 program, the owner is liable for the entire balance of the capital advance amount with interest and penalties. The capital advance model also began providing project rental assistance to fund the difference between the HUD-approved operating costs of the project and the tenant's contribution toward rent, to assist the owners with the operation of the project.

HUD is taking a renewed look at the Section 202 program and is making several enhancements to the program. Specifically, the current section 202 of the Housing Act of 1959 contains several important authorizations for HUD that will be implemented by this rule. First, HUD has authority under section 202(b) of the Housing Act of 1959 to provide assistance for other expenses as necessary to expand the supply of supportive housing for the elderly, which gives HUD the authority to provide technical assistance for preliminary work in the development of such housing. Second, HUD has authority under section 202(c) of the Housing Act of 1959 to provide an enhanced project rental assistance contract option, which is similar to senior preservation rental assistance contracts (in connection with the prepayment and refinancing of Section 202 projects). Section 202(c) gives HUD the broad authority to implement project rental assistance contracts in accordance with the goals of the Section 202 program. Third, section 202(f) of the Housing Act of 1959 gives HUD the broad authority to set the selection criteria for the Section 202 program, in order to make sure funds are used effectively. Such authority allows HUD to set selection criteria to give a priority for assistance to housing that will provide support to elderly individuals with functional limitations. Fourth, section 202(g)(1) of the Housing Act of 1959 states that HUD must ensure that housing assisted under the Section 202 program provides a range of services tailored to the needs of the category or categories of elderly persons occupying such housing; thereby, providing HUD the authority to make sure the needs of elderly persons with functional limitations are met. Lastly, section 202(j)(1) of the Housing Act of 1959 authorizes HUD to provide technical assistance grants for applicants with limited resources in order for the applicants to fully participate in the Section 202 program.

Section 202b of the Housing Act of 1959–Assisted Living Conversion

Section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) authorizes grants for the substantial capital repair of elderly housing or the conversion of elderly housing to assisted living facilities (the Assisted Living Conversion program). Assisted living facilities are designed to accommodate the frail elderly and persons with disabilities who can live independently but need assistance with activities of daily living (e.g., assistance with eating, bathing, grooming, dressing, and home management activities.) Assisted living facilities must provide support services such as personal care, transportation, meals, housekeeping, and laundry. Generally, funding for assisted living facilities covers basic physical conversion of existing project units, common and service spaces.

Section 811 of the Cranston-Gonzalez National Affordable Housing Act of 1990—Supportive Housing for Persons With Disabilities

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 8013) authorizes HUD's supportive housing for persons with disabilities (Section 811 program) and allows persons with disabilities to live as independently as possible by providing capital advances to increase the supply of supportive housing for such persons. In addition, the Section 811 program provides project rental assistance to fund the difference between the HUD-approved operating costs of the project and the tenants' contribution toward rent. In addition, similar to section 202 of the Housing Act of 1959, section 811 of NAHA contains several important program authorizations that will be implemented by this rule and have been strengthened by the Melville Act. For example, section 811(b)(2) of NAHA authorizes HUD to provide assistance for other expenses as necessary to expand the supply of supportive housing for persons with disabilities. Section 811(d) of NAHA authorizes HUD to allow for an enhanced project rental assistance contract option. This section gives HUD the broad authority to implement project rental assistance contracts in accordance with the goals of the Section 811 program. Under section 811(j)(1) of NAHA, HUD is authorized to provide technical assistance grants for applicants with limited resources in order to fully participate in the Section 811 program.

Housing and Community Development Act of 1992—Multifamily Housing Service Coordinators

The Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) in Sections 671 through 677, which establish on their own or amend other housing program statutes, authorizes funding for service coordinators to assist elderly individuals and persons with disabilities, living in federally-assisted multifamily housing to obtain needed supportive services from community agencies. These sections were amended by section 851 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000) to provide for increased flexibility in the use of service coordinators in federally-assisted multifamily housing (see 114 Stat. 3023–2025). The services authorized are intended to prevent premature and inappropriate institutionalization.

Section 811 of the American Homeownership and Economic Opportunity Act of 2000—Prepayment of Certain Section 202 Loans

Section 811 of the American Homeownership and Economic Opportunity Act of 2000 (AHEO) (12 U.S.C. 1701q note) authorizes the prepayment of certain Section 202 loans. Between 1959 and 1990, HUD loaned funds to private nonprofit developers to build housing for the elderly and disabled families. Many of these projects are now in need of repair and recapitalization, which is typically accomplished through the prepayment and refinancing of the Section 202 direct loan, as authorized under section 811 of the AHEO. HUD reviews any prepayment requests to ensure the prepayment will benefit the project and its residents while preserving affordability.

B. The Section 202 Act of 2010 and the Melville Act

Section 202 Act of 2010—Amendments to the Section 202 Program

The Section 202 Act of 2010 (Pub. L. 111–372, approved January 4, 2011) amends the Section 202 program to include in the selection criteria for funding Section 202 supportive housing the extent to which the applicant has ensured that a service coordinator will be employed or otherwise retained for the housing. This service coordinator must have managerial capacity and responsibility for carrying out supportive services. In addition, the Section 202 Act of 2010 amends the development cost limitations for the Section 202 program to be reasonable. The Section 202 Act of 2010 also limits an owner's deposit to cover operating deficits during the first 3 years of operations, and prohibits the use of such amount to cover construction shortfalls or inadequate initial project rental assistance amounts.

The Section 202 Act of 2010 redefines ''private nonprofit organization'' and authorizes HUD, in the case of a nonprofit sponsoring organization of multiple housing projects assisted under such Act, to determine the criteria or conditions under which financial or administrative responsibilities exercised by a single-entity private nonprofit organization that is the owner corporation responsible for the operation of an individual housing project may be shared or transferred to the governing board of the sponsoring organization. The new definition also allows the sole general partner of a for-profit limited partnership to be a limited liability or for-profit organization company wholly owned and controlled by one or more organizations meeting the requirements of such definition.

The Section 202 Act of 2010 directs HUD to either operate a national competition for the nonmetropolitan funds under the Section 202 program, or to make allocations to regional offices of HUD.

In addition, the Section 202 Act of 2010 amends section 811 of the AHEO, making significant changes for the prepayment of certain Section 202 loans. The Section 202 Act of 2010 requires that a project owner execute an affordability use agreement that extends at least 20 years beyond the maturity date of the original Section 202 loan at the time of prepayment, authorizes new flexibility in the use of proceeds from the refinancing of a project, and creates permanent authority for the refinancing of Section 202 projects where debt service savings is not anticipated as a result of the refinance.

The Section 202 Act also authorizes a new form of rental assistance, called Senior Preservation Rental Assistance Contracts (SPRACs), to be provided in the refinancing of certain Section 202 projects where no debt service savings is anticipated and where unassisted residents would otherwise face potential rent increases. This is one of the most significant changes made to the Section 202 Direct Loan program.

Section 202 Act of 2010—Amendments to the Assisted Living Conversion Program

The Section 202 Act of 2010 also amends section 202b of the Housing Act of 1959 to enable the conversion of units to create either an assisted living facility or service-enriched housing. Although these amendments directly affect the Assisted Living Conversion program, they also focus on enhancing the services provided in such facilities. Service coordinators are necessary to coordinate the provision of supportive services for the elderly, especially for the frail or disabled elderly, in part to help them to continue living independently in such housing. Service coordinators manage and provide access, through third parties, to necessary supportive services for the elderly living in supportive housing, assisted living facilities, or service-enriched housing, because many residents have unmet needs for services and assistance that the owner of the project cannot identify or provide effectively.

Melville Act—Amendments to the Section 811 Program

The Melville Act (Pub. L. 111–374, approved January 4, 2011) makes significant changes to the Section 811 program. The Melville Act improves the Section 811 program by establishing new features that are designed to facilitate community integration for persons with significant and long-term disabilities. These new features include: Providing stronger incentives to Section 811 program participants to leverage other sources of capital funding; transferring Section 811 program vouchers to the Housing Choice Voucher program (also known as HUD's Section 8 program), which serves to conform and streamline the administrative requirements for rental assistance; adopting the HOME Investment Partnerships (HOME) program cost limitations on funds invested on a per-unit basis to further conform and streamline requirements; providing for delegated processing of applications for funding; and allowing for greater tenant protections. The Melville Act also amends the definition of ''persons with disabilities'' to mean a household composed of one or more persons who is 18 years of age or older but less than 62 years of age, and who has a disability.

Most significantly, the Melville Act implements a new project rental assistance authority (section 811(b)(3) of NAHA, as amended by the Melville Act) that is separate from the existing project rental assistance under the Section 811 program, which provides capital advances and contracts for project rental assistance. The new project rental assistance provided by the Melville Act provides funding to state housing finance agencies and other appropriate entities to assist them in providing rental assistance to extremely low-income, nonelderly adults (persons 18 years of age or older and less than 62 years of age) with disabilities. To be eligible for the project rental assistance, the state housing finance agency or other appropriate entity must have entered into an agreement with the state health and human services agency and the state agency designated to administer or supervise the administration of the state plan for medical assistance under title XIX of the Social Security Act (the state Medicaid agency). This agreement must: (1) Identify and target the populations to be served by the project, (2) set forth the methods for outreach and referral, and (3) make available appropriate services for tenants of the project. Placing this new project rental assistance funding under the control of housing finance agencies that have partnered with state health and human services and Medicaid agencies, will allow states to more carefully target resident populations that will benefit most from integrated supportive housing units, and promote and refer these target populations to this newly available housing.

As provided by the Melville Act, projects eligible for the new project rental assistance can be either new or existing multifamily housing projects. These projects' development costs are paid with resources from other public or private sources, including projects that have a commitment of Federal Low-Income Housing Tax Credits (LIHTC), HOME program funds, any other Federal Government funding, or other sources. To ensure that the goals of community integration are achieved, the Melville Act provides that in any multifamily housing project receiving the new project rental assistance, no more than 25 percent of the total

number of dwelling units in the project may be used for supportive housing for persons with disabilities and receive the project rental assistance, or have an occupancy preference for persons with disabilities associated with such units. This does not prevent owners from housing persons with disabilities in units not set aside to receive the project rental assistance under this program. Persons with disabilities are eligible to occupy nonassisted units. Denying admission on the basis of disability in nonassisted units would violate the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

The Melville Act also requires all dwelling units receiving the new project rental assistance to operate as supportive housing for persons with disabilities for a period of not less than 30 years and to only serve nonelderly, extremely low-income persons with disabilities and extremely low-income households that include at least one nonelderly person with a disability.

In addition, the Melville Act modernizes the capital advance portion of the Section 811 program by authorizing the use of project rental assistance for emergency situations that are outside the control of the owner, and the conversion of units; adopting the cost limitations on funds invested on a per-unit basis as provided by the HOME program, authorized by title II of NAHA, for the purpose of further conforming and streamlining requirements; providing for delegated processing of applications for funding; and allowing for greater tenant protections.

The Section 202 Act of 2010 and the Melville Act provide a much-needed foundation for practical improvements to the Section 202 program and Section 811 program, and several of these reforms, which did not require a regulatory foundation for implementation, have already been implemented.[2]

III. This Proposed Rule—Overview

This section of the preamble provides an overview of the regulations to be revised, removed, and added by this proposed rule. Although the proposed rule primarily implements the new statutory program features authorized by the Section 202 Act of 2010 and the Melville Act, these two statutes also require conforming changes to existing regulations at 24 CFR part 891, and this rule makes those conforming changes. In addition, HUD is also proposing to add a new part 892 to establish regulations for the Service Coordinator in Multifamily Housing program and the Assisted Living Conversion program, as provided by the Section 202 Act of 2010. The requirements for these programs have long been addressed only through NOFAs. The enhanced features to both programs provided by the Section 202 Act of 2010 present an optimum time to propose regulations, and solicit feedback on whether the regulatory structure for these two programs achieves the service-enriched housing that HUD is striving to achieve through this proposed rule.

A. Supportive Housing for the Elderly and Persons With Disabilities (Part 891)

General Program Requirements (Subpart A)

Purpose and Policy (§ 891.100—Revised)

The purpose and policy for the Section 202 program and Section 811 program would be revised to align with the changes to the Section 811 program made by the Melville Act amendments. The revision to this section reflects the new policy for the Section 811 program, which ensures residents are offered, but are not required to accept, any necessary supportive services that address their individual needs. In addition, it is clarified that supportive services are voluntary under the Section 202 program.

Definitions (§ 891.105—Revised)

Section 891.105 in subpart A, which addresses the definitions for both the Section 202 program and Section 811 program, would define certain new terms and revise existing terms to reflect the statutory changes.

A key term defined in this section pertains to ePRACs. HUD would add a definition for ePRAC, which would mean the contract entered into by the nonprofit organization and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the ePRAC. An ePRAC is made available for nonprofit organizations submitting new applications under section 811 of NAHA (42 U.S.C. 8013) or section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), and who are accessing private capital, to fund the construction or provide permanent financing for supportive housing units for the elderly or persons with disabilities; as well as for owners of existing properties accessing private capital and debt service results in ongoing operating cost savings in an amount greater than the cost of debt service. Such contract would allow for the inclusion of debt service as an eligible expense for the units covered by the contract and would allow for rents to be set up to an amount determined by HUD (which may include the provision of a service coordinator).

The definition of ''operating costs'' would be revised to include allowances for debt service only for units covered by an ePRAC, or for existing properties when such debt service results in ongoing operating cost savings in an amount greater than the cost of debt service.

The definitions for ''project rental assistance contract'' and ''project rental assistance payment'' would be amended to clarify that they do not apply to subpart G, which authorizes the new project rental assistance as provided under the Melville Act. In addition, the definition of ''project rental assistance contract'' would be amended to clarify that this term does not apply to units covered by ePRAC under § 891.190 in subpart A. Lastly, the definition of ''project rental assistance contract'' would also be amended to include payments and the terms as provided in the ePRAC.

Development Cost Limits (§ 891.140—Revised)

The Melville Act revises the development cost limitations for the Section 811 program. Accordingly, the current section on development cost limits in § 891.140 would be removed because the Section 811 program and Section 202 program now have separate development cost limitations. However, since the development cost limits for the Section 202 program are not changed, the language under § 891.140 would be redesignated as § 891.208 for applicability only to the Section 202 program.

Owner Deposit (§ 891.145—Removed)

The Melville Act eliminates the owner deposit requirement for the Section 811 program, and, therefore, § 891.145 is removed.

Operating Cost Standards (§ 891.150—Revised)

Section 891.150, which addresses operating cost standards for the supportive housing programs for the

[2] HUD issued a notice (H 2012–8) entitled ''Updated Requirements for Prepayment and Refinance of Section 202 Direct Loans'' on May 4, 2012. See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/hsg.* HUD also issued a Notice of Funding Availability on May 15, 2012, for the Section 811 Project Rental Assistance Demonstration program, authorized by the Melville Act (funding provided under the Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. 112–55, 125 Stat. 552). See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail/nofa12/sec811PRAdemo.*

elderly and persons with disabilities, would be revised to provide that § 891.150 only applies to PRACs, as defined under § 891.105.

Other Federal Requirements (§ 891.155—Revised)

This section's introductory paragraph would be slightly amended to reference subpart G, the new project rental assistance. This section would also be changed in paragraph (b) by adding language explaining that the environmental requirements of 24 CFR part 50 and part 55 do not apply to subpart G. As described elsewhere in this preamble under Responsibilities of Participating Agencies (§ 891.882), the environmental standards for the Project Rental Assistance for Projects without Capital Advances program under subpart G would be under § 891.882(e) of this proposed rule. In addition, paragraph (b) would clarify that the environmental standards under § 891.882(e) that are applicable to prepayments (as provided under §§ 891.530 and 891.700) must consider the use of a senior preservation rental assistance contract under subpart H, regardless of whether an application for such contract has been made at the time of review.

Under paragraph (d), it would be clarified that the labor standards under this section do not apply to subpart H, which has separate labor standards under § 891.882(g) of this proposed rule. While the labor standards under this section would apply to prepayments under §§ 891.530 and 891.700, it should be noted that the labor standards may not be triggered by such prepayments, even where 12 or more units may continue to be assisted under a preexisting Section 8 contract. Paragraph (d) would also correct the statutory citations to the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act.

Audit Requirements (§ 891.160—Revised)

This section, which applies to both the Section 202 program and Section 811 program, would be revised to state that nonprofits receiving assistance under part 891 are subject to the audit requirements in the NOFA. Currently, this section refers to 24 CFR part 45, which was removed and is no longer applicable (see 62 FR 61616 (November 18, 1997)).

Duration of Capital Advance (§ 891.165—Revised)

In HUD's final rule published in the **Federal Register** on June 20, 2013, at 78 FR 37106, entitled ''Streamlining Requirements Governing the Use of Funding for Supportive Housing for the Elderly and Persons with Disabilities Programs, as corrected by an amendatory rule published on August 15, 2013, at 78 FR 49680, HUD revised § 891.165(a) to provide that duration of the fund reservation for a capital advance with construction advances is 24 months from the date of issuance of the award letter to the date of initial closing. HUD, however, inadvertently omitted offering a similar amendment to § 891.165(b). Section 891.165(b), as currently codified, provides that the fund reservation for projects that elect not to receive any capital advance before construction completion is 24 months from the date of issuance of the award letter to the start of construction, and the duration can be extended up to 36 months, as approved by HUD on a case-by-case basis. However to close-out a fund reservation, initial closing must occur. A project that elects not to receive any capital advance before construction completion does not reach initial closing until after construction completion. Therefore, the time frame must be from the date of issuance of the award letter to the initial closing. This rule would make that revision.

Technical Assistance (§ 891.175—Revised)

Section 891.175, which addresses technical assistance for the Section 202 program and the Section 811 program, would be amended to provide for grant assistance for applicants without sufficient capital to prepare a housing site in order to compete for funding under the Section 202 program or Section 811 program. These grants will be categorized as technical assistance because the use of this funding serves purposes for which technical assistance grants are commonly awarded. HUD shall continue to make available appropriate technical assistance for both programs, and such technical assistance must ensure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the programs.

In addition, the amendments made to this section by this proposed rule provide that HUD may offer competitive grants to bolster an applicant's capacity in preliminary work required in the development of supportive housing for the elderly and persons with disabilities. This type of technical assistance is only available if the applicant meets the eligibility requirements under the NOFA for the Section 202 program or Section 811 program. The applicant must have site control, and lack access to capital to undertake initial efforts to confirm site feasibility, pursue initial site funding, and undertake the preparatory steps necessary to compete in the NOFA for the Section 202 program or Section 811 program, as applicable. Such technical assistance may be used to cover initial costs of necessary architectural and engineering work, site control, and other activities related to the development of supportive housing for the elderly and persons with disabilities.

Enhanced Project Rental Assistance Contracts (§ 891.190—New)

A new § 891.190, entitled ''Enhanced Project Rental Assistance Contracts'' (ePRACs) would be added to contain the regulations that will govern the ePRACs under the Section 811 and Section 202 programs. HUD proposes to place the regulations for the ePRACs under subpart A of part 891, because these contracts are available to a nonprofit organization under either the Section 811program or Section 202 program. Subpart A provides general requirements for both the Section 811program and Section 202 program.

As provided in the discussion of this section, an ePRAC is available to a sponsor or owner under the Section 811 program or Section 202 program, accessing private capital, to fund the construction or provide permanent financing for supportive housing units for the elderly or persons with disabilities. The ePRAC would be available to sponsors that can provide evidence of a committed funding source from a lender for the construction or permanent financing of the Section 202 or Section 811 supportive housing units covered by the ePRAC. These contracts would allow, among other things, for the inclusion of debt service for units covered by the ePRAC as a project expense. With the exception of the requirements provided in this section for the ePRAC, such contracts must abide by the other requirements set forth in the regulations in 24 CFR part 891, subparts D and F.

New § 891.190 is proposed to be structured as follows:

In General (§ 891.190(a))

Paragraph (a) of § 891.190, entitled ''In general,'' states that ePRACs are available to private nonprofit organizations, as defined under §§ 891.205, 891.305, and 891.805, with sponsors accessing private capital, and such organizations must abide by the requirements set out under § 891.190(b).

Requirements (§ 891.190(b))

Paragraph (b) of § 891.190 provides the requirements for ePRACs. These

requirements only apply to a private nonprofit organization, as defined under §§ 891.205, 891.305, and 891.805, with sponsors accessing private capital for the construction or permanent financing of the section 202 or section 811 supportive housing units covered by the ePRAC. These contracts provide for the inclusion of debt service as an under eligible expenses, the of debt service for housing units covered by an ePRAC. Debt service for non-section 202 or non-section 811 units cannot be included.

The ePRAC must set the initial rent levels, as well as the rent levels at the beginning of each 5-year term of the multiyear contract, based on the project's operating expenses that include debt service and that do not exceed market rents, subject to a rent comparability study (which may take the provision of a service coordinator into consideration). Rents during the 5-year term of the multiyear contract would be adjusted using the Operating Cost Adjustment Factor (OCAF).

For Section 202 projects, ePRACs must be for a term of 20 years. The 20-year term is linked to the availability of funding. Accordingly, the funding for the first year of the contract must be provided in accordance with current funding procedures, and funding for subsequent years is subject to available appropriations. If, however, funds appropriated are inadequate to meet the financial needs of the assisted units, HUD will not require the enforcement of the contract term. For Section 811 projects, ePRACs must also be for a term of 20 years. However, if the project is assisted with any low-income housing tax credits or with any tax-exempt housing bonds, the contract term must be for a term of 30 years. In accordance with the provisions of the Melville Act, for all Section 811 projects utilizing an ePRAC, funding for the first 5 years of the contract must be provided. Funding for subsequent years is subject to available appropriations.

Vacancy payments for units under an ePRAC will be in the amount of 80 percent of the per-unit operating expenses that include debt service for the first 60 days of vacancy if the conditions for receipt of the vacancy payments are fulfilled under § 891.445.

Section 202 Supportive Housing for the Elderly (Subpart B)

Definitions (§ 891.205—Revised)

Section 891.205, which provides the definitions for the Section 202 program, would be amended to revise the definition for ''activities of daily living,'' and add a new definition for ''functional limitations.'' The definition of ''activities of daily living,'' (ADL) would be amended to remove references to ''home management activities,'' and to add the activity of ''transferring.'' The reference to ''home management activities'' was removed because it is no longer consistent with the standard ADL definition. ''Transferring'' is included as an activity of daily living, and identifies tasks such as going from a seated to a standing position, and getting in and out of bed. HUD is revising the definition of ''activities of daily living,'' to include this recognized category of ADL to identify tasks that are essential for maintaining independent living. The amended definition provides a comprehensive grouping of everyday activities that are an indicator of the services necessary for independent living.

HUD is also adding a definition for the term ''functional limitations,'' since new program requirements would allow for a set-aside for elderly individuals with functional limitations, as explained earlier in this preamble. This term relates to the restriction or loss of ability to perform or complete ADL and or Instrumental Activities of Daily Living (IADLs) tasks. An elderly person with functional limitations requires assistance with three ADLs or one ADL and some combination of IDALs and/or other thresholds as established by HUD. An assessment of ADLs and IADLs is a useful tool for tailoring services to meet the needs of elderly persons to allow for such persons to age-in-place and live independently.

HUD is adding a definition for the term Instrumental Activities of Daily Living (IADLs) since it is included in the definition of functional limitations. IADLs are activities that are more complex than those needed for the ADLs, they include but are not limited to handling personal finances, meal preparation, shopping, traveling, doing housework, using the telephone, and taking or managing medications.

Provisions of Services (§ 891.225—Revised)

Section 891.225, which applies to the provision of services for the Section 202 program, would be amended to add a new paragraph (b)(2) to provide that sponsors of projects may set aside a percentage of units for elderly individuals with functional limitations or other category of elderly persons as defined in the NOFA. HUD is allowing sponsors this set-aside in order to better align the Section 202 program with Federal, state, and local health care initiatives that support very low-income elderly individuals. The exact percentage will be determined and announced by HUD through a NOFA.

Any units set aside under this new paragraph (b)(2) must also abide by requirements under § 891.410(c)(3), as added by this proposed rule, and discussed below.

Current paragraph (b)(2) of § 891.225 will be redesignated as paragraph (b)(3), and redesignated paragraph (b)(3) will be amended to clarify that the limit of $15 per unit, per month, for service costs as an eligible expense pertains only to the cost of supportive services and not to the employment of a service coordinator. The limit of $15 may also be changed, as determined by HUD, to allow for flexibility. In addition, HUD is removing the sentence that stated any cost associated with the paragraph is an eligible cost under the contract because this sentence is inconsistent with the rest of the paragraph.

Selection Preferences (§ 891.230—Removed)

Section 891.230, which outlines the selection preferences for the Section 202 program, would be removed. This section no longer applies to the Section 202 program as these Federal preferences were eliminated by statute (see HUD final rule published on March 29, 2000, 65 FR 16692).

Owner Deposit (§ 891.235—New)

The Melville Act eliminates the owner deposit requirement for the Section 811 program. Since the Section 202 program still requires an owner deposit, the Section 202 language under § 891.145 is moved to a new § 891.235 for Section 202 projects. Under § 891.145, if an owner has a National Sponsor or a National Co-Sponsor, the Minimum Capital Investment shall be one-half of one percent (0.5 percent) of the HUD-approved capital advance, not to exceed $25,000, and this requirement continues in § 891.235. In addition, as required by the Section 202 Act of 2010, such amount must be used only to cover operating deficits during the first 3 years of operation, and must not be used to cover construction shortfalls or inadequate initial project rental assistance amounts.

Section 811 Supportive Housing for Persons With Disabilities (Subpart C)

Definitions (§ 891.305—Revised)

The Melville Act amends the definition of ''persons with disabilities'' to mean a household composed of one or more persons who is 18 years of age or older and less than 62 years of age, and who has a disability. The definition of ''disabled household'' in § 891.305 is amended to align with the Melville Act,

and would be amended to mean a household composed of one or more persons who is 18 years of age or older and less than 62 years of age, and who has a disability. In addition, the section would be amended to clarify that a surviving member or members in a disabled household must have been living in the unit as lawful tenants.

Cost Limits (§ 891.308—New)

A new § 891.308 is added to subpart C to provide the cost limitations as authorized by the Melville Act. Under the Melville Act, HUD must periodically establish development cost limitations, by market area, for group homes of supportive housing for persons with disabilities by publishing a notice of such limitations in the **Federal Register**. This language is similar to the current development cost limits for the entire Section 811 program, but now only applies to group homes. HUD adopts the current regulatory language for development cost limits under § 891.140 for group homes.

For group homes, HUD must use the development cost limits, established by notice in the **Federal Register** and adjusted by locality, to calculate the fund reservation amount of the capital advance to be made available to individual owners of group homes, as defined under section 811(k)(1) of NAHA, as amended by the Melville Act.

Other than group homes, the provisions of section 212(e) of NAHA (42 U.S.C. 12742(e)) and the cost limits established by HUD, pursuant to this section which authorizes the HOME program, apply on a per-unit basis to supportive housing for persons with disabilities assisted with a capital advance as provided under the Melville Act. HUD may provide for the waiver of such cost limits under such cases in which the cost limits established pursuant to section 212(e) of NAHA may be waived, and to provide for the cost of special design features so that housing is made accessible to persons with disabilities, so that individual dwelling units meet the special needs of persons with disabilities, and so that housing is established in a location that is accessible to public transportation and community organizations that provide supportive services to persons with disabilities. In addition, applicants will not receive a waiver in excess of 110 percent of the applicable HOME program cost limitations.

In accordance with the Melville Act, for supportive housing for persons with disabilities assisted with a capital advance, HUD will use the cost limits under the HOME program to calculate the maximum fund reservation amount of the capital advance to be made available to individual owners. Owners may request an amount less than the amount determined under the cost limits if such amount still allows for the project's financial feasibility. However, owners must not decline the capital advance amount made available to them.

As stated in § 891.140, owners that incur actual development costs that are less than the amount of the initial fund reservation are entitled to retain 50 percent of the savings in a Replacement Reserve Account. Such percentage will be increased to 75 percent for owners that add energy efficiency features. In addition, the Replacement Reserve Account must only be used for repairs, replacements, and capital improvements to the project.

Special Project Standards (§ 891.310—Revised)

In order to provide flexibility for the developers of multifamily projects as authorized under the Melville Act, § 891.310(b) would be amended to clarify that the additional accessibility requirements under paragraph (b) of § 891.310 only apply to group homes as defined under section 811(k)(1) of NAHA, and independent living facilities. In addition, HUD is amending the existing accessibility requirements under section 891.310(b). Under the Melville Act, projects can no longer limit occupancy based on a type of disability. Instead, projects must base eligibility on who will benefit from the services provided. Accordingly, § 891.310(b) is revised to state that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

As revised, § 891.310(b) would provide, in paragraph (b)(2), that all dwelling units in an independent living facility (or all bedrooms and bathrooms in a group home) involving new construction must be designed to be accessible or adaptable for persons with physical disabilities. Section 891.310(b)(3) would provide that in a project for chronically mentally ill individuals involving new construction, a minimum of 10 percent of all dwelling units in an independent living facility (or 10 percent of all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical disabilities. Section 891.310(b)(4) would provide that a project involving acquisition and/or rehabilitation may provide less than full accessibility if: (i) The project complies with the requirements of 24 CFR 8.23; (ii) the cost of providing full accessibility makes the project financially infeasible; (iii) fewer than one-half of the intended occupants have mobility impairments; and (iv) the accessibility requirement will be met through existing properties that serve persons with disabilities.

Project Rental Assistance (§ 891.330—New)

As noted earlier in this preamble, one of the most significant changes made by the Melville Act is the establishment of a new project rental assistance authority (section 811(b)(3) of NAHA, as amended by the Melville Act) that is separate from the existing project rental assistance under the Section 811 program, and which provides capital advances and contracts for project rental assistance. Under the Melville Act, project rental assistance under the Section 811 program may be adjusted upon renewal and may be increased in emergency situations. A new § 891.330 is added to subpart C to reflect these changes.

Upon the expiration of each contract term, subject to the availability of appropriations, HUD will adjust the annual contract amount for Section 811 projects to provide for reasonable project operating costs, including adequate reserves and service coordinators. Any contract amounts not used by a project during a contract term will not be available for such adjustments upon renewal.

In addition, for emergencies that are outside the control of the owner, HUD will increase the annual contract amount, subject to HUD's review and limitations, as may be prescribed by HUD. The Melville Act gives HUD broad discretion to increase the annual contract amount in emergency situations. Increases in contract amounts will be no greater than either 10 percent above the most recently approved budget-based rent, or 110 percent of Fair Market Rents (FMR) for market-based rents. Such increases will be solely for repaying a loan or equity that was used for addressing emergency repairs to the building that are beyond normal repair and maintenance, are not attributable to deferred maintenance, and caused by matters outside the control of the owner for which sufficient insurance proceeds are not available.

Conversions (§ 891.335—New)

A new § 891.335 is added to provide, as authorized by the Melville Act, that an owner may request the conversion of supportive housing units for very low-income persons with disabilities. Under a new § 891.335, an owner may request conversion of some or all units from

supportive housing for very low-income persons with disabilities to very low-income persons, without tenancy being conditioned on such very low-income persons having disabilities. Under the Melville Act, HUD has to determine that the units are no longer needed for supportive housing for persons with disabilities. Therefore, a conversion would be approved only if the state agency responsible for administering the Medicaid program and/or the state health and human services agency indicates in writing that the need for supportive housing for very low-income persons with disabilities no longer exists or that the affordable supportive housing for very low-income persons with disabilities will be replicated in a more integrated setting. In addition, the project must have had persistent vacancy, despite a reasonable effort to lease such units, as determined by HUD; and the project must show that a demonstrated need exists for the households that would benefit from such conversion. In granting a conversion, HUD may reserve the right to request a change in management or require a conversion only for a certain period.

Limitation on Use of Funds (§ 891.340—New)

In accordance with section 811 of NAHA, as amended by the Melville Act, a new § 891.340 is added to subpart C that states that Section 811 funds may not be used to replace other state or local funds previously used or designated for use for persons with disabilities.

Multifamily Projects (§ 891.345—New)

A new § 891.345 is added to subpart C to provide the Melville Act restriction on the total number of dwelling units in a multifamily project that may be used for persons with disabilities. The restriction states that in any multifamily housing project (including any condominium or cooperative housing project) that contains any unit for which assistance is provided under the regulations in 24 CFR part 891, the total number of dwelling units within a multifamily housing project that may be used for supportive housing for persons with disabilities, or with any occupancy preference for persons with disabilities, may not exceed 25 percent of such total; the limit set by statute. This restriction applies only to assistance provided after the date of the enactment of the Melville Act, and does not apply to any project that is a group home or independent living facility.

Voluntary Supportive Services (§ 891.350—New)

Consistent with the Melville Act, housing funded under subpart C must make available supportive services to persons with disabilities, but these services do not have to be accepted. This requirement is added as a new § 891.350 to subpart C. Under this new section, and consistent with the Melville Act, a supportive service plan for housing for Section 811 projects must allow for voluntary participation and permit each resident to take responsibility for choosing and acquiring their own services, to receive any supportive services made available directly or indirectly by the owner of such housing, or to not receive any supportive services.

Project Management (Subpart D)

Determination of Eligibility and Selection of Tenants (§ 891.410—Revised)

HUD would amend § 891.410 to revise paragraph (c)(2) which currently only provides requirements for general project management and specific requirements for the Section 811 program, and add a new paragraph (c)(3) that will apply to the determination of eligibility and selection of tenants. Paragraph (c)(2) will be revised to clarify that the owner of the housing may, with the approval of HUD, limit occupancy within the housing to persons with disabilities who can benefit from the supportive services offered in connection with the housing. The Melville Act changed the tenant protections under the Section 811 program, and owners can no longer limit occupancy within housing to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. New paragraph (c)(3) will apply to the Section 202 program only. New paragraph (c)(3) states that, under the Section 202 program, in order to be eligible for admission the applicant must also meet any project occupancy requirements approved by HUD. This standard currently exists for the Section 811 program, and HUD has added it for the Section 202 program for consistency.

In addition, and as provided under the discussion of § 891.225, if a sponsor has set aside units as provided under § 891.225(b)(2), this section provides the requirements by which owners must abide. New § 891.410(c)(3) provides that owners must lease units set aside under § 891.225(b)(2) to elderly individuals who have been assessed by a qualified professional and who can provide evidence of functional limitations. Evidence can consist of a doctor's or nurse's written evaluation or a letter from the Area Agency on Aging (AAA) or Aging and Disability Resource Center (ADRC) or other like social service agencies. Examples of service providers include, but are not limited to, Medicaid home and community-based service providers or Programs for All-Inclusive Care for the Elderly (PACE) providers (including colocation of PACE programs on site). Provider organizations must have the capacity to bill Medicaid or be affiliated with AAA. HUD has determined that such requirements are necessary for units set aside under § 891.225(b)(2), to make certain that very low-income elderly persons who are aging in place under the Section 202 program are better served. Such requirements will allow HUD to ensure that set-aside units are leased only to elderly individuals with functional limitations or other category of elderly persons as defined in the NOFA.

Additionally, owners must continue to lease units not set aside for elderly individuals to any applicant determined to be eligible for the project. Owners are not prohibited from housing other elderly individuals with functional limitations or other conditions defined in the NOFA who are on their waiting list in units not set aside by the sponsor. Owners will make selections in a nondiscriminatory manner, without regard to considerations of race, religion, color, sex, national origin, familial status, or disability. Owners must also make selections without regard to actual or perceived sexual orientation, gender identity, or marital status, in accordance with 24 CFR 5.105(a). These requirements will ensure that other units not set aside for elderly individuals with functional limitations or other category of elderly persons as defined in the NOFA can serve other eligible applicants, and that all units are leased in a nondiscriminatory manner.

Set-aside units, as proposed by this rule, would be distributed throughout the project and must not be segregated to one area of a building or the project. A specified number of units, rather than specific units (e.g., units 101, 201, etc.), may be set aside for this purpose, allowing the owner more flexibility in maintaining the number of units set aside by the sponsor for elderly individuals with functional limitations or other category of the elderly persons as defined in the NOFA.

Denial of Admission, Termination of Tenancy, and Modification of Lease (§ 891.430—Revised)

The Melville Act amends the termination and the modification of lease requirements for the Section 811 program. Accordingly, § 891.430 would be revised to include these changes. HUD's regulations in 24 CFR part 5, subpart I, which pertain to preventing crime in federally assisted housing and denying admission and terminating tenancy for criminal activity or alcohol abuse, would continue to apply to Section 811 capital advance projects. In addition, HUD's regulations in 24 CFR part 247, which address evictions from certain subsidized and HUD-owned projects, would continue to apply to all decisions by an owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home). However, an owner of a Section 811 project may not terminate a tenancy or refuse to renew a lease except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, state, or local law; or for other good cause. In addition, the tenant must receive (in accordance with the Melville Act), no less than 30 days before the date of such termination or refusal to renew, a written notice specifying the grounds for such action.

Loans for Housing for the Elderly and Persons With Disabilities (Subpart E) Replacing ''Handicapped Person'' With ''Person With Disabilities''

Through this rule, HUD also proposes to update terminology in the part 891, subpart E, regulations, which regulations still use the term ''handicap'' and not ''disability.'' Not only is the term ''disability'' the preferred term, it is the term used in the Melville Act. Accordingly, this rule proposes to replace ''handicap person'' with ''person with disabilities,'' and similar terminology changes.

Prepayment Privileges (§ 891.530 and § 891.700—Revised)

The existing regulatory sections pertaining to prepayment privileges, both found in subpart E of part 891, would be revised to reflect the changes made by the Section 202 Act of 2010. These sections are § 891.530, which addresses direct loan prepayment privileges for Section 202 projects for the elderly, and § 891.700, which addresses prepayment of direct loans for housing for persons with disabilities. Section 891.700 would be amended to reference § 891.530 because both sections list the same requirements. These two sections would be amended to expressly require an extension of affordability for at least 20 years beyond the maturity date of the original loan as a condition for prepayment approval, as required by section 201 of the Section 202 Act of 2010. In addition, the revisions to these two regulatory sections recognize that the continued operation of the project following the prepayment must remain under terms at least as advantageous to current and future residents as the provisions of the Section 202 direct loan, as well as any project-based rental assistance contract that may be in place at the property (which would include SPRAC assistance if such assistance is made available as part of the prepayment transaction).

Direct loans were made under the Section 202 program to private nonprofit developers so they could build housing for elderly and disabled families. Under section 811(a) of the American Homeownership and Economic Opportunity Act (AHEO), as amended by the Section 202 Act of 2010, HUD may not grant approval for the prepayment unless the transaction will ensure the continued operation of the project, until at least 20 years following the maturity date of the original Section 202 loan, in a manner that will provide rental housing for the elderly and persons with disabilities on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any project-based rental assistance payment contract related to the project. Such a prepayment may involve refinancing if the refinancing results in a lower interest rate on the principal of the project and in reductions in the debt service, as authorized under section 811(b)(2) of the AHEO, as amended by the Section 202 Act of 2010.

In addition, the prepayment may involve refinancing of certain ''early 202'' projects. These ''early 202'' projects are properties financed with a Section 202 Direct Loan carrying an interest rate of 6 percent or lower. Because of the low interest rate on the Direct Loan, the refinancing may not result in a reduction in debt service. If there is an increase in debt service, the prepayment and refinance of such a 202 project may be approved if the refinance meets certain requirements, as authorized under section 811(b)(2) and (3) of the AHEO, as amended by the Section 202 Act of 2010. These requirements are that the project owner must address the physical needs of the project, the transaction may not result in an increase in rent for unassisted families, and the transaction must address the capital needs of the project and ensure physical viability for the term of the new financing. In addition, the increase in debt service must not increase the overall costs of providing any rental assistance for the project under section 8 of the 1937 Act, unless approved by HUD. HUD may only approve an increase in rental assistance under this scenario if contracts are marked-up-to-market pursuant to section 524(a)(3) of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) (42 U.S.C. 1437f note) for properties owned by nonprofit organizations; or marked-up-to-budget pursuant to section 524(a)(4) of MAHRA (42 U.S.C. 1437f note), for properties owned by eligible owners (as such term is defined in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)).

If the refinancing of an ''early 202'' project would result in a rent increase for unassisted residents, HUD may issue SPRAC assistance to these households under the Section 202 Act of 2010. As provided under the discussion of new subpart H, to be eligible for SPRAC assistance, unassisted residents must meet the Section 8 income guidelines for a low-income family, which in some cases may be lower than income limitations imposed by the Section 202 Direct Loan project where the families reside. At the time of closing of the Section 202 direct loan, SPRAC assistance will be provided for units occupied by unassisted, income-eligible families. Because HUD may provide SPRAC assistance for ''early 202'' refinances where the rent charged to unassisted residents would otherwise be increased, and because appropriations for SPRACs may not be available, HUD may set priorities for the consideration of prepayment approvals that require the provision of a SPRAC.

Section 811(c) of the AHEO was also amended by the Section 202 Act of 2010 to authorize, subject to HUD approval, the use of loan proceeds resulting from the refinancing of the project to ensure such proceeds are used in a manner advantageous to the tenants of the Section 202 project. Under this new statutory authority, loan proceeds in excess of those required to pay off the Section 202 Direct Loan must be expended within 5 years of the closing of the refinance, except for approved ongoing social services. Proceeds may be used for up to 15 percent of the cost of increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services.

The use of loan proceeds may include modernization, accessibility modifications or retrofits for the project, construction of an addition or another facility in the project, rent reduction of unassisted tenants residing in the project, or the rehabilitation of the project to ensure long-term viability. Loan proceeds may also be used to pay the project owner, sponsor, or third-party developer a developer's fee in an amount not to exceed or duplicate, in the case of a project refinanced through a low-income housing tax credit (LIHTC) program, the fee permitted by the LIHTC program; or in the case of a project refinanced through any other source of refinancing, 15 percent of the acceptable development cost, which includes the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposits, and transaction costs.

In addition, HUD may approve the use of proceeds from the refinancing of the Section 202 direct loan in a manner advantageous to the tenants of the project or for the provision of affordable housing and related social services for elderly persons who are tenants of other HUD-assisted senior housing. Such housing must be owned by the same private nonprofit organization that is the project owner, the project sponsor, or the private developer of the Section 202 project being refinanced. The other HUD-assisted senior housing must be designated as senior housing serving only those residents 62 years of age and older, and must have an active program in place to provide social services for elderly residents. At the time of application for the Section 202 Direct Loan prepayment, the level of affordability of the project(s) receiving proceeds from the refinance must be at least as affordable as the Section 202 Direct Loan project being refinanced. All project(s) to receive proceeds from the refinance must have or put in place a Use or Regulatory Agreement requiring operation of the project as affordable senior housing for a period at least 10 years beyond the date of closing of the Section 202 refinance, or the date of termination of the existing Use or Regulatory Agreement, whichever is later. The other HUD-assisted senior housing may include Section 202 Direct Loan and Section 202 Capital Advance properties, or may include affordable senior projects that receive HUD assistance or financing such as project-based rental assistance, Federal Housing Administration (FHA) mortgage insurance, Project-Based Vouchers, HOME Investment Partnerships (HOME), or Community Development Block Grant (CDBG) assistance. HUD must approve the use of proceeds in other HUD-assisted senior housing, and such use will only be approved if the proposed refinancing will address all physical and financial needs of the Section 202 Direct Loan project.

Term of Project Assistance Contracts (§ 891.710—Removed)

All of the initial PACs terms (of 20 years) have expired, and current PACs are renewed yearly. Therefore, HUD is removing § 891.710.

For-Profit Limited Partnerships and Mixed-Finance Development for Supportive Housing for the Elderly or Persons With Disabilities (Subpart F)

Project Rental Assistance (§ 891.810—Revised)

This section would be amended to clarify that ''project rental assistance contract'' and ''project rental assistance payment'' are defined in § 891.105, rather than in this section, which is entitled ''project rental assistance.'' In addition, this section would be amended to clarify that ''project rental assistance payment'' is provided for operating costs, not covered by tenant contributions, attributable to the number of units funded by capital advances under the Section 202 program and the Section 811 program, subject to the provisions of § 891.445.

Drawdown (§ 891.830—Revised)

Section 891.830(c)(5), in the currently codified regulations, requires each drawdown to be consistent with the ratio of Section 202 or Section 811 supportive housing units to other units. This unnecessarily requires a proration that lacks flexibility for mixed-finance projects. Paragraph (b) of § 891.830 sufficiently protects HUD's interests by requiring approval of a drawdown schedule while allowing the needed flexibility to permit low-income housing tax credits to be used effectively while reducing the amount of waivers that must be granted.

Eligible Uses of Project Rental Assistance (§ 891.835—Revised)

Section 891.835(b)(1) would be amended to clarify that Section 202 or Section 811 project rental assistance may not be used to pay for debt service on construction or permanent financing for any units in development, except for units under an ePRAC under § 891.190.

Development Cost Limits (§ 891.853—Revised)

Section 891.853 would be amended to reflect the new development cost limit sections for mixed-finance developments under the Section 202 and Section 811 programs.

Project Rental Assistance for Projects Without Capital Advances (Subpart G—New)

HUD proposes to establish a new regulatory subpart G, entitled ''Project Rental Assistance for Projects without Capital Advances,'' to reflect that the new project rental assistance would only apply to certain properties, and not the entire Section 811 program. This new subpart G is proposed to be structured as follows:

Applicability (§ 891.870)

Section 891.870, entitled ''Applicability,'' states that this new subpart applies only to the new project rental assistance that is made available to projects without capital advances under the Section 811 program.

Definitions (§ 891.872)

In addition to the definitions provided in §§ 891.105 and 891.305, § 891.872 defines certain terms applicable to the new project rental assistance.

Admission. ''Admission'' is defined as the point in time the applicant and owner execute the lease agreement, and where occupancy is imminent. Project rental assistance under this subpart may only be provided for dwelling units that are set aside for extremely low-income persons with disabilities and extremely low-income households that include at least one person with a disability. The person with disabilities must be at least 18 years of age or older and less than 62 years of age at the time of admission, as defined in this section.

Eligible Applicant. ''Eligible applicant'' is defined as any state housing agency currently allocating LIHTC, or any state housing or state community development agency allocating and overseeing assistance under the HOME program, section 8 of the 1937 Act, or other similar Federal or state program, and which has a formal partnership with the state health and human services agency and the state agency designated to administer or supervise the administration of the state plan for medical assistance under title XIX of the Social Security Act (Medicaid). Such agency must be in good standing, as determined by HUD, in its administration of assistance. An eligible applicant may also be a state, regional, or local housing agency or agencies; or a partnership or collaboration of state housing agencies and/or state and local/regional housing agencies.

Extremely Low-Income Family. The definition of ''extremely low-income family'' is the same definition as defined in 24 CFR 5.603. Therefore, an extremely low-income family is a family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. However, HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Housing Agency. ''Housing Agency'' is defined as a state, regional, or local housing agency.

Interagency Partnership Agreement. ''Interagency Partnership Agreement'' is defined as the formalized agreement entered into between the eligible applicant and the state health and human services agency, and the applicable state Medicaid agency, if different entities. Project rental assistance under this subpart may only be provided for eligible projects that conform to this agreement.

Nonelderly Adult. ''Nonelderly adult'' is defined as a person who is 18 years of age or older and less than 62 years of age, in accordance with the definition of ''persons with disabilities'' under the Melville Act.

Participating Agencies. ''Participating agencies'' is defined as the eligible applicant awarded project rental assistance funds, the state agency responsible for health and human services programs, and the state agency designated to administer or supervise the administration of the state plan for medical assistance under the Medicaid program.

Project rental assistance. ''Project rental assistance'' is defined as funding that is made available by HUD to eligible applicants. This funding shall be used to provide long-term rental assistance for supportive housing for nonelderly, extremely low-income persons with disabilities and for extremely low-income households that include at least one nonelderly person with a disability.

Rental Assistance Contract (RAC). ''Rental assistance contract (RAC)'' is defined as the contract between the approved housing agency and the multifamily property owner, authorized under section 811(b)(3) of the National Affordable Housing Act (NAHA) (42 U.S.C. 8013). Section 811(b)(3) authorizes the separate project rental assistance only for projects without capital advances.

Allocation of Funds (§ 891.874)

This new section reflects that HUD may allocate funds made available in any fiscal year for project rental assistance under this new subpart G by competition or in accordance with the formula allocation provided under HUD's regulations in 24 CFR part 791 (Allocations for Housing Assistance Funds). In determining the method of allocation, HUD will take into account the amount of funds available, the number and types of eligible applicants, the period of funding availability, and administrative efficiency. This flexibility will allow HUD to fund project rental assistance under this new subpart G as necessary each fiscal year.

Eligible Projects (§ 891.876)

Section 891.876 provides that funding of project rental assistance under this subpart may be provided to a new or existing multifamily housing project subject to several requirements. First, such project's development costs must be paid with resources from other public and/or private sources. These other sources may be LIHTC, equity, private debt (such as a private mortgage or financing on the property), or HOME funds. Second, an eligible project must not otherwise be receiving Section 811 program funds. Lastly, a commitment of funding for project costs must be made by the LIHTC allocation agency, participating jurisdiction receiving assistance under the HOME program, or any Federal, state or local government.

For existing multifamily housing projects, these projects may only receive project rental assistance under this subpart if the assisted units have no existing contractual obligation to serve persons with disabilities, such as a recorded use agreement. In addition, existing units currently receiving any form of operating housing subsidy under section 8 of the 1937 Act cannot receive project rental assistance under this proposed rule. HUD is implementing these requirements in order to increase, rather than maintain, the number of supportive housing units for persons with disabilities.

Eligible Tenants (§ 891.878)

Section 891.878 addresses eligible persons that may reside in units receiving project rental assistance as provided under the new subpart G. This section provides that project rental assistance may be provided only for dwelling units that are set aside for extremely low-income persons with disabilities and extremely low-income households that include at least one person with a disability. This requirement is statutory and ensures that the project rental assistance serves those persons with disabilities who are most in need of supportive housing.

In addition to being extremely low-income, the person with disabilities must be at least 18 years of age or older and less than 62 years of age at the time of admission, as defined under § 891.872. The Interagency Partnership Agreement must include the target population to be served that will benefit from the assisted units under this subpart and the available services.

The person with disabilities must also be eligible for community-based, long-term services and supports as provided through Medicaid waivers, Medicaid state plan options, state-funded services, or other appropriate services (provided by state, local, nonprofit, or other entities) related to the target populations identified under the Interagency Partnership Agreement. However, participation in services is voluntary and cannot be required as a condition of tenancy.

Terms and Conditions of Project Rental Assistance Financing (§ 891.880)

As discussed earlier in this preamble, the project rental assistance made available by the Melville Act provides state housing agencies and other eligible applicants with a method of funding supportive housing for nonelderly, extremely low-income persons with disabilities that does not require capital advances from HUD under the Section 811 program. Accordingly, § 891.880 establishes the terms and conditions for the use of this new project RAC. Approved housing agencies receiving project rental assistance under this subpart must comply with the requirements of this section, and all the terms and conditions of the rental assistance contract.

Under § 891.880(b), the housing agency administering the project rental assistance funds must enter into a RAC with the owner of the project. The RAC will provide the housing assistance payments to the owner for eligible tenants, as determined under § 891.878, residing in units that have been set aside by the owner as supportive housing for persons with disabilities, as defined in the NOFA. Section 891.880(c) provides that the initial term of the RAC between the approved housing agency administering the project rental assistance program and the owner of the multifamily housing project must be for a minimum of 20 years. In addition, § 891.880(c) states that RACs may be renewed as long as all parties approve such renewal, subject to

the availability of project rental assistance funds.

Section 891.880(d) addresses the statutory use restrictions required for this project rental assistance. The Melville Act requires all dwelling units assisted with the new project rental assistance to operate as supportive housing for extremely low-income persons with disabilities and extremely low-income households that include at least one person with a disability for a period of not less than 30 years. Section 891.880(d) reflects this statutory requirement, and any unit must be subject to a recorded 30-year minimum use agreement for nonelderly, extremely low-income persons with disabilities. In addition, § 891.880(d) provides that if a RAC is renewed in accordance with new subpart G, the corresponding use agreement must be extended for the duration of the renewal.

Section 891.880(e) provides the accessibility requirements for projects under this section. Projects must meet the accessibility requirements of section 504 of the Rehabilitation Act of 1973 and titles II and III of the Americans with Disabilities Act, as applicable. Covered multifamily dwellings must also meet the design and construction requirements of the Fair Housing Act.

Section 891.880(f), consistent with the statutory requirement, provides that in any multifamily housing project receiving the project rental assistance, no more than 25 percent of the total number of dwelling units in the project may be set aside for supportive housing for persons with disabilities, or have any occupancy preference for persons with disabilities associated with such unit. These units must be distributed throughout the project, must not be segregated to one area of a building or the project (such as on a particular floor, part of a floor in a building, or certain sections within a project), and can consist of both accessible and non-accessible units. Owners may designate unit types (*e.g.,* accessible, 1-bedroom, etc.) rather than designating specific units (*e.g.,* units 101, 201, etc.) to be set aside for supportive housing for persons with disabilities. This type of designation would allow flexibility in offering the next available unit to a person with a disability under this program as long as the unit type was designated as being set aside for persons with disabilities and the number of units occupied by persons with disabilities under the set-aside had not been met.

Responsibilities of Participating Agencies (§ 891.882)

Section 891.882 addresses the responsibilities of the participating agencies. New project rental assistance may only be provided for eligible projects that conform with the Interagency Partnership Agreement. To be eligible for the rental assistance funding, HUD must have reviewed and approved this Interagency Partnership Agreement to confirm that such agreement: (1) Identifies the target populations to be served by the project, (2) sets forth methods for outreach and referral, and (3) describes the services to be made available/offered to the tenants of the project.

The Interagency Partnership Agreement must include the target populations to be served that will benefit from the assisted units under this subpart and the available services. In addition to being extremely low-income, the person with disabilities as defined in § 891.305, must have a disability appropriate to the services to be provided in the community under such agreement. In the Interagency Partnership Agreement, states must identify the available state-funded services and other appropriate services (provided by state, local, nonprofit, or other entities), and describe how such services will be made available to the tenants.

To comply with this statutory requirement for state agency involvement, this section requires participating agencies to develop a formalized collaboration, herein referred to as Interagency Partnership Agreement that will result in long-term strategies to increase affordable permanent supportive housing units, new and/or existing units, with structured access to appropriate services. This Interagency Partnership Agreement must include the eligible applicant, and the state health and human services agency, and the applicable state Medicaid agency, if different entities. This formalized agreement must be evidenced by a memorandum of understanding (MOU), joint letter, or other binding document. In states where health and human service functions have been separated, both agencies' participation should be evidenced.

Section 891.882 further provides that participating agencies must provide a plan detailing the process by which the availability of units for project rental assistance and waiting lists will be managed. This plan must include the costs and authority and/or sources for paying for those costs for establishing the infrastructure and the process to implement this plan if no such process currently exists, as well as a consideration of training. This process is essential in order to provide expeditious and efficient service to nonelderly, extremely low-income persons with disabilities and extremely low-income households that include at least one nonelderly person with a disability.

Section 891.882 also requires participating agencies to describe how the process of referring eligible persons with disabilities to the assisted multifamily housing projects will be carried out, describe how households will be tracked, and to provide a list of people who property owners can contact if there are any problems. These details will also provide for an efficient process that will serve the greatest number of needy, nonelderly, extremely low-income persons with disabilities. In addition, this section provides that the plan and process must be incorporated into the Interagency Partnership Agreement between participating agencies.

Section 891.882 further provides that a percentage, as defined by HUD in the NOFA, of the total project rental assistance award may be used for initial and administrative costs relating to the administration of the project rental assistance program under this new subpart G. This section provides that such costs may include costs of hiring ongoing staff, contract assistance, infrastructure costs, and information technology. No charges relating to the administration of the program may be charged to the tenants.

Section 891.882 also provides fair housing and equal opportunity requirements. Participating agencies must ensure that all applicable fair housing and equal opportunity requirements are met. First, participating agencies must adopt affirmative marketing procedures for their project rental assistance program funded under this subpart. Affirmative marketing procedures consist of actions to provide information and otherwise attract eligible persons to the program regardless of race, color, national origin, religion, sex, disability, or familial status, who are not likely to apply to the program without special outreach. Participating agencies must annually assess the success of their affirmative marketing activities and make any necessary changes to their affirmative marketing procedures as a result of the evaluation. Participating agencies must keep records describing actions taken to affirmatively market the program and records to assess the results of these actions. Eligible applicants must

describe their methods of outreach and referral and waiting list policies in their applications, as prescribed in the NOFA. All methods of outreach and referral and management of the waiting list must be consistent with fair housing and civil rights laws and regulations and affirmative marketing requirements.

Second, participating agencies must adopt a process for providing full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types at each site. Third, participating agencies must require projects receiving project rental assistance under this subpart to maintain records on the race, ethnicity, sex, and place of previous residency for applicants and approved eligible households. The owner must submit such reports to the housing agency to demonstrate compliance with applicable civil rights and equal opportunity requirements.

Section 891.882 also provides specific environmental requirements for the administration of this program under the new subpart G. As HUD does not approve funding for specific activities or projects of the selected housing agencies under this program, HUD will not perform environmental reviews on such activities or projects. However, to ensure that the tenets of HUD environmental policy and the requirements of applicable statutes and authorities are met, housing agencies selected for funding will be required to implement the special environmental analyses and determinations for specific program activities and projects that are detailed in this section. The approved housing agency's signature on the RAC would constitute an assurance that all environmental requirements under this section will be met. In addition, to the extent that property standards or restrictions on the use of properties stated in this section are more stringent than provisions of the authorities cited, the requirements in this section shall control.

Section 891.882 also provides for compliance with the lead-based paint requirements. Approved housing agencies must abide by the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, and R of this title.

Senior Preservation Rental Assistance (Subpart H—New)

As noted earlier in this preamble, this proposed rule would introduce the authority for senior preservation rental assistance, as authorized under title II of the Section 202 Act of 2010. HUD has decided to place the regulations applicable to such assistance in a new subpart H entitled ''Senior Preservation Rental Assistance'' because this type of assistance is only available for certain Section 202 projects, and does not apply to the entire Section 202 program. In addition, in certain sections, HUD has retained current regulatory requirements for SPRAC for consistency and administrative ease.

New subpart H is proposed to be structured as follows:

Applicability (§ 891.900)

The requirements set forth in this subpart H apply only in connection with a prepayment plan for a project approved by HUD to prevent displacement of elderly residents of a Section 202 project in the case of refinancing or recapitalization, and the project is provided project-based rental assistance under a senior preservation rental assistance contract, as defined under § 891.902.

Definitions (§ 891.902)

In addition to the definitions provided in §§ 891.105, 891.205, and 891.505, § 891.902 defines certain terms applicable to senior preservation rental assistance.

Family(ies) means an *Elderly Family* as defined by 24 CFR 891.505, and may include a ''Disabled Family,'' as defined in 24 CFR 891.505, pursuant to the terms and conditions of an applicant's original Section 202 Loan. As noted earlier in this preamble, HUD is replacing ''handicap'' terminology with ''disability'' terminology, in the subpart E regulations.

Low-Income Family and Very Low-Income Family. The definitions of ''low-income family'' and ''very low-income family'' are the same definitions as defined in 24 CFR 5.603. Therefore, a low-income family is a family whose annual income does not exceed 80 percent of the median income for the area and a very low-income family is a family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 or 50 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

Senior Preservation Rental Assistance Contract (SPRAC). SPRACs are project-based rental assistance made available to a private nonprofit organization owner for a term of at least 20 years, subject to annual appropriations with the ability to renew the contract upon expiration of the initial 20-year term, and governed by the regulations of this subpart. Such contract is subject to a use agreement having a term of the SPRAC or such term as is required by the prepayment of the Section 202 Direct Loan, whichever is longer. The Section 202 Direct Loan use agreement requires compliance with the SPRAC requirements, which includes the renewal of SPRAC for the life of the use agreement.

Contract Execution (§ 891.904)

A SPRAC sets forth the rights and duties of the owner and HUD with respect to the project and the senior preservation rental assistance payments. Upon the closing of the refinancing for the project, and following the approval of the prepayment of the Section 202 direct loan, the owner and HUD must execute a SPRAC on a form prescribed by HUD. The effective date of such SPRAC will be the date of the closing of the refinancing.

Under the SPRAC, payments may be made to assist eligible families leasing assisted units under part 891. The amount of such payment is equal to the difference between the contract rent for the unit and the tenant rent payable by the family. Payments under the SPRAC may also be made to owners for vacant assisted units. The amount of and conditions for vacancy payments are described in § 891.912(k). Vacancy payments only apply to units that were initially occupied at the time the SPRAC was executed, in the case that those units are later unoccupied during the term of the contract. In addition, SPRAC payments are made monthly by HUD upon proper requisition by the owner. If a SPRAC Unit remains vacant for more than 60 consecutive days upon tenant turnover, the owner shall not be eligible to receive further SPRAC payments for that SPRAC Unit. The unit must have been in decent, safe, and sanitary condition during the vacancy period for which payment is claimed.

Under a SPRAC, as applicable, a utility reimbursement will be paid to a family occupying an assisted unit as an additional housing assistance payment. The SPRAC will provide that the owner must make this payment on behalf of HUD, and funds will be paid to the owner in trust solely for the purpose of

making the additional payment. The owner may pay the utility reimbursement jointly to the family and the utility company, or if the family and utility company consent, directly to the utility company.

Contract Term (§ 891.906)

This section provides that the minimum term of the SPRAC for assisted units under this subpart shall be 20 years.

Pursuant to title II of the Section 202 Act of 2010, any projects for which a SPRAC is provided shall be subject to a use agreement to ensure continued project affordability having a term of the longer of (A) the term of the SPRAC, or (B) such term as is required by the new financing.

Leasing to Eligible Families (§ 891.910)

Under the regulations for the SPRAC, as proposed by this rule, eligible families that may occupy assisted units under this part must meet the income guidelines for a low-income family under section 8 of the 1937 Act. During the term of the SPRAC, an owner shall make available for occupancy by eligible families, the total number of units for which assistance is committed under the SPRAC. This means that the owner is conducting marketing in accordance with § 891.912(c); has leased or is making good-faith efforts to lease the units to eligible families, including taking all feasible actions to fill vacancies by renting to such families; and has not rejected any eligible applicant family, except for reasons acceptable to HUD.

If the owner is temporarily unable to lease all units for which assistance is committed under the SPRAC to eligible families, one or more units may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income eligibility requirements. Those over-income families must pay 30 percent of their income towards rent, up to the contract rent level. Failure on the part of the owner to comply with the requirements under this section is a violation of the SPRAC and grounds for all available legal remedies, including an action for specific performance of the SPRAC, suspension or debarment from HUD programs, and reduction of the number of units under the SPRAC.

HUD may reduce the number of units covered by the SPRAC to the number of units available for occupancy by eligible families if the owner fails to comply with the applicable requirements. Notwithstanding any prior approval by HUD, HUD may reduce the number of units if HUD determines that the inability to lease units to eligible families is not a temporary issue. An amendment to the SPRAC will be authorized by HUD to provide for the subsequent restoration of the reduction of units if HUD determines that the restoration is justified by demand; the owner has a record of compliance with the owner's obligations under the SPRAC; and contract and budget authority is available.

HUD may permit SPRAC units in the project to be leased to nonelderly families if the owner has made reasonable efforts to lease assisted and unassisted units to eligible families, the owner has been granted HUD approval, and the owner is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure. HUD approval for this situation would be of limited duration. If there is an FHA-insured mortgage on the project, HUD may also impose terms and conditions applicable to FHA-insured mortgages for this approval that are consistent with the program objectives, and necessary to protect its interest under the FHA-insured loan.

HUD's regulations in subpart L of 24 CFR part 5, which applies to the admission and occupancy of eligible families in cases where there is or there is claimed to be incidents of, or there is criminal activity related to, domestic violence, dating violence, or stalking, would also apply to the SPRAC.

Applicability of Other Part 891 Regulations (§ 891.912)

This section contains all of the requirements for subpart H that are from other sections of part 891. HUD has put these requirements under this section for consistency and ease of administration.

SPRAC Administration (§ 891.912(a))

Section 891.912(a) provides that HUD is responsible for the administration of the SPRAC.

Notice Upon SPRAC Expiration (§ 891.912(b))

Section 891.912(b) provides that the owner of any projects assisted by a SPRAC must follow the notice requirements under § 891.590 for contract expirations. Under § 891.590, the SPRAC must provide that the owner will notify each family leasing an assisted unit of any increase in the amount the family must pay as rent as a result of the expiration. The owner must notify the assisted family at least 1 year before the end of the SPRAC. Such notice must be sent by a first-class letter, be properly stamped, and be addressed to the family at its address at the project, with a proper return address. A copy of the notice must be served on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service will be considered effective when the notice is mailed and served properly. The date on which the notice will be considered to be received by the family will be the date on which the owner mails the first-class letter, or the date on which the notice is properly served, whichever is later.

Under § 891.590, the notice must advise each affected family that, after the expiration date of the SPRAC, the family will be required to bear the entire cost of the rent and that the owner may, subject to requirements and restrictions contained in the regulatory agreement, the lease, and state or local law, change the rent. The notice must also state the actual (if known) or the estimated rent that will be charged following the expiration of the SPRAC, the difference between the new rent and the total tenant payment toward rent under the SPRAC, and the date the SPRAC will expire.

In addition, the owner must give HUD a certification that families have been notified properly and in accordance with § 891.590, and must attach to the certification an example of the text of the notice. Section 891.590 applies to all SPRACs.

Responsibilities of the Owner (§ 891.912(c))

Section 891.912(c), the owner is responsible for all requirements under § 891.600, except for § 891.600(a)(1) and (a)(3). Therefore, for owners, marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, state, or local fair housing and equal opportunity requirements. See 24 CFR 5.105(a). The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of discriminatory considerations, such as their race, color, religion, familial status, disability, sex or national origin. Marketing must also be done in accordance with the communication and notice requirements of HUD's Section 504 regulations at 24 CFR 8.6 and 24 CFR 8.54.

Under § 891.600, the owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for

families occupying assisted units, collection of rents, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with fair housing and equal opportunity requirements.

With HUD approval, the owner may contract with a private or public entity for performance of the services or duties required under § 891.600. However, such an arrangement does not relieve the owner of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationships described in §§ 891.130 and 891.505, if applicable. (These prohibitions do not extend to management contracts entered into by the owner with the sponsor or its nonprofit affiliate).

The owner must promote awareness and participation of minority and women's business enterprises in contracting and procurement activities consistent with the objectives of Executive Order No. 11625 (36 FR 19967, 3 CFR, 1971–1975 Comp., p. 616; as amended by Executive Order No. 12007 (42 FR 42839, 3 CFR, 1977 Comp., p. 139; unless otherwise noted); Executive Order No. 12432 (48 FR 32551, 3 CFR, 1983 Comp., p. 198; unless otherwise noted); and Executive Order No. 12138 (44 FR 29637, 3 CFR, 1979 Comp., p. 393; unless otherwise noted.

The owner must submit to HUD within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD; and other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the SPRAC and to monitor project operations.

The owner must also maintain a separate project fund account in a depository or depositories that are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund, and must deposit all rents, charges, income, and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally-insured accounts. All balances must be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), to make required principal and interest payments on the project mortgage, and to make required deposits to the replacement reserve under §§ 891.605 and 891.745 (as applicable), in accordance with a HUD-approved budget. Any project funds in the project funds account (including earned interest) following the expiration of the fiscal year must be deposited in a federally insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds must be returned to HUD.

Lastly, the owner must submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements.

Replacement Reserve (§ 891.912(d))

Section 891.912(d) provides the owner must comply with all requirements under § 891.605. Therefore, the owner must establish and maintain a replacement reserve to aid in funding extraordinary maintenance, and repair and replacement of capital items. The owner must make monthly deposits to the replacement reserve in an amount determined by HUD. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements, and if the reserve reaches that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

Replacement reserve funds must be deposited with HUD or in a federally insured depository in an interest-bearing account(s) whose balances are fully insured at all times. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

Selection and Admission of Tenants (§ 891.912(e))

Section 891.912(e) provides that the owner must comply with the requirements under § 891.610, except for § 891.610(c). However, an applicant must meet the low-income eligibility guidelines for a low-income family under section 8 of the 1937 Act in order to be eligible under this subpart.

The owner must adopt written tenant selection procedures that ensure nondiscrimination in the selection of tenants, that are consistent with the purpose of improving housing opportunities for low-income elderly families or persons with disabilities; and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease.

Owners must promptly notify in writing any rejected applicant of the grounds for the rejection. Owners must maintain a written, chronological waiting list showing the name, race, gender, ethnicity, and the date of application for each person applying for the program. For applications, the owner must accept applications for admission to the project in the form prescribed by HUD. In addition, applicant families must sign a release of information consent for verification of information, and complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security numbers, and sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided in HUD's regulations in 24 CFR part 5, subpart B, which address the disclosure and verification of Social Security numbers and employer identification numbers and the procedures for obtaining income information. The owner and the applicant must complete and sign the application for admission. On request, the owner must furnish copies of all applications for admission to HUD.

If the owner determines that the family is eligible and units are available, the owner will assign the family a unit of appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be admitted within the next 12 months, the owner may advise the applicant that no additional applications for admission are being considered for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance.

If the owner determines that an applicant is ineligible for admission, or the owner is not selecting the applicant for other reasons, the owner must promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting with the owner or managing agent to review the rejection, in accordance with HUD requirements. If a review is requested, the review may not be conducted by a member of the owner's staff who made the initial decision to reject the applicant. The applicant may also

exercise other rights (e.g., rights granted under Federal, state, or local civil rights laws), if the applicant believes he or she is being discriminated against on a prohibited basis.

In addition, records on applicants and approved eligible families, which provide racial, ethnic, sex, disability status, and place of previous residency data required by HUD, must be retained for 3 years.

Also, the owner must reexamine the income and composition of the family at least every 12 months. Upon the verification of the information, the owner must make appropriate adjustments in the total tenant payment in accordance with 24 CFR 5.628 and determine whether the family's unit size is still appropriate. The owner must adjust tenant rent and the housing assistance payment, and must carry out any unit transfer in accordance with the administrative instructions issued by HUD. At the time of the reexamination, the owner must require the family to meet the disclosure and verification requirements for Social Security numbers, as provided under 24 CFR part 5, subpart B.

In addition, the family must comply with the provisions in their lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent, and housing assistance payment must be verified. A family must remain eligible for senior preservation rental assistance payments until the total tenant payment equals or exceeds the gross rent. The termination of subsidy eligibility will not affect the family's other rights under its lease.

SPRAC payments may be resumed if, as a result of changes in income, rent, or other relevant circumstances during the term of the SPRAC, the family meets the income eligibility requirements and housing assistance is available for the unit under the terms of the contract.

A family's eligibility for senior preservation rental assistance payments may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B.

Obligations of the Family (§ 891.912(f))

The obligations of the family are applicable to both the Section 202 and Section 811 programs, as provided under § 891.415. Under § 891.415, the assisted household or family must pay amounts due under the lease directly to the owner. The assisted household or family must supply such certification, release of information, consent, completed forms or documentation as the owner or HUD determines necessary. In addition, the assisted household or family must allow the owner to inspect the dwelling unit or residential space at reasonable times and after reasonable notice. The assisted household family must notify the owner before vacating the dwelling unit or residential space, and use the dwelling unit or residential space solely for residency by the household or family and as the principal place of residence.

The assisted household or family must not assign the lease or transfer the unit or residential space; or occupy, or receive assistance for the occupancy of, a unit or residential space governed under this part while occupying, or receiving assistance for the occupancy of, another unit assisted under any Federal housing assistance program, including any Section 8 programs.

Overcrowded and Under Occupied Units (§ 891.912(g))

Under this proposed rule, the owner must comply with the requirements under § 891.620. Therefore, if the owner determines that because of a change in family size, an assisted unit is smaller or larger than appropriate for the eligible family to which it is leased; SPRAC payments with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternate unit. If possible, the owner will, as promptly as possible, offer the family an appropriate alternate unit. The owner may receive vacancy payments for the vacated unit if the owner complies with the requirements of § 891.650, except § 891.650(b) does not apply.

Lease Requirements (§ 891.912(h))

The lease requirements are provided in § 891.425. Section 891.425 applies to capital advances under the Section 202 program and the Section 811 program, as well as loans financed under subpart E of part 891. Under § 891.425, the term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the household and owner may execute a new lease for a term not less than 1 year, or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of 1 month.

In addition, all leases may contain a provision that permits the household to terminate the lease upon 30-day advance notice. A lease for a term that exceeds 1 year must contain such provision.

Section 891.425 requires the owner to use the lease form as prescribed by HUD. In addition to required provisions of the lease form, the owner may include a provision in the lease permitting the owner to enter the leased premises at any time without advance notice when there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

Adjustment of Rents (§ 891.912(i))

The initial project rents shall not exceed the lesser of either comparable market rents for the market area as specified under the recipient's rent comparability study (RCS), and approved by HUD.

After initial rent setting, rents shall be adjusted by an OCAF on the anniversary of each executed SPRAC. Section 514(e)(2) of MAHRA (42 U.S.C. 1437f note) requires HUD to establish guidelines for rent adjustments based on an OCAF. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which renewal rents are established or adjusted. Under this subpart, the contract administrator shall conduct annual project rent adjustments according to the OCAF methodology prescribed under this notice.

At the expiration of each 5-year period of the SPRAC, the contract administrator shall compare existing contract rents with comparable market rents for the market area. At such contract anniversary, the contract administrator will make any adjustment necessary in the monthly contract rents necessary to set the contract rents for all unit sizes at comparable market rents. Such adjustments may result in a negative adjustment (decrease) or positive adjustment (increase) of the contract rents for one or more unit sizes.

To assist in the redetermination of contract rents, the contract administrator may require that the owner submit to the contract administrator a rent comparability study prepared at the owner's expense.

The rent payable by families occupying units that are not assisted

under the SPRAC will be equal to the contract rent.

Adjustment of Utility Allowances (§ 891.912(j))

In connection with adjustments of contract rents, as provided in § 891.905(b), the requirements for the adjustment of utility allowances, provided in § 891.440, apply.

Conditions for Receipt of Vacancy Payments for Assisted Units (§ 891.912(k))

Section 891.912(k) provides that the owner must comply with the requirements under § 891.650, except § 891.650(b) does not apply. Therefore, vacancy payments under the SPRAC will not be made unless the conditions for receipt of these senior preservation rental assistance payments set forth in this section are fulfilled.

If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner certifies that it did not cause the vacancy by violating the lease, the SPRAC, or any applicable law; and the owner notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy. The owner must have fulfilled and continued to fulfill the requirements specified in § 891.600(a)(2) and (3), and in this section; and for any vacancy resulting from the owner's eviction of an eligible family, certify that it has complied with § 891.630.

If a SPRAC unit remains vacant for more than 60 consecutive days upon tenant turnover, the owner shall not be eligible to receive further SPRAC payments for that SPRAC unit.

The unit must have been in decent, safe, and sanitary condition during the vacancy period for which payment is claimed. The owner must have fulfilled and continues to fulfill the requirements specified in this section, as appropriate. The owner must demonstrate to the satisfaction of HUD that, for the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit; and that the project can achieve financial soundness within a reasonable time.

If the owner collects payments for vacancies from other sources (tenant rent, security deposits, payments under § 891.435(c), or governmental payments under other programs), the owner is not entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

Default by Owner (§ 891.914)

If HUD determines that the owner is in default under the SPRAC, this section provides that HUD will notify the owner in writing of the actions required to cure the default and of the remedies that must be satisfied, including specific performance under the SPRAC, and a reduction or suspension of senior preservation rental assistance payments and recovery of overpayments or inappropriate payments, where appropriate.

If HUD determines that the owner is in default of any of the terms and requirements of the SPRAC, HUD will notify the owner in writing of the nature of the default, the actions required to cure the default, and the time within which the default must be cured. The notice will also identify the remedies that HUD may impose if the default is not cured within the applicable time. These may include termination of the SPRAC, reduction or suspension of payments under the SPRAC, and recovery of overpayments or inappropriate payments, where appropriate.

SPRAC Extension or Renewal (§ 891.916)

A Section 202 owner shall agree in writing that upon expiration of each annual increment of a given SPRAC, the owner shall accept each offer of annual increment renewal during the period of the use agreement. Each such offer of a renewal and the renewals themselves are subject to the availability of appropriations and further subject to the requirements of this part. The number of assisted units under the renewed SPRAC must equal the number of assisted units under the original SPRAC, subject to the availability of appropriations, except that HUD and the owner may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the renewal.

With respect to Section 202 Direct Loan prepayments with approved SPRAC units, each owner shall agree to enter into a Section 202 Direct Loan use agreement, which will expire at either 20 years beyond the maturity date of the original Section 202 Direct Loan, or the term of new financing, whichever is longer. Upon expiration of the term of the SPRAC and at HUD's sole discretion, the term of the SPRAC may be renewed or extended (subject to available funds) pursuant to the terms and conditions of the SPRAC and the use agreement.

Each owner shall agree in writing to operate the assisted Section 202 project for the full term specified under the executed SPRAC and for each renewal term in accordance with all statutory, regulatory, and administrative requirements of the SPRAC program.

The number of assisted units under the extended or renewed SPRAC must equal the number of assisted units under the original SPRAC, subject to the availability of appropriations, except that HUD and the owner may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the extension or renewal.

Denial of Admission, Termination of Tenancy, and Modification of the Lease (§ 891.918)

The regulations of 24 CFR part 5, subpart I, apply to projects previously financed with Section 202 direct loans under this subpart. The provisions of 24 CFR part 247 apply to all decisions by an owner to terminate the tenancy or modify the lease of a family residing in a unit.

In actions or potential actions to terminate tenancy, the owner must follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

Security Deposits (§ 891.920)

The general requirements for security deposits on assisted units are provided under § 891.435, with additional requirements under § 891.635 applying to properties with direct loans. The owner must maintain a record of the amount in the segregated interest-bearing account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement under § 891.435(b)(3), the owner must allocate to the family's balance the interest accrued on the balance during the year.

Unless prohibited by state or local law, the owner may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment must not exceed the accrued interest allocated to the family's balance for the year.

Labor Standards (§ 891.922)

Section 891.922 consists of the labor standards applicable to assisted units under this subpart. All laborers and mechanics employed by contractors and subcontractors in the construction, rehabilitation, or repair performed in connection with the provision of assistance under this subpart to nine or more units of housing in a project, where the total cost of such repair, replacement, or capital improvement is in excess of $500,000, shall be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 3141 et seq.). These standards are consistent with other labor standards under this part, adjusted for this program.

In addition, contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.). Sponsors, owners, contractors, and subcontractors must comply with related rules, regulations, and requirements as directed by HUD.

B. Service Coordinator in Multifamily Housing and Assisted Living Conversion Programs (Part 892—New)

General Program Requirements (Subpart A)

Applicability and Scope (§ 892.100)

The requirements set forth in this subpart A apply to the Service Coordinator in Multifamily Housing program, as authorized under sections 671, 672, 674, 676, and 677 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), as amended by section 851 of the AHEO (Pub. L. 106–569, approved January 24, 2000); and to the Assisted Living Conversion program, as authorized under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2).

Definitions (§ 892.105)

This section defines certain terms applicable to part 892. Certain terms with definitions unique to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs are defined in §§ 892.205 and 892.305, as applicable.

Activities of daily living (ADLs). Under this part, the definition of ''activities of daily living'' will have the same meaning as § 891.205. HUD has determined that the definition under § 891.205, which is applicable to the Section 202 program, is also applicable to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs. These programs serve the same populations.

Elderly person. Under this part, an ''elderly person'' means a person who is at least 62 years of age. This definition is consistent with the definition of an ''elderly person'' under section 202 of the Housing Act of 1959.

Eligible housing project. In order to receive assistance under this part, a project must be an ''eligible housing project,'' which can fall under one of seven categories as defined under section 202b(b) of the Housing Act of 1959 (12 U.S.C. 1701q–2). An eligible housing project can be housing that:

—Receives project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f);

—Is assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

—Is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the NAHA;

—Is financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715) that bears interest at a rate determined under section 221(d)(5) of such Act;

—Is assisted under section 515 of the Housing Act of 1949 (42 U.S.C. 1485), which authorizes assistance for rural housing projects and such projects are also receiving rental assistance under the 1937 Act;

—Is insured, assisted, or held by the Secretary, a state, or a state agency under section 236 of the National Housing Act (12 U.S.C. 1715z–1);

—Is constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the 1937Act (42 U.S.C. 1437f), as in effect before October 1, 1983, and that is assisted under a contract for assistance under such section.

Each of these categories may provide for assisted living facilities or service-enriched housing, as authorized under this part.

Frail elderly person. A ''frail elderly person'' is an elderly person who is unable to perform at least three of the activities of daily living. This definition is similar to § 891.205. HUD has determined that the definition under § 891.205, which is applicable to the Section 202 program, is also applicable to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs. These programs serve the same populations.

Functional limitations. The definition of ''functional limitations'' will be the same as § 891.205.

Housing assistance. The definition of ''housing assistance'' will apply only to federally assisted housing as provided under this part. ''Housing assistance'' is defined to mean the grant, contribution, capital advance, loan, mortgage insurance, or other assistance provided for an eligible housing project, as defined under this section. This term also includes any assistance provided for the housing by HUD, including any rental assistance for low-income occupants.

Instrumental activities of daily living (IADLs). Under this part, the definition of instrumental activities of daily living has the same meaning as in § 891.205

Low-income and very low-income family. Under this part, the definitions for ''low-income family'' and ''very low-income family'' will have the same meanings as provided under section 3(b)(2) of the 1937 Act.

Owner. The definition of ''owner'' will have the same meaning as provided under § 891.205. HUD has determined that the definition under § 891.205, which is applicable to the Section 202 program, is also applicable to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs. These programs serve the same populations.

Person with disabilities. Under this part, a ''person with disabilities'' will have the same meaning as provided under § 891.305. HUD has determined that the definition under § 891.305, which is applicable to the Section 811 program, is also applicable to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs. These programs serve the same populations.

Private nonprofit organization. The definition of ''private nonprofit organization'' will have the same meaning as provided under § 891.205. HUD has determined that the definition under § 891.205, which is applicable to the Section 202 program, is also applicable to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs. These programs serve the same populations.

Retain. The definition of ''retain'' means service coordination performed by a partnering agency that results in a reduction to the project's cost to hire or contract a service coordinator.

Service coordinator. The definition of ''service coordinator'' means a social service person hired, contracted, or retained by the assisted housing owner or its management company, who assists residents in identifying, locating, and acquiring supportive services necessary for elderly persons and

nonelderly persons with disabilities to live independently and age in place.

Supportive services. Under this part, ''supportive services'' mean health-related services, mental health services, services for nonmedical counseling, meals, transportation, personal care, bathing, toileting, housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable state laws), case management, personal emergency response, and other appropriate services that are designed to prevent hospitalization or institutionalization and permit elderly residents to age in place and live independently in a residential setting. The services may be provided through any agency of the Federal, state, or local government or other public or private department, agency, or organization.

Service expenses. Under this part, the definition of ''service expenses'' means those costs of providing supportive services necessary to permit residents to live independently, age in place, and prevent hospitalization or institutionalization.

Vicinity of the housing project. The definition of ''vicinity of the housing project'' means the area close enough to the eligible housing project to allow for easy access by individuals to the service coordinator's office space, and by service coordinators to individuals' residences.

Eligible Funding Recipients (§ 892.110)

This section provides that recipients who receive assistance under the Service Coordinator in Multifamily Housing and Assisted Living programs must own an eligible housing project, as defined in § 892.105, and comply with any regulatory agreement, housing assistance payment (HAP) contract, or any other HUD grant or contract, where applicable. In addition, recipients must be current in mortgage payments for any FHA-insured loan or Section 202 direct loan, unless the entity has signed a work-out agreement for the delinquent loan, and is current on and in compliance with the workout agreement, as applicable. Recipient must also meet the Physical Condition Standards in 24 CFR part 5, subpart G, as evidenced by a satisfactory score in the most recent final physical inspection report or by an approved work-out plan for housing projects that received a failing score.

Nondiscrimination and Equal Opportunity Requirements (§ 892.115)

This section provides the nondiscrimination and equal opportunity requirements for recipients who receive assistance under the Service Coordinator in Multifamily Housing and Assisted Living programs. Recipients must comply with all applicable nondiscrimination and equal opportunity requirements, including HUD's generally applicable nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). This includes, but is not limited to, the Fair Housing Act and its implementing regulations at 24 CFR part 100; title VI of the Civil Rights Act of 1964 and its implementing regulations at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR part 8; and titles II and III of the Americans with Disabilities Act and their implementing regulations at 28 CFR parts 35 and 36.

In addition, recipients must affirmatively further fair housing in their use of funds for the programs under this part. Specific activities will be detailed in the individual program NOFAs.

Lastly, recipients must ensure that programs or activities are administered in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The ''most integrated setting'' is defined as a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.[3]

Environmental Requirements (§ 892.120)

This section provides the environmental requirements that apply to the Service Coordinator in Multifamily Housing and Assisted Living programs. The National Environmental Policy Act of 1969, and HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4, apply to this part. In addition, if funding under subpart B will be used to cover the cost of any activities that are not exempt from environmental review requirements, such as acquisition, leasing, construction, or building rehabilitation, HUD must perform an environmental review to the extent required by 24 CFR part 50. Such environmental review must be performed before the grant award.

Service Coordinator in Multifamily Housing Program (Subpart B)

Purpose and Applicability (§ 892.200)

As explained in this section, the Service Coordinator in Multifamily Housing program allows owners of eligible projects to assist elderly persons and nonelderly persons with disabilities living in HUD-assisted housing and in the vicinity of the housing project to obtain needed supportive services from the community that enable independent living and aging in place. HUD makes funds available to employ and support a service coordinator by awarding grants and by approving owners' requests to use certain classes of project funds. Thus, the requirements set forth in this subpart B apply only to the Service Coordinator in Multifamily Housing program, as authorized under sections 671, 672, 674, 676, and 677 of the Housing and Community Development Act of 1992.

Definitions (§ 892.205)

This section defines certain terms applicable to the Service Coordinator in Multifamily Housing program (subpart B). The definitions under § 892.105 also apply.

At-risk elderly person. The definition of ''at-risk elderly person'' means an elderly person who is unable to perform one or two of the ADLs, as defined under § 892.105. Defining this category of elderly will help to determine the various levels of ADL needed, as well as ensure that the services provided by service coordinators are not limited to only those residents defined as ''frail elderly.'' The definition will also serve as a means for owners to identify those residents who may have higher ADL needs in the future. Estimating future supportive service needs supports HUD's efforts to ensure elderly residents age in place.

Available funds. Under this subpart, ''available funds'' means funds for supportive services, as approved by HUD, and must not be used to address critical property needs.

Eligible project. Under this subpart, an ''eligible project'' is defined to include an eligible housing project as defined in § 892.105. ''Eligible project'' also includes a project that has no ''project funds,'' as defined under § 892.105, available to pay for a service coordinator, and that is designed or designated for the elderly or persons with disabilities and continues to

[3] This direction is consistent with HUD's guidance on the U.S. Supreme Court landmark decision in Olmstead v. L.C., 527 U.S. 581 (1999), affirming that unjustified segregation of individuals with disabilities is a form of discrimination prohibited by title II of the Americans with Disabilities Act (ADA). See *http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf.* This guidance is consistent with efforts across Federal agencies and in many states to provide health care and related support and services for individuals with disabilities in the most integrated setting appropriate to their needs.

operate as such. This latter project includes any building within a mixed-use development that was designed for occupancy by elderly persons or persons with disabilities at its inception and continues to operate as such, or consistent with title VI, subtitle D, of the Housing and Community Development Act of 1992 (Pub. L. 102–550). If a project was not designed at its inception for occupancy by elderly persons or persons with disabilities, an eligible project includes a property in which the owner gives preferences in tenant selection (with HUD approval) to eligible elderly persons or nonelderly persons with disabilities for all units in that property.

Sources of Funding (§ 892.210)

This section provides that owners of eligible housing projects may request the use of or apply for different types of funding to cover Service Coordinator in Multifamily Housing program expenses. Service coordinator expenses will be considered an eligible project expense, in accordance with § 891.250(b). Amounts available for such costs include funding provided through section 8 of the 1937 Act (42 U.S.C. 1437f), and PRACs, pursuant to section 802 of NAHA (42 U.S.C. 8011); income generated from these programs or from tenant rental payments that exceed operating expenses and that may be used only upon approval from HUD; and multifamily service coordinator grants, subject to and consistent with the availability of appropriations.

Application and Selection (§ 892.215)

HUD will provide through a NOFA the form and manner of applications for grants under this subpart and for selection of applicants to receive such grants.

Duties (§ 892.220)

This section outlines the duties of service coordinators, as required under section 671 of the Housing and Community Development Act of 1992 (42 U.S.C. 13631). Service coordinators must perform an initial-needs screening, and subsequent annual reviews, to identify service needs. If a comprehensive assessment is required, the service coordinator must refer the tenant to a qualified professional. For residents identified through such screening, service coordinators must refer and link residents to an agency in the community that provides supportive service; monitor the ongoing provision of services from community agencies; and manage the provision of supportive services where appropriate. Service coordinators may provide case management when such service is not available through the general community.

Service coordinators must also educate residents on matters such as service availability, application procedures, and client rights, and provide advocacy as appropriate; maintain detailed case files on each resident served; help the residents build informal support networks with other residents, family and friends; establish linkages with agencies such as, but not limited to, local Area Agencies on Aging (AAA)/Aging and Disability Resource Centers (ADRC), and home and community-based service providers, to enhance service provision; and create a directory of providers for use by both housing staff and residents. Service coordinators must affirmatively market the service coordinator's services to residents of the property and surrounding community who are least likely to inquire, and find counselors to help tenants with counseling for mobility and fair housing choice. Service coordinators may work and consult with tenant organizations and resident management corporations; provide training to residents of the project in the obligations of tenancy or coordinate such training; and may carry out other appropriate activities for residents of the eligible housing project or for low-income elderly and persons with disabilities living in the vicinity of the eligible housing project.

However, there are also activities that service coordinators must not perform. Service coordinators must not act as a recreational or activities director, or provide supportive services directly.

Qualifications (§ 892.225)

This section provides the qualification requirements that individuals must meet to participate in the Service Coordinator in Multifamily Housing program as service coordinators. As set forth in this section, service coordinators must possess a bachelor's degree and have experience in social service delivery for the elderly and persons with disabilities. In addition, service coordinators must demonstrate a working knowledge of supportive services and other resources available for the elderly and persons with disabilities in the area served by the eligible housing project, and the ability to advocate, organize, problem-solve, and provide results for the elderly and persons with disabilities. However, this section provides for HUD to substitute a bachelor's degree based on the extent of qualifications, as set forth in paragraphs (b) through (d) of this section, and/or other qualifications that the service coordinator may present. The extent of qualifications will be determined by HUD through a NOFA.

Form of Employment or Retention (§ 892.230)

This section states that an owner may directly employ a service coordinator or may procure by contract the services of a service coordinator. Owners may also utilize a service coordinator whose expenses are supported by external sources of funding.

Training (§ 892.235)

As required under section 672 of the Housing and Community Development Act of 1992 (42 U.S.C. 8011(d)(4)), this section provides that service coordinators must receive and document training, at minimum, in the following subject areas: The aging process; elderly and disability services; eligibility for and procedures of Federal and applicable state entitlement programs; legal liability issues relating to providing service coordination; drug and alcohol use and abuse by the elderly; and mental health issues.

Administrative Requirements (§ 892.240)

This section describes the administrative requirements for the Service Coordinator in the Multifamily Housing program. Owners must provide on-site private office space for the service coordinator to allow for confidential meetings with residents. Such office space must be accessible to persons with disabilities and meet all Federal accessibility standards, including section 504 of the Rehabilitation Act of 1973, 24 CFR part 8, and titles II and III of the Americans with Disabilities Act of 1990, as applicable. In addition, resident files must be kept in a secured location and only be accessible to the service coordinator as required under § 892.245, unless the residents provide signed consent otherwise. Resident files must include documentation that demonstrates the resident's supportive service needs, referrals for needed supportive services (both short- and long-term) and follow-up from the service coordinator on the types and amounts of services residents receive, and any aging-in-place statistics or information. As directed, performance reports completed by the service coordinator and financial reports detailing program expenses must be submitted by the owner to HUD.

Confidentiality (§ 892.245)

Under the Service Coordinator in Multifamily Housing program, service

coordinators must store, in a secure manner, all files containing information related to the provision of supportive services for residents. Files must be accessible only to the service coordinator. A service coordinator may not disclose to any person any individually identifiable information that relates to the provision of supportive services to a resident, unless the resident has knowingly consented. Any such consent must be in writing and be signed by the resident, and must clearly identify the parties to whom the information may be disclosed, as well as the scope and purpose of the disclosure. If there is no applicable consent to disclosure, service coordinators may disclose individually identifiable information that relates to the provision of supportive services to a resident, to the extent necessary to protect the safety or security of a resident, housing project staff, or the housing project. However, confidentiality policies must be consistent with maintaining confidentiality of information related to any individual as required by the Privacy Act of 1974 (5 U.S.C. 552a).

Program Costs (§ 892.250)

This section provides the eligible and ineligible program costs for the Service Coordinator in Multifamily Housing program. Funds may be used to cover the costs of employing or otherwise retaining the services of one or more service coordinators. Eligible program expenses include salary and fringe benefits; training; creating private office space; purchase of office furniture and equipment, supplies and materials, computer hardware, software, and Internet service; and other related administrative expenses approved by HUD.

Eligible costs must be reasonable, necessary, and recognized as expenditures in compliance with the uniform government-wide cost principles and other grant requirements found in HUD's regulations at 24 CFR part 84 (for private nonprofit organizations) and part 85 (for governments). Grant recipients must additionally be subject to allowable cost provisions in NOFAs and grant agreements. Owners of eligible housing projects who use a class or classes of project funds under this program must comply with the requirements that are applicable to approved withdrawals or uses of the class or classes of project funds under their governing agreements with HUD.

Ineligible program expenses are any costs that are not directly related to employing the service coordinator. Examples of ineligible program expenses are expenses associated with holiday parties, purchase of televisions or exercise equipment, and recreational activities for residents.

Services for Low-Income Elderly or Persons With Disabilities (§ 892.255)

This section provides that a service coordinator funded under § 892.210 may provide services to low-income elderly individuals or nonelderly persons with disabilities living in the vicinity of an eligible housing project. Community residents choosing to seek assistance from a service coordinator must come to the eligible housing project to meet with and receive assistance from the service coordinator. Service coordinators must make reasonable accommodations for those persons with disabilities unable to travel to the housing project, and have the option to make accommodations for other community residents.

Sanctions (§ 892.260)

This section provides the sanctions for noncompliance with the requirements of the Service Coordinator in Multifamily Housing program. If HUD determines that an owner has not complied with the requirements of this subpart, then HUD may impose any or a combination of sanctions as listed in this section. HUD may temporarily withhold reimbursements, approvals, extensions, or renewals until the owner adequately remedies the deficiency. HUD may disallow all or part of the cost attributable to activities undertaken not in compliance with applicable requirements, and if applicable, require the owner to remit to HUD, or to redeposit in the source, account funds in the amount that has been disallowed. HUD may suspend or terminate, in part or in whole, the grant or approval to use project funds. HUD may place conditions on the awards of grants or approvals of one or more classes of project funds so that the deficiency be remedied and that adequate steps be taken to prevent future deficiencies. Lastly, HUD may impose other sanctions authorized by law or regulation.

Assisted Living Conversion Program (Subpart C)

Purpose and Applicability (§ 892.300)

This section describes the purpose of the Assisted Living Conversion program. This program provides grants for the physical conversion of eligible multifamily assisted housing developments to assisted living facilities or service-enriched housing for the elderly. Grants provided under this program must be used for the purposes described in section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2). In addition, the requirements set forth in this subpart C apply only to eligible projects under the Assisted Living Conversion program, as authorized under section 202b(b)(1) of the Housing Act of 1959 (12 U.S.C. 1701q–2).

Definitions (§ 892.305)

This section defines certain terms applicable to the Assisted Living Conversion program (subpart C). The definitions under § 892.105 also apply.

Assisted living facility (ALF). Under this subpart, an ''assisted living facility'' will have the same meaning as provided under section 232(b) of the National Housing Act (12 U.S.C. 1715w(b)). Under this statute, an ''assisted living facility'' means a public facility, proprietary facility, or facility of a private nonprofit corporation. Each of these facilities must be licensed and regulated by the state (or if there is no state law providing for such licensing and regulation by the state, by the municipality or other political subdivision in which the facility is located). Such facility must make available to residents supportive services to assist the residents in carrying out activities of daily living (as defined under § 891.205). Lastly, such facility must provide separate dwelling units for residents, each of which contain a full bathroom and may contain a full kitchen, and include common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.

Congregate space. ''Congregate space,'' otherwise known as community space, shall have the same meaning as provided under section 202(h)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(h)(1)). This term excludes halls, mechanical rooms, laundry rooms, parking areas, dwelling units, and lobbies. Community space does not include commercial areas.

Conversion. The definition of ''conversion'' means activities in an eligible project designed to convert dwelling units into assisted living facilities. Conversion can include unit configuration and related common and service space, and any necessary remodeling, consistent with the Uniform Federal Accessibility Standards, section 504 of the Rehabilitation Act of 1973, and HUD's implementing regulations at 24 CFR part 8, as well as any applicable provisions of the Americans with Disabilities Act of 1990 and applicable Fair Housing Act design and construction requirements

for all portions of the development physically affected by such conversion. Where conversion may involve Medicaid reimbursement, conversion should be undertaken in accordance with the Home and Community-Based Services regulations of the U.S. Department of Health and Human Services (see 42 U.S.C. part 441.)

Eligible project. An ''eligible project'' under this subpart means eligible housing projects as defined under § 892.105; eligible projects as described in section 638(2) of the Housing and Community Development Act; and section 202 properties, as defined under § 891.105, with a PRAC.

Emergency capital repairs. ''Emergency capital repairs'' are repairs to a project that correct a situation that presents an immediate threat to the life, health, and safety of the project tenants, and if left untreated, would result in an evacuation of the tenants or long-term tenant displacement.

Repairs. Under the Assisted Living Conversion, ''repairs'' mean substantial and emergency capital repairs to a project that are needed to rehabilitate, modernize, or retrofit aging structures, common areas, or individual dwelling units.

Service-enriched activities. This section defines ''service-enriched activities'' as activities designed to convert dwelling units in the eligible project to service-enriched housing for elderly persons, as applicable under the Assisted Living Conversion program.

Service-enriched housing. This section defines ''service-enriched housing'' as housing that makes available, through licensed or certified third party service providers, supportive services to assist the residents in carrying out activities of daily living. Under this definition, ''activities of daily living'' means the definition under § 891.205. ''Service-enriched housing'' is housing that has a service coordinator, which may be funded as an operating expense of the property; provides separate dwelling units for residents, each of which contain a full bathroom and may contain a full kitchen; includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the housing; and provides residents with control over health care and supportive services decisions, including the right to accept, decline, or choose such services and to have the choice of a provider.

Other Federal Requirements (§ 892.310)

This section is similar to section 891.155 (Other Federal requirements) that is being revised by this proposed rule; however, the contents of this section are tailored to the program in this subpart. In addition to the requirements set forth in 24 CFR part 5, the requirements in this section apply to the Assisted Living Conversion program under this subpart.

In particular, this section incorporates requirements applicable for the rehabilitation, other construction, and related activities to be undertaken for the conversions to be conducted under this subpart. The introductory paragraph of this section is more focused than its counterpart in § 891.155, because the scope of this subpart is narrower. Similarly, § 891.155(e)(3), on acquisition, is not incorporated into this subpart based on the presumption that acquisitions will not be assisted under this program. Acquisitions may be assisted under one or more other HUD programs, and their regulations would apply to the acquisition.

In addition, all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in the construction (including rehabilitation) of housing with 12 or more units assisted under this program must be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a–276a–5). A group home for persons with disabilities is not covered by the labor standards under this paragraph. Contracts involving employment of laborers and mechanics under this subpart shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333). Sponsors, owners, contractors, and subcontractors must comply with all rules, regulations, and requirements related to the Davis-Bacon Act (40 U.S.C. 276a–276a–5).

The Lead Safe Housing regulations (LSHR) (24 CFR 35, subparts B–R) is incorporated in the proposed § 892.310(h) because children under age 6 are not prohibited from residing in pre-1978 supportive housing for the elderly under this new subpart. When children under age 6 reside in or are expected to reside in supportive housing for the elderly under this subpart, such housing must abide by the requirements under the LSHR. When children under age 6 do not reside in nor are expected to reside in supportive housing for the elderly under this subpart, such housing is not required to abide by the requirements under the LSHR. HUD will determine, on a case-by-case basis, whether supportive housing for the elderly under this subpart must abide by the requirements under the LSHR.

Additional Project Eligibility (§ 892.315)

This section provides that, in addition to the criteria for eligible housing projects as defined under § 892.105, projects receiving Assisted Living Conversion Program (ALCP) funds must also meet certain criteria as provided under section 202b(b) of the Housing Act of 1959 (12 U.S.C. 1701q–2(b)). The project must be owned by a private nonprofit organization, as defined under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). The project must be designated primarily for occupancy by elderly persons, and the project may be unused or underutilized commercial property, except that HUD may not provide grants under this section for more than three such properties.

Notice of Funding Availability (§ 892.320)

This section provides that HUD will issue a separate notice of funding availability (NOFA) for the Assisted Living Conversion program. The NOFA will contain specific information on how and when to apply for the grant authority, the contents of the application, and the selection process.

As authorized under section 202b(c) of the Housing Act of 1959 (12 U.S.C. 1701q–2(c)), HUD has broad discretion to set the requirements for applications for assistance under this subpart. This section provides that an application for assistance under this subpart must contain certain requirements, in addition to the requirements outlined in the NOFA. The application must contain a description of the substantial capital repairs or the proposed conversion activities for either an assisted living facility or service-enriched housing for which a grant under this subpart is requested. The application must contain the amount of the grant requested to complete the substantial capital repairs or conversion activities, and a description of the resources that are expected to be made available, if any, in conjunction with the requested funding.

Requirements for Services (§ 892.325)

HUD will ensure that assistance under this subpart provides firm commitments for the funding of services to be provided in the assisted living facility or service-enriched housing as described in section 202b(d)(1) of the Housing Act of 1959 (12 U.S.C. 1701q–2(d)(1)). In addition, HUD will require evidence that each recipient of a grant for service-enriched housing provide relevant and timely disclosure of information to

residents or potential residents as described in section 202b(d)(2) of the Housing Act of 1959 (12 U.S.C. 1701q–2(d)(2)).

Section 8 Project-Based Assistance (§ 892.330)

This section provides that multifamily projects, which include one or more dwelling units that have been converted to assisted living facilities or service-enriched housing using funding made under this subpart, are eligible for project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). Such project-based assistance is provided in the same manner in which the project would be eligible for such assistance, but for the assisted living facilities or service-enriched housing in the project. The maximum monthly rent of a dwelling unit that is an assisted living facility or service-enriched housing that receives section 8 assistance under this section(§ 892.330) must not include charges attributable to services relating to assisted living.

Vacancy Payment (§ 892.335)

A vacancy payment, under the Assisted Living Conversion program, is limited to 30 days after a conversion to an assisted living facility.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). Consistent with Executive Order 13563, this rule revises the existing part 891 regulations for the supportive housing programs for the elderly and persons with disabilities to implement not only new flexible provisions required by the legislation signed into law on January 4, 2011, but from HUD's own review of the existing regulations and where improvements could be made based on experience.

The costs and benefits of this rule are discussed in detail in the regulatory impact analysis (RIA) and a summary of the costs and benefits are found in the executive summary in this preamble.

The rule and the RIA are available for public inspection on *www.regulations.gov.* These documents are also available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, at toll-free, 800–877–8339.

Information Collection Requirements

The information collection requirements contained in this proposed rule have been submitted to the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN FOR PARTS 891 AND 892

Section reference	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
§ 891.190—documentation to support approval of ePRAC	100	1	100	20	2,000
§ 891.308(b)(2)(ii)—application for waiver	20	1	20	0.5	10
§ 891.335—documentation to support conversion	10	1	10	16	160
§ 891.410—documentation of elderly individuals who can support having functional limitations	30	1	30	2	60
§ 891.430—notification to tenant of termination of tenancy	300	1	300	1	300
§ 891.530—documentation necessary to approve prepayment	280	1	280	2	560
§ 891.700—documentation necessary to approve prepayment	280	1	280	2	560
§ 891.800—information to be included in RAC	15	1	15	20	300
§ 891.882—information required by agreement; MOU, plan of participating agencies	15	1	15	1	15
§ 892.210(a)—information required for project income use	50	1	50	2	100
§ 892.210(b)—information required for renewals	1700	1	1700	2	3,400
§ 892.210(b)—information required for grant funding	200	1	200	40	8,000
§ 892.315—information required for funding	50	1	50	40	2,000
Total:				148.5	17,465

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5576–P–01) and must be sent to:

HUD Desk Officer
Office of Management and Budget
New Executive Office Building
Washington, DC 20503
Fax number: 202–395–6947
and
Reports Liaison Officer
Office of Housing
Department of Housing and Urban Development
451 Seventh Street SW. Room 9116
Washington, DC 20410–8000

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

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this proposed rule in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington DC 20410–0500. Due to security measures at the HUD Headquarters Building, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at 202–708–3055 (not a toll free number).

Unfunded Mandates Reform Act

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As has been discussed in this preamble, this proposed rule is largely directed to: Establishing the requirements and procedures for the use of new project rental assistance for supportive housing for persons with disabilities; implementing an enhanced project rental assistance contract; providing for an allowance of a set-aside for a number of units for elderly individuals with functional limitations or other category of elderly individuals as defined in the NOFA; revising the requirements for the prepayment of certain loans for supportive housing for the elderly; implementing a new form of rental assistance called senior preservation rental assistance contracts (SPRACs); modernizing the capital advance for supportive housing for persons with disabilities; and establishing the requirements that will be applicable to grant assistance for applicants without sufficient capital to prepare a site for a funding competition.

This rule also proposes to establish the regulations for the Service Coordinator in Multifamily Housing program and Assisted Living Conversion program, long-term grant programs for which there have not been regulations promulgated to date.

The statutory changes to the Section 202 program and Section 811 program, for which this rule proposes regulations, increase flexibility with respect to use of funds and administration of these programs. This flexibility benefits all participants in these programs, small and large entities. In addition to the statutory changes that increase flexibility to these programs, HUD proposes, administratively, regulatory changes to the Section 202 program and Section 811 program that would further increase administrative flexibility.

Given the proposed rule's goal to reduce burden and increase flexibility in the programs covered by this rule, HUD has determined that it would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has Federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have Federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive order.

List of Subjects in

24 CFR Part 891

Capital advances, Persons with disabilities, Project rental assistance, Supportive housing for persons with disabilities, Supportive services.

24 CFR Part 892

Service Coordinator, Assisted Living Conversion, Elderly Persons, Persons with Disabilities, and Supportive Services.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 891 and add a new part 892 to read as follows:

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 1. The authority citation for 24 CFR part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 2. In § 891.100, revise paragraph (a) to read as follows:

§ 891.100 Purpose and policy.

(a) *Purpose.* The Section 202 Program of Supportive Housing for the Elderly and the Section 811 Program of Supportive Housing for Persons with Disabilities provide Federal capital advances and project rental assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) (section 202) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013) (section 811), respectively, for housing projects serving elderly households and persons with disabilities. Section 202 projects shall provide a range of voluntary services that are tailored to the needs of the residents. Owners of Section 811 projects shall ensure that the residents are offered, but are not required to accept, any necessary supportive services that address their individual needs.

* * * * *

■ 3. Section 891.105 is revised by amending the introductory paragraph; revising the definitions of ''family,'' ''operating costs,'' ''project rental assistance contract,'' and ''project rental assistance payment''; and adding, in alphabetical order, the definition of ''enhanced project rental assistance contract;'' to read as follows:

§ 891.105 Definitions.

The following definitions apply, as appropriate, throughout this part. Other terms with definitions unique to the particular program are defined in §§ 891.205, 891.305, 891.505, 891.805, 891.872, and 891.892, as applicable.

* * * * *

Enhanced project rental assistance contract (ePRAC) means the contract entered into by the nonprofit organization and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the ePRAC. An enhanced project rental assistance contract is made available for:

(1) Sponsors submitting a new application under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013) or under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and who are accessing private capital, to fund the construction or provide permanent financing for supportive housing units for the elderly or persons with disabilities:

(2) Owners of existing 202 and 811 capital advance properties. Such contract would allow for the inclusion of debt service as an eligible expense for the units covered by the contract.

* * * * *

Family(ies) means an *Elderly Family* as defined in § 891.505, and may include a ''Disabled Family,'' as defined in § 891.505, pursuant to the terms and conditions of an applicant's original Section 202 loan.

* * * * *

Operating costs means HUD-approved expenses related to the provision of housing and includes:

(1) Administrative expenses, including salary and management expenses related to the provision of shelter and, in the case of the Section 202 Program, the coordination of services;

(2) Maintenance expenses, including routine and minor repairs and groundskeeping;

(3) Security expenses;

(4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services;

(5) Taxes and insurance;

(6) Allowances for reserves;

(7) Allowances for services (in the Section 202 Program only); and

(8) Allowances for debt service only for units in new or existing 202 and 811 capital advance properties covered by an ePRAC in accordance with the requirements in § 891.190.

Project rental assistance contract (PRAC) means the contract entered into by the Owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC, except for project rental assistance provided under subpart G and units covered by ePRACs under § 891.190 in subpart A.

Project rental assistance payment means the payment made by HUD to the Owner for assisted units as provided in the PRAC or ePRAC, except for project rental assistance provided under subpart G. The payment is the difference between the total tenant payment and the HUD-approved per-unit operating expenses except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a household occupying an assisted unit when the utility allowance is greater than the total tenant payment. A project rental assistance payment, known as a ''vacancy payment,'' may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the PRAC or ePRAC.

* * * * *

■ 4. Redesignate § 891.140 as § 891.208.

■ 5. Remove § 891.145.

■ 6. § 891.150 is revised to read as follows:

§ 891.150 Operating cost standards.

(a) *Applicability.* The requirements under this section apply only to PRACs, as defined under § 891.105.

(b) *Standard.* HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for the elderly or for persons with disabilities in each field office, and shall adjust the standard annually based on appropriate indices of increases in housing costs, such as the Consumer Price Index. The operating cost standards shall be developed based on the number of units. However, for the Section 811 Program and for projects funded under §§ 891.655 through 891.790, the operating cost standard for group homes shall be based on the number of residents. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance initially reserved for a project.

■ 7. In § 891.155, the introductory text, paragraph (b), paragraphs (d)(1) and (2) are revised to read as follows:

§ 891.155 Other Federal requirements.

In addition to the requirements set forth in 24 CFR part 5, the following requirements in this § 891.155 apply to the Section 202 and Section 811 Programs, projects funded under §§ 891.655 through 891.790, and prepayments under §§ 891.530 and 891.700. Other requirements unique to a particular program are described in subparts B, C, G, and H of this part, as applicable.

* * * * *

(b) *Environmental requirements.* Except for the program under subpart G, the National Environmental Policy Act of 1969, and HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4, apply. Environmental reviews under § 891.530 and 891.700 shall consider the use of a senior preservation rental assistance contract under subpart H of this part, regardless of whether an application for such contract has been made at the time of review. For the environmental requirements for the program under subpart G (see §§ 891.882(e) and (f)). For the purposes of Executive Order No. 11988, Floodplain Management (42 FR 26951, 3 CFR, 1977 Comp., p. 117); as amended by Executive Order 12148 (44 FR 43239, 3 CFR, 1979 Comp., p. 412), and implementing regulations in 24 CFR part 55, all applications for intermediate

care facilities for persons with developmental disabilities shall be treated as critical actions requiring consideration of the 500-year floodplain.

* * * * *

(d) *Labor standards.* (1) All laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in the construction (including rehabilitation) of housing with 12 or more units assisted under this part (other than under subpart H) shall be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*). A group home for persons with disabilities is not covered by the labor standards.

(2) Contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*).

* * * * *

■ 8. § 891.160 is revised to read as follows:

§ 891.160 Audit requirements.

Nonprofits receiving assistance under this part are subject to the audit requirements in the notice of funding availability (NOFA).

■ 9. In § 891.165, paragraph (b) is revised to read as follows:

§ 891.165 Duration of capital advance.

* * * * *

(b) The duration of the fund reservation for projects that elect not to receive any capital advance before construction completion is 24 months from the date of initial closing to the start of construction. This duration can be up to 36 months, as approved by HUD on a case-by-case basis.

■ 10. Revise § 891.175 to read as follows:

§ 891.175 Technical assistance.

For purposes of the Section 202 Program and the Section 811 Program, HUD shall make available appropriate technical assistance.

(a) Assistance under this section must ensure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the programs.

(b) HUD may offer competitive grants under this section in order to bolster an applicant's capacity to engage in preliminary work required in the development of supportive housing under the Section 202 Program or the Section 811 program.

(1) Assistance under paragraph (b) of this section is available only if:

(i) The applicant is eligible under the NOFA for the Section 202 Program or the Section 811 Program;

(ii) The applicant has site control; and

(iii) The applicant lacks access to capital to undertake initial efforts to confirm site feasibility, pursue initial site funding, and undertake the preparatory steps necessary to compete in the NOFA for the Section 202 Program or the Section 811 Program, as applicable.

(2) Competitive grants provided under paragraph (b) of this section may be used to cover initial costs of necessary architectural and engineering work, site control, and other activities related to the development of supportive housing for the elderly and persons with disabilities.

■ 11. Section 891.190 is added to read as follows:

§ 891.190 Enhanced project rental assistance contracts (ePRACs).

(a) *In general.* The ePRACs are available to applicants under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* The following requirements apply to ePRACs:

(1) *Eligible applicants.* Applicants eligible for ePRACs are only nonprofit organizations, as defined under §§ 891.205, 891.305, and 891.805, with:

(i) Sponsors accessing private capital to fund the construction or provide permanent financing for supportive new housing units; or

(ii) Owners of existing properties accessing private capital and where debt service results in ongoing operating cost savings in an amount greater than the cost of debt service.

(2) *Eligible expenses.* Eligible expenses must include debt service covering the private financing obtained for the supportive housing units covered by the contract. Debt service for non-section 202 or non-section 811 units must not be included.

(3) *Rent setting.* (i) Initial rent levels, as well as the rent levels at the beginning of each 5-year term of the multiyear contract, must be based on the project's operating expenses that include private long-term debt service and must not exceed market rents (which may take the provision of a service coordinator into consideration); or

(ii) Rents during the 5-year term of the multiyear contract will be adjusted using the operating cost adjustment factor (OCAF).

(4) *Vacancy payments for assisted units.* Vacancy payments for units under the ePRAC will be in the amount of 80 percent of the per-unit operating expenses that include debt service for the first 60 days of vacancy if the conditions for receipt of these project rental assistance payments under § 891.445 are fulfilled.

(5) *Operating cost savings.* HUD may retain a percentage of the ongoing operating cost savings. HUD will advise of the percentage of savings to be retained through notice.

(6) *Other requirements.* Except as provided under this section, ePRACs must follow the requirements provided under this subpart as well as under subparts D and F of part 891.

■ 12. In § 891.205, the definition for ''activities of daily living'' is revised, and definitions for ''functional limitations'' and ''instrumental activities of daily living'' are added in alphabetical order to read as follows:

§ 891.205 Definitions.

Activities of daily living (ADL) means eating, dressing, bathing, grooming, and transferring, as further described below:

(1) *Eating*—May need assistance with cooking, preparing, or serving food, but must be able to feed self;

(2) *Bathing*—May need assistance in getting in and out of the shower or tub, but must be able to wash self;

(3) *Grooming*—May need assistance in washing hair, but must be able to take care of personal appearance;

(4) *Dressing*—Must be able to dress self, but may need occasional assistance;

(5) *Transferring*—Actions such as going from a seated to standing position and getting in and out of bed; and

(6) Other such activities as HUD deems essential for maintaining independent living.

* * * * *

Functional limitations means the restriction or loss of ability to perform or complete ADL/IADL tasks. An elderly person with functional limitations requires assistance with three ADLs or one ADL and some combination of Instrumental Activities of Daily Living (IADLs) and/or other thresholds as established by HUD through publication of notice. An assessment of ADL/IADLs is a useful tool for tailoring services to meet the needs of elderly persons to allow for such persons to age in place and live independently. Assessment of functional limitations must be performed by a qualified professional and is generally documented by an individual's service provider or health care provider.

* * * * *

Instrumental Activities of Daily Living (IADLs) means activities that are more

complex than those needed for the ADLs, they include but are not limited to handling personal finances, meal preparation, shopping, traveling, doing housework, using the telephone, taking or managing medications, or other such activities as HUD deems essential for maintaining independent living.

* * * * *

■ 13. In § 891.225, paragraph (b) is revised to read as follows:

§ 891.225 Provision of services.

* * * * *

(b)(1) HUD shall ensure that Owners have the managerial capacity to perform the coordination of services described in section 202(g)(2) of the Housing Act of 1959 (12 U.S.C. 1701q(g)(2)).

(2) Sponsors of projects may set aside a percentage, as determined by HUD in a NOFA, of units for elderly individuals with functional limitations or other category of elderly individuals as defined in the NOFA. Tenants of these set-aside units must be eligible for long-term services and support from home and community-based service providers. Such set-aside units must abide by the requirements under § 891.410(c)(3).

(3) Any cost associated with the employment of a service coordinator shall also be an eligible cost, except if the project is receiving congregate housing services assistance under section 802 of the National Affordable Housing Act (42 U.S.C. 8011). The HUD-approved service costs will be an eligible expense to be paid from project rental assistance, not to exceed $15 per unit per month; or such other amount as determined by HUD. The balance of service costs shall be provided from other sources, which may include co-payment by the tenant receiving the service. Such co-payment shall not be included in the Total Tenant Payment. The limit of $15 per unit, per month, or such other amount as determined by HUD, pertains only to the cost of supportive services and not to costs associated with the employment of a service coordinator.

■ 14. Remove § 891.230.

■ 15. Section § 891.235 is added to read as follows:

§ 891.235 Owner deposit (minimum capital investment).

Under the Section 202 Program, if an Owner has a National Sponsor or a National Co-Sponsor, the Minimum Capital Investment shall be one-half of one percent (0.5 percent) of the HUD-approved capital advance, not to exceed $25,000. Such amount must be used only to cover operating deficits during the first 3 years of operations, and must not be used to cover construction shortfalls or inadequate initial project rental assistance amounts.

■ 16. In § 891.305, the definition of ''disabled household'' is revised to read as follows:

§ 891.305 Definitions.

* * * * *

Disabled household means a household composed of:

(1) One or more persons at least one of whom is an adult (18 years of age or older and less than 62 years of age), and who has a disability;

(2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well being; or

(3) The surviving member or members of any household, described in paragraph (1) of this definition, who were living in a unit as a lawful tenant assisted under this part, with the deceased member of the household at the time of his or her death.

* * * * *

■ 17. Section § 891.308 is added to read as follows:

§ 891.308 Cost limits.

(a) *Group homes.* (1) HUD shall use the development cost limits, established by notice in the **Federal Register** and adjusted by locality, to calculate the fund reservation amount of the capital advance to be made available to individual owners of group homes, as defined under section 811(k)(1) of the National Affordable Housing Act (42 U.S.C. 8013(k)). Owners that incur actual development costs that are less than the amount of the initial fund reservation shall be entitled to retain 50 percent of the savings in a Replacement Reserve Account. Such percentage shall be increased to 75 percent for owners that add energy efficiency features.

(2) The Replacement Reserve Account established under paragraph (a)(1) of this section must only be used for repairs, replacements, and capital improvements to the project.

(b) *HOME program cost limitations.* (1) *In general.* Except for the cost limitations under paragraph (a) of this section, the provisions of section 212(e) of the National Affordable Housing Act (42 U.S.C. 12742(e)) and the cost limits established by HUD pursuant to section 212(e) for the HOME Investment Partnerships program under subtitle A of title II of such Act, apply on a per-unit basis to supportive housing for persons with disabilities assisted with a capital advance.

(2) *Waivers.* (i) HUD may provide for the waiver of the cost limits under paragraph (b)(1) of this section. HUD may provide a waiver in such cases in which the cost limits established pursuant to section 212(e) of the National Affordable Housing Act may be waived under the HOME Investment Partnerships program, and to provide for:

(A) The cost of special design features to make the housing accessible to persons with disabilities;

(B) The cost of special design features necessary to make individual dwelling units meet the special needs of persons with disabilities; and

(C) The cost of providing the housing in a location that is accessible to public transportation and community organizations that provide supportive services to persons with disabilities.

(ii) The applicant will not receive a waiver in excess of 110 percent of the applicable HOME Investment Partnerships program cost limitations under paragraph (b)(1) of this section.

(3) *Reserve account.* HUD shall use the cost limits as established by paragraph (b)(1) of this section to calculate the maximum fund reservation amount of the capital advance to be made available to individual owners.

(i) Owners may elect to request an amount less than the amount determined under the development cost limits if such amount still allows for the project's financial feasibility.

(ii) Owners must not decline a capital advance amount.

■ 18. In § 891.310, the introductory text of paragraph (b), paragraphs (b)(1), (b)(2), and (b)(3) are revised, paragraph (b)(4) is redesignated as paragraph (b)(5) and a new paragraph (b)(4) is added, to read as follows:

§ 891.310 Special project standards.

* * * * *

(b) *Additional accessibility requirements.* In addition to the accessibility requirements in § 891.120(b), the following requirements apply to group homes as defined under section 811(k)(1) of the National Affordable Housing Act, independent living facilities, and to projects funded under §§ 891.655 through 891.790:

(1) All entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

(2) All dwelling units in an independent living facility (or all bedrooms and bathrooms in a group home) involving new construction must be designed to be accessible or

adaptable for persons with physical disabilities.

(3) In a project for chronically mentally ill individuals, involving new construction, a minimum of 10 percent of all dwelling units in an independent living facility (or 10 percent of all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical disabilities.

(4) A project involving acquisition and/or rehabilitation may provide less than full accessibility if:

(i) The project complies with the requirements of 24 CFR 8.23;

(ii) The cost of providing full accessibility makes the project financially infeasible;

(iii) Fewer than one-half of the intended occupants have mobility impairments; and

(iv) The accessibility requirement will be met through existing properties that serve persons with disabilities.

* * * * *

■ 19. In subpart C, new §§ 891.330, 891.335, 891.340, 891.345, and 891.350 are added to read as follows:

§ 891.330 Project rental assistance.

(a) *Renewals and increases in contract amounts.* (1) Upon the expiration of each contract term, subject to the availability of appropriations, HUD will adjust the annual contract amount to provide for reasonable project operating costs, including adequate reserves and service coordinators.

(2) Any contract amounts not used by a project during a contract term will not be available for such adjustments upon renewal.

(b) *Emergency situations.* For emergencies that are outside the control of the owner, HUD will increase the annual contract amount, subject to HUD's review and restrictions, as may be prescribed by HUD.

(1) Increases in contract amounts will be no greater than either 10 percent above the most recently approved budget-based rent, or 110 percent of FMR for market-based rents.

(2) Such increases will be solely for repaying loans or equity that was used for addressing emergency repairs to the building that are:

(i) Beyond normal repair and maintenance;

(ii) Are not attributable to deferred maintenance; and

(iii) Caused by matters outside the control of the owner for which sufficient insurance proceeds are not available.

§ 891.335 Conversions.

(a) *In general.* An owner may request to convert some or all units from supportive housing for very low-income persons with disabilities to very low-income persons if:

(1) The state agency responsible for administering the Medicaid program and/or the state health and human services agency indicates in writing that the need for supportive housing for very low-income persons with disabilities no longer exists or that the affordable supportive housing for very low-income persons with disabilities will be replicated in a more integrated setting;

(2) The project has had persistent vacancy, despite a reasonable effort to lease such units as determined by HUD; and

(3) A demonstrated need exists for the households that would benefit from such conversion.

(b) *Reservation.* In granting a conversion, HUD may reserve the right to request a change in management or require a conversion only for a certain period.

§ 891.340 Limitation on use of funds.

Section 811 funds may not be used to replace other state or local funds previously used or designated for use for persons with disabilities.

§ 891.345 Multifamily housing projects.

(a) *Restriction.* The total number of dwelling units in any multifamily housing project (including any condominium or cooperative housing project) containing any unit for which assistance is provided under this part for supportive housing for persons with disabilities, or with any occupancy preference for persons with disabilities, may not exceed 25 percent of such total.

(b) *Exception.* The restriction under paragraph (a) of this section shall not apply to any project that is a group home or independent living facility.

§ 891.350 Voluntary supportive services.

(a) *In general.* For Section 811 projects funded under this subpart, supportive services must be offered to, but are not required to be accepted, by persons with disabilities.

(b) *Supportive service plan.* A supportive service plan for housing for Section 811 projects must permit each resident to choose and acquire services, to receive any supportive services made available directly or indirectly by the owner of such housing or by others, or to not receive any supportive services.

■ 20. In § 891.410, paragraph (c)(2)(ii) is revised and paragraph (c)(3) is added to read as follows:

§ 891.410 Determination of eligibility and selection of tenants.

* * * * *

(c) * * *

(2) * * *

(ii) Owners shall make selections in a nondiscriminatory manner without regard to considerations such as race, religion, color, sex, national origin, familial status, or disability. An owner may, with the approval of HUD, limit occupancy within the housing to persons with disabilities who can benefit from the supportive services, including the accessibility features, offered in connection with the housing.

(3) Under the Section 202 Program:

(i) In order to be eligible for admission, the applicant must also meet any project occupancy requirements approved by HUD.

(ii) Owners must lease units set aside under § 891.225(b)(2) to elderly individuals who can provide evidence of functional limitations or other category as defined in the NOFA. Evidence can consist of a doctor's or nurse's written evaluation or a letter from the AAA or Aging and Disability Resource Center (ADRC) or other like social service agencies. Examples of service providers include, but are not limited to, Medicaid home and community-based service providers or Programs for All-Inclusive Care for the Elderly (PACE) providers (including co-location of PACE programs on site). Provider organizations must have the capacity to bill Medicaid or be affiliated with AAA.

(iii) Owners will continue to lease units not set aside for elderly individuals with functional limitations or other category of elderly persons as defined in the NOFA to any applicant determined to be eligible for the project. Owners will make selections in a nondiscriminatory manner without regard to considerations of race, religion, color, sex, national origin, familial status, or disability. Owners must also make selections without regard to actual or perceived sexual orientation, gender identity, or marital status, in accordance with 24 CFR 5.105(a).

(iv) Set aside units must be distributed throughout the project and must not be segregated to one area of a building or the project. A specified number of units, rather than specific units (e.g., units 101, 201, etc.), may be set aside for this purpose.

* * * * *

■ 21. Revise § 891.430 to read as follows:

§ 891.430 Denial of admission, termination of tenancy, and modification of lease.

(a) *In general.* (1) The provisions of 24 CFR part 5, subpart I, apply to Section 202 and Section 811 capital advance projects.

(2) The provisions of 24 CFR part 247 apply to all decisions by an owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home), except as provided under paragraph (b) of this section.

(b) *Section 811 projects.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of a rental dwelling unit assisted with funds under Section 811 except:

(1) For serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause; and

(2) The tenant must receive, no less than 30 days before such termination or refusal to renew, a written notice specifying the grounds for such action.

Subpart E—Loans for Housing for the Elderly and Persons With Disabilities

■ 22. In Subpart E:

■ a. Revise the undesignated heading, ''Section 202 Projects for the Elderly or Handicapped—Section 8 Assistance,'' to read ''Section 202 Projects for the Elderly or Persons with Disabilities—Section 8 Assistance.''

■ b. Revise the undesignated heading, ''Section for the Nonelderly Handicapped Families and Individuals—Section 162 Assistance'' to read ''Section for the Nonelderly Disabled Families and Individuals—Section 162 Assistance.''

§ 891.500 [Amended].

■ 23. In § 891.500, replace the term ''handicapped'' with the term ''disabled'' every place the term ''handicapped'' appears in this section.

§ 891.505 [Amended].

■ 24. In § 891.505, the definitions of ''borrower'' is amended by replacing the term ''handicapped'' with the term ''disabled''; the definition of ''handicapped family'' is amended by replacing the term ''handicapped'' with ''disabled'' wherever the term ''handicapped'' appears in the definition; the definition of ''handicapped person or individual'' is amended by replacing the defined term with the words ''person with disabilities''; and the definitions of ''housing and related facilities'' and ''nonelderly handicapped family'' are amended by replacing the term ''handicapped'' with the term ''disabled'' wherever the term ''handicapped'' appears in these two definitions.

§ 891.510 [Amended].

■ 25. In § 891.510(e), remove the term ''handicap'' in the last sentence of paragraph (e) and replace with the term ''disability.''

§ 891.520 [Amended].

■ 26. In § 891.520, replace the term ''handicapped'' with the term ''disabled'' every place the term ''handicapped'' appears in this section.

■ 27. Revise § 891.530 to read as follows:

§ 891.530 Prepayment privileges.

(a) *Prepayment prohibition.* The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any Section 202 project is prohibited, unless HUD gives prior written approval.

(b) *HUD-approved prepayment.* HUD may not grant approval unless HUD has determined that the prepayment or transfer of the loan is part of a transaction that will ensure the continued operation of the project, until at least 20 years following the maturity date of the original Section 202 loan, in a manner that will provide rental housing for the elderly and persons with disabilities on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any project-based rental assistance payment contract related to the project.

(c) *Refinancing.* The prepayment may involve refinancing of the loan if such refinancing results in:

(1) A lower interest rate on the principal of the Section 202 loan for the project and in reductions in debt service related to such loan; or

(2) An increase in debt service for a project requesting prepayment of a Section 202 loan carrying an interest rate of 6 percent or lower, which must abide by the following:

(i) The project owner proposing the refinance must address the physical needs of the project;

(ii) The transaction may not result in an increase in rents for unassisted families residing in the project;

(iii) The transaction must address the capital needs of the project and ensure its physical viability for the term of the new financing;

(iv) The overall cost for providing any rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) for the project must not increase, except upon approval by HUD to:

(A) Mark-up-to-market contracts pursuant to section 524(a)(3) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note) for properties owned by nonprofit organizations; or

(B) Mark-up-to-budget contracts pursuant to section 524(a)(4) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), for properties owned by eligible owners (as such term is defined in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)); and

(v) If HUD determines that the transaction would not be feasible without a rent increase for unassisted families, such unassisted families may be eligible to receive assistance under a senior preservation rental assistance contract (SPRAC) pursuant to part 891, subpart H;

(A) HUD may make rental assistance available to unassisted households in other forms as authorized under section 8 of the United States Housing Act of 1937 to meet the requirement under this paragraph (c)(2)(v) of this section;

(B) Subject to the availability of appropriations for such assistance, HUD may set priorities for the consideration of prepayment approvals that require the provision of a SPRAC; and

(C) SPRACs shall only be provided for units occupied by unassisted, income-eligible families at the time of closing of the refinance of the Section 202 Direct Loan. Such families must meet the low-income eligibility guidelines under section 8 of the United States Housing Act of 1937.

(d) HUD must approve the use of loan proceeds resulting from the refinance of the project to ensure such proceeds are used in a manner advantageous to the tenants of the Section 202 Direct Loan project.

(e) Loan proceeds must be expended within 5 years of the closing of the Direct Loan refinance, except for approved ongoing social service programs. Use of proceeds may include, but are not limited to:

(1) No more than 15 percent of the cost for increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services;

(2) Rehabilitation, modernization, accessibility modifications or retrofits of the project, including reducing the number of units by reconfiguring units that are functionally obsolete, unmarketable, or not economically viable;

(3) Construction of an addition or another facility in the project, including assisted living facilities;

(4) Rent reduction of unassisted tenants residing in the project;

(5) Rehabilitation of the project to ensure long-term viability; or

(6) The payment to the project owner, sponsor, or third party developer of a developer's fee in an amount not to exceed or duplicate:

(i) In the case of a project refinanced through a low-income housing tax credit program, the fee permitted by the low-income housing tax credit program; or

(ii) In the case of a project refinanced through any other source of refinancing, 15 percent of the acceptable development cost, which includes the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposits, and transaction costs.

(f) HUD may approve the use of proceeds from the refinancing of the Section 202 Direct Loan for the provision of affordable housing and related social services for elderly persons who are tenants of other HUD-assisted senior housing.

(1) Such housing must be owned by the same private nonprofit organization that is the project owner, the project sponsor, or the private developer as the Section 202 project being refinanced. This includes limited partnerships for which the general partner is a private nonprofit organization, a corporation wholly owned and controlled by one or more nonprofit organizations, or a limited liability company wholly owned and controlled by one or more nonprofit organizations.

(2) The use of proceeds in other HUD-assisted senior housing must be approved by HUD.

(3) The use of proceeds in other HUD-assisted housing projects will be approved only if the proposed Section 202 Direct Loan refinancing will address all physical and financial needs of the project.

(4) The other HUD-assisted senior housing must be designated as senior housing serving only those residents 62 years of age and older, and must have an active program in place to provide social services for elderly residents.

(5) At the time of the application for prepayment of the 202 Direct Loan, the level of affordability of the project(s) receiving proceeds from the refinance must be at least as affordable as the Section 202 Direct Loan project being refinanced.

(6) All project(s) to receive proceeds from the refinance must have or put in place a Use or Regulatory Agreement requiring operation of the project as affordable senior housing for a period at least 10 years beyond the date of closing of the Section 202 refinance, or the date of termination of the existing Use or Regulatory Agreement, whichever is later.

(7) The other HUD-assisted senior housing may include Section 202 Direct Loan and Section 202 Capital Advance properties, or may include affordable senior projects that receive HUD assistance including but not limited to project-based rental assistance, FHA mortgage insurance, Project-Based Vouchers, HOME Investment Partnerships (HOME), or Community Development Block Grant (CDBG) assistance.

§ 891.575 [Amended].

■ 28. In § 891.575, replace the term ''handicapped'' with the term ''disabled'' every place the term ''handicapped'' appears in this section.

§ 891.610 Selection and admission of tenants.

■ 29. In § 891.610:

■ a. In paragraph (a), replace the term ''handicapped persons'' with ''persons with disabilities.''

■ b. In paragraph (b), replace the term ''handicapped family'' with ''disabled family.''

■ c. In paragraph (f), replace the term ''handicap status'' with ''disability status.''

§ 891.655 [Amended].

■ 30. In § 891.655:

■ a. In the definition of ''family (eligible family),'' replace the term ''handicapped family'' with ''disabled family''.

■ b. In the definition of ''group home,'' replace the term ''handicapped individuals'' with ''persons with disabilities.''

■ c. In the definition of ''housing for handicapped families'' replace the term ''handicapped families'' with ''disabled families'' every place the term ''handicapped families'' appears in this definition.

■ d. In the definition of ''independent living complex,'' replace the term ''nonelderly handicapped families'' with the term ''nonelderly disabled families.''

§ 891.665 [Amended].

■ 31. In § 891.665, in the definition of ''independent living complexes for handicapped families'' replace the term ''handicapped families'' with ''disabled families'' every place the term ''handicapped families'' appears in the definition; replace the term ''physically handicapped'' with the term ''physically disabled'' every place the term ''physically handicapped'' appears in the definition; replace the term ''handicap family'' with the term ''disabled family;'' replace the term ''handicapped individuals'' with the term ''persons with disabilities;'' replace the term ''handicapped person'' with the term ''person with disabilities;'' and replace the term ''handicapped person's well being'' with the term ''person with disabilities' well being''.

§ 891.680 [Amended].

■ 32. In § 891.680(b), replace the term ''handicapped persons'' with ''persons with disabilities'' every place the term ''handicapped persons'' appears in paragraph (b).

■ 33. Revise § 891.700 to read as follows:

§ 891.700 Prepayment of loans.

The requirements of § 891.530 apply to all prepayments for 202/162 projects.

■ 34. Remove § 891.710.

§ 891.720 [Amended].

■ 35. In § 891.720(d), replace the term ''handicapped'' with ''disabled.''

§ 891.750 [Amended].

■ 36. In § 891.750:

■ a. In paragraph (b), replace the term ''handicapped family'' with the term ''disabled family.''

■ b. In paragraph (b)(3), replace the term ''handicap'' with ''disability.''

■ 37. § 891.810 is revised to read as follows:

§ 891.810 Project rental assistance.

(a) *Project rental assistance contract* and *Project rental assistance payment* are defined in § 891.105. Project rental assistance payment is provided for operating costs, not covered by tenant contributions, attributable to the number of units funded by capital advances under the Section 202 Program and the Section 811 Program, subject to the provisions of § 891.445.

(b) The sponsor of a mixed-finance development must obtain the necessary funds from a source other than project rental assistance funds for operating costs related to non-Section 202 or non-Section 811 units.

§ 891.830 [Amended].

■ 38. In § 891.830, paragraph (c)(5) is removed, and, at the end of paragraph (c)(4), the semicolon and the word ''and'' are removed and a period is inserted.

■ 39. In § 891.835 paragraph (b)(1) is revised to read as follows:

§ 891.835 Eligible uses of project rental assistance.

* * * * *

(b) * * *

(1) Debt service on construction or permanent financing, or any refinancing thereof, for any units in the development, including the Section 202 or Section 811 supportive housing units, except for units under an ePRAC whereby debt service may be included as an eligible expense under § 891.190;

* * * * *

■ 40. Revise § 891.853 to read as follows:

§ 891.853 Development cost limits.

The Development Cost Limits for development activities, as established at § 891.208 for Section 202 supportive housing units and at § 891.308 for Section 811 supportive housing units, apply in mixed-finance developments under this subpart.

■ 41. Subparts G and H are added to read as follows:

Subpart G—Section 811 Project Rental Assistance Program

Sec.
891.870 Applicability.
891.872 Definitions.
891.874 Allocation of funds.
891.876 Eligible projects.
891.878 Eligible tenants.
891.880 Terms and conditions of project rental assistance financing.
891.882 Responsibilities of participating agencies.

§ 891.870 Applicability.

The requirements in this subpart G apply only to project rental assistance provided to projects without capital advances under the Section 811 Program.

§ 891.872 Definitions.

In addition to the applicable definitions in §§ 891.105 and 891.305, the following definitions are applicable to the use of project rental assistance in the Section 811 program, as provided in this subpart:

Admission means the point-in-time the applicant and owner execute the lease agreement, and where occupancy is imminent.

Eligible applicant means any state housing agency currently allocating low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42), or any state housing or state community development agency that is currently allocating and overseeing assistance under the HOME Investment Partnerships (HOME) program as authorized by title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*), or under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or other similar Federal or state program, and the agency is determined to be in good standing by HUD in its administration of assistance. An eligible applicant may also be a state, regional, or local housing agency or agencies; or a partnership or collaboration of state housing agencies and/or state and local/regional housing agencies. To be eligible, the agency must have a formal partnership with the state health and human services agency and the state agency designated to administer or supervise the administration of the State plan for medical assistance under title XIX of the Social Security Act.

Extremely low-income family has the same meaning as defined in 24 CFR 5.603.

Housing agency means a state, regional, or local housing agency.

Inter-agency Partnership Agreement means the agreement entered into between the eligible applicant and the state health and human services agency, and the applicable state Medicaid agency, if different entities. An eligible project must abide by such agreement in order to provide new project rental assistance under this subpart.

Nonelderly adult means a person who is 18 years of age or older and less than 62 years of age.

Participating agencies means the eligible applicant awarded project rental assistance funds, the state agency responsible for health and human services programs, and the state agency designated to administer or supervise the administration of the state plan for medical assistance under the Medicaid program.

Project rental assistance means funding made available by HUD to eligible applicants for purposes of providing long-term rental assistance for supportive housing for nonelderly, extremely low-income persons with disabilities and for extremely low-income households that include at least one nonelderly person with a disability.

Rental assistance contract (RAC) means contracts authorized under section 811(b)(3) of the National Affordable Housing Act (42 U.S.C. 8013(b)(3)) between the approved housing agency, as defined under this subpart, and the multifamily property owner to provide project rental assistance under this subpart.

§ 891.874 Allocation of funds.

HUD may allocate funds made available in any fiscal year for project rental assistance under this subpart by competition or in accordance with the formula allocation provided under 24 CFR part 791. In determining the method of allocation, HUD shall take into account such factors as the amount of funds available, the number and types of eligible applicants, the period of funding availability, and administrative efficiency.

§ 891.876 Eligible projects.

(a) *In general.* Any new or existing multifamily project is eligible for project rental assistance under this section if:

(1) Such project's development costs are paid with resources from other public and/or private sources, such as low-income housing tax credits as authorized under section 42 of the Internal Revenue Code (26 U.S.C. 42), equity, private debt, or HOME program funds as authorized under title II of the National Affordable Housing Act (42 U.S.C. 12701 *et seq.*);

(2) The project is not otherwise receiving assistance under the Section 811 program; and

(3) A commitment must be made by a Federal, state or local government agency.

(b) *Existing projects.* (1) Existing multifamily housing projects may only receive project rental assistance under this section if the assisted units have no existing contractual obligation to serve persons with disabilities, such as a recorded use agreement.

(2) Existing units receiving any form of operating housing subsidy, such as assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), are ineligible to receive project rental assistance under this section.

§ 891.878 Eligible tenants.

(a) Project rental assistance provided under this section may only be provided for dwelling units that are set aside for extremely low-income disabled households. The person with the disability must be 18 years of age or older and less than 62 years of age at the time of admission.

(b) A person with a disability assisted under this subpart must be eligible for community-based, long-term services and supports as provided through Medicaid waivers, Medicaid state plan options, state funded services, or other appropriate services (provided by state, local, nonprofit, or other entities) related to the target populations identified under the Interagency Partnership Agreement.

(c) The Interagency Partnership Agreement must include the target population to be served that shall benefit from the assisted units under this subpart and available services.

(d) Participation in community-based, long-term services and supports is voluntary and shall not be required as a condition of tenancy.

§ 891.880 Terms and conditions of project rental assistance financing.

(a) *In general.* Approved housing agencies receiving project rental assistance under this subpart must comply with the requirements of this section, and all the terms and conditions of the rental assistance contract.

(b) *Rental assistance contract (RAC).* (1) The RAC will provide the housing assistance payments to the owner for eligible tenants, as determined under § 891.878, residing in units that have been set aside by the owner as supportive housing for persons with disabilities.

(2) The approved housing agency administering the project rental assistance under this subpart must enter into a RAC with the owner of the project, as defined in the NOFA.

(c) *Term.* (1) The initial term of RACs under this section between the approved housing agency administering the project rental assistance under this subpart and the owner of the multifamily housing project must be for a minimum of 20 years.

(2) RACs under this section may be renewed if all parties agree to such renewal, subject to the availability of project rental assistance funds.

(d) *Use restrictions.* (1) Any unit assisted with project rental assistance under this subpart must be subject to a recorded 30-year minimum use agreement for nonelderly, extremely low-income persons with disabilities.

(2) If a RAC is renewed under this subpart, the corresponding use agreement must be extended for the duration of the renewal.

(e) Projects must meet the accessibility requirements of section 504 of the Rehabilitation Act of 1973 and titles II and III of the Americans with Disabilities Act, as applicable. Covered multifamily dwellings must also meet the design and construction requirements of the Fair Housing Act.

(f) *Limitation on units assisted.* (1) In any multifamily housing project receiving project rental assistance under this section, no more than 25 percent of the total number of dwelling units in the project may be set aside for supportive housing for persons with disabilities or apply any occupancy preference for persons with disabilities, and no unit may have any preexisting occupancy preference requirement for persons with disabilities associated with such unit.

(2) These units must be distributed throughout the project, must not be segregated to one area of a building or the project (such as on a particular floor, part of a floor in a building, or certain sections within a project), and can consist of both accessible and nonaccessible units. Owners may designate unit types (e.g., accessible, one-bedroom, etc.) rather than designating specific units (e.g., units 101, 201, etc.) to be set aside for supportive housing for persons with disabilities.

§ 891.882 Responsibilities of participating agencies.

(a) *Required agreement.* (1) Participating agencies must develop an Interagency Partnership Agreement, which is a formalized agreement for collaboration (such as a memorandum of understanding (MOU), joint letter, or other document) that includes the eligible applicant and the state health and human services agency, and the applicable state Medicaid agency, if different entities.

(i) In states where health and human service functions have been separated, both agencies' participation must be evidenced in the collaboration.

(ii) Project rental assistance under this subpart may only be provided for eligible projects that conform to the Interagency Partnership Agreement.

(2) Such agreement must:

(i) Identify the target populations to be served by the project;

(ii) Set forth methods for outreach and referral; and

(iii) Describe the services to be made available to the tenants of the project.

(3) *Target populations.* The Interagency Partnership Agreement must include the target populations to be served that will benefit from the assisted units under this subpart and available services. In addition to being extremely low-income, the person with disabilities as defined in § 891.305, must have a disability appropriate to the services to be provided in the community under such agreement. In the Interagency Partnership Agreement, states must identify the available state-funded services and other appropriate services (provided by state, local, nonprofit, or other entities), and describe how such services will be made available to the tenants.

(b) *Program requirements.* (1) Participating agencies must provide a plan detailing the process by which the availability of units receiving project rental assistance under this subpart and waiting lists will be managed, including:

(i) A consideration of training; and

(ii) Costs, authority, and/or sources for establishing the infrastructure and process for establishing such a system if no process or system currently exists.

(2) Participating agencies must describe how the process of referring eligible persons with disabilities to the assisted multifamily housing projects will be carried out, describe how households will be tracked, and provide a list of people who property owners can contact if there are any problems.

(3) This system and framework must be incorporated into the Interagency Partnership Agreement between the participating agencies as required under this section.

(c) *Administrative cost.* Participating agencies may use a percentage, as defined by HUD in a NOFA, of their total project rental assistance award under this section for initial and administrative costs relating to the administration of the project rental assistance program under this subpart. Such costs may include costs of hiring ongoing staff, training, contract assistance, infrastructure costs, and information technology. No charges relating to the administration of the program may be charged to the tenants.

(d) *Fair housing and equal opportunity requirements.* Approved housing agencies must ensure that the following fair housing and equal opportunity requirements are met.

(1)(i) *Affirmative fair housing marketing.* Participating agencies must adopt affirmative marketing procedures for their project rental assistance program funded under this subpart. Affirmative marketing procedures consist of actions to provide information and otherwise attract eligible persons to the program regardless of race, color, national origin, religion, sex, disability, or familial status, who are not likely to apply to the program without special outreach. Participating agencies must annually assess the success of their affirmative marketing activities and make any necessary changes to their affirmative marketing procedures as a result of the evaluation. Participating agencies must keep records describing actions taken to affirmatively market the program and records to assess the results of these actions. Eligible applicants must describe their methods of outreach and referral and waiting list policies in their applications, as prescribed in the NOFA. All methods of outreach and referral and management of the waiting list must be consistent with fair housing and civil rights laws and regulations and affirmative marketing requirements.

(ii) *Full disclosure of available housing.* Participating agencies must adopt a process for providing full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (e.g., location, number and size of accessible units, access to transportation and commercial facilities) and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each site.

(2) *Civil rights recordkeeping.* Participating agencies must require

projects receiving project rental assistance under this subpart to maintain records on the race, ethnicity, sex, and place of previous residency for applicants and approved eligible households. The owner must submit such reports to the housing agency to demonstrate compliance with applicable civil rights and equal opportunity requirements.

(e) *Environmental requirements and environmental assurance.* (1) General. As HUD does not approve program funding for specific activities or projects of the eligible applicants, HUD will not perform environmental reviews on such activities or projects. However, to ensure that the tenets of HUD environmental policy and the requirements of applicable statutes and authorities are met, eligible applicants selected for funding will be required to implement the analyses and determinations as set forth in this paragraph (e), for specific program activities and projects. The eligible applicant's signature on the application shall constitute an assurance that the applicant, if selected, will perform such implementation.

(i) The environmental tenets apply to both existing and new projects per the requirements below. Existing properties that are currently HUD-assisted or HUD-insured and that will not engage in activities with physical impacts or changes beyond routine maintenance activities or minimal repairs are not required to comply with the environmental tenets.

(ii) If, at the time that a project applies for Project Rental Assistance (PRA), the project is under construction or being rehabilitated, the project shall be subject to the environmental review requirements applicable to new construction or rehabilitation if the work has not progressed beyond a stage of construction where modifications can be undertaken to avoid the adverse environmental impacts addressed by the requirement.

(iii) Citations to authorities in the following paragraphs of this paragraph (3) are for reference only; to the extent that property standards or restrictions on the use of properties stated in the following paragraphs are more stringent than provisions of the authorities cited, the requirements stated in the following paragraphs shall control:

(2) *Site Contamination (24 CFR 50.3(i)).* It is HUD policy that all properties for use in HUD-assisted housing be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property (24 CFR 50.3(i)(1)). Therefore, projects applying for assistance must:

(i) Assess whether the site:

(A) Is listed on an Environmental Protection Agency (EPA) Superfund National Priorities or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) list or equivalent State list;

(B) Is located within 3,000 feet of a toxic or solid waste landfill site;

(C) Has an underground storage tank other than a residential fuel tank; or

(D) Is known or suspected to be contaminated by toxic chemicals or radioactive materials. If none of these conditions exist, a letter of finding certifying these findings must be submitted and maintained in the site's environmental record. If any of these conditions exist, an American National Standards Institute (ASTM) Phase I Environmental Site Assessment (ESA), in accordance with ASTM E 1527–013 (or the most recent edition), must be provided; OR

(ii) Provide a Phase I ESA in accordance with ASTM E 1527–13 (or the most recent edition).

(A) An ASTM Phase I ESA that was prepared within the Phase I ESA continuing viability timeframe for the acquisition of the property or a real estate transaction (construction, rehabilitation, or refinancing) for the property and complies with ASTM E1527–05 or a more recent edition shall be deemed acceptable.

(B) If a Phase I ESA is conducted and the Phase I ESA identifies Recognized Environmental Conditions, a Phase II ESA in accordance with ASTM E 1903–11 (or the most recent edition) shall be performed. Any hazardous substances and/or petroleum products that are identified at levels that would require clean-up under state policy shall be so cleaned up in accordance with the state's clean-up policy. Risk-Based Corrective Actions are permitted if allowed for under a state's clean-up policy.

(3) *Historic Preservation (16 U.S.C. 470 et seq.).* (i) As the various states, territories, tribes, and municipalities have established historic preservation programs to protect historic properties within their jurisdiction, all work on properties identified as historic by the State, territory, tribe, or municipality, as applicable, must comply with all applicable state, territorial, and tribal historic preservation laws and requirements, and, for projects affecting locally designated historic landmarks or districts, local historic preservation ordinance and permit conditions.

(ii) In addition, all work on properties listed on the National Register of Historic Places, or which the eligible applicant knows are eligible for such listing, must comply with ''The Secretary of the Interior's Standards for Rehabilitation.'' Complete demolition of such properties would not meet the standards and is prohibited.

(iii) *On-site discoveries.* If archaeological resources and/or human remains are discovered on the project site during construction, the recipient must comply with applicable state, tribal, or territory law, and/or local ordinance (e.g., state unmarked burial law).

(4) *Noise (24 CFR part 51, subpart B—Noise Abatement and Control).* All activities and projects involving new construction shall be developed to ensure an interior noise level of 45 decibels (dB) or less. In this regard, and using the day-night average sound level (Ldn), sites not exceeding 65 dB of environmental noise are deemed to be acceptable; sites above 65 dB require sound attenuation in the building shell to 45 dB; and sites above 75 dB shall not have noise sensitive outdoor uses (e.g., picnic areas, tot lots, balconies, or patios) situated in areas exposed to such noise levels.

(5) *Airport Clear Zones (24 CFR part 51, subpart D—Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields).* No activities or projects shall be permitted within the ''clear zones'' or the ''accident potential zones'' of military airfields or the ''runway protection zones'' of civilian airports.

(6) *Coastal Barrier Zone Management Act (16 U.S.C. 1451 et seq.).* Activities and projects shall be consistent with the appropriate state coastal zone management plan. Plans are available from the local coastal zone management agency.

(7) *Floodplains (Executive Order 11988; Flood Disaster Protection Act(42 U.S.C. 4001–4128*). No new construction activities or projects shall be located in the mapped 500 year floodplain or in the 100-year floodplain according to the best available data of the Federal Emergency Management Agency (FEMA), which may be Advisory Base Flood Elevations (ABFEs), Preliminary Flood Insurance Rate Maps (P–FIRMs), or Flood Insurance Rate Maps (FIRM). Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:

(i) The existing structures must be flood-proofed or must have the lowest

habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain according to FEMA's best available data.

(ii) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(iii) Project structures in the 100-year floodplain must obtain flood insurance under the National Flood Insurance Program.

(8) *Wetlands (Executive Order 11990).* No new construction shall be performed in wetlands. No rehabilitation of existing properties shall be allowed that expands the footprint such that additional wetlands are destroyed. New construction includes draining, dredging, channelizing, filling, diking, impounding, and related grading activities. The term wetland is intended to be consistent with the definition used by the U.S. Fish and Wildlife Service in Classification of Wetlands and Deep Water Habitats of the United States (Cowardin, et al., 1977). This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements.

(9) *Siting of Projects and Activities Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature (24 CFR part 51, subpart C).* Unshielded or unprotected new construction sites shall be allowed only if they meet the standards of blast overpressure (0.5psi–buildings and outdoor unprotected facilities) and thermal radiation (450 BTU/ft^2—hr—people, 10,000 BTU/ft^2—hr—buildings) from facilities that store, handle, or process substances of an explosive or fire-prone nature in stationary, above ground tanks/containers.

(10) *Endangered Species Act of 1973 (16 U.S.C. 1531 et seq).* New construction shall not be permitted if it would result in a taking of endangered plant or animal species as listed under the Endangered Species Act of 1973. Taking includes not only direct harm and killing but also modification of habitat.

(11) *Farmland Protection (7 USC 4201 et seq).* New construction shall not result in the conversion of unique, prime, or otherwise productive agricultural properties to urban uses.

(12) *Sole Source Aquifers (Section 1424(e) of the Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 et seq., and 21 U.S.C. 349)).* Any new construction activities and projects located in federally designated sole source aquifer areas (SSAs) shall require consultation and review with the U.S. Environmental Protection Agency (EPA).

(13) *The Coastal Barrier Resources Act of 1982 (16 U.S.C. 3501).* Eligible applicants must comply with the Coastal Barrier Resources Act, which prohibits activities or projects in Coastal Barrier Resource System (CBRS) units.

(f) *Flood Insurance* (Flood Disaster Protection Act of 1973 (42 U.S.C. 4106)). Project structures in the 100-year floodplain must obtain flood insurance under the National Flood Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or that has been suspended from the National Flood Insurance Program.

Subpart H—Senior Preservation Rental Assistance

Sec.

891.900 Applicability.
891.902 Definitions.
891.904 Contract execution.
891.905 Project rents.
891.906 Contract term.
891.908 Distributions and replacement reserves.
891.910 Leasing to eligible families.
891.912 Applicability of other part 891 regulations.
891.914 Default by owner.
891.916 SPRAC extension or renewal.
891.918 Denial of admission, termination of tenancy, and modification of the lease.
891.920 Security deposits.
891.922 Labor standards.

§ 891.900 Applicability.

The requirements set forth in this subpart H apply only in connection with a prepayment plan for a project approved by HUD under §§ 891.530 or 891.700 to prevent displacement of elderly residents of the project in the case of refinancing or recapitalization, and the project is provided project-based rental assistance under a senior preservation rental assistance contract, as defined under § 891.902.

§ 891.902 Definitions.

In addition to the applicable definitions in §§ 891.105, 891.205, and 891.505, the following definitions are applicable to senior preservation rental assistance contracts as provided in this subpart:

Family(ies) means an *Elderly Family* as defined by 24 CFR 891.505, and may include a ''Disabled Family,'' as defined in 24 CFR 891.505, pursuant to the terms and conditions of an applicant's original Section 202 loan.

Low-income family has the same meaning as defined in 24 CFR 5.603.

Operational Cost Adjustment Factor (OCAF) has the same meaning as defined in 24 CFR 402.2(c), and as otherwise prescribed by HUD.

Senior preservation rental assistance contract (SPRAC) means a contract for project-based rental assistance made available to a private nonprofit organization owner for a term of at least 20 years, subject to annual appropriations, and governed by the regulations of this subpart. Such contract is subject to a use agreement having a term of the SPRAC or such term as is required by the new financing, whichever is longer.

Very low-income family has the same meaning as defined in 24 CFR 5.603.

Utility Allowance has the same meaning as defined in 24 CFR 5.603.

§ 891.904 Contract execution.

(a) *In general.* A SPRAC sets forth the rights and duties of the owner and HUD with respect to the project and the senior preservation rental assistance payments.

(b) *SPRAC execution.* (1) Upon the closing of the refinancing for the project, and following the approval of the prepayment of the Section 202 Direct Loan, the owner and HUD must execute a SPRAC on a form prescribed by HUD.

(2) The effective date of the SPRAC is the date of closing of the refinancing.

(c) *Payments to owners.* The eligible SPRAC payments consist of the following:

(1) *Assistance to eligible families leasing assisted units.* The amount of the housing assistance payment (HAP) made to the owner for an assisted unit leased to an eligible family is equal to the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) *Vacancy payments.* SPRAC payments can be made to owners for vacant assisted units. The amount of and conditions for vacancy payments are described in § 891.912(k).

(i) Vacancy payments only apply to units that were initially occupied at the time the SPRAC was executed, in the case that those units are later unoccupied during the term of the contract. The unit must be in a decent, safe, and sanitary condition during the vacancy period for which payment is claimed.

(ii) SPRAC payments are made monthly by HUD upon proper requisition by the owner. If a SPRAC unit remains vacant for more than 60 consecutive days upon tenant turnover, the owner shall not be eligible to receive further SPRAC payments for that SPRAC Unit.

(d) *Utility reimbursement.* As applicable, a utility reimbursement will be paid to a family occupying an assisted unit if the utility allowance (for tenant-paid utilities) exceeds the amount of the total tenant payment (see 24 CFR 5.628):

(1) The SPRAC will provide that the owner must make this payment on behalf of HUD. Funds will be paid to the owner in trust solely for the purpose of making the additional payment.

(2) The owner may pay the utility reimbursement jointly to the family and the utility company, or if the family and utility company consent, directly to the utility company.

§ 891.905 Project rents.

(a) The initial project rents shall not exceed the lesser of either:

(1) Comparable market rents for the market area as specified under the recipient's rent comparability study (RCS), and approved by HUD; or

(2) A reasonable percentage of the fair market rents, as defined by HUD.

(b) After initial rent setting, existing rents shall be adjusted by an Operating Cost Adjustment Factor (OCAF), as defined in § 402.2(c), on the anniversary of each executed SPRAC. Section 514(e)(2) of Multifamily Assisted Housing Reform and Affordability Act (MAHRA) (42 U.S.C. 1437f note) requires HUD to establish guidelines for rent adjustments based on an OCAF. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which renewal rents are established or adjusted. Under this subpart, the contract administrator shall conduct annual project rent adjustments according to the OCAF methodology prescribed under this notice.

(c) *Comparability adjustments.* (1) At the expiration of each 5-year period of the SPRAC, the contract administrator shall compare existing contract rents with comparable market rents for the market area. At such contract anniversary, the contract administrator will make any adjustment necessary in the monthly contract rents necessary to set the contract rents for all unit sizes at comparable market rents. Such adjustments may result in a negative adjustment (decrease) or positive adjustment (increase) of the contract rents for one or more unit sizes.

(2) To assist in the redetermination of contract rents, the contract administrator may require that the owner submit to the contract administrator a rent comparability study prepared at the owner's expense.

§ 891.906 Contract term.

(a) The minimum term of the SPRAC for assisted units under this subpart shall be 20 years.

(b) Any projects for which a SPRAC is provided shall be subject to a use agreement to ensure continued project affordability having a term of the longer of the term of the SPRAC, or such term as is required by the new financing.

§ 891.908 Distributions and replacement reserves.

(a) *Limitations on distributions.* (1) Nonprofit owners are not entitled to distributions of project funds.

(2) For the life of the SPRAC, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the SPRAC after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(i) For projects receiving SPRAC assistance, the first year's distribution will be limited to 6 percent on equity resulting from the refinance of the property's mortgage for purposes of Section 202 prepayment and recapitalization. HUD may provide for increases in subsequent years' distributions on an annual or other basis, and in accordance with all HUD and other Federal regulations and requirements. Any such adjustment will be made by notice in the **Federal Register**.

(ii) If the Section 202 project is/will be owned by a for-profit limited partnership (meeting the statutory requirements in AHEO, as amended) and the Section 202 project has a Section 8 HAP contract that imposes no percentage cap on distributions, then, upon refinance/prepayment, the for-profit limited partnership may continue receiving the benefit of not having a percentage cap on distributions.

(3) Any short-fall in return may be made up from surplus project funds in future years.

(4) If HUD determines at any time throughout the term of the SPRAC that project funds exceed the amount needed for project operations, reserve requirements, and distributions permitted under this subpart, HUD may require the owner to deposit these residual receipts in an account to be used to reduce SPRAC payments or for other project purposes. Upon termination of the SPRAC, any excess funds that remain in this residual receipts account must be remitted to HUD.

(5) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program regulations, except in the case of small, partially assisted, or previously HUD-owned, insured projects that are and shall remain subject to the applicable mortgage insurance regulations.

(b) *Replacement reserves account.* (1) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(i) Under this subpart project owners will deposit an amount equivalent to 0.006 of the cost of total structures, including main buildings, accessory buildings, garages, and other buildings, or any higher rate as required by HUD from time to time, in the replacement reserve, annually. This amount will be adjusted each year by the amount of the applicable OCAF, as determined by HUD.

(ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(iii) All earnings including interest on the reserve must be added to the reserve.

(iv) Funds will be held by the mortgagee, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(2) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions.

§ 891.910 Leasing to eligible families.

(a) *Availability of assisted units for occupancy by eligible families.* (1) Eligible families must meet the income guidelines established for a low-income family in accordance with title II of the Section 202 Act of 2010. In the renting of the SPRAC units, the owner must comply with the income eligibility requirements of the SPRAC program. See § 891.903 for definitions of Low-Income and Very Low-Income.

(2) During the term of the SPRAC, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the SPRAC. For purposes of this section, making units available for occupancy by eligible families means that the owner:

(i) Is conducting marketing in accordance with § 891.912(c);

(ii) Has leased or is making good faith efforts to lease the units to eligible families, including taking all feasible actions to fill vacancies by renting to such families; and

(iii) Has not rejected any eligible applicant family, except for reasons acceptable to HUD.

(3) If the owner is temporarily unable to lease to eligible families all units for which assistance is committed under the SPRAC, one or more units may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income eligibility requirements under paragraph (a)(1) of this section. Those over-income families must pay 30 percent of their income towards rent, up to the contract rent level.

(4) Failure on the part of the owner to comply with the requirements under this section is a violation of the SPRAC and grounds for all available legal remedies, including specific performance of the SPRAC, suspension or debarment from HUD programs, and reduction of the number of units under the SPRAC as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by the SPRAC.* HUD may reduce the number of units covered by the SPRAC to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units to eligible families is not a temporary issue.

(c) *Restoration.* An amendment to the SPRAC will be authorized by HUD to provide for the subsequent restoration of the reduction made under paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The owner has a record of compliance with the owner's obligations under the SPRAC; and

(3) Contract and budget authority is available.

(d) *Occupancy by nonelderly or nondisabled families.* (1) HUD may permit SPRAC units in the project to be leased to nonelderly or nondisabled families if:

(i) The owner has made reasonable efforts to lease assisted and unassisted units to eligible families;

(ii) The owner has been granted HUD approval under paragraph (a) of this section; and

(iii) The owner is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure.

(2) HUD approval under paragraph (d)(1) of this section will be of limited duration. If there is a HUD-insured mortgage on the project, HUD may impose terms and conditions for this approval that are consistent with the program objectives, and necessary to protect its interest under the FHA-insured loan.

(e) HUD's regulations in 24 CFR part 5, subpart L, apply to the admission and occupancy of eligible families in cases where there is incident of, or claimed to be incident of, or criminal activity related to, domestic violence, dating violence, or stalking.

§ 891.912 Applicability of other Part 891 regulations.

(a) *SPRAC administration.* HUD is responsible for the administration of the SPRAC.

(b) *Notice upon SPRAC expiration.* The owner is responsible for all of the HAP notice requirements under § 891.590.

(c) *Responsibilities of the owner.* The owner is responsible for all requirements that pertain to responsibilities of the borrower under § 891.600, except for § 891.600(a)(1) and (a)(3).

(d) *Selection and admission of tenants.* The owner must comply with the requirements under § 891.610, which pertain to selection and admission of tenants, with the exception of § 891.610(c). The applicant must meet the low-income guidelines under section 8 of the United States Housing Act of 1937 in order to be eligible under this subpart.

(e) *Obligations of the family.* The obligations of the family are provided under § 891.415.

(f) *Overcrowded and underoccupied units.* The owner must comply with the requirements under § 891.650, except § 891.650(b) does not apply.

(g) *Lease requirements.* The lease requirements are provided in § 891.425.

(h) *Adjustment of rents.* The owner must comply with the requirements under § 891.6.905(b).

(i) *Adjustment of utility allowances.* In connection with adjustments of contract rents as provided in § 891.640(a), the requirements for the adjustment of utility allowances provided in § 891.440 apply.

(j) *Conditions for receipt of vacancy payments for assisted units.* The owner must comply with the requirements under § 891.650, except § 891.650(b) does not apply.

§ 891.914 Default by owner.

(a) If HUD determines that the owner is in default under the SPRAC, HUD will notify the owner in writing of the actions required to cure the default and of the remedies that must be satisfied, including an action for specific performance under the SPRAC, and a reduction or suspension of senior preservation rental assistance payments and recovery of overpayments or inappropriate payments, where appropriate; and

(b) If HUD determines that the owner is in default of any of the terms and requirements of the SPRAC, HUD will notify the owner in writing of the nature of the default, the actions required to cure the default, and the time within which the default must be cured. The notice will also identify the remedies that HUD may impose if the default is not cured within the applicable time. These may include termination of the SPRAC, reduction or suspension of payments under the SPRAC, and recovery of overpayments or inappropriate payments, where appropriate.

§ 891.916 SPRAC extension or renewal.

(a) A Section 202 owner shall agree in writing that upon expiration of each annual increment of a given SPRAC, the owner shall accept each offer of annual increment renewal during the period of the Use Agreement.

(1) Each such offer of a renewal and the renewals themselves are subject to the availability of appropriations and further subject to the requirements of this part.

(2) The number of assisted units under the renewed SPRAC must equal the number of assisted units under the original SPRAC, subject to the availability of appropriations, except that HUD and the owner may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the renewal.

(3) With respect to Section 202 Direct Loan prepayments with approved SPRAC units, each owner shall agree to enter into a Section 202 Use Agreement, which will expire at either 20 years beyond the maturity date of the original Section 202 Direct Loan or, the term of new financing, whichever is longer.

(4) Upon expiration of the term of the SPRAC and at HUD's sole discretion, the term of the SPRAC may be renewed or extended (subject to available funds) pursuant to the terms and conditions of the SPRAC and the Use Agreement.

(5) Each owner shall agree in writing to operate the assisted Section 202 project for the full term specified under

the executed SPRAC and for each renewal term in accordance with all statutory, regulatory, and administrative requirements of the SPRAC program.

(b) The number of assisted units under the extended or renewed SPRAC must equal the number of assisted units under the original SPRAC, subject to the availability of appropriations, except that HUD and the owner may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the extension or renewal.

§ 891.918 Denial of admission, termination of tenancy, and modification of the lease.

(a) HUD's regulations in 24 CFR part 5, subpart I, apply to projects previously financed with Section 202 direct loans.

(b) HUD's regulations in 24 CFR part 247 apply to all decisions by an owner to terminate the tenancy or modify the lease of a family residing in a unit.

(c) In actions or potential actions to terminate tenancy, the owner must follow HUD's regulations in 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

§ 891.920 Security deposits.

(a) The general requirements for security deposits on assisted units are provided under § 891.435, with additional requirements under § 891.635.

(b) For purposes of this subpart, additional requirements apply:

(1) The owner must maintain a record of the amount in the segregated interest-bearing account that is attributable to each family in residence in the project.

(2) Annually for all families, and when computing the amount available for disbursement under § 891.435(b)(3), the owner must allocate to the family's balance the interest accrued on the balance during the year.

(3) Unless prohibited by state or local law, the owner may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment must not exceed the accrued interest allocated to the family's balance for the year.

§ 891.922 Labor standards.

(a) All laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in construction, rehabilitation, or repair performed in connection with the provision of assistance under this subpart to nine or more units of housing in a project where the total cost of such repair, replacement, or capital improvement is in excess of $500,000 shall be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*).

(b) Contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*).

(c) Sponsors, owners, contractors, and subcontractors must comply with related rules, regulations, and requirements as directed by HUD.

■ 42. A new part 892 is added to read as follows:

PART 892—SERVICE COORDINATOR IN MULTIFAMILY HOUSING AND ASSISTED LIVING CONVERSION PROGRAMS

Subpart A—General Program Requirements

Sec.

892.100 Applicability and scope.
892.105 Definitions.
892.110 Eligible funding recipients.
892.115 Nondiscrimination and equal opportunity requirements.
892.120 Environmental requirements.

Subpart B—Service Coordinator in Multifamily Housing Program

892.200 Purpose and applicability.
892.205 Definitions.
892.210 Sources of funding.
892.215 Application and selection.
892.220 Duties.
892.225 Qualifications.
892.230 Form of employment or retention.
892.235 Training.
892.240 Administrative requirements.
892.245 Confidentiality.
892.250 Program costs.
892.255 Services for low-income elderly or persons with disabilities.
892.260 Limitations.
892.265 Sanctions.

Subpart C—Assisted Living Conversion Program

892.300 Purpose and applicability.
892.305 Definitions.
892.310 Other Federal requirements.
892.315 Additional project eligibility.
892.320 Notice of funding availability.
892.325 Requirements for services.
892.330 Section 8 project-based assistance.
892.335 Vacancy payment.

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, and 3535(d).

Subpart A—General Program Requirements

§ 892.100 Applicability and scope.

The requirements set forth in this subpart A apply to the Service Coordinator in Multifamily Housing program, as authorized under sections 671, 672, 674, 676, and 677 of the Housing and Community Development Act of 1992 (Pub. L. 102–550), as amended by section 851 of the AHEO (Pub. L. 106–569); and to the Assisted Living Conversion program, as authorized under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2).

§ 892.105 Definitions.

The following definitions apply, as appropriate, throughout this part. Other terms with definitions unique to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs are defined in §§ 892.205 and 892.305, as applicable.

Activities of daily living (ADLs) shall have the same meaning as provided under § 891.205.

Elderly person means a person who is at least 62 years of age.

Eligible housing project means:

(1) Housing for which project-based assistance is provided under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

(2) Housing that is assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(3) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act (Public Law 101–625);

(4) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715) that bears interest at a rate determined under section 221(d)(5) of such Act;

(5) Section 515 rural housing projects, as authorized under section 515 of the Housing Act of 1949 (42 U.S.C. 1485), receiving Section 8 rental assistance;

(6) Housing insured, assisted, or held by the Secretary, a state, or a state agency under section 236 of the National Housing Act (12 U.S.C. 1715z–1); or

(7) Housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f), as in effect before October 1, 1983, that is assisted under a contract for assistance under such section.

Frail elderly person means an elderly person who is unable to perform at least three of the activities of daily living described in this subpart.

Functional limitations shall have the same meaning as provided under § 891.205.

Housing assistance means, with respect to federally assisted housing as

provided under this part, the grant, contribution, capital advance, loan, mortgage insurance, or other assistance provided for an eligible housing project, as defined under this section. This term also includes any assistance provided for the housing by HUD, including any rental assistance for low-income occupants.

Instrumental activities of daily living (IADLs). Under this part, the definition of instrumental activities of daily living has the same meaning as in § 891.205.

Low-income and very low-income family shall have the same meanings as provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

Owner shall have the same meaning as provided under § 891.205.

Person with disabilities shall have the same meaning as provided under § 891.305.

Private nonprofit organization shall have the same meaning as provided under § 891.205.

Retain means service coordination performed by a partnering agency that results in a reduction to the project's cost to hire or contract a service coordinator.

Service coordinator means a social service staff person hired, contracted, or retained by the assisted housing owner or its management company, who assists residents in identifying, locating, and acquiring supportive services necessary for elderly persons and nonelderly persons with disabilities to live independently and age in place.

Supportive services mean health-related services, mental health services, services for nonmedical counseling, meals, transportation, ADL services, (eating, bathing, grooming, dressing, transferring, and other such activities as HUD deems essential for maintaining independent living), housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable state laws), case management, personal emergency response, and other appropriate services that are designed to prevent hospitalization or institutionalization and permit elderly residents to age in place and live independently in a residential setting. The supportive services may be provided through any agency of the Federal, State or Local Government, or other public or private department, agency or organization.

Service expenses means those costs of providing supportive services necessary to permit residents to live independently, age in place, and to prevent hospitalization or institutionalization.

Vicinity of the housing project means the area close enough to the eligible housing project to allow for easy access by individuals to the service coordinator's office space, and by service coordinators to individuals' residences.

§ 892.110 Eligible funding recipients.

Recipients who receive assistance under the Service Coordinator in Multifamily Housing and Assisted Living programs must:

(a) Own an eligible housing project, as defined in § 892.105;

(b) Comply with any regulatory agreement, HAP contract, or any other HUD grant or contract, where applicable;

(c) Be current in mortgage payments for any FHA-insured loan or Section 202 direct loan, unless the entity has signed a work-out agreement for the delinquent loan and is current on and in compliance with the workout agreement, as applicable; and

(d) Meet the Physical Condition Standards in 24 CFR part 5, subpart G, as evidenced by a satisfactory score in the most recent final physical inspection report or by an approved work-out plan for housing projects that received a failing score.

§ 892.115 Nondiscrimination and equal opportunity requirements.

(a) *In general.* Recipients under this part shall comply with all applicable nondiscrimination and equal opportunity requirements, including HUD's generally applicable nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). This includes, but is not limited to, the Fair Housing Act and its implementing regulations at 24 CFR part 100; title VI of the Civil Rights Act of 1964 and its implementing regulations at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR part 8; and titles II and III of the Americans with Disabilities Act and their implementing regulations at 28 CFR parts 35 and 36.

(b) *Affirmatively furthering fair housing.* Recipients under this part shall affirmatively further fair housing in their use of funds under this part. Specific activities will be detailed in the individual program NOFAs.

(c) *Most integrated setting appropriate.* Recipients under this part shall ensure that programs or activities under this part are administered in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The most integrated setting is defined as a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible. See the Home and Community-Based Services regulations of the U.S. Department of Health and Human Services at 42 U.S.C. part 441, the regulations pertaining to nondiscrimination on the basis of disability in HUD programs and activities at 24 CFR 8(d), and the regulations of the U.S. Department of Justice pertaining to nondiscrimination on the basis of disability in state and local government services at 28 CFR 35.130(d).

§ 892.120 Environmental requirements.

(a) The National Environmental Policy Act of 1969, and HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4, apply to this part.

(b) If funding under subpart B will be used to cover the cost of any activities that are not exempt from environmental review requirements, such as acquisition, leasing, construction, or building rehabilitation, HUD must perform an environmental review to the extent required by 24 CFR part 50, prior to grant award.

Subpart B—Service Coordinator in Multifamily Housing Program

§ 892.200 Purpose and applicability.

(a) *Purpose.* The Service Coordinator in Multifamily Housing program allows owners of eligible projects to assist elderly persons and nonelderly persons with disabilities living in HUD-assisted housing and in the vicinity of the housing project to obtain needed supportive services from the community and to continue living as independently as possible in their homes. HUD makes funds available to employ and support a service coordinator, by awarding grants and by approving owners' requests to use certain classes of project funds to pay for the costs of providing a service coordinator.

(b) *Applicability.* The requirements set forth in this subpart B apply only to the Service Coordinator in Multifamily Housing program, as authorized under sections 671, 672, 674, 676, and 677 of the Housing and Community Development Act of 1992 (Pub. L. 102–550).

§ 892.205 Definitions.

In addition to the definitions under § 892.105, the following definitions apply to this subpart:

At-risk elderly person means an elderly person who is unable to perform one or two of the ADLs, as defined under § 892.105.

Available funds means funds for supportive services, as approved by HUD, and which must not be used to address critical property needs.

Eligible project includes eligible housing projects as defined under § 892.105 and means a project that:

(1) Has no available project funds as defined under § 892.105 to pay for a service coordinator; and

(2) Is designed or designated for the elderly or persons with disabilities and continues to operate as such. This includes any building within a mixed-use development that was designed for occupancy by elderly persons or persons with disabilities at its inception and continues to operate as such, or consistent with title VI, subtitle D, of the Housing and Community Development Act of 1992 (Public Law 102–550). If a project was not so designed at its inception for occupancy by elderly persons or persons with disabilities, an eligible project includes a property in which the owner gives preferences in tenant selection (with HUD approval) to eligible elderly persons or nonelderly persons with disabilities for all units in that property.

§ 892.210 Sources of funding.

Owners of eligible housing projects may request the use of or apply for the following types of funding to cover service coordinator program expenses:

(a) *Project rent and other income.* Service coordinator expenses, in accordance with § 891.250(b), is an eligible project expense. This includes funding provided through:

(1) Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

(2) PRACs, pursuant to section 802 of the National Affordable Housing Act (42 U.S.C. 8011); and

(3) Income generated from programs in paragraphs (a)(1) and (2) of this section or from tenant rental payments that exceed operating expenses and that may be used only upon approval from HUD.

(b) Multifamily service coordinator grants, subject to appropriations.

§ 892.215 Application and selection.

HUD will provide through a NOFA the form and manner of applications for grants under this subpart and for selection of applicants to receive such grants.

§ 892.220 Duties.

(a) *In general.* Service coordinators must perform the following duties:

(1) Perform an initial needs screening, with subsequent annual reviews, to identify service needs. If a comprehensive needs assessment is required, service coordinators must refer tenant to a qualified professional;

(2) Maintain detailed case files on each resident served;

(3) Refer and link the residents to supportive services available in and provided by trusted partners/resources in the general community. Such services may include, but are not limited to, case management, personal assistance, homemaker services, meals-on-wheels/congregate meal provision, transportation, counseling, visiting nurse, preventive health screening/wellness training, and legal advocacy;

(4) Educate residents on matters such as, but not limited to, service availability, application procedures, client rights, etc.;

(5) Establish linkages with agencies such as, but not limited to, a local area agency on aging (AAA)/Aging and Disability Resource Center (ADRC) and home and community-based service providers. Perform market analysis to determine/develop the best ''deals'' in service pricing, to assure individualized, flexible, and creative services for the involved resident. Provide advocacy as appropriate;

(6) Provide case management when such service is not available through the general community. This might include evaluation of health, psychological and social needs, development of an individually tailored case plan for services, periodic reassessment of the residents' situations and needs, and assistance identifying, obtaining, and completing appropriate documentation in order to secure needed services;

(7) Monitor the ongoing provision of services from community agencies. Manage the provision of supportive services where appropriate;

(8) Help the residents build informal support networks with other residents, family, and friends;

(9) Work and consult with tenant organizations and resident management corporations. Provide training to the property's residents in the obligations of tenancy or coordinate such training;

(10) Create a directory of service providers for use by both housing staff and residents;

(11) Educate and train other staff of the management team on issues related to aging-in-place and service coordination, to help them to better work with and assist the residents;

(12) Provide service coordination to low-income elderly individuals or nonelderly persons with disabilities living in the vicinity of an eligible property. Community residents should come to your housing site to meet with and receive service from the service coordinator, but you must make reasonable accommodations for those individuals with disabilities unable to travel to the housing site, and have the option to make accommodations for other community residents;

(13) Affirmatively market the service coordinator's services to residents of the property and surrounding community who are least likely to inquire; find counselors to help tenants with counseling for mobility and fair housing choice.

(b) *Prohibited duties.* Service coordinators must not perform the following activities:

(1) Act as a recreational or activities director; or

(2) Provide supportive services directly.

§ 892.225 Qualifications.

Service coordinators must possess the following qualifications:

(a) A bachelor's degree;

(b) Experience in social service delivery for the elderly and persons with disabilities;

(c) Demonstrated working knowledge of supportive services and other resources available for the elderly and persons with disabilities in the area served by the eligible housing project; and

(d) Demonstrated ability to advocate, organize, problem-solve, and provide results for the elderly and persons with disabilities.

(e) HUD may allow for the substituting of a bachelor's degree based on the extent of qualifications in paragraphs (b) through (d) of this section and/or other qualifications. The extent of qualifications will be determined by HUD through a NOFA.

§ 892.230 Form of employment or retention.

An owner may directly employ a service coordinator or may procure by contract the services of a service coordinator. Owners may also utilize a service coordinator whose expenses are supported by external sources of funding.

§ 892.235 Training.

Service coordinators must receive and document training, at minimum, in the following subject areas:

(a) The aging process;

(b) Elder and disability services;

(c) Eligibility for and procedures of Federal and applicable state entitlement programs;

(d) Legal liability issues relating to providing service coordination;

(e) Drug and alcohol use and abuse by the elderly; and

(f) Mental health issues.

§ 892.240 Administrative requirements.

(a) Owners must provide on-site private office space for the service coordinator to allow for confidential meetings with residents. Office space must be accessible to persons with disabilities and meet all Federal accessibility standards, including section 504 of the Rehabilitation Act of 1973, 24 CFR part 8, and titles II and III of the Americans with Disabilities Act of 1990, as applicable.

(b) Resident files must be kept in a secured location and only be accessible to the service coordinator as required under § 892.245, unless the residents provide signed consent otherwise. Resident files must include documentation that demonstrates the resident's supportive service needs, referrals for needed supportive services (both short- and long-term) and follow-up from the service coordinator on the types and amounts of services residents receive, and any aging-in-place statistics or information.

(c) As directed, owners must submit to HUD performance reports completed by the service coordinator and financial reports detailing program expenses.

§ 892.245 Confidentiality.

(a) Service coordinators must store in a secure manner all files containing information related to the provision of supportive services to residents served by the service coordinator. Files must be accessible only to the service coordinator.

(1) A service coordinator may not disclose to any person any individually identifiable information that relates to the provision of supportive services to a resident, unless and only to the extent the resident to whom the information relates has knowingly consented. Any such consent must be in writing and be signed by the resident, and must clearly identify the parties to whom the information may be disclosed, as well as the scope and purpose of the disclosure.

(2) In the absence of an applicable consent to disclosure in accordance with this section, service coordinators may nonetheless disclose individually identifiable information that relates to the provision of supportive services to a resident, to the extent necessary to protect the safety or security of a resident, housing project staff, or the housing project.

(b) These policies must be consistent with maintaining confidentiality of information related to any individual as required by the Privacy Act of 1974 (5 U.S.C. 552a).

§ 892.250 Program costs.

(a) *In general.* Funds provided under § 892.210 may be used to cover the costs of employing or otherwise retaining the services of one or more service coordinators.

(b) *Eligible costs.* (1) Eligible program expenses include:

(i) Salary and fringe benefits;

(ii) Training;

(iii) Creating private office space;

(iv) Purchase of office furniture and equipment; supplies and materials; and computer hardware, software, and Internet service; and

(v) Other related administrative expenses (both direct and indirect costs) approved by HUD.

(2) Eligible costs must be reasonable, necessary, and recognized as expenditures in compliance with the uniform government-wide cost principles and other grant requirements found in 24 CFR parts 84 and 85.

(i) Grant recipients must additionally be subject to allowable cost provisions in NOFAs and grant agreements.

(ii) Owners of eligible housing projects who use a class or classes of project funds under this subpart must comply with the requirements that are applicable to approved withdrawals or uses of the class or classes of project funds under their governing agreements with HUD.

(c) *Ineligible costs.* Ineligible program expenses are any costs that are not directly related to employing the service coordinator. Examples are expenses associated with holiday parties, purchase of televisions or exercise equipment, and recreational activities for residents.

§ 892.255 Services for low-income elderly or persons with disabilities.

A service coordinator funded under § 892.210 may provide services to low-income elderly individuals or nonelderly persons with disabilities living in the vicinity of an eligible housing project. Community residents choosing to seek assistance from a service coordinator must come to the eligible housing project to meet with and receive assistance from the service coordinator. Service coordinators must make reasonable accommodations for those persons with disabilities unable to travel to the housing project, and have the option to make accommodations for other community residents.

§ 892.260 Sanctions.

(a) If HUD determines that an owner has not complied with the requirements in this subpart, then HUD may impose any or a combination of the following sanctions:

(1) Temporarily withhold reimbursements, approvals, extensions, or renewals until the owner adequately remedies the deficiency;

(2) Disallow all or part of the cost attributable to activities undertaken not in compliance with applicable requirements, and if applicable, require the owner to remit to HUD or to redeposit in the source account funds in the amount that has been disallowed;

(3) Suspend or terminate, in part or in whole, the grant or approval to use project funds;

(4) Place conditions on the awards of grants or approvals of one or more classes of project funds so that the deficiency be remedied and that adequate steps be taken to prevent future deficiencies; or

(5) Other sanctions authorized by law or regulation.

b) Reserved.

Subpart C—Assisted Living Conversion Program

§ 892.300 Purpose and applicability.

(a) *Purpose.* The Assisted Living Conversion program provides grants for the conversion of elderly housing to assisted living facilities and other purposes. Grants provided under this program must be used for the purposes described in section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2).

(b) *Applicability.* The requirements set forth in this subpart C apply only to eligible projects under the Assisted Living Conversion program, as authorized under section 202b(b)(1) of the Housing Act of 1959 (12 U.S.C. 1701q–2).

§ 892.305 Definitions.

In addition to the applicable definitions in § 892.105, the following definitions are applicable to the Assisted Living Conversion program, as provided in this subpart:

Assisted living facility (ALF) shall have the same meaning as provided under section 232(b) of the National Housing Act (12 U.S.C. 1715w(b)), which states that an ''assisted living facility'' means a public facility, proprietary facility, or facility of a private nonprofit corporation that:

(1) Is licensed and regulated by the state (or if there is no state law providing for such licensing and regulation by the state, by the municipality or other political subdivision in which the facility is located);

(2) Makes available to residents supportive services to assist the residents in carrying out activities of

daily living, as defined under § 891.205; and

(3) Provides separate dwelling units for residents, each of which contain a full bathroom and may contain a full kitchen, and

(4) Includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.

Congregate space (hereinafter referred to as community space) shall have the same meaning as the definition provided under section 202(h)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(h)(1)). The term ''congregate space'' (also referred to as community space) excludes halls, mechanical rooms, laundry rooms, parking areas, dwelling units, and lobbies. Community space does not include commercial areas.

Conversion means activities in an eligible project designed to convert dwelling units into assisted living facilities. Conversion can include unit configuration and related common and service space, and any necessary remodeling, consistent with the Uniform Federal Accessibility Standards, section 504 of the Rehabilitation Act of 1973, and HUD's implementing regulations at 24 CFR part 8, as well as any applicable provisions of the Americans with Disabilities Act of 1990 and applicable Fair Housing Act design and construction requirements for all portions of the development physically affected by such conversion. Where conversion may involve Medicaid reimbursement, conversion should be undertaken in accordance with the Home and Community-Based Services regulations of the U.S. Department of Health and Human Services (see 42 U.S.C. part 441).

Eligible project means eligible housing projects as defined under § 892.105; eligible projects as described in section 638(2) of the Housing and Community Development Act; and section 202 properties, as defined under § 891.105; with a PRAC.

Emergency capital repairs are repairs to a project that correct a situation that presents an immediate threat to the life, health, and safety of the project tenants and which if left untreated, would result in an evacuation of the tenants or long-term tenant displacement.

Repairs mean substantial and emergency capital repairs to a project that are needed to rehabilitate, modernize, or retrofit aging structures, common areas, or individual dwelling units.

Service-enriched activities means activities designed to convert dwelling units in the eligible project to service-enriched housing for elderly persons.

Service-enriched housing means housing that:

(1) Makes available, through licensed or certified third party service providers, supportive services to assist the residents in carrying out activities of daily living, as defined under § 891.205;

(2) Includes the position of a service coordinator;

(3) Provides separate dwelling units for residents, each of which contains a full kitchen and bathroom;

(4) Includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the housing; and

(5) Provides residents with control over health care and supportive services decisions, including the right to accept, decline, or choose such services, and to have the choice of a provider.

§ 892.310 Other Federal requirements.

In addition to the requirements set forth in 24 CFR part 5, the following requirements in this section apply to the Assisted Living Conversion program under this subpart.

(a) *Affirmative fair housing marketing.*

(1) The affirmative fair housing marketing requirements of 24 CFR part 200, subpart M, and the implementing regulations at 24 CFR part 108; and

(2) The fair housing advertising and poster guidelines at 24 CFR parts 109 and 110.

(b) *Environmental requirements.* The National Environmental Policy Act of 1969; HUD's implementing regulations at 24 CFR part 50, including compliance with 24 CFR 50.3(i) and the related authorities described in 24 CFR 50.4. For the purposes of Executive Order 11988, Floodplain Management (42 FR 26951, 3 CFR, 1977 Comp., p. 117), as amended by Executive Order 12148 (44 FR 43239, 3 CFR, 1979 Comp., p. 412), and implementing regulations in 24 CFR part 55, all actions shall be treated as critical actions requiring consideration of the 500-year floodplain.

(c) *Flood insurance.* The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(d) *Coastal Barrier Resource Units.* The Coastal Barrier Resources Act (16 U.S.C. 3501).

(e) *Labor standards.* (1) All laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in the construction (including rehabilitation) of housing with 12 or more units assisted under this subpart shall be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a–276a–5). A group home for persons with disabilities is not covered by the labor standards under this paragraph.

(2) Contracts involving employment of laborers and mechanics under this subpart shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(3) Sponsors, owners, contractors, and subcontractors must comply with all rules, regulations, and requirements related to the Davis-Bacon Act (40 U.S.C. 276a–276a–5).

(f) *Displacement and relocation.* (1) *Minimizing displacement.* Consistent with the other goals and objectives of this subpart, sponsors and owners (or borrowers, if applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, or farms) as a result of a project assisted under this subpart.

(2) *Relocation assistance for displaced persons.* A displaced person must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24.

(g) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order 12372 (47 FR 30959, 3 CFR, 1982 Comp., p. 197), as amended by Executive Order 12416 (48 FR 15587, 3 CFR, 1983 Comp., p. 186), and the implementing regulations at 24 CFR part 52 are applicable to this program.

(h) *Lead-based paint.* The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, and R of this title apply to these programs.

§ 892.315 Additional project eligibility.

In addition to the criteria for eligible housing projects as defined under § 892.105, projects receiving Assisted Living Conversion Programs (ALCP) funds must also meet the following criteria:

(a) The project must be owned by a private nonprofit organization, as defined under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(b) The project must be designated primarily for occupancy by elderly persons; and

(c) The project may be unused or underutilized commercial property, except that the Secretary may not provide grants under this section for more than three such properties.

§ 892.320 Notice of funding availability.

(a) *In general.* HUD will issue a separate notice of funding availability (NOFA) for the Assisted Living Conversion program. The NOFA will contain specific information on how and when to apply for the grant authority, the contents of the application, and the selection process.

(b) *Application.* An application for assistance under this subpart must contain the requirements under this section, in addition to the requirements outlined in the NOFA:

(1) A description of the substantial capital repairs or the proposed conversion activities for either an assisted living facility or service-enriched housing for which a grant under this subpart is requested;

(2) The amount of the grant requested to complete the substantial capital repairs or conversion activities; and

(3) A description of the resources that are expected to be made available, if any, in conjunction with the requested funding.

§ 892.325 Requirements for services.

(a) HUD will ensure that assistance under this subpart provides firm commitments for the funding of services to be provided in the assisted living facility or service-enriched housing as described in section 202b(d)(1) of the Housing Act of 1959 (12 U.S.C. 1701q–2(d)(1)).

(2) HUD will require evidence that each recipient of a grant for service-enriched housing provide relevant and timely disclosure of information to residents or potential residents as described in section 202b(d)(2) of the Housing Act of 1959 (12 U.S.C. 1701q–2(d)(2)).

(b) Reserved.

§ 892.330 Section 8 project-based assistance.

(a) *Eligibility.* Multifamily projects, which include one or more dwelling units that have been converted to assisted living facilities or service-enriched housing using funding made under this subpart, are eligible for project-based assistance under section 8 of the United State Housing Act of 1937 (42 U.S.C. 1437f). Such project-based assistance is provided in the same manner in which the project would be eligible for such assistance, but for the assisted living facilities or service-enriched housing in the project.

(b) *Calculation of rent.* The maximum monthly rent of a dwelling unit that is an assisted living facility or service-enriched housing with respect to which assistance payments are made under this section must not include charges attributable to services relating to assisted living.

§ 892.335 Vacancy payment.

A vacancy payment, as related to assistance provided under this subpart, is limited to 30 days after a conversion to an assisted living facility.

Dated: September 24, 2014.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2014–23276 Filed 10–6–14; 8:45 am]

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Part III

Department of Labor

Office of the Secretary

29 CFR Part 10

Establishing a Minimum Wage for Contractors; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 10

RIN 1235–AA10

Establishing a Minimum Wage for Contractors

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Labor issues final regulations to implement Executive Order 13658, Establishing a Minimum Wage for Contractors, which was signed by President Barack Obama on February 12, 2014. Executive Order 13658 states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. The Executive Order therefore seeks to raise the hourly minimum wage paid by those contractors to workers performing work on covered Federal contracts to: $10.10 per hour, beginning January 1, 2015; and beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor. The Executive Order directs the Secretary to issue regulations by October 1, 2014, to the extent permitted by law and consistent with the requirements of the Federal Property and Administrative Services Act, to implement the Order's requirements. This final rule therefore establishes standards and procedures for implementing and enforcing the minimum wage protections of Executive Order 13658. As required by the Order, the final rule incorporates to the extent practicable existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act, the Service Contract Act, and the Davis-Bacon Act.

DATES: *Effective date:* This final rule is effective on December 8, 2014.

Applicability date: For procurement contracts subject to the Federal Acquisition Regulation and Executive Order 13658, this final rule is applicable beginning on the effective date of regulations revising 48 CFR parts 22 and 52 issued by the Federal Acquisition Regulatory Council.

FOR FURTHER INFORMATION CONTACT: Timothy Helm, Chief, Branch of Government Contracts Enforcement, Office of Government Contracts, Wage and Hour Division, U.S. Department of Labor, Room S–3006, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0064 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest Wage and Hour Division (WHD) district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the WHD's Web site for a nationwide listing of WHD district and area offices at *http://www.dol.gov/whd/america2.htm*.

SUPPLEMENTARY INFORMATION:

I. Executive Order 13658 Requirements and Background

On February 12, 2014, President Barack Obama signed Executive Order 13658, Establishing a Minimum Wage for Contractors (the Executive Order or the Order). 79 FR 9851. The Executive Order states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. *Id.* The Order therefore ''seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government'' by raising the hourly minimum wage paid by those contractors to workers performing work on covered Federal contracts to (i) $10.10 per hour, beginning January 1, 2015; and (ii) beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor (Secretary) in accordance with the Executive Order. *Id.*

Section 1 of Executive Order 13658 sets forth a general position of the Federal Government that increasing the hourly minimum wage paid by Federal contractors to $10.10 will ''increase efficiency and cost savings'' for the Federal Government. 79 FR 9851. The Order states that raising the pay of low-wage workers increases their morale and productivity and the quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs. *Id.* The Order further states that these savings and quality improvements will lead to improved economy and efficiency in Government procurement. *Id.*

Section 2 of Executive Order 13658 therefore establishes a minimum wage for Federal contractors and subcontractors. 79 FR 9851. The Order provides that executive departments and agencies (agencies) shall, to the extent permitted by law, ensure that new contracts, contract-like instruments, and solicitations (collectively referred to as ''contracts''), as described in section 7 of the Order, include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c),[1] in the performance of the contract or any subcontract thereunder, shall be at least: (i) $10.10 per hour beginning January 1, 2015; and (ii) beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary in accordance with the Executive Order. 79 FR 9851. As required by the Order, the minimum wage amount determined by the Secretary pursuant to this section shall be published by the Secretary at least 90 days before such new minimum wage is to take effect and shall be: (A) Not less than the amount in effect on the date of such determination; (B) increased from such amount by the annual percentage increase, if any, in the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted) (CPI–W), or its successor publication, as determined by the Bureau of Labor Statistics; and (C) rounded to the nearest multiple of $0.05. *Id.*

Section 2 of the Executive Order further explains that, in calculating the annual percentage increase in the CPI for purposes of this section, the Secretary shall compare such CPI for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage determined by the Secretary is in effect pursuant to this section) with the CPI for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. 79 FR 9851. Pursuant to this section, nothing in the Order excuses noncompliance with any applicable Federal or State prevailing wage law or any applicable

[1] 29 U.S.C. 214(c) authorizes employers, after receiving a certificate from the WHD, to pay subminimum wages to workers whose earning or productive capacity is impaired by a physical or mental disability for the work to be performed.

law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Order. *Id.*

Section 3 of Executive Order 13658 explains the application of the Order to tipped workers. 79 FR 9851–52. It provides that for workers covered by section 2 of the Order who are tipped employees pursuant to 29 U.S.C. 203(t), the hourly cash wage that must be paid by an employer to such employees shall be at least: (i) $4.90 an hour, beginning on January 1, 2015; (ii) for each succeeding 1-year period until the hourly cash wage under this section equals 70 percent of the wage in effect under section 2 of the Order for such period, an hourly cash wage equal to the amount determined under section 3 of the Order for the preceding year, increased by the lesser of: (A) $0.95; or (B) the amount necessary for the hourly cash wage under section 3 to equal 70 percent of the wage under section 2 of the Order; and (iii) for each subsequent year, 70 percent of the wage in effect under section 2 for such year rounded to the nearest multiple of $0.05. 79 FR 9851–52. Where workers do not receive a sufficient additional amount on account of tips, when combined with the hourly cash wage paid by the employer, such that their wages are equal to the minimum wage under section 2 of the Order, section 3 requires that the cash wage paid by the employer be increased such that their wages equal the minimum wage under section 2 of the Order. 79 FR 9852. Consistent with applicable law, if the wage required to be paid under the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.,* or any other applicable law or regulation is higher than the wage required by section 2 of the Order, the employer must pay additional cash wages sufficient to meet the highest wage required to be paid. *Id.*

Section 4 of Executive Order 13658 provides that the Secretary shall issue regulations by October 1, 2014, to the extent permitted by law and consistent with the requirements of the Federal Property and Administrative Services Act, to implement the requirements of the Order, including providing exclusions from the requirements set forth in the Order where appropriate. 79 FR 9852. It also requires that, to the extent permitted by law, within 60 days of the Secretary issuing such regulations, the Federal Acquisition Regulatory Council (FARC) shall issue regulations in the Federal Acquisition Regulation (FAR) to provide for inclusion of the contract clause in Federal procurement solicitations and contracts subject to the Executive Order. *Id.* Additionally, this section states that within 60 days of the Secretary issuing regulations pursuant to the Order, agencies must take steps, to the extent permitted by law, to exercise any applicable authority to ensure that contracts for concessions and contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public, entered into after January 1, 2015, consistent with the effective date of such agency action, comply with the requirements set forth in sections 2 and 3 of the Order. *Id.* The Order further specifies that any regulations issued pursuant to this section should, to the extent practicable and consistent with section 8 of the Order, incorporate existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.;* the SCA; and the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.* 79 FR 9852.

Section 5 of Executive Order 13658 grants authority to the Secretary to investigate potential violations of and obtain compliance with the Order. 79 FR 9852. It also explains that Executive Order 13658 does not create any rights under the Contract Disputes Act and that disputes regarding whether a contractor has paid the wages prescribed by the Order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued pursuant to the Order. *Id.*

Section 6 of Executive Order 13658 establishes that if any provision of the Order or the application of such provision to any person or circumstance is held to be invalid, the remainder of the Order and the application shall not be affected. 79 FR 9852.

Section 7 of the Executive Order provides that nothing in the Order shall be construed to impair or otherwise affect the authority granted by law to an agency or the head thereof; or the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals. 79 FR 9852–53. It also states that the Order is to be implemented consistent with applicable law and subject to the availability of appropriations. 79 FR 9853. The Order explains that it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. *Id.*

Section 7 of Executive Order 13658 further establishes that the Order shall apply only to a new contract, as defined by the Secretary in the regulations issued pursuant to section 4 of the Order, if: (i)(A) It is a procurement contract for services or construction; (B) it is a contract for services covered by the SCA; (C) it is a contract for concessions, including any concessions contract excluded by Department of Labor (the Department) regulations at 29 CFR 4.133(b); or (D) it is a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (ii) the wages of workers under such contract are governed by the FLSA, the SCA, or the DBA. 79 FR 9853. Section 7 of the Order also states that, for contracts covered by the SCA or the DBA, the Order shall apply only to contracts at the thresholds specified in those statutes.[2] *Id.* Additionally, for procurement contracts where workers' wages are governed by the FLSA, the Order specifies that it shall apply only to contracts that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a),[3] unless expressly made subject to the Order pursuant to regulations or actions taken under section 4 of the Order. 79 FR 9853. The Executive Order specifies that it shall not apply to grants; contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended; or any contracts expressly excluded by the regulations issued pursuant to section 4(a) of the Order. 79 FR 9853. The Order also strongly encourages independent agencies to comply with its requirements. *Id.*

Section 8 of Executive Order 13658 provides that the Order is effective immediately and shall apply to covered contracts where the solicitation for such contract has been issued on or after: (i) January 1, 2015, consistent with the effective date for the action taken by the FARC pursuant to section 4(a) of the Order; or (ii) for contracts where an agency action is taken pursuant to section 4(b) of the Order, January 1, 2015, consistent with the effective date for such action. 79 FR 9853. It also

[2] The prevailing wage requirements of the SCA apply to covered prime contracts in excess of $2,500. *See* 41 U.S.C. 6702(a)(2) (recodifying 41 U.S.C. 351(a)). The DBA applies to covered prime contracts that exceed $2,000. *See* 40 U.S.C. 3142(a). There is no value threshold requirement for subcontracts awarded under such prime contracts.

[3] 41 U.S.C. 1902(a) defines the micro-purchase threshold as $3,000.

specifies that the Order shall not apply to contracts entered into pursuant to solicitations issued on or before the effective date for the relevant action taken pursuant to section 4 of the Order. *Id.* Finally, section 8 states that, for all new contracts negotiated between the date of the Order and the effective dates set forth in this section, agencies are strongly encouraged to take all steps that are reasonable and legally permissible to ensure that individuals working pursuant to those contracts are paid an hourly wage of at least $10.10 (as set forth under sections 2 and 3 of the Order) as of the effective dates set forth in this section. 79 FR 9854.

II. Discussion of Final Rule

A. Legal Authority

The President issued Executive Order 13658 pursuant to his authority under ''the Constitution and the laws of the United States,'' expressly including the Federal Property and Administrative Services Act (Procurement Act), 40 U.S.C. 101 *et seq.* 79 FR 9851. The Procurement Act authorizes the President to ''prescribe policies and directives that the President considers necessary to carry out'' the statutory purposes of ensuring ''economical and efficient'' government procurement and administration of government property. 40 U.S.C. 101, 121(a). Executive Order 13658 delegates to the Secretary the authority to issue regulations to ''implement the requirements of this order.'' 79 FR 9852. The Secretary has delegated his authority to promulgate these regulations to the Administrator of the WHD. Secretary's Order 05–2010 (Sept. 2, 2010), 75 FR 55352 (published Sept. 10, 2010).

B. Discussion of the Final Rule

On June 17, 2014, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, inviting public comments for a period of 30 days on a proposal to implement the provisions of Executive Order 13658. *See* 79 FR 34568 (June 17, 2014). On July 8, 2014, the Department extended the period for filing written comments until July 28, 2014. *See* 79 FR 38478. More than 6,500 individuals and entities commented on the Department's NPRM. Comments were received from a variety of interested stakeholders, such as labor organizations; contractors and contractor associations; worker advocates, including advocates for people with disabilities; contracting agencies; small businesses; and workers. Some organizations attached the views of some of their individual members. For example, 1,159 individuals joined in comments submitted by Interfaith Worker Justice and the National Women's Law Center submitted 5,127 individual comments.

The Department received many comments, such as those submitted by the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), North America's Building Trades Unions (Building Trades), the National Women's Law Center, Interfaith Worker Justice, Demos, the National Employment Law Project (NELP), and the National Disability Rights Network (NDRN), expressing strong support for the Executive Order and for raising the minimum wage. Many of these commenters, such as Demos, commended the Department's NPRM as a ''reasonable and appropriate'' implementation of Executive Order 13658. The Building Trades similarly applauded the Department's proposed rule as presenting ''a straightforward and comprehensive framework for implementing, policing and enforcing Executive Order 13658.'' Although the Professional Services Council (PSC) disagreed with some of the substantive interpretations set forth in the Department's NPRM, it also expressed its appreciation for ''the extensive explanatory material'' set forth in the preamble to the proposed rule and noted that such information provided ''valuable insight into the Department's approach and rationale.''

However, the Department also received submissions from several commenters, including the National Restaurant Association (Association) and the International Franchise Association (IFA), the U.S. Chamber of Commerce (Chamber) and the National Federation of Independent Business (NFIB), the HR Policy Association, and the Associated Builders and Contractors, Inc. (ABC), expressing strong opposition to the Executive Order and questioning its legality and stated purpose. Comments questioning the legal authority and rationale underlying the Executive Order are not within the purview of this rulemaking action.

The Department also received a number of comments requesting that the President take other executive actions to protect workers on Federal Government contracts. While the Department appreciates such input, comments requesting further executive actions are beyond the scope of this rule and the Department's rulemaking authority.

Finally, the Center for Plain Language (CPL) submitted a comment regarding how the Federal Plain Language Guidelines could improve the general clarity of the final rule. The Department has carefully considered this comment and has endeavored to use plain language in the preamble and regulatory text of the final rule in instances where plain language is appropriate and does not change the substance of the rule. For example, the Department has avoided the use of ''prior to,'' ''pursuant to,'' ''shall,'' ''such,'' and ''thereunder,'' where appropriate. In addition, the Department has made an effort to use shorter sentences and paragraphs where possible or appropriate. Some of the suggested changes, however, are not suitable to this final rule. For example, the Department does not find the use of the pronoun ''you'' or headings in the form of questions to be appropriate here. Section 4(c) of Executive Order 13658 directs the Department to incorporate existing definitions and procedures from the DBA, the SCA, and the FLSA, to the extent practicable. Because the implementing regulations under those statutes do not use the pronoun ''you'' and do not use questions as headings, the Department has concluded that it would be inconsistent to do so in the final rule.

All other comments, including comments raising specific concerns regarding interpretations of the Executive Order set forth in the Department's NPRM, will be addressed in the following section-by-section analysis of the final rule. After considering all timely and relevant comments received in response to the June 17, 2014 NPRM, the Department is issuing this final rule to implement the provisions of Executive Order 13658.

The Department's final rule, which amends Title 29 of the Code of Federal Regulations (CFR) by adding part 10, establishes standards and procedures for implementing and enforcing Executive Order 13658. Subpart A of part 10 relates to general matters, including the purpose and scope of the rule, as well as the definitions, coverage, and exclusions that the rule provides pursuant to the Order. It also sets forth the general minimum wage requirement for contractors established by the Executive Order, an antiretaliation provision, and a prohibition against waiver of rights. Subpart B establishes the requirements that contracting agencies and the Department must follow to comply with the minimum wage provisions of the Executive Order. Subpart C establishes the requirements that contractors must follow to comply with the minimum wage provisions of the Executive Order. Subparts D and E specify standards and procedures related to complaint intake, investigations, remedies, and administrative enforcement

proceedings. Appendix A contains a contract clause to implement Executive Order 13658. 79 FR 9851. Appendix B sets forth a poster regarding the Executive Order minimum wage for contractors with FLSA-covered workers performing work on or in connection with a covered contract.

The following section-by-section discussion of this final rule summarizes the provisions proposed in the NPRM, addresses the comments received on each section, and sets forth the Department's response to such comments for each section.

Subpart A—General

Executive Order 13658 seeks to raise the hourly minimum wage paid by those contractors to workers performing work on covered Federal contracts to: $10.10 per hour, beginning January 1, 2015; and beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor in accordance with the Order.

Subpart A of part 10 pertains to general matters, including the purpose and scope of the rule, as well as the definitions, coverage, and exclusions that the rule provides pursuant to the Order. Subpart A also includes the Executive Order minimum wage requirement for contractors, an antiretaliation provision, and a prohibition against waiver of rights.

Section 10.1 Purpose and Scope

Proposed § 10.1(a) explained that the purpose of the proposed rule was to implement Executive Order 13658 and reiterated statements from the Order that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. The proposed rule further stated that there is evidence that boosting low wages can reduce turnover and absenteeism in the workplace, while also improving morale and incentives for workers, thereby leading to higher productivity overall. As stated in proposed § 10.1(a), it is for these reasons that the Executive Order concludes that raising, to $10.10 per hour, the minimum wage for work performed by parties who contract with the Federal Government will lead to improved economy and efficiency in Government procurement. The NPRM stated that the Department believes that, by increasing the quality and efficiency of services provided to the Federal Government, the Executive Order will improve the value that taxpayers receive from the Federal Government's investment.

The Department received a number of comments asserting that Executive Order 13658 does not promote economy and efficiency in Federal Government procurement and challenging the determinations set forth in the Executive Order that are reflected in proposed § 10.1(a). As stated above, comments questioning the President's legal authority to issue the Executive Order are not within the scope of this rulemaking action. To the extent that such comments challenge specific conclusions made by the Department in its economic and regulatory flexibility analyses set forth in the NPRM, those comments are addressed in sections IV and V of the preamble to this final rule. The Department did not receive any other comments addressing proposed § 10.1(a) and therefore implements the provision as it was proposed in the NPRM.

Proposed § 10.1(b) explained the general Federal Government requirement established in Executive Order 13658 that new contracts with the Federal Government include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, requiring, as a condition of payment, that the contractor and any subcontractors pay workers performing work on the contract or any subcontract thereunder at least: (i) $10.10 per hour beginning January 1, 2015; and (ii) an amount determined by the Secretary pursuant to the Order, beginning January 1, 2016, and annually thereafter. Proposed § 10.1(b) also clarified that nothing in Executive Order 13658 or part 10 is to be construed to excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Order. The Department did not receive any comments on proposed § 10.1(b) and therefore adopts the provision as proposed.

Proposed § 10.1(c) outlined the scope of this proposed rule and provided that neither Executive Order 13658 nor this part creates any rights under the Contract Disputes Act or any private right of action. In the NPRM, the Department explained that it does not interpret the Executive Order as limiting existing rights under the Contract Disputes Act. This provision also restated the Executive Order's directive that disputes regarding whether a contractor has paid the minimum wages prescribed by the Order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued under the Order. The provision clarified, however, that nothing in the Order is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. Finally, this paragraph clarified that neither the Order nor the proposed rule would preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

The PSC commented on proposed § 10.1(c), noting that it concurred with the provision as written but recommended that the Department modify the phrase ''*create* any rights under the Contract Disputes Act'' in the first sentence of that provision to ''*change* any rights under the Contract Disputes Act'' to recognize that this rule does not impact existing Contract Disputes Act rights. The Department agrees with this comment and, as stated in the NPRM, does not interpret the Executive Order as limiting any existing rights under the Contract Disputes Act. *See* 79 FR 34571. Accordingly, the Department has provided in § 10.1(c) of the final rule that neither Executive Order 13658 nor this part ''creates or changes'' any rights under the Contract Disputes Act. The Department has also made a technical edit to this section by adding a citation to the Administrative Procedure Act.

Section 10.2 Definitions

Proposed § 10.2 defined terms for purposes of this rule implementing Executive Order 13658. Section 4(c) of the Executive Order instructs that any regulations issued pursuant to the Order should ''incorporate existing definitions'' under the FLSA, the SCA, and the DBA ''to the extent practicable and consistent with section 8 of this order.'' 79 FR 9852. Most of the definitions provided in the Department's proposed rule were therefore based on either the Executive Order itself or the definitions of relevant terms set forth in the statutory text or implementing regulations of the FLSA, SCA, or DBA. Several proposed definitions adopted or relied upon definitions published by the FARC in section 2.101 of the FAR. 48 CFR 2.101. The Department also proposed to adopt, where applicable, definitions set forth in the Department's regulations implementing Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts. 29 CFR 9.2. In the NPRM, the Department noted that, while the proposed definitions discussed in the proposed rule would govern the implementation and enforcement of Executive Order 13658, nothing in the proposed rule was

intended to alter the meaning of or to be interpreted inconsistently with the definitions set forth in the FAR for purposes of that regulation.

As a general matter, several commenters, such as Demos and the AFL–CIO, stated that the Department reasonably and appropriately defined the terms of the Executive Order. The AFL–CIO, for example, particularly supported ''the inclusive definitions and broad scope of the proposed rule.'' Many other individuals and organizations submitted comments supporting, opposing, or questioning specific proposed definitions that are addressed below.

The Department proposed to define the term *agency head* to mean the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency or any persons authorized to act on behalf of the agency head. This proposed definition was based on the definition of the term set forth in section 2.101 of the FAR. *See* 48 CFR 2.101. The CPL suggested that the Department consolidate this definition with the definition set forth for the term *Administrator* because the NPRM appeared to be using different terms to describe the same concept. The Department disagrees with the CPL's suggested consolidation of these two definitions because the term *agency head* is used to refer to the head of any executive agency whereas the term *Administrator,* as used in this part, refers specifically to the head of the Wage and Hour Division, U.S. Department of Labor. Because the Department did not receive any other comments addressing the term *agency head,* the Department has adopted the definition of that term as it was originally proposed.

The Department proposed to define *concessions contract* (or *contract for concessions*) to mean a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. In the NPRM, the Department explained that this proposed definition did not contain a limitation regarding the beneficiary of the services, and such contracts may be of direct or indirect benefit to the Federal Government, its property, its civilian or military personnel, or the general public. *See* 29 CFR 4.133. The proposed definition included but was not limited to all concessions contracts excluded by Departmental regulations under the SCA at 29 CFR 4.133(b).

Demos expressed its support for the Department's proposed definition of *concessions contract,* noting that the definition appropriately does not impose restrictions on the beneficiary of services offered by parties to a concessions contract with the Federal Government (*i.e.,* concessions contracts may be of direct or indirect benefit to the Federal Government, its property, its civilian or military personnel, or the general public). Several other commenters expressed concern or confusion regarding application of this definition to specific factual circumstances; such comments are addressed below in the preamble discussion of the coverage of concessions contracts. As the Department received no comments suggesting revisions to the proposed definition of this term, the Department adopts the definition as set forth in the NPRM.

The Department proposed to define *contract* and *contract-like instrument* collectively for purposes of the Executive Order as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition included, but was not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The proposed definition of the term *contract* broadly included all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing.

The Department explained that the proposed definition of the term *contract* shall be interpreted broadly to include, but not be limited to, any contract that may be consistent with the definition provided in the FAR or applicable Federal statutes. In the NPRM, the Department noted that this definition shall include, but shall not be limited to, any contract that may be covered under any Federal procurement statute. The Department specifically proposed to note in this definition that contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. The proposed definition also explained that, in addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. The proposed definition also specified that, for purposes of the minimum wage requirements of the Executive Order, the term *contract* included contracts covered by the SCA, contracts covered by the DBA, and concessions contracts not otherwise subject to the SCA, as provided in section 7(d) of the Executive Order. *See* 79 FR 9853. The proposed definition of *contract* discussed herein was derived from the definition of the term *contract* set forth in Black's Law Dictionary (9th ed. 2009) and § 2.101 of the FAR (48 CFR 2.101), as well as the descriptions of the term *contract* that appear in the SCA's regulations at 29 CFR 4.110–.111, 4.130. The Department also incorporated the exclusions from coverage specified in section 7(f) of the Executive Order and provided that the term *contract* does not include grants; contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended; or any contracts or contract-like instruments expressly excluded by § 10.4.

The Department noted that the mere fact that a legal instrument constitutes a *contract* under this definition does not mean that the contract is subject to the Executive Order. The NPRM explained that, in order for a contract to be covered by the Executive Order and the proposed rule, the contract must qualify as one of the specifically enumerated types of contracts set forth in section 7(d) of the Order and proposed § 10.3. For example, although a cooperative agreement would be considered a contract pursuant to the Department's proposed definition, a cooperative agreement would not be covered by the Executive Order and this part unless it was subject to the DBA or SCA, was a concessions contract, or was entered into ''in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.'' 79 FR 9853. In other words, the NPRM explained that this part would not apply to cooperative agreements that did not involve providing services for Federal employees, their dependents, or the general public.

Several individuals and entities submitted comments expressing their support for the Department's proposed definition of the terms *contract* and *contract-like instrument.* NELP and the

eight organizations that joined in its comment, for example, stated that the proposed definition ''fairly reflect[s] the increasing complexity of leasing and contracting relationships between the Federal Government and the private sector.'' The AFL–CIO similarly commended the Department's proposed definition because ''it is consistent both with the Executive Order and because it tracks the definitions contained in the SCA and DBA. . . . The proposal appropriately seeks to include the full range of contracts and other government procurement arrangements so as to effectuate the purposes of the Executive Order.''

However, the Department received several comments, such as those submitted by the Associated General Contractors of America (AGC), the Chamber/NFIB, the Equal Employment Advisory Council (EEAC), and the Association/IFA, expressing confusion or concern regarding the breadth of the Department's proposed definition of the terms *contract* and *contract-like instrument.* The National Ski Areas Association (NSAA), for example, described this proposed definition as ''all-encompassing'' and ''remarkably broad.'' NSAA asserted that the proposed definition of the term *contract* was so broad that it could extend to cover ''*any* agreement with a federal agency'' and could ''include even those hotels that accept a GSA room rate for government employees.''

The PSC similarly criticized the Department's ''very broad'' proposed definition and contended that it would cover situations and business relationships that are not subject to the FAR or the SCA's regulations, thus generating confusion among contractors. The PSC asserted that the proposed definition also ''over-scopes'' the term *contract* to include transactions, such as notices of awards that are not ''mutually binding legal relationships.'' The PSC further stated that the proposed definition of the term would cover instruments such as blanket purchase agreements, task orders, and delivery orders that it does not regard as ''contracts.'' The PSC thus urged the Department to adopt the definition of the term *contract* set forth in the FAR for purposes of covering Federal procurement transactions. The EEAC criticized the Department's proposed definition for including ''verbal agreements,'' and asserted that it is difficult to imagine how a proposed contract clause could be included in a verbal agreement. It further observed that the proposed definition would appear to cover any lease for space under the General Services Administration's (GSA) outlease program as well as any license or permit to use Federal land, including a permit to conduct a wedding on Federal property.

As a threshold matter, the Department notes that its proposed definition of the terms *contract* and *contract-like instrument* was primarily derived from the definitions of those terms in the FAR and the SCA's regulations and thus it should not have been wholly unfamiliar or unduly confusing to contractors. *See* 48 CFR 2.101; 29 CFR 4.110–.111, 4.130. For example, the PSC criticized the proposed definition for its inclusion of ''notices of awards,'' which the PSC argues are not ''mutually binding legal relationships.'' However, this language is taken verbatim from the FAR definition of the term *contract* that the PSC itself urges the Department to adopt. *See* 48 CFR 2.101 (defining the term *contract* as ''a mutually binding legal relationship'' and specifically stating that ''contracts include (but are not limited to) awards and notices of awards'').

Although the Department relied heavily on the FAR's definition of the term *contract,* the Department must reject the suggestion that it wholly adopt the FAR definition of the term because the term *contract* as used in the Executive Order applies to both procurement and non-procurement legal arrangements whereas the FAR definition only applies to procurement contracts. For that reason, the Department has also relied upon the Department's interpretation of the term ''contract'' under the SCA. For example, the proposed definition includes ''verbal agreements'' because the SCA's regulations specifically provide that the mere fact that an agreement is not written does not render such contract outside the scope of the SCA's coverage, *see* 29 CFR 4.110, even though the SCA mandates inclusion of a written contract clause. The inclusion of verbal agreements in the definition of the terms *contract* and *contract-like instrument* helps to ensure that coverage of the Executive Order can extend to situations where contracting parties, for whatever reason, rely on an oral agreement rather than a written contract. Although such instances are likely to be exceptionally rare, workers should not be deprived of the Executive Order minimum wage merely because the contracting parties neglected to formally memorialize their mutual agreement in an executed written contract.

With respect to all comments regarding the general breadth of the proposed definition of the terms *contract* and *contract-like instrument,* the Department notes that its proposed definition is intentionally all-encompassing. The proposed definition of these terms could indeed be applied to an expansive range of different types of legal arrangements, including purchase and task orders; the use of the term ''contract-like instrument'' in the Executive Order underscores that the Order was intended to be of potential applicability to virtually any type of agreement with the Federal Government that is contractual in nature. Importantly, however, the NPRM carefully explained that ''the mere fact that a legal instrument constitutes a contract under this definition does not mean that such contract is subject to the Executive Order.'' 79 FR 34572.

In order for a legal instrument to be covered by the Executive Order, the instrument must satisfy all of the following prongs: (1) It must qualify as a *contract* or *contract-like instrument* under the definition set forth in this part; (2) it must fall within one of the four specifically enumerated types of contracts set forth in section 7(d) of the Order and § 10.3 of this part; and (3) it must be a ''new contract'' pursuant to the definition provided in § 10.2. (Moreover, in order for the minimum wage protections of the Executive Order to actually extend to a particular worker on a covered contract, that worker's wages must be governed by the DBA, SCA, or FLSA.) For example, although an agreement between a contracting agency and a hotel pursuant to which the hotel accepts the GSA room rate for Federal Government workers would likely be regarded as a ''contract'' or ''contract-like instrument'' under the Department's proposed definition, such an agreement would not be covered by the Executive Order and this part because it is not subject to the DBA or SCA, is not a concessions contract, and is not entered into in connection with Federal property or lands. Similarly, a permit issued by the National Park Service (NPS) to an individual for purposes of conducting a wedding on Federal land would qualify as a ''contract'' or ''contract-like instrument'' but would not be subject to the Executive Order because it would not be a contract covered by the SCA or DBA, a concessions contract, or a contract in connection with Federal property related to offering services to Federal employees, their dependents, or the general public. The Department believes that this basic test for contract coverage was clearly stated in the NPRM, but has endeavored to provide additional clarification and examples of covered contracts in its preamble discussion of

the coverage provisions set forth at § 10.3 in this final rule.

Several other commenters, including AGC, requested that the Department separately define the term *contract-like instrument* and provide examples of contract-like instruments because the regulated community is generally unfamiliar with the term. The EEAC generally observed that the term *contract-like instrument* is not used in the FAR or the prevailing wage statutes with which most government contractors are familiar and thus the term has generated considerable confusion in the regulated community. Fortney and Scott, LLC (FortneyScott) similarly requested that the Department clarify the definition of a *contract-like instrument.* It asserted that all of the examples of ''contract-like instruments'' set forth in the NPRM would in fact qualify as ''contracts'' and therefore asked whether there would be any instruments that would be deemed to be ''contract-like instruments'' that would not also be considered ''contracts.'' FortneyScott suggested that the Department should expressly state in the final rule that there are no ''contract-like instruments'' subject to the Executive Order other than those that would be covered by the definition of ''contract.''

The Department acknowledges that the term *contract-like instrument* is not used in the FLSA, SCA, DBA, or FAR. For this reason, the Department has defined the term collectively with the well-known term *contract* in a manner that should be generally known and understood by the contracting community. As noted above, several commenters accurately observed that the Department's proposed definition of these terms is broad. The use of the term ''contract-like instrument'' in the Executive Order reflects that the Order is intended to cover all arrangements of a contractual nature, including those arrangements that may not be universally regarded as a ''contract.'' For example, the term *contract-like instrument* would encompass Forest Service permits that ''possess contract characteristics,'' *Son Broadcasting, Inc.* v. *United States,* 52 Fed. Cl. 815, 823 (Ct. Cl. 2002), and that use ''contract-like language.'' *Meadow-Green Wildcat Corp.* v. *Hathaway,* 936 F.2d 601, 604 (1st Cir. 1991). The large number of specific comments that the Department received regarding the coverage of ''contracts for concessions'' and ''contracts in connection with Federal property'' underscores the importance of the term ''contract-like instrument'' in the Executive Order; as the EEAC itself observed, ''[e]mployers may not think of these arrangements as contracts at all, and indeed may be surprised to learn that the new minimum wage mandate applies.'' For this precise reason, the Executive Order utilized the term ''contract-like instrument'' to help clarify that its minimum wage requirements are broadly applicable to all contractual arrangements so long as such arrangements fall within one of the four specifically enumerated types of arrangements set forth in section 7(d) of the Order. The Department acknowledges that the term *contract-like instrument* does not apply to an arrangement or an agreement that is truly not contractual. However, the use of such term helps to emphasize that the Executive Order was intended to sweep broadly to apply to concessions agreements and agreements in connection with Federal property or lands and related to offering services, regardless of whether the parties involved typically consider such arrangements to be ''contracts'' and regardless of whether such arrangements are characterized as ''contracts'' for purposes of the specific programs under which they are administered. Moreover, the Department believes that the Executive Order's use of the term *contract-like instrument* is intended to prevent disputes or extended discussions between contracting agencies and contractors regarding whether a particular legal instrument qualifies as a ''contract'' for purposes of coverage by the Order and this part. The broad definition set forth in this rule will help facilitate more efficient determinations by contractors, contracting officers, and the Department as to whether a particular legal arrangement is covered. The Department thus declines to separately define the term *contract-like instrument* as suggested by some commenters because the term is best understood contextually in conjunction with the well-known term *contract.*

The United States Department of Agriculture's Forest Service (FS) commented that the Department should consolidate the definition of the terms *contract* and *contract-like instrument* with the definition of the term *concessions contract* because it believes that the definition of *concessions contract* is subsumed in the more general definition of *contract.* Although the Department agrees that the definition of the term *contract* is relevant to determining whether a legal instrument qualifies as a ''*contract* for concessions,'' the Department continues to believe that a separate definition is necessary to inform the regulated community about the meaning of the term ''contract *for concessions.''* As noted above, commenters such as Demos expressed their strong support for the proposed definition of the term ''contract for concessions.'' The need for this specific and separate definition is underscored by the large number of comments that the Department received regarding the coverage of concessions contracts and contracts in connection with Federal property or lands. The Department addresses the specific concerns raised regarding the coverage of concessions contracts in the preamble discussion of coverage provisions below.

Several other commenters, including the America Outdoors Association (AOA) and the Association/IFA, urged the Department to include separate definitions of the terms *subcontract* and *subcontractor* in the final rule. In the NPRM, the Department stated that the proposed definition of the term *contract* broadly included all contracts and any subcontracts of any tier thereunder and also provided that the term *contractor* referred to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. The AOA and the Association/IFA expressed confusion regarding the ''flow-down'' provisions of the Executive Order and suggested that the Department could help to clarify coverage of subcontracts by expressly defining that term.

The applicability of the Executive Order to subcontracts is addressed in greater detail in the discussion of the rule's coverage provisions below, but with respect to these commenters' specific proposal to separately define the terms *subcontract* and *subcontractor,* the Department declines to set forth definitions of those terms in the final rule because it could generate significant confusion for contracting agencies, contractors, and workers. The Department notes that many commenters, including the Association/IFA itself, strongly urged the Department to align its definitions and coverage provisions with those set forth in the SCA, the DBA, and the FAR to ensure compliance and to minimize confusion. Neither the FAR nor the regulations implementing the DBA or SCA provide independent definitions of the terms ''subcontract'' and ''subcontractor.'' The SCA's regulations, for example, simply provide that the definition of the term ''contractor'' includes a subcontractor whose subcontract is subject to provisions of the SCA. *See* 29 CFR 4.1a(f).

As with the SCA and DBA, all of the provisions of the Executive Order that

are applicable to covered prime contracts and contractors apply with equal force to covered subcontracts and subcontractors, except for the value threshold requirements set forth in section 7(e) of the Order that only pertain to prime contracts. The final rule provides more clarity with respect to the rule's flow-down provisions and subcontractor coverage and liability below. For these reasons and to avoid using unnecessary and duplicative terms throughout this part, the Department therefore will continue to utilize the term *contract* to refer to all contracts and any subcontracts thereunder and use the term *contractor* to refer to a prime contractor and all of its subcontractors in the final rule, unless otherwise noted.

The Department has carefully considered all of the comments received on the proposed definition of the terms *contract* and *contract-like instrument* but, for the reasons set forth above, ultimately declines to make any of the suggested changes. However, the Department has modified the proposed definition of *contract* to delete reference to the exclusions from coverage specified in section 7(f) of the Executive Order (*i.e.,* grants; contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended; or any contracts or contract-like instruments expressly excluded by § 10.4). As the Department has explained throughout this rule, the mere fact that an agreement qualifies as a ''contract'' under this definition does not necessarily mean that the agreement is covered by the Order. Accordingly, the Department has determined that its proposed reference to the exclusionary provisions of the Order in this definition is unnecessary and potentially confusing for the public. The Department has also made a clarifying edit to the definition of *contract* to reflect application of the Executive Order to contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public. Other than these changes, the Department adopts the definition as proposed in the NPRM.

The Department proposed to substantially adopt the definition of *contracting officer* in section 2.101 of the FAR, which means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term included certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. *See* 48 CFR 2.101. The Department did not receive any comments on its proposed definition of this term; the final rule therefore adopts the definition as proposed.

The Department defined *contractor* to mean any individual or other legal entity that (1) directly or indirectly (*e.g.,* through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract or a subcontract under a Government contract; or (2) conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor. In the NPRM, the Department noted that the term *contractor* refers to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. This proposed definition incorporated relevant aspects of the definitions of the term *contractor* in section 9.403 of the FAR, *see* 48 CFR 9.403; the SCA's regulations at 29 CFR 4.1a(f); and the Department's regulations implementing Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts at 29 CFR 9.2. This definition included lessors and lessees, as well as employers of workers performing on or in connection with covered Federal contracts whose wages are computed pursuant to special certificates issued under 29 U.S.C. 214(c). The Department noted that the term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in this part. The proposed rule also explained that the U.S. Government, its agencies, and its instrumentalities are not considered contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of Executive Order 13658.

The Department received several comments on its proposed definition of the term *contractor.* The PSC, for example, contended that the proposed definition improperly covers entities that are not subject to the Executive Order, the FAR, or the SCA's regulations. In its comment, the PSC observed that the proposed definition covers an entity that ''submits an offer or reasonably may be expected to submit offers for'' a government contract and asserted that it is ''not aware of any federal procurement provision that applies to entities who 'may be expected to submit offers''' and urged the Department to delete this language. The Association/IFA similarly criticized the Department's proposed definition of the term *contractor* as including prospective bidders on a government contract ''with no explanation provided in the preamble.'' The Association/IFA further urged the Department to define specific words that appear in the proposed definition of *contractor,* such as ''affiliate'' and ''indirectly,'' and to clarify what it means to ''indirectly'' submit offers. The Association/IFA also challenged the proposed definition as including an ''exceedingly broad'' category of entities because it would apply to entities such as law firms that ''reasonably may be expected to conduct business . . . with the Government as an agent or representative of another contractor.'' The Association/IFA expressed concern that the Department's proposed definition could potentially cover ''hundreds of thousands of entities that never before considered themselves 'government contractors''' and would need to ascertain what, if any, legal obligations they have under the Executive Order. The National Industry Liaison Group (NILG) similarly requested that the Department narrow its proposed definition of the term *contractor* to exclude prospective and former Federal contractors.

The Department notes that all of the proposed definitional language to which the PSC, the Association/IFA, and the NILG object is taken verbatim from the FAR's definition of the term *contractor. See* 48 CFR 9.403. The Department proposed this definition, in part, because it believed that the definition would be of general familiarity to contractors. Moreover, the proposed definition purposely included both prospective and former contractors because, like section 9.403 of the FAR, this final rule also sets forth standards regarding the debarment, suspension, and ineligibility of contractors.

However, in light of the comments received by the Department expressing concern and confusion regarding the breadth of the proposed definition of the term *contractor,* the Department has decided to simplify the definition in the final rule to assist the general public in understanding coverage of the Executive Order. In the final rule, the Department has therefore deleted the first sentence of the definition derived from the FAR and instead defines *contractor* to mean any individual or other legal entity that is awarded a Federal Government contract or subcontract under a Federal Government contract. The Department has therefore removed the proposed definition's reference to prospective contractors and has eliminated use of terms such as ''affiliate'' and ''indirectly,'' which apparently confused several commenters. However, the Department notes that, despite the

removal of language regarding prospective contractors from this definition, such a deletion has no impact on the suspension and debarment provisions of the final rule. In other words, an individual that is awarded a Federal Government contract may be debarred pursuant to § 10.52 if he or she has disregarded obligations to workers or subcontractors under the Executive Order or this part.

Importantly, the Department notes that the mere fact that an individual or entity qualifies as a *contractor* under the Department's definition does not mean that such an entity has any legal obligations under the Executive Order. A contractor only has obligations under the Executive Order if it has a contract with the Federal Government that is specifically covered by the Order. Thus, while an individual that is awarded a contract with the Federal Government will qualify as a ''contractor'' pursuant to the Department's definition, that individual will only be subject to the minimum wage requirements of the Executive Order if he or she is awarded a ''new'' contract that falls within the scope of one of the four specifically enumerated categories of contracts covered by the Order.

Other than the revisions to the first sentence of the proposed definition of the term *contractor* explained above, the Department has retained the remainder of the proposed definition, which incorporates relevant aspects of the definition from the SCA's regulations at 29 CFR 4.1a(f) and the Department's regulations implementing Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts at 29 CFR 9.2. As in the proposed rule, the Department thus explains that the term *contractor* refers to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. The Department also notes that the term *contractor* includes lessors and lessees, as well as employers of workers performing on covered Federal contracts whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c). Finally, as stated in the NPRM, the Department explains that the term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in various sections of this part and that the U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of the Executive Order.

The PSC commented on the portion of the proposed definition of *contractor* that states that neither the U.S. Government nor its agents are contractors or employers for purposes of the rule and stated that it has not yet had an opportunity to research whether the Department has the authority to make ''such a binding declaration by regulation'' or the potential effects of such a statement. The Department notes that this language identified by the PSC is taken directly from the SCA's definition of the term *contractor, see* 29 CFR 4.1a(f), and merely reflects that for purposes of this Executive Order the Federal Government does not contract with itself or enter into employment relationships with the contractors with whom it conducts business.

Finally, the Association/IFA suggested that the Department define the term ''Government contract'' because it is used in the definition of *contractor.* The Department disagrees with this comment because this part already contains definitions of the term *Federal Government* and *contract.* Because other commenters such as the CPL have urged the Department to avoid creating duplicative definitions and the Department believes that readers of this part already have clear guidance about what types of agreements qualify as contracts with the Federal Government, the Department declines to make this suggested revision.

For the reasons explained above, the Department has revised the first sentence of the definition of the term *contractor* as proposed in the NPRM to assist the general public in understanding coverage of the Executive Order, but has retained the remainder of the proposed definition in the final rule.

The Department proposed to define the term *Davis-Bacon Act* to mean the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 *et seq.,* and its implementing regulations. Because the Department did not receive any comments on this proposed definition, the Department adopts the proposed definition in this final rule.

In the NPRM, the Department defined *executive departments and agencies* that are subject to Executive Order 13658 by adopting the definition of *executive agency* provided in section 2.101 of the FAR. 48 CFR 2.101. The Department therefore interpreted the Executive Order to apply to executive departments within the meaning of 5 U.S.C. 101, military departments within the meaning of 5 U.S.C. 102, independent establishments within the meaning of 5 U.S.C. 104(1), and wholly owned Government corporations within the meaning of 31 U.S.C. 9101. The Department did not interpret this definition as including the District of Columbia or any Territory or possession of the United States. No comments were received on this proposed definition; the final rule therefore adopts the definition as set forth in the NPRM.

The Department defined the term *Executive Order minimum wage* as a wage that is at least: (i) $10.10 per hour beginning January 1, 2015; and (ii) beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary pursuant to section 2 of Executive Order 13658. This definition was based on the language set forth in section 2 of the Executive Order. 79 FR 9851–52. No comments were received on this proposed definition; accordingly, this definition is adopted in the final rule.

The Department proposed to define *Fair Labor Standards Act* as the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.,* and its implementing regulations. The Department did not receive any comments on this proposed definition and therefore adopts the definition as proposed, except that it has added the acronym FLSA to the definition.

The term *Federal Government* was defined in the NPRM as an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. This proposed definition was based on the definition of *Federal Government* set forth in 29 CFR 9.2, but eliminated the term ''procurement'' from that definition because Executive Order 13658 applies to both procurement and non-procurement contracts covered by section 7(d) of the Order. Consistent with the SCA, the proposed definition of the term *Federal Government* included nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or of other Federal agencies. *See* 29 CFR 4.107(a). For purposes of the Executive Order and this part, the Department's proposed definition did not include the District of Columbia or any Territory or possession of the United States. The Department did not receive any comments on the proposed definition of *Federal Government* and thus adopts the definition as set forth in the NPRM with one modification. For the reasons explained in the NPRM and set forth below, independent regulatory agencies within the meaning of 44 U.S.C. 3502(5) are not subject to the Executive Order or this part. The Department has therefore made a clarifying edit to this definition to reflect that, for purposes of the Executive Order, independent regulatory agencies are not included in the definition of *Federal Government.*

The Department proposed to define the term *independent agencies,* for the purposes of Executive Order 13658, as any independent regulatory agency within the meaning of 44 U.S.C. 3502(5). Section 7(g) of the Executive Order states that ''[i]ndependent agencies are strongly encouraged to comply with the requirements of this order.'' The Department interpreted this provision to mean that independent agencies are not required to comply with this Executive Order. This proposed definition was therefore based on other Executive Orders that similarly exempt independent regulatory agencies within the meaning of 44 U.S.C. 3502(5) from the definition of *agency* or include language requesting that they comply. *See, e.g.,* Executive Order 13636, 78 FR 11739 (Feb. 12, 2013) (defining *agency* as any executive department, military department, Government corporation, Government-controlled operation, or other establishment in the executive branch of the Government but excluding independent regulatory agencies as defined in 44 U.S.C. 3502(5)); Executive Order 13610, 77 FR 28469 (May 10, 2012) (same); Executive Order 12861, 58 FR 48255 (September 11, 1993) (''Sec. 4 Independent Agencies. All independent regulatory commissions and agencies are requested to comply with the provisions of this order.''); Executive Order 12837, 58 FR 8205 (Feb. 10, 1993) (''Sec. 4. All independent regulatory commissions and agencies are requested to comply with the provisions of this order.''). The Department did not receive any comments on the proposed definition of this term and therefore adopts the definition as proposed in this final rule.

The Department proposed to define the term *new contract* as a contract that results from a solicitation issued on or after January 1, 2015, or a contract that is awarded outside the solicitation process on or after January 1, 2015. The proposed definition noted that this term includes both new contracts and replacements for expiring contracts provided that the contract results from a solicitation issued on or after January 1, 2015, or is awarded outside the solicitation process on or after January 1, 2015. This language was based on section 8 of the Executive Order, 79 FR 9853, and was consistent with the convention set forth in section 1.108(d) of the FAR, 48 CFR 1.108(d). The PSC commented that it supports the proposed definition of this term. In response to several comments requesting clarification of the Executive Order's applicability to new contracts, the Department has revised the definition of ''new contract'' provided in § 10.2 of the proposed rule, as explained below in the preamble discussion of the ''new contract'' coverage provisions set forth at § 10.3.

Proposed § 10.2 defined the term *option* by adopting the definition set forth in section 2.101 of the FAR, which provides that the term *option* means a unilateral right in a contract by which, for a specified time, the Federal Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract. *See* 48 CFR 2.101. As noted above, many commenters expressed confusion or concern with the Department's discussion of the coverage of new contracts, including its proposed interpretation that the exercise of an option clause by the Federal Government does not constitute a ''new contract'' for purposes of the Executive Order. All such comments are addressed below in the preamble discussion of the coverage provisions set forth at § 10.3.

Several other commenters, including Bond, Schoeneck, and King, PLLC, and the Civil Works Program of the U.S. Army Corps of Engineers (USACE), observed that the Department's proposed definition of the term *option* refers only to a unilateral contractual right held by the Federal Government; these commenters questioned whether the Department would also include situations in which a contractor exercises a unilateral right to extend the term of a contact within its definition of an *option.* The USACE noted, for example, that many of its leases of Federal lands to third parties contain options for renewal that provide the lessee with the unilateral right to renew the lease with all terms and conditions of the existing lease, except that they occasionally provide for increased rent and are subject to USACE's discretion to terminate the lease or decline renewal of the lease for non-compliance with the terms and conditions of the agreement.

In response to these comments, the Department notes that its proposed definition of the term *option,* which solely refers to a unilateral contractual right exercised by the Federal Government, is taken directly from the FAR. *See* 48 CFR 2.101. The Department chose to utilize this definition in order to provide clarity and consistency with well-established contracting concepts to the regulated community. The Department understands that it is rare for the Federal Government to enter into agreements under which a contractor would have the unilateral right to extend the term of the contract without entering into bilateral negotiations with the contracting agency. Insofar as such a situation may arise in which a contractor holds a unilateral right to extend the contract, however, the Department believes that the interests of the Executive Order are best effectuated by adhering to its conclusion that only the unilateral exercise of a pre-negotiated option clause by the Federal Government itself falls outside the scope of the Order; if a contractor unilaterally elects to exercise an option period after January 1, 2015, that option period may be subject to the minimum wage requirements of the Order. After thorough review and consideration of these comments, the Department has decided to implement the definition as proposed in the NPRM without modification.

The Department proposed to define the term *procurement contract for construction* to mean a contract for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and which requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. The proposed definition included any contract subject to the provisions of the DBA, as amended, and its implementing regulations. This proposed definition was derived from language found at 40 U.S.C. 3142(a) and 29 CFR 5.2(h). The Department did not receive any comments on this proposed definition and it is therefore adopted as set forth in the NPRM.

The Department proposed to define the term *procurement contract for services* to mean a contract the principal purpose of which is to furnish services in the United States through the use of service employees, and any subcontract of any tier thereunder. This proposed definition included any contract subject to the provisions of the SCA, as amended, and its implementing regulations. This proposed definition was derived from language set forth in 41 U.S.C. 6702(a), 29 CFR 4.1a(e), and 29 CFR 9.2. No comments were submitted on this definition; accordingly, the Department implements the definition as proposed.

The Department proposed to define the term *Service Contract Act* to mean the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.,* and its implementing regulations. *See* 29 CFR 4.1a(a). The Department did not receive any comments on the proposed definition of this term and thus adopts the definition as proposed for purposes of the final rule.

In the NPRM, the term *solicitation* was defined to mean any request to

submit offers or quotations to the Federal Government. This definition was based on the language found at 29 CFR 9.2. The Department broadly interpreted the term *solicitation* to apply to both traditional and nontraditional methods of solicitation, including informal requests by the Federal Government to submit offers or quotations. In its comment, the PSC did not object to the proposed definition of this term as set forth in the regulatory text itself, but stated that the NPRM's preamble discussion of this term reflected that the Department intended to cover ''informal requests'' by the Federal Government to submit offers or quotations. The PSC urged the Department to reject this interpretation because it could be construed to inappropriately cover ''requests for information'' whereby agencies seek information from the public without providing any commitment to issuing solicitations or making awards. The PSC similarly contended that this interpretation of ''solicitation'' could even be deemed to apply to informal conversations with Federal workers. In response to the PSC's concerns, the Department has clarified that requests for information issued by Federal agencies and informal conversations with Federal workers are not ''solicitations'' for purposes of the Executive Order.

The final rule therefore adopts the definition as proposed, except that it clarifies that the term *solicitation* also includes any request to submit ''bids'' to the Federal Government. The Department believes that the NPRM was clear that ''bids'' were included within its reference to ''offers or quotations,'' but has determined that it would be helpful to the regulated community to include the more colloquially used term ''bids'' in the final rule.

The Department adopted in the proposed rule the definition of *tipped employee* in section 3(t) of the FLSA, that is, any employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips. *See* 29 U.S.C. 203(t). The NPRM explained that, for purposes of the Executive Order, a worker performing on or in connection with a contract covered by the Executive Order who meets this definition is a tipped employee. One commenter, the CPL, criticized the Department for defining the term *tipped employee* twice in its proposed rule—first in the ''definitions'' section at proposed § 10.2 and subsequently in the section addressing contractor requirements with respect to tipped employees at proposed § 10.28(b)(1). The CPL added that the definition provided in proposed § 10.2 was ''incomplete'' because it did not include the additional clarifications provided in proposed § 10.28(b)(1). In response, the Department notes that the two definitions are consistent and believes that keeping the definitions of ''tipped employee'' in both sections is appropriate to the extent that doing so obviates the need for contractors to cross reference between sections when attempting to understand their obligations to tipped employees. For that reason, the Department adopts the definition of ''tipped employee'' in § 10.2 as it was originally proposed.

In proposed § 10.2, the Department defined the term *United States* by adopting the definition set forth in 29 CFR 9.2, which provides that the term means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities. The proposed definition also incorporated the definition of the term that appears in the FAR at 48 CFR 2.101, which explains that when the term is used in a geographic sense, the *United States* means the 50 States and the District of Columbia. The Department's proposed rule did not adopt any of the exceptions to the definition of this term that are set forth in the FAR. No comments were received on this proposed definition and it is therefore implemented in the final rule.

The Department proposed to define *wage determination* as including any determination of minimum hourly wage rates or fringe benefits made by the Secretary pursuant to the provisions of the SCA or the DBA. This term included the original determination and any subsequent determinations modifying, superseding, correcting, or otherwise changing the provisions of the original determination. The proposed definition was derived from 29 CFR 4.1a(h) and 29 CFR 5.2(q). The Department did not receive any comments on this proposed definition and thus adopts it as proposed for the final rule.

The Department proposed to define *worker* as any person engaged in the performance of a contract covered by the Executive Order, and whose wages under such contract are governed by the FLSA, the SCA, or the DBA, regardless of the contractual relationship alleged to exist between the individual and the employer. The proposed definition also incorporated the Executive Order's provision that the term *worker* includes any individual performing on or in connection with a covered contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c). *See* 79 FR 9851, 9853. The proposed definition also included any person working on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. *See* 29 CFR 4.6(p) (SCA); 29 CFR 5.2(n) (DBA). Consistent with the FLSA, SCA, and DBA and their implementing regulations, this proposed definition of *worker* excluded from coverage any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. *See* 29 U.S.C. 213(a)(1) (FLSA); 41 U.S.C. 6701(3)(C) (SCA); 29 CFR 5.2(m) (DBA).

The Department also emphasized the well-established principle under those statutes that worker coverage does not depend upon the existence or form of any contractual relationship that may be alleged to exist between the contractor or subcontractor and such persons. *See, e.g.,* 29 U.S.C. 203(d), (e)(1), (g) (FLSA); 41 U.S.C. 6701(3)(B), 29 CFR 4.155 (SCA); 29 CFR 5.5(a)(1)(i) (DBA). The proposed rule noted that, as reflected in the proposed definition, the Executive Order is intended to apply to a wide range of employment relationships. The Department thus explained that neither an individual's subjective belief about his or her employment status nor the existence of a contractual relationship is determinative of whether a worker is covered by the Executive Order.

The AFL–CIO supported the Department's proposed definition of the term *worker,* noting that it ''appropriately comports with the very broad definition of 'employee' contained in the FLSA,'' as well as with the relevant definitions of covered workers under the SCA and DBA.

A few commenters such as the Association/IFA noted a technical inconsistency in the regulatory text pertaining to the scope of the definition of the term *worker.* In the NPRM, the Department repeatedly stated in its preamble discussion that workers are entitled to the Executive Order minimum wage for all hours worked ''on or in connection with'' a covered contract. This language regarding coverage of workers performing ''on or

in connection with'' a covered contract is also set forth in the proposed definition of the term *worker* in specific reference to certain apprentices and workers whose wages are calculated pursuant to special certificates issued under section 14(c) of the FLSA; that language did not, however, appear in the regulatory text of the proposed definition in a more generally applicable way.

Based on the number of comments received regarding this standard and its application to all covered workers, the Department believes that commenters clearly understood the NPRM's intent to apply this standard to all covered workers. As recommended by the Association/IFA, however, the Department has added clarifying language to reconcile the definition of the term *worker* with its preamble discussion of worker coverage, reflecting that the definition applies to all individuals performing work on or in connection with a covered contract.

The Department also received many comments regarding its proposed interpretation of worker coverage under the Executive Order, all of which are addressed in the preamble and regulatory text for the coverage provisions at § 10.3 below.

Finally, the Department proposed to adopt the definitions for the terms *Administrative Review Board, Administrator, Office of Administrative Law Judges,* and *Wage and Hour Division* set forth in 29 CFR 9.2. No comments were received on the proposed definitions of these terms, and the Department thus adopts those definitions in the final rule with a technical modification. The Department has added the acronym ARB to the definition of *Administrative Review Board.*

Section 10.3 Coverage

Proposed § 10.3 addressed and implemented the coverage provisions of Executive Order 13658. Proposed § 10.3 explained the scope of the Executive Order and its coverage of executive agencies, new contracts, types of contractual arrangements and workers. Proposed § 10.4 implemented the exclusions expressly set forth in section 7(f) of the Executive Order and provided other limited exclusions to coverage as authorized by section 4(a) of the Order. 79 FR 9852–53. Several commenters, such as AGC and the Association/IFA, requested that the Department provide additional clarification and examples regarding covered contracts, workers, and work throughout its preamble discussion of this provision. The Association/IFA also generally urged the Department to include additional discussion of the coverage provisions in both the preamble and regulatory text. In response to these comments and as set forth below, the Department has endeavored to further clarify the scope of the Executive Order's coverage in both the preamble and regulatory text for § 10.3.

A number of commenters requested that the Department determine whether the Executive Order applies to a wide variety of particular factual arrangements and circumstances. To the extent that such commenters provided sufficient specific factual information for the Department to opine on a particular coverage issue and such a discussion of the specific coverage issue would be useful to the general public, the Department has addressed the specific factual questions raised in the preamble discussion below.

Executive Order 13658 provides that agencies must, to the extent permitted by law, ensure that new contracts, as described in section 7 of the Order, include a clause specifying, as a condition of payment, that the minimum wage to be paid to workers in the performance of the contract shall be at least: (i) $10.10 per hour beginning January 1, 2015; and (ii) an amount determined by the Secretary, beginning January 1, 2016, and annually thereafter. 79 FR 9851. Section 7(d) of the Executive Order establishes that the Order's minimum wage requirement only applies to a new contract if: (i)(A) It is a procurement contract for services or construction; (B) it is a contract for services covered by the SCA; (C) it is a contract for concessions, including any concessions contract excluded by the Department's regulations at 29 CFR 4.133(b); or (D) it is a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (ii) the wages of workers under such contract are governed by the FLSA, the SCA, or the DBA. 79 FR 9853. Section 7(e) of the Order states that, for contracts covered by the SCA or the DBA, the Order applies only to contracts at the thresholds specified in those statutes. *Id.* It also specifies that, for procurement contracts where workers' wages are governed by the FLSA, the Order applies only to contracts that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to the Order pursuant to regulations or actions taken under section 4 of the Order. 79 FR 9853. The Executive Order states that it does not apply to grants; contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended; or any contracts expressly excluded by the regulations issued pursuant to section 4(a) of the Order. 79 FR 9853.

Proposed § 10.3(a) implemented these coverage provisions by stating that Executive Order 13658 and this part apply to any contract with the Federal Government, unless excluded by § 10.4, that results from a solicitation issued on or after January 1, 2015, or that is awarded outside the solicitation process on or after January 1, 2015, provided that: (1)(i) It is a procurement contract for construction covered by the DBA; (ii) it is a contract for services covered by the SCA; (iii) it is a contract for concessions, including any concessions contract excluded by Departmental regulations at 29 CFR 4.133(b); or (iv) it is a contract in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (2) the wages of workers under such contract are governed by the FLSA, the SCA, or the DBA. 79 FR 9853. Proposed § 10.3(b) incorporated the monetary value thresholds referred to in section 7(e) of the Executive Order. *Id.* Finally, proposed § 10.3(c) stated that the Executive Order and this part only apply to contracts with the Federal Government requiring performance in whole or in part within the United States. Several issues relating to the coverage provisions of the Executive Order and proposed § 10.3 are discussed below.

Coverage of Executive Agencies and Departments

Executive Order 13658 applies to all ''[e]xecutive departments and agencies.'' 79 FR 9851. As explained above, the Department proposed to define *executive departments and agencies* by adopting the definition of *executive agency* provided in section 2.101 of the Federal Acquisition Regulation (FAR). 48 CFR 2.101. The proposed rule therefore interpreted the Executive Order as applying to executive departments within the meaning of 5 U.S.C. 101, military departments within the meaning of 5 U.S.C. 102, independent establishments within the meaning of 5 U.S.C. 104(1), and wholly owned Government corporations within the meaning of 31 U.S.C. 9101. Pursuant to this proposed definition, contracts awarded by the District of Columbia or any Territory or possession of the United States would not be covered by the Order.

The Executive Order strongly encourages, but does not compel, ''[i]ndependent agencies'' to comply with its requirements. 79 FR 9853. The Department interpreted this provision, in light of the Executive Order's broad goal of adequately compensating workers on contracts with the Federal Government, as a narrow exemption from coverage. *See* 79 FR 9851. As discussed above, the proposed rule interpreted independent agencies to mean any independent regulatory agency within the meaning of 44 U.S.C. 3502(5). This interpretation is consistent with provisions in other Executive Orders. *See, e.g.,* Executive Order 13636, 78 FR 11739 (Feb. 12, 2013); Executive Order 12861, 58 FR 48255 (Sept. 11, 1993). Thus, under the proposed rule, the Executive Order would cover executive departments and agencies but would not cover any independent regulatory agency within the meaning of 44 U.S.C. 3502(5).

The Department did not receive any comments on its discussion of the proposed coverage of executive agencies and departments and thus adopts this coverage discussion in the final rule.

Coverage of New Contracts With the Federal Government

Proposed § 10.3(a) provided that the requirements of the Executive Order generally apply to ''contracts with the Federal Government.'' As discussed above, the NPRM set forth a broadly inclusive definition of the term *contract* that would include all contracts and contract-like instruments and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, intergovernmental service agreements, provider agreements, service agreements, licenses, permits, awards and notices of awards, job orders or task letters issued under basic ordering agreements, letter contracts, purchase orders, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. Unless otherwise noted, the use of the term *contract* throughout the Executive Order and this part therefore included *contract-like instruments* and subcontracts of any tier.

As reflected in proposed § 10.3(a), the minimum wage requirements of Executive Order 13658 apply only to ''new contracts'' with the Federal Government within the meaning of section 8 of the Order. 79 FR 9853–54. Section 8 of the Executive Order states that the Order shall apply to covered contracts where the solicitation for such contract has been issued on or after: (i) January 1, 2015, consistent with the effective date for the action taken by the FARC pursuant to section 4(a) of the Order; or (ii) for contracts where an agency action is taken pursuant to section 4(b) of the Order, on or after January 1, 2015, consistent with the effective date for such action. 79 FR 9853–54. Proposed § 10.3(a) of this rule therefore stated that this part applies to contracts with the Federal Government, unless excluded by § 10.4, that result from solicitations issued on or after January 1, 2015, or to contracts that are awarded outside the solicitation process on or after January 1, 2015. As stated in the NPRM, the Executive Order and this part thus would apply to both new contracts and replacements for expiring contracts provided that such a contract results from a solicitation issued on or after January 1, 2015, or is awarded outside the solicitation process on or after January 1, 2015. The Department proposed that the Executive Order and this part do not apply to subcontracts unless the prime contract under which the subcontract is awarded results from a solicitation issued on or after January 1, 2015, or is awarded outside the solicitation process on or after January 1, 2015. Pursuant to the proposed rule, the requirements of the Executive Order and this part would not apply to contracts entered into pursuant to solicitations issued prior to January 1, 2015, the automatic renewal of such contracts, or the exercise of options under such contracts. Under the NPRM, existing contracts would have been treated as ''new contracts'' subject to the Executive Order if they were extended, renewed, or modified in any way (other than administrative changes) as a result of bilateral negotiations on or after January 1, 2015.

As discussed above in the context of the Department's proposed definitions in § 10.2, the term *option* meant a unilateral right in a contract by which, for a specified time, the Federal Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract. *See* 48 CFR 2.101. In the NPRM, the Department noted that only truly automatic renewals of contracts or exercises of options devoid of any bilateral negotiations fall outside the scope of the Executive Order. As discussed above, the Department's proposed definition of the term *contract* specifically included bilateral contract modifications. Pursuant to the proposed rule, any renewals or extensions of contracts resulting from bilateral negotiations involving contractual modifications other than administrative changes would therefore qualify as ''new contracts'' subject to the Executive Order if they are awarded on or after January 1, 2015, even if such negotiations occur during option periods. For example, pursuant to the proposed interpretation, renewals of GSA Schedule Contracts that occur on or after January 1, 2015, and subsequent task orders under such contracts, would be covered by the Executive Order and this part to the extent that such renewals reflect bilateral negotiations. By way of another example, if on January 1, 2015, a contracting agency and contractor renew an existing contract for construction after engaging in negotiations regarding the type, size, cost, or location for the construction work to be performed under the contract, the Department would view such a contractual renewal as a ''new contract'' subject to the Executive Order. However, when a contracting agency exercises its unilateral right to extend the term of an existing service contract and simply makes pricing adjustments based on increased labor costs that result from its obligation to include a current SCA wage determination pursuant to 29 CFR 4.4 but no bilateral negotiations occur (other than any necessary to determine and effectuate those pricing adjustments), the Department would not view the exercise of that option as a ''new contract'' covered by the Executive Order.

The Department received a number of comments relating to its proposed interpretation of ''new contracts'' that are subject to the minimum wage requirements of the Executive Order. As a general matter, the PSC expressed its support for the formulation of proposed § 10.3(a) because ''it is consistent with the definition of a 'new contract' in Section 10.2 and the provisions of the Executive Order.'' Other commenters, however, expressed confusion or concern regarding the Department's proposed interpretation, resulting in some changes to the proposed definition discussed above. Each of these comments, and any resulting change made, is addressed below.

A few comments were submitted regarding the Department's proposed interpretation that the minimum wage requirements of Executive Order 13658 do not apply to a unilateral exercise of an option clause because it is not a ''new contract.'' The AFL–CIO, the Office and Professional Employees International Union (OPEIU) and the Industrial Technical & Professional Employees Union, OPEIU Local 4873 (ITPEU), and the Building Trades

expressed concern regarding the Department's proposed interpretation of the term *new contract* and urged the Department to redefine the term in the Final Rule such that the exercise of an option period under an existing contract would be subject to the Executive Order if it is exercised on or after January 1, 2015. Those commenters noted that, under the SCA and DBA, the Department and the FARC require the inclusion of new or current prevailing wage determinations upon the exercise of options under existing contracts. *See, e.g.,* 48 CFR 22.404–1(a)(1). The Building Trades and AFL–CIO argued that the Department should apply this same standard to the Executive Order. The OPEIU and the ITPEU similarly asserted that the exercise of an option clause under an existing contract should be covered and suggested that the Department clarify that its proposed definition of *contract-like instrument* includes the exercise of an option period because it qualifies as a ''bilateral contract modification.'' This commenter cautioned that if the exercise of options is not considered a covered contract, the application of the Executive Order to many service contract workers could be delayed for years because concessions contracts are often long-term in nature.

The Department appreciates and has carefully considered the comments received on this issue, but ultimately declines to alter its conclusion that the unilateral exercise of an option clause under an existing contract does not qualify as a ''new contract'' for purposes of the Executive Order. As a threshold matter, the Department notes that its definition of the term *option* only refers to a pre-negotiated unilateral contractual right held by the Federal Government to purchase additional supplies or services or extend the term of the contract; contrary to the assertion made by the OPEIU and the ITPEU, the unilateral exercise of an option clause does not qualify as a ''bilateral contract modification'' for purposes of the Order because it is a pre-negotiated unilateral contractual right affording the contracting agency discretion in whether to exercise the option.

Sections 2(a), 7(d), and 8(a) of the Executive Order all contain express directives that the minimum wage requirements of the Order only extend to ''new contracts.'' 79 FR 9851–53. In extending only to ''new contracts,'' the Executive Order ensures that contracting agencies and contractors will have sufficient notice of any obligations under Executive Order 13658 and can take into account any potential economic impact of the Order on projected labor costs prior to negotiating ''new contracts'' on or after January 1, 2015.

The Department recognizes that, under the SCA and DBA, the Department and the FARC generally require the inclusion of new or current prevailing wage determinations upon the exercise of option clauses under existing contracts. *See, e.g.,* 29 CFR 4.143(b); 48 CFR 22.404–1(a)(1); All Agency Memorandum (AAM) No. 157 (1992); *In the Matter of the United States Army,* ARB Case No. 96–133, 1997 WL 399373 (ARB July 17, 1997).[4] The SCA's regulations, for example, provide that when the term of an existing contract is extended pursuant to an option clause, the contract extension is viewed as a ''new contract'' for SCA purposes. *See* 29 CFR 4.143(b). The rationale underlying this treatment of the exercise of option periods for purposes of the SCA and DBA, however, is distinguishable from the equities present with the Executive Order. Under the SCA and DBA, the interpretation of an exercise of an option period as a ''new contract'' is relevant for purposes of inserting a new or current prevailing wage determination in an existing multi-year contract that is *already* subject to the SCA or DBA; contracting parties affected by this interpretation thus knew that the agreement was covered by the prevailing wage statute at the time they entered into the original contract. Under the Executive Order, however, the ''new contract'' determination triggers coverage of the minimum wage requirements for contracts that previously were not subject to the Order at all. The Department thus finds its treatment of option periods under the SCA and DBA serves a substantively different purpose and function than its interpretation of option periods under the Executive Order.

For these reasons, the Department adheres to its conclusion that the unilateral exercise of a pre-negotiated option clause by the Federal Government under an existing contract is not a ''new contract'' for purposes of the Executive Order.

Under the Department's proposed interpretation set forth in the NPRM, any renewals extensions, or modifications of existing contracts resulting from bilateral negotiations (other than administrative changes) on or after January 1, 2015 would have qualified as ''new contracts'' subject to the Executive Order, even if such negotiations occurred during option periods. The USACE commented on this proposed interpretation, requesting clarification as to what constitutes an ''administrative change'' and as to what degree of contractual modification is required in order for a modification to be considered a ''new contract'' subject to the Executive Order, particularly for covered contracts that are not subject to the FAR. The USACE specifically wondered whether the Department would regard a change of ownership or control under a contract (*e.g.,* assignment of a lease) as an ''administrative change'' or if such change would be sufficient to trigger a ''new contract'' under this part.

The FS similarly requested clarification on the scope of bilateral contract modifications that would require application of the Executive Order minimum wage requirements to a concessions contract. It specifically asked the Department to explain whether the Executive Order is intended to apply to bilateral contract modifications exclusively in the context of contractual renewals or extensions, or whether bilateral contract modifications in any context (*e.g.,* revisions during the term of an existing concessions contract that do not modify the scope of the authorized use of Federal land or property) would be regarded as ''new contracts'' subject to the Order. The FS also asked the Department to clarify whether the Executive Order applies exclusively to bilateral contract modifications that affect the scope of offered services or facilities, or would extend more generally to any type of bilateral contract modifications, including those that do not change the scope of authorized services or facilities (such as updating annual operating plans or utilizing a land use fee offset agreement).

Similarly, the AOA asked about the application of the Executive Order to contractual amendments, specifically with respect to amendments to existing contracts and permits on Federal land. It also requested clarification as to whether the Executive Order would apply to extensions of National Park Service (NPS) concessions contracts pursuant to the Concessions Management Improvement Act or to extensions and/or renewals of FS priority use permits.

Under the NPRM, existing contracts would have been treated as ''new contracts'' if extended, renewed, or

[4] As stated in AAM 157 and as recognized by the Building Trades, the Department does not assert that the exercise of an option period qualifies as a new contract in all cases for purposes of the DBA and SCA. *See* 63 FR 64542 (Nov. 20, 1998). The Department considers the specific contract requirements at issue in making this determination. For example, the Department does not consider that a new contract has been created where a contractor is simply given additional time to complete its original obligations under the contract. *Id.*

modified in any way except for administrative changes as a result of bilateral negotiations on or after January 1, 2015. Based upon a thorough review of comments received and careful consideration of the issue, the Department has decided to modify and clarify its approach to ''new contract'' coverage in this final rule. A contractual arrangement is a ''new contract'' subject to the Executive Order if it is a contract that results from a solicitation issued on or after January 1, 2015, or a contract that is awarded outside the solicitation process on or after January 1, 2015. The Department notes that this term includes both new contracts and replacements for expiring contracts, but it does not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government. The Department further clarifies that, for purposes of the Executive Order, a contract entered into prior to January 1, 2015 will be deemed to be a *new contract* if, through bilateral negotiation, on or after January 1, 2015: (1) The contract is renewed; (2) the contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2014 providing for a short-term limited extension; or (3) the contract is amended pursuant to a modification that is outside the scope of the contract. The FARC, in consultation with the Department, will develop additional guidance, as necessary, as to what constitutes a short-term limited extension for these purposes.

In this final rule, the Department adopts its proposed interpretation in the NPRM that existing contracts that are renewed on or after January 1, 2015 as a result of bilateral negotiations qualify as ''new contracts'' subject to the Executive Order. As noted above, however, the final rule makes two changes with respect to the NPRM's treatment of contract extensions and modifications on or after January 1, 2015. First, extensions would not be treated as ''new contracts'' if such extensions were made pursuant to terms in the contract as of December 31, 2014 that authorized a short-term limited contract extension. Second, modifications (other than extensions or renewals that constitute new contracts) would not be treated as ''new contracts'' unless they qualify as modifications outside the scope of the contract. Each of these changes to the Department's proposed treatment of ''new contracts'' set forth in the NPRM are discussed below.

With respect to the coverage of contract modifications, the Department's approach in this final rule is designed to reflect that modifications within the scope of the contract do not in fact constitute new contracts. Long-standing contracting principles recognize that an existing contract, especially a larger one, will often require modifications, which may include very modest changes (*e.g.,* a small change to a delivery schedule). Therefore, regulations such as the FAR do not require agencies to create new contracts to support these actions. Accordingly, contract modifications that are within the scope of the contract within the meaning of the FAR, *see* 48 CFR 6.001(c) and related case law, are not ''new contracts'' for purposes of the Executive Order.

However, if the parties bilaterally negotiate a modification that is outside the scope of the contract, the agency will be required to create a new contract, triggering solicitation and/or justification requirements, and thus such a modification after January 1, 2015 will constitute a ''new contract'' subject to the minimum wage requirements of this rule. For example, if an existing SCA-covered contract for janitorial services at a Federal office building is modified by bilateral negotiation after January 1, 2015 to also provide for security services at that building, such a modification would likely be regarded as outside the scope of the contract and thus qualify as a ''new contract'' subject to the Executive Order. Similarly, if an existing DBA-covered contract for construction work at Site A was modified by bilateral negotiation after January 1, 2015 to also cover construction work at Site B, such a modification would generally be viewed as outside the scope of the contract and thus trigger coverage of the Executive Order. The Department cautions, however, that whether a modification qualifies as ''within the scope'' or ''outside the scope'' of the contract is necessarily a fact-specific determination. *See, e.g., AT&T Communications, Inc.* v. *Wiltel, Inc.,* 1 F.3d 1201 (Fed. Cir. 1993).

The Department further notes that, while in scope modifications do not create ''new contracts'' under this final rule, the Department strongly encourages agencies to bilaterally negotiate, as part of any such modification, application of the minimum wage requirements so that these contracts can take advantage of the benefits of a higher minimum wage.

With respect to contract extensions, the Department generally affirms its proposed approach that a bilaterally negotiated extension of an existing contract on or after January 1, 2015 will be viewed as a ''new contract.'' Importantly, however, the Department has carved out one exception to this general principle: If the extension is made pursuant to a term in the contract as of December 31, 2014 providing for a short-term limited extension, the extension will not constitute a ''new contract'' and will not be covered. These changes to the definition of *new contract* better align the final rule with notions of in scope and out of scope actions while still providing an important limitation on the length of the bilaterally negotiated extension. Thus, a short-term extension of contract terms (*e.g.,* an extension of six months or less) that was provided for by the pre-negotiated terms of the contract prior to January 1, 2015 would be an in scope change and would not constitute a new contract. Bilaterally negotiated extensions envisioned in the contract that are limited in duration, such as a bridge to prevent a gap in service, would not be considered a ''new contract,'' but a long-term extension that is tantamount to a replacement contract will be treated as a ''new contract'' for purposes of this rule. Similarly, an extension that was bilaterally negotiated and not previously authorized by the terms of the existing contract would be a ''new contract'' subject to the minimum wage requirements. The Department also notes that a long-term extension of an existing contract will qualify as a ''new contract'' subject to the Executive Order, even if such an extension was provided for by a pre-negotiated term of the contract. The Department would regard a long-term extension as tantamount to a renewal or replacement, which are covered by the Order.

The Department has consulted with the FARC and notes that contract extensions are commonly accomplished through options created by the agency pursuant to FAR clause 52.217–8 (which allows for an extension of time of up to six months for a contractor to perform services that were acquired but not provided during the contract period) or FAR clause 52.217–9 (which provides for an extension of the contract term to provide additional services for a limited term specified in the contract at previously agreed upon prices). The contracting agency's exercise of extensions under these clauses would not trigger application of the minimum wage requirements because the clauses give the contracting agency a discretionary right to unilaterally exercise the option to extend and unilateral options are excluded from the definition of ''new contract.'' However, as explained above, if an extension was

bilaterally negotiated and not made pursuant to an existing clause as of January 1, 2015, such action would create a new relationship with the Federal Government. As a result, such action would be treated as creating a ''new contract'' for purposes of this rule and trigger application of the minimum wage requirements.

The Department believes that these changes to its proposed approach to ''new contract'' coverage are responsive to several commenters, such as the USACE, the FS, and the AOA, that expressed confusion regarding the type or extent of contract modifications that the Department would consider sufficient to trigger coverage of the Executive Order. For example, with respect to the USACE's comment seeking clarification on the meaning of the phrase ''administrative change,'' as explained above, the Department has modified the definition of *new contract* in the final rule and removed reference to ''administrative changes.''

With respect to the specific questions raised by the AOA, the approach described above governs whether a ''new contract'' has been created for purposes of the Executive Order. Extensions of existing NPS concessions contracts pursuant to the Concessions Management Improvement Act will be treated in the same manner as all other concessions contracts. If the NPS exercises its unilateral right to exercise an option to extend the contract and no substantive modifications are made to the agreement, such agreement will not be considered a ''new contract.'' However, if, on or after January 1, 2015, the parties renew the agreement or extend the agreement bilaterally and such extension was not made pursuant to the terms of the contract as of December 31, 2014 or is not a short-term extension, the Department would view the resulting agreement as a ''new contract'' subject to the Executive Order. Similarly, if the parties amend the concessions contract pursuant to a modification that is outside the scope of the contract, the Department would regard the resulting agreement as a ''new contract'' subject to the Order.

Several commenters also requested the Department to clarify whether its interpretation of ''new contracts'' subject to the Executive Order applies to task orders issued on or after January 1, 2015, under existing master contracts. The AGC, for example, sought clarification as to whether the Order applies to task orders issued on or after January 1, 2015, pursuant to an ''indefinite delivery, indefinite quantity'' (IDIQ) contract that was awarded prior to January 1, 2015. FortneyScott similarly sought clarification regarding the coverage of task orders issued by a contracting agency under a GSA Schedule Contract. It specifically asked whether, if a GSA Schedule Contract is entered into prior to January 1, 2015, and remains unmodified after that date, any task orders issued under the GSA Schedule Contract, even if issued on or after January 1, 2015, would be subject to the Order. FortneyScott asked that the Department explicitly state in the regulations that task orders issued under GSA Schedule Contracts entered into prior to January 1, 2015, and prior to the renewal or modification of the GSA Schedule Contract are not subject to the Executive Order. Alternatively, it proposed that if the Department determines that such task orders are covered, contractors should be entitled to a contract price adjustment. Relatedly, the PSC observed that the Department's proposed interpretation of the coverage of new contracts would treat each new order under a task order as a new contract and that such an interpretation would raise labor costs without the contractor being able to anticipate or recover any price increase resulting from the minimum wage requirement, notwithstanding the pricing regimes in the base contract.

Under this final rule, a contract awarded under the GSA Schedules will be considered a ''new contract'' in certain situations. Of particular note, any covered contracts that are added to the GSA Schedule in response to GSA Schedule solicitations issued on or after January 1, 2015, qualify as ''new contracts'' subject to the Order; any covered task orders issued pursuant to those contracts would be deemed to be ''new contracts.'' This would include contracts to add new covered services as well as contracts to replace expiring contracts. As explained above, the Department is strongly encouraging agencies to bilaterally modify existing contracts, as appropriate, to include the minimum wage requirements of this rule when such contracts are not otherwise considered to be a ''new contract'' under the terms of this rule. For example, the FARC should encourage, if not require, contracting officers to modify existing indefinite-delivery, indefinite-quantity contracts in accordance with FAR section 1.108(d)(3) to include the Executive Order minimum wage requirements, particularly with respect to future orders if the amount of work or number of orders expected under the remaining performance period is substantial.

The Department declines the request made by FortneyScott to direct that a contract price adjustment be given to contractors reflecting any higher short-term labor costs that may arise by applying the Order to new task or purchase orders on or after January 1, 2015, that are issued under master contracts that were entered into prior to January 1, 2015. As a general matter, price adjustments, if appropriate, would need to be negotiated by the parties and based on the specific nature of the contract. In addition, as explained above, the Department is encouraging, but not requiring, agencies to modify existing IDIQ contracts that do not otherwise meet the definition of a new contract. Pursuant to this final rule, task orders that are issued under IDIQ contracts entered into prior to January 1, 2015 will thus only be covered by the Executive Order if and when the master contract is modified to include the minimum wage requirement.

The Department also received many comments from individuals and organizations such as the National Federation of the Blind and the National Association of Blind Lawyers urging the Department not to exempt contracts placed on the AbilityOne Procurement List from the Executive Order minimum wage requirements. These commenters noted that, although such contracts are exempt from external competition once placed on the Procurement List, they are subject to renewal and renegotiation in the same manner as any other contract. The Department agrees with such commenters that procurements through the AbilityOne program are not exempt and will be covered in the same manner as any other contract. For example, if an AbilityOne service contract was awarded on January 1, 2011 and provided for a five-year contract term, a decision by the contracting parties to renew the contract on January 1, 2016 would qualify as a ''new contract'' subject to the Executive Order.

The Department therefore adopts § 10.3(a) as proposed, except that it has used the term *new contract* in the regulatory text to improve clarity. As explained above, the Department has also revised its proposed definition of the term *new contract* set forth in § 10.2.

Coverage of Types of Contractual Arrangements

Proposed § 10.3(a)(1) set forth the specific types of contractual arrangements with the Federal Government that are covered by the Executive Order. As explained in the NPRM, Executive Order 13658 and this part are intended to apply to a wide range of contracts with the Federal Government for services or construction. Proposed § 10.3(a)(1)

implemented the Executive Order by generally extending coverage to procurement contracts for construction covered by the DBA; service contracts covered by the SCA; concessions contracts, including any concessions contract excluded by the Department's regulations at 29 CFR 4.133(b); and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. Each of these categories of contractual agreements is discussed in greater detail below.

Procurement Contracts for Construction: Section 7(d)(i)(A) of the Executive Order extends coverage to ''procurement contract[s] for . . . construction.'' 79 FR 9853. The proposed rule at § 10.3(a)(1)(i) interpreted this provision of the Order as referring to any contract covered by the DBA, as amended, and its implementing regulations. The Department noted that this provision reflects that the Executive Order and this part apply to contracts subject to the DBA itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)–(60).

The DBA applies, in relevant part, to contracts to which the Federal Government is a party, for the construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Federal Government and which require or involve the employment of mechanics or laborers. 40 U.S.C. 3142(a). The DBA's regulatory definition of *construction* is expansive and includes all types of work done on a particular building or work by laborers and mechanics employed by a construction contractor or construction subcontractor. *See* 29 CFR 5.2(j). For purposes of the DBA and thereby the Executive Order, a contract is ''for construction'' if ''more than an incidental amount of construction-type activity'' is involved in its performance. *See, e.g., In the Matter of Crown Point, Indiana Outpatient Clinic,* WAB Case No. 86–33, 1987 WL 247049, at *2 (June 26, 1987) (citing *In re: Military Housing, Fort Drum, New York,* WAB Case No. 85–16, 1985 WL 167239 (Aug. 23, 1985)), *aff'd sub nom., Building and Construction Trades Dep't, AFL–CIO* v. *Turnage,* 705 F. Supp. 5 (D.D.C. 1988); 18 Op. O.L.C. 109, 1994 WL 810699, at *5 (May 23, 1994). The term ''contract for construction'' is not limited to contracts entered into with a construction contractor; rather, a contract for construction ''would seem to require only that there be a contract, and that one of the things required by that contract be construction of a public work.'' *Id.* at *3–4. The term ''public building or public work'' includes any building or work, the construction, prosecution, completion, or repair of which is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public. *See* 29 CFR 5.2(k).

Proposed § 10.3(b) implemented section 7(e) of Executive Order 13658, 79 FR 9853, which provides that the Order applies only to DBA-covered prime contracts that exceed the $2,000 value threshold specified in the DBA. *See* 40 U.S.C. 3142(a). Consistent with the DBA, there is no value threshold requirement for subcontracts awarded under such prime contracts.

Several commenters, including the EEAC, expressed support for the Department's discussion of this category of covered contracts. In its comment, the EEAC noted that it concurred with the Department's interpretation that the Executive Order does not apply to contracts subject only to the Davis-Bacon Related Acts and appreciated that clarification in the NPRM's preamble.

The Building Trades submitted a comment expressing concern regarding the Department's interpretation that the Executive Order only applies to procurement contracts for construction that are subject to the DBA. The Building Trades argued that there is no ''legitimate or reasonable explanation'' for excluding FLSA-covered workers on construction contracts that are not subject to the DBA because the plain language of section 7(d) of the Executive Order states that its minimum wage requirements apply to workers on ''procurement contract[s] . . . for construction'' whose wages are governed by the FLSA, SCA, or DBA. In other words, the Building Trades urged the Department to extend coverage of the Executive Order to FLSA-covered workers performing work on prime construction contracts that are not subject to the Davis-Bacon Act because the value of the prime contract does not exceed the DBA's $2,000 statutory threshold.

As explained above, the DBA applies to all prime contracts for construction over $2,000 and all subcontracts thereunder regardless of the value of the subcontract. *See* 40 U.S.C. 3142(a). The Department has interpreted the Executive Order as applying to all procurement construction contracts covered by the DBA, which means that the Order covers all prime procurement contracts for construction worth at least $2,000 and all covered subcontracts thereunder. Based on the Department's enforcement experience under the DBA, there are very few construction contracts with the Federal Government that fall below the $2,000 statutory value threshold.

However, insofar as construction contracts with the Federal Government that fall below the $2,000 statutory value threshold may exist, the Department believes that it is constrained, by the plain language of section 7(e) of the Executive Order, from extending the protections of the Executive Order to FLSA-covered workers on prime construction contracts that are valued at less than $2,000. *See* 79 FR 9853. That provision expressly states that, for procurement contracts where workers' wages are governed by the FLSA, the Order applies only to contracts that exceed the $3,000 micro-purchase threshold, as defined in 41 U.S.C. 1902(a). Although section 7(e) of the Order allows the Department to depart from these value threshold standards in its regulations where appropriate, the Department believes that this provision constitutes compelling evidence that the Executive Order is not intended for construction contracts that are not covered by the DBA to be subject to the Order. Moreover, the Department received many comments specifically requesting it to align coverage of the Executive Order with coverage of the SCA and DBA to the greatest extent possible. Although the Department appreciates and has carefully considered the comment submitted by the Building Trades on this issue, the Department believes that its interpretation that only procurement contracts for construction that are subject to the DBA are within the scope of the Executive Order is reasonable and appropriate.

Contracts for Services: Proposed § 10.3(a)(1)(ii) provided that coverage of the Executive Order and this part encompasses ''contract[s] for services covered by the Service Contract Act.'' This proposed provision implemented sections 7(d)(i)(A) and (B) of the Executive Order, which state that the Order applies respectively to a ''procurement contract for services'' and a ''contract or contract-like instrument for services covered by the Service Contract Act.'' 79 FR 9853. The Department interpreted a ''procurement contract for services,'' as set forth in section 7(d)(i)(A) of the Executive Order, to mean a procurement contract that is subject to the SCA, as amended, and its implementing regulations. The proposed rule viewed a ''contract for services covered by the Service Contract Act'' under section 7(d)(i)(B) of the Order as including both procurement

and non-procurement contracts for services that are covered by the SCA. The Department therefore incorporated sections 7(d)(i)(A) and (B) of the Executive Order in proposed § 10.3(a)(1)(ii) by expressly stating that the requirements of the Order apply to service contracts covered by the SCA.

The SCA generally applies to every contract entered into by the United States that ''has as its principal purpose the furnishing of services in the United States through the use of service employees.'' 41 U.S.C. 6702(a)(3). The SCA is intended to cover a wide variety of service contracts with the Federal Government, so long as the principal purpose of the contract is to provide services using service employees. *See, e.g.,* 29 CFR 4.130(a). As reflected in the SCA's regulations, where the principal purpose of the contract with the Federal Government is to provide services through the use of service employees, the contract is covered by the SCA. *See* 29 CFR 4.133(a). Such coverage exists regardless of the direct beneficiary of the services or the source of the funds from which the contractor is paid for the service and irrespective of whether the contractor performs the work in its own establishment, on a Government installation, or elsewhere. *Id.* Coverage of the SCA, however, does not extend to contracts for services to be performed exclusively by persons who are not service employees, *i.e.,* persons who qualify as bona fide executive, administrative, or professional employees as defined in the FLSA's regulations at 29 CFR part 541. Similarly, a contract for professional services performed essentially by bona fide professional employees, with the use of service employees being only a minor factor in contract performance, is not covered by the SCA and thus would not be covered by the Executive Order or this part. *See* 41 U.S.C. 6702(a)(3); 29 CFR 4.113(a), 4.156; WHD Field Operations Handbook (FOH) ¶¶ 14b05, 14c07.

Although the SCA covers all non-exempted contracts with the Federal Government that have the ''principal purpose'' of furnishing services in the United States through the use of service employees regardless of the value of the contract, the prevailing wage requirements of the SCA only apply to covered contracts in excess of $2,500. 41 U.S.C. 6702(a)(2) (recodifying 41 U.S.C. 351(a)). Proposed § 10.3(b) of this rule implemented section 7(e) of the Executive Order, which provides that for SCA-covered contracts, the Executive Order applies only to those prime contracts that exceed the $2,500 threshold for prevailing wage requirements specified in the SCA. 79 FR 9853. Consistent with the SCA, there is no value threshold requirement for subcontracts awarded under such prime contracts.

Some commenters, including the EEAC, expressed support for the Department's interpretation of this category of covered contracts, noting that ''[b]y directly linking . . . coverage of service contracts to SCA coverage, the NPRM eliminates most of the confusion generated by the EO as to what service contracts might be covered as 'procurement contracts for services' but which are not 'contracts for services covered' by the SCA.'' However, other commenters such as the AFL–CIO and the Building Trades urged the Department to extend the Executive Order's minimum wage requirements to all service contracts with the Federal Government and not to restrict coverage to those service contracts covered by the SCA. The AFL–CIO noted, for example, that ''certain employees who perform service tasks on contracts that are exempt from the SCA because the principal purpose of the contract is not provision of services'' would not be covered under the proposed rule. It urged the Department to reconsider this approach for contracts that exceed the micro-purchase threshold because the plain language of the Executive Order extends coverage to workers performing on ''procurement contract[s] for services'' whose wages are governed by the FLSA.

The Department's proposed approach to interpret sections 7(d)(i)(A) and (B) of the Executive Order as referring to SCA-covered procurement and nonprocurement service contracts was similar to the manner in which the Department interpreted section 7(d)(i)(A) as referring to DBA-covered procurement construction contracts. The Department intended its interpretation of these two categories of contracts to be aligned with well-established SCA and DBA contract coverage standards in order to assist contracting agencies and contractors in determining their obligations under the Order and this part. The Department believes that this approach best effectuates the purposes of the Executive Order and is consistent with the directive set forth in section 4(c) of the Order to draft regulations that incorporate existing definitions, procedures, and processes under the FLSA, SCA, and DBA to the extent practicable. The Department emphasizes, however, that service contracts that are not subject to the SCA may still be covered by the Order if such contracts qualify as concessions contracts or contracts in connection with Federal property or lands and related to offering services to Federal employees, their dependents, or the general public pursuant to sections 7(d)(i)(C) and (D) of the Order. Because service contracts may be covered by the Order if they fall within any of these three categories (*e.g.,* SCA-covered contracts, concessions contracts, or contracts in connection with Federal property and related to offering services), the Department anticipates that most service contracts with the Federal Government will be covered by the Executive Order and this part.

The Department received a comment from an individual seeking clarification as to whether non-profit service providers who provide home and community-based services through the Medicaid waiver program are subject to the Executive Order because the Medicaid waiver program involves Federal funds. In response, the Department notes the mere receipt of Federal financial assistance by an individual or entity does not render an agreement subject to the Executive Order. With respect to the specific concerns raised by this commenter, contracts let under the Medicaid program that are financed by Federally-assisted grants to the states, and contracts that provide for insurance benefits to third parties under the Medicare program, are not subject to the SCA. *See* 29 CFR 4.107(b), 4.134(a); WHD FOH ¶ 14e01. Because such an agreement is not covered by the SCA and would not fall within the scope of the other three types of contracts covered by the Executive Order (*e.g.,* it is not a construction contract covered by the DBA, a concessions contract, or a contract in connection with Federal property or lands), the agreement is not subject to the requirements of the Order.

The American Health Care Association (AHCA) submitted a comment on the proposed coverage of service contracts under the Executive Order, seeking clarification as to the coverage of provider agreements with the Veterans Administration (VA). The AHCA noted that a proposed rule issued by the VA in 2013 would exempt nursing facilities operating under provider agreements with the VA from SCA coverage and such agreements would therefore not be covered by the Executive Order. The AHCA requested that, if the VA's proposed rule is not finalized by the time that the Department issues its final rule, the Department should expressly exempt VA provider agreements from coverage of the Executive Order. The AHCA asserted that if the Executive Order were

deemed to apply to nursing facilities operating pursuant to VA provider agreements, many such facilities would be unable to continue their VA contracts because nursing facilities ''will not be able to afford to pay all of their staff the wage increase.'' As a result, the AHCA maintained that application of the Executive Order to such nursing facilities ''will result in a health care access issue for our nation's veterans because a number of [nursing facilities] will no longer be able to provide VA services.''

For purposes of determining coverage under the Executive Order, the relevant inquiry is whether VA provider agreements fall into one of the specifically enumerated categories of covered contracts set forth in section 7(d) of the Order, *i.e.,* whether such agreements are covered by the SCA.[5] The SCA grants authority and responsibility for administering and enforcing the SCA to the Secretary of Labor. *See* 41 U.S.C. 6707(a) and (b) (stating that the Secretary of Labor has authority ''to enforce this chapter, . . . prescribe regulations, issue orders, hold hearings, make decisions based on findings of fact, and take other appropriate action'' and to ''provide reasonable limitations'' and ''prescribe regulations allowing reasonable variation, tolerances, and exemptions'' as the Secretary deems necessary and proper). The Secretary's authority includes the ability to make final determinations regarding coverage of the SCA, and such decisions are binding on contracting agencies. *See id.; Collins Int'l Serv. Co.* v. *United States,* 744 F.2d 812 (Fed. Cir. 1984); *Curtiss-Wright Corp.* v. *McLucas,* 381 F. Supp. 657 (D. N.J. 1974); *Midwest Service and Supply Co.,* Decision of the Comptroller General No. B–191554 (July 13, 1978); 43 Op. Atty. Gen. 14 (March 9, 1979). The Department is not asserting SCA coverage of VA provider agreements through this rulemaking; in fact, the AHCA has not pointed to any examples of VA provider agreements for which the Department has asserted SCA coverage. In the event that the Department is called upon to issue a coverage determination under the SCA regarding VA provider agreements and determines that such contracts are not covered by the SCA, they would not be subject to Executive Order 13658. In this circumstance, and because the Department finds that the AHCA's general claims of hardship that could result from application of the Order to VA provider agreements are inconsistent with the economy and efficiency rationale underlying the Executive Order, the Department believes that it would be inappropriate to grant a special exemption from the Executive Order for this type of agreement.

The Department also received a comment from EAP Lifestyle Management, LLC, seeking clarification about whether the Executive Order would apply to its provision of employee assistance programs, including critical incident response services, provided for Federal employees on private land. The Department notes that, based on the limited amount of information received, such a contract appears to be subject to the SCA because it is a contract with the Federal Government principally for services through the use of service employees and thus would indeed be covered by the Executive Order regardless of whether the services are performed on public or private land.

Finally, the AOA and the O.A.R.S. Companies, Inc. (O.A.R.S.) sought guidance regarding whether the Executive Order applies to special use permits issued by the FS, Commercial Use Authorizations (CUAs) issued by the NPS, and outfitter and guide permits issued by the Bureau of Land Management (BLM) and the United States Fish and Wildlife Service (USFWS), respectively. The Department notes that FS special use permits generally are SCA-covered contracts, unless a permit holder can invoke the SCA exemption for certain concessions contracts contained in 29 CFR 4.133(b). *See Cradle of Forestry in America Interpretive Association,* ARB Case No. 99–035, 2001 WL 328132, at *5 (ARB March 30, 2001) (noting that ''whether Forest Service [special use permits] are exempt from SCA coverage as concessions contracts would need to be evaluated based upon the specific services being offered at each site''). Thus, FS special use permits will normally be subject to the Executive Order's requirements under section 7(d)(i)(B) of the Order and § 10.3(a)(1)(ii). To the extent that a contractor may be able to invoke the 29 CFR 4.133(b) exemption from the SCA with respect to a specific special use permit, such a contract will be subject to the Executive Order's requirements under section 7(d)(i)(C) of the Order and § 10.3(a)(1)(iii).

The AOA also represents that its members ''provide services to the public on federal lands.'' O.A.R.S. refers to itself as a ''recreational service provider on federal lands.'' Accordingly, the Department's understanding is that the AOA's members and O.A.R.S. enter into CUA agreements with the NPS, and outfitter and guide permit agreements with the BLM and USFWS, respectively, the principal purpose of which (akin to the agreement at issue in the *Cradle of Forestry* decision cited above) is to furnish services through the use of service employees. Assuming this is true, the SCA, and thus the Executive Order, covers the CUA and outfitter and guide permit agreements that the AOA's members, and O.A.R.S., enter into with the NPS, BLM, and USFWS, respectively. The Department notes that a further discussion of the application of section 7(d)(i)(D) of the Executive Order to FS special use permits, NPS CUAs, and BLM and USFWS outfitter and guide permits is set forth below in the discussion of contracts in connection with Federal property and related to offering services.

Contracts for Concessions: Proposed § 10.3(a)(1)(iii) implemented the Executive Order's coverage of a ''contract or contract-like instrument for concessions, including any concessions contract excluded by the Department of Labor's regulations at 29 CFR 4.133(b).'' 79 FR 9853. As explained above, the NPRM interpreted a ''contract or contract-like instrument for concessions'' under section 7(d)(i)(C) of the Executive Order as a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. The proposed definition of the term *concessions contract* included every contract the principal purpose of which is to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment, regardless of whether the services are of direct benefit to the Government, its personnel, or the general public. The SCA generally covers contracts for concessionaire services. *See* 29 CFR 4.130(a)(11). However, pursuant to the Secretary's authority under section 4(b) of the SCA, the SCA's regulations specifically exempt from coverage concession contracts ''principally for the furnishing of food, lodging, automobile fuel, souvenirs, newspaper stands, and recreational equipment to the general public.'' 29 CFR 4.133(b); Preamble to the SCA final rule, 48 FR 49736, 49753 (Oct. 27, 1983). Section 7(d)(i)(C) of the Executive Order specifies that the Order applies to all contracts with the Federal Government for concessions, including any concessions contracts that are

[5] Based on the information provided by the AHCA in its comment, it does not appear that its VA provider agreements would qualify as concessions contracts or as contracts in connection with Federal property or lands and related to offering services to Federal employees, their dependents, or the general public.

excluded from SCA coverage by 29 CFR 4.133(b). Proposed § 10.3(a)(1)(iii) implemented this provision and extended coverage of the Executive Order and this part to all concession contracts with the Federal Government. Consistent with the SCA's implementing regulations at 29 CFR 4.107(a), the Department noted in the NPRM that the Executive Order generally applies to concessions contracts with nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or of other Federal agencies.

Proposed § 10.3(b) of this rule implemented the value threshold requirements of section 7(e) of Executive Order 13658. 79 FR 9853. Pursuant to that section, the Executive Order applies to an SCA-covered concessions contract only if it exceeds $2,500. *Id.;* 41 U.S.C. 6702(a)(2). Section 7(e) of the Executive Order further provides that, for procurement contracts where workers' wages are governed by the FLSA, such as procurement contracts for concessionaire services that are excluded from SCA coverage under 29 CFR 4.133(b), this part applies only to contracts that exceed the $3,000 micro-purchase threshold, as defined in 41 U.S.C. 1902(a). There is no value threshold for subcontracts awarded under prime contracts or for non-procurement concessions contracts or contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

The Department received several comments expressing concern regarding application of the Executive Order to restaurant franchises on military bases. These comments, which were submitted by individual franchisees as well as organizations such as the Association/IFA and the Dunkin' Donuts Independent Franchise Owners, assert that the minimum wage requirements of the Order impose a uniquely burdensome obligation on fast food restaurants on military bases because the restaurant owners receive no funding from the Federal Government. They state that such contractors generally pay rent and a portion of their sales in exchange for the ability to conduct business on the military installation and that such funds are used to support the military's Morale, Welfare and Recreation (MWR) Programs. These commenters also assert that, due to restrictions in their contracts with the Federal Government, they cannot raise the prices that they charge for products sold on the military base above the prices offered by competitors in a three-mile radius.

Many franchise owners on military installations commented that they are small businesses and will not be able to absorb the increase in cost that may result from the Executive Order. These commenters asserted that having to pay the Executive Order minimum wage would result in their businesses reducing employee work hours, terminating workers, or closing store locations, all of which would affect customer service. The Coalition of Franchisee Associations similarly noted that the closure of such businesses could substantially impact the military's MWR Programs that are funded by the concessionaires' rent payments. These franchise owners also argued that application of the Executive Order minimum wage to their business establishments on military installations would cause them to operate at a competitive disadvantage because competitor businesses located off the military base would not be affected. The Association/IFA, for example, maintained that the application of the Executive Order minimum wage to concessions contracts and contracts in connection with Federal property and related to offering services places businesses operating under such contracts on an unfair playing field because their competitors are generally not subject to the minimum wage increase and thus have a competitive advantage due to their lower labor costs. Many of the commenters raising these concerns also noted that the potential economic impact of the Executive Order upon their businesses should not be analyzed in isolation; rather, they asked that the Department consider the costs of the Executive Order minimum wage as well as the costs associated with legal obligations to which they may be subject under other Federal laws (*e.g.,* SCA fringe benefit obligations). For these reasons, some commenters urged the Department to exempt from the Executive Order minimum wage requirements any entities that do not receive direct funds from the Federal Government (*e.g.,* concessionaires).

In response to all of the comments received about the economic impact of the Executive Order upon businesses operating on military installations under concessions contracts, the Department notes that such comments fail to account for a number of factors that the Department anticipates will substantially offset many potential adverse economic effects on their businesses. In particular, these commenters fail to consider that increasing the minimum wage of their workers can reduce absenteeism and turnover in the workplace, improve employee morale and productivity, reduce supervisory costs, and increase the quality of services provided to the Federal Government and the general public. These commenters similarly do not account for the potential that increased efficiency and quality of services will attract more customers and result in increased sales.

Moreover, and significantly, the Executive Order minimum wage requirements apply only to ''new contracts.'' Contracting agencies and contractors negotiating ''new contracts'' after January 1, 2015, will be aware of Executive Order 13658 and can take into account any potential economic impact of the Order on projected labor costs. For example, with respect to several commenters' concerns regarding the restrictions on pricing imposed by their concessions contracts, the Department notes that contractors typically will have the ability to negotiate a lower percentage of sales paid as rent or royalty to the Federal Government in new contracts prior to application of the Executive Order that could help to offset any costs that may be incurred as a result of the Order. The assertion that a franchisee must terminate workers or close businesses due to the Executive Order minimum wage requirements thus overlooks the benefits of the Executive Order wage increase as well as alternatives available through contract renegotiation. Sections 7(d)(i)(C) and (D) of the Executive Order reflects a clear intent that concessions contracts with the Federal Government are subject to the minimum wage requirement. The Department therefore declines the commenters' request to create an exemption for entities that do not receive direct funds from the Federal Government (*e.g.,* concessionaires).

A few commenters, such as ACCSES and SourceAmerica, requested that the Department address whether officers clubs and restaurants on military bases operated by nonappropriated Federal funds are subject to the Executive Order. The Department noted in the NPRM that, consistent with the SCA, the proposed definition of the term *Federal Government* includes nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or of other Federal agencies. *See* 29 CFR 4.107(a). Businesses that contract with nonappropriated fund instrumentalities to operate on military installations are thus subject to the Executive Order minimum wage requirement if the contract falls within one of the four specifically enumerated categories of contracts covered by the Order.

Contracts to operate officers clubs and restaurants on military bases would likely qualify as SCA-covered contracts as well as concessions contracts or contracts in connection with Federal lands and related to offering services; any such contracts which qualify as a ''new contract'' as explained in this part will thus be subject to the Executive Order.

The EEAC commented on the Department's interpretation of concessions contract coverage, noting it would be helpful for the Department to provide more examples of covered contracts. The EEAC further stated that the Executive Order ''appears to effectively eliminate the regulatory exception that the Department created for certain concessions contracts now codified at 29 CFR § 4.133(b).'' The EEAC also expressed confusion because it viewed the NPRM as implying that there might be concessions contracts covered by the third category of the Executive Order that are not exempt under the SCA's regulations.

Contrary to the EEAC's claim, the Executive Order does not eliminate the regulatory exemption to the SCA's requirements that the Department created for certain concessions contracts at 29 CFR 4.133(b). Even after enactment of Executive Order 13658, the SCA still does not apply to such contracts. While the Executive Order establishes a minimum wage for such contracts, SCA prevailing wage rate and fringe benefit requirements remain inapplicable to concessions contracts that fall within the 29 CFR 4.133(b) exemption.

With respect to this commenter's confusion about the types of concessions contracts that are not exempt from the SCA under 29 CFR 4.133(b), the regulatory text of that provision expressly states that the exemption only applies to certain kinds of concessions contracts. The SCA's regulatory exemption applies to certain concessions contracts that provide services to the general public; it does not, however, apply to concessions contracts that provide services to the Federal Government or its personnel or to concessions services provided incidentally to the principal purpose of a covered SCA contract. *See, e.g.,* 29 CFR 4.130 (providing an illustrative list of SCA-covered contracts); *In the Matter of Alcatraz Cruises, LLC,* ARB Case No. 07–024, 2009 WL 250456 (ARB Jan. 23, 2009) (holding that the SCA regulatory exemption at 29 CFR 4.133(b) does not apply to National Park Service contracts for ferry transportation services to and from Alcatraz Island). The Executive Order expressly applies to all concessions contracts with the Federal Government, including those exempted from the SCA's requirements. For example, the Executive Order's minimum wage requirements generally extend to fast food restaurants on military bases, souvenir shops at national monuments, child care centers in Federal buildings, and boat rental facilities at national parks.

The comment submitted by the FS also raised several issues pertaining to the Executive Order's coverage of concessions contracts. First, the FS urged the Department to consolidate the definition for the terms *contract* and *contract-like instrument* with the definition for the term *concessions contract.* As discussed above in the context of § 10.2, the Department has considered and declined this request. Second, the FS noted its disagreement with the Department's proposed interpretation of the term ''concessions.'' This commenter stated that ''the FS construes the term 'concession' much more narrowly'' than the definition proposed by the Department and that it specifically interprets the term ''to include only commercial recreation public services such as ski areas, marinas, and outfitting and guiding.'' The FS stated that it does not view ''concessions'' as including the provision of noncommercial educational or interpretive services or covering the provision of energy, transportation, communications, or water services to the public. Finally, the FS requested that the Department create a $3,000 de minimis threshold for nonprocurement concessions contracts whose workers' wages are subject to the FLSA. The FS noted that the Executive Order has value threshold requirements for SCA- and DBA-covered prime contracts, as well as for covered prime procurement contracts on which FLSA-covered workers perform work, but that it does not have a value threshold for nonprocurement concessions contracts under which workers' wages are subject to the FLSA. It urged the Department to apply the micro-purchase threshold set forth at 41 U.S.C. 1902(a) to all such nonprocurement concessions contracts and thus to determine that nonprocurement contracts under which a land use fee to the Federal Government falls below the $3,000 threshold are not covered by the Executive Order.

With respect to the FS's comment on the scope of the term ''concessions,'' the Department does not believe that the narrow view of the term proffered by the FS is an appropriate interpretation for purposes of the Executive Order.[6] The Department has proposed to more broadly define a concessions contract as any contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services without any substantive restrictions on the type of services provided or the beneficiary of the services rendered. The Department received supportive comments on its proposed definition of this term from several commenters such as Demos and NELP. Moreover, this broad interpretation of the term ''concessions'' best effectuates the inclusive nature of the Executive Order. By expressly applying to both concessions contracts covered by the SCA as well as concessions contracts exempt from the SCA, the Executive Order clearly is intended to cover concessions contracts for the benefit of the general public as well as for the benefit of the Federal Government itself and its personnel. The Department would thus generally view contracts for the provision of noncommercial educational or interpretive services, energy, transportation, communications, or water services to the general public as within the scope of concessions contracts covered by the Order. Regardless of the scope of the term ''concessions,'' however, the Department notes that such contracts may qualify as SCA-covered contracts and are also likely to fall within the ambit of the fourth category of covered contracts set forth at section 7(d)(i)(D) of the Executive Order because such contracts are entered into ''in connection with Federal property'' and ''related to offering services for . . . the general public.''

With respect to the FS's request that the Department establish a $3,000 de minimis threshold for nonprocurement concessions contracts, the Department has carefully considered this request. The Department declines to create such an exception to coverage of the Executive Order, however, because section 7(e) of the Order sets forth very specific value threshold requirements for other types of contracts and notably does not include a value threshold for nonprocurement contracts under which workers' wages are governed by the FLSA. The Department views such an omission as a deliberate decision reflecting a clear intent of the Executive

[6] The Department's interpretation of the term ''concessions'' for purposes of Executive Order 13658 and this final rule of course does not determine how that term may be interpreted under other laws, including laws implemented by the FS.

Order to cover concessions contracts regardless of dollar amount.

Contracts in Connection with Federal Property or Lands and Related to Offering Services: Proposed § 10.3(a)(1)(iv) implemented Section 7(d)(i)(D) of the Executive Order, which extends coverage of the Order to contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. *See* 79 FR 9853. To the extent that such agreements were not otherwise covered by § 10.3(a)(1), the Department interpreted this provision in the NPRM as generally including leases of Federal property, including space and facilities, and licenses to use such property entered into by the Federal Government for the purpose of offering services to the Federal Government, its personnel, or the general public. In other words, under the Department's proposed interpretation, private entities that lease space in a Federal building to provide services to Federal employees or the general public would be covered by the Executive Order and this part.

In the NPRM, the Department noted that although evidence that an agency has retained some measure of control over the terms and conditions of the lease or license to provide services is not necessary for purposes of determining applicability of this section, such a circumstance strongly indicates that the agreement involved is covered by section 7(d)(i)(D) of the Executive Order and § 10.3(a)(1)(iv). Pursuant to this interpretation, a private fast food or casual dining restaurant that rents space in a Federal building and serves food to the general public would be subject to the Executive Order minimum wage requirement. Additional examples of agreements that would generally be covered by the Executive Order and this part under the Department's proposed approach include delegated leases of space in a Federal building from an agency to a contractor whereby the contractor operates a child care center, credit union, gift shop, barber shop, or fitness center in the Federal agency building to serve Federal employees and/or the general public.

Some commenters expressed support for the Department's interpretation of this category of covered contracts. In particular, NELP specifically supported extending coverage to contracts offering services to Federal employees, their dependents, or the general public. Similarly, the AFL–CIO applauded the inclusion of workers engaged on contracts connected to Federal property and lands (and related to offering services) within the scope of the Executive Order and implementing regulations. At the same time, a number of commenters raised questions and concerns regarding application of the Executive Order minimum wage in this context.

Two commenters, the AOA and O.A.R.S., specifically sought clarification as to whether FS special use permits (SUPs), NPS CUAs, and BLM and USFWS outfitter and guide permits constitute *contracts* under the Executive Order. As noted previously, the Department has defined the term *contract* and *contract-like instrument* collectively for purposes of the Executive Order as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition broadly includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including but not limited to lease agreements, licenses, and permits. The types of instruments (SUPs, CUAs, and outfitter and guide permits) identified by the AOA and O.A.R.S. authorize the use of Federal land for specific purposes in exchange for the payment of fees to the Federal Government. Indeed, as the AOA explained in its comment on the NPRM, AOA members that hold CUAs issued by the NPS or permits issued by the FS, BLM, and USFWS ''provide services to the public on federal lands.'' Such instruments create obligations that are enforceable or otherwise recognizable at law and hence constitute *contracts* for purposes of the Executive Order and this part.

Although the determination of whether an agreement qualifies as a *contract* or *contract-like instrument* under the Executive Order and this part does not turn on whether such agreements are characterized as ''contracts'' for other purposes (such as in connection with the specific programs under which they are administered), the Department nonetheless notes that its conclusion that such instruments are *contracts* for purposes of the Executive Order is consistent with pertinent precedent. For example, the Department's Administrative Review Board (ARB) previously has held that a FS SUP is a contract under the SCA, *see Cradle of Forestry,* 2001 WL 328132, at *5, and the Department likewise has determined that FS SUPs constitute contracts for purposes of the FLSA. *See* DOL Opinion Letter, WH–449, 1978 WL 51447 (Jan. 26, 1978) (FS SUP was a contract for purposes of FLSA section 13(a)(3)). *See also* DOL Opinion Letter, 1995 WL 1032476 (March 24, 1995) (Department of Agriculture license to operate amusement rides constituted a contract for purposes of FLSA section 13(a)(3)).

Colorado Ski Country USA (CSCUSA) asserted that FS ski area permits should not be treated as contracts under the Executive Order and this final rule because they have never been considered Federal contracts subject to Federal procurement requirements. Similarly, the AOA observed that an FS SUP is not a contract for purposes of the Contract Disputes Act, and NSAA noted that the FS has informed it that its members are not Federal contractors for purposes of the Crime Control Act of 1990. NSAA also asserted that because FS ski area permits are revocable at any time, they are not contracts.

In response to these comments, the Department notes that Executive Order 13658 expressly applies to non-procurement contracts that are not subject to the FAR; CSCUSA's assertion that FS ski area permits are not subject to Federal procurement requirements therefore does not weigh against application of the Executive Order to such permits. Similarly, the fact that a particular instrument may not be subject to the Contract Disputes Act or constitute a contract for purposes of a particular statute such as the Crime Control Act of 1990 is not determinative with respect to coverage of the instrument under Executive Order 13658. Indeed, the Department notes that notwithstanding Executive Order 13658's express application to contracts entered into with the Federal Government in connection with Federal property or lands and relating to offering services, the Executive Order provides that it creates no rights under the Contract Disputes Act. *See* 79 FR 9852.

As for NSAA's assertion that FS ski area permits are not contracts because they are revocable at any time, it remains that FS ski area permits constitute an agreement with the Federal Government creating obligations that are enforceable or otherwise recognizable at law. Furthermore, the Department understands that FS ski area permits may be revoked only for specified reasons. *See* 16 U.S.C. 497b(b)(5); 36 CFR 251.60.

NSAA and O.A.R.S. also expressed concern that the Department's designation of their members' agreements with the Federal Government as contracts for purposes of the Executive Order would render them subject to the legal requirements of a ''federal contractor.'' However, the Department's conclusion that FS SUPs,

CUAs, and similar instruments constitute contracts under Executive Order 13658 and this final rule does not render NSAA's members and O.A.R.S. ''federal contractors'' with respect to other Federal laws.

That FS SUPs, NPS CUAs, and BLM and USFWS outfitter and guide permits are contracts for purposes of the Executive Order does not necessarily mean individuals performing work on or in connection with the contract are covered workers. In order for the minimum wage protections of the Executive Order to extend to a particular worker performing work on or in connection with a covered contract, that worker's wages must be governed by the FLSA, SCA, or DBA. The FLSA generally governs the wages of employees of holders of CUAs issued by the NPS and permits issued by the FS, BLM and USFWS, at least to the extent such instruments are not covered by the SCA. 29 U.S.C. 213(a)(3) exempts employees of certain amusement and recreational establishments from the minimum wage and overtime provisions of the FLSA, but, as the AOA acknowledged, that provision ''does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture.'' *See* 29 U.S.C. 213(a)(3). As explained above, the Department has concluded that the holders of CUAs issued by the NPS, and permits issued by the FS, BLM and USFWS, are operating under a contract with the Secretary of the Interior or the Secretary of Agriculture. Thus, the exemption from the FLSA's minimum wage requirement will normally not apply and the FLSA will usually govern the wages of the employees of such holders for purposes of the Executive Order (unless, as noted, the SCA applies to such contracts).

NSAA also sought clarification as to whether the Executive Order applies to the holder of an FS ski area permit issued by the Department of Agriculture that provides services or facilities directly related to skiing. The AOA asserted that the Executive Order does not apply to FS ski area permits because entities providing services or facilities directly related to skiing under an FS special use permit are exempt from the FLSA's minimum wage requirements under section 213(a)(3) of the FLSA. To the extent that an entity providing services or facilities directly related to skiing satisfies the criteria for this specific exemption from the FLSA's minimum wage requirements, and to the extent that the wages of the entity's workers are also not governed by the SCA or DBA, Executive Order 13658 would not apply in this specific context because the contractor would not have any workers on the contract whose wages were governed by the FLSA, SCA, or DBA.

Multiple commenters, including the AOA, O.A.R.S., Ski New Hampshire, and CSCUSA assert that FS SUPs, NPS CUAs, and BLM and USFWS outfitter and guide permits create a relationship that, unlike procurement contracts, does not contain a mechanism by which the holder of the instrument can ''pass on'' costs related to operation of the Executive Order to contracting agencies. Such commenters generally asserted that an increase in the minimum wage permit holders will have to pay will cause them to operate at a competitive disadvantage because competitor businesses not operating under contracts covered by the Executive Order would not be affected. The AOA in particular asserted that its members believe application of the Executive Order will place a significant strain on their businesses. Another commenter, Advocacy, observed that small businesses have informed it that application of the Executive Order minimum wage requirement to these contracts will render their operations unprofitable. For these reasons, the AOA, Ski New Hampshire, O.A.R.S., and similar commenters requested an exemption from the Executive Order for permit and CUA holders' contracts with the Federal Government.

In response to these comments concerning the economic impact of the Executive Order upon permit and CUA holders' contracts with the Federal Government, the Department notes that, as with the comments from businesses operating on military installations under concessions contracts, the permit and CUA holders' comments fail to account for various factors that the Department anticipates will substantially offset many potential adverse economic effects on their businesses. In particular, these commenters fail to consider that increasing the minimum wage of their workers can reduce absenteeism and turnover in the workplace, improve employee morale and productivity, reduce supervisory costs, and increase the quality of services provided to the Federal Government and the general public. These commenters similarly do not account for the potential that increased efficiency and quality of services will attract more customers and result in increased sales.

Moreover, as noted previously, the Executive Order minimum wage requirements apply only to ''new contracts.'' Contracting agencies and contractors negotiating ''new contracts'' after January 1, 2015 will be aware of Executive Order 13658 and can take into account any potential economic impact of the Executive Order on projected labor costs. For example, the Department notes that the holders of covered permits and CUAs will likely have the ability to negotiate a lower fee in new contracts prior to application of the Executive Order that could help offset any costs that may be incurred as a result of the Order.

Section 7(d)(i)(D) of the Executive Order states that contracts in connection with Federal property and related to offering services for Federal employees, their dependents, or the general public are subject to the minimum wage requirement. For the reasons explained above, the Department therefore declines the commenters' request to create an exemption for permit and CUA holders' contracts with the Federal Government.

The AOA also expressed concern that the annual minimum wage increases the Executive Order authorizes the Secretary of Labor to make will create budgeting and pricing uncertainty for contractors operating under FS SUPs, NPS CUAs, and BLM and USFWS permits. As discussed below, however, the contract clause in the Department's final rule reflects that contractors may be compensated, if appropriate, for the increase in labor costs resulting from the annual inflation increases in the Executive Order minimum wage beginning on January 1, 2016. In addition, the CPI–W is published monthly, which allows parties, on a regular basis, to estimate what the annual wage increase will be. These circumstances should significantly reduce, if not eliminate, the budgeting and pricing uncertainty the AOA contends its members will face based on annual increases in the Executive Order minimum wage.

The EEAC sought clarification regarding whether the Department intended to interpret ''related to offering services'' in section 7(d)(i)(D) in a manner consistent with the principal purpose test the Department uses under the SCA. The threshold for a contract to ''relate to offering'' services is lower than the threshold for a contract to have as its ''principal purpose'' the furnishing of services. For example, the SCA will typically not cover a professional services contract with a

medical services company to operate a clinic for Federal employees on Federal land because the contract is not principally for services through the use of ''service employees.'' *See* 29 CFR 4.113(a)(2). However, because such a professional services agreement would constitute a contract with the Federal Government in connection with Federal property or lands and would be related to offering medical services to Federal employees, it would constitute a covered contract under section 7(d)(i)(D) of the Order. The Department accordingly has concluded that engrafting a ''principal purpose'' requirement onto the ''related to offering services'' standard set forth in section 7(d)(i)(D) of the Executive Order would be inconsistent with the text of the Executive Order. The Department notes, however, that pursuant to § 10.4(e), the Executive Order minimum wage does not apply to workers who are exempt from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) unless they are otherwise covered by the DBA or the SCA. An individual employed in a bona fide executive, administrative, or professional capacity performing on a professional services contract, for example, is thus not entitled to the Executive Order minimum wage.

The EEAC sought examples of arrangements that would not be covered contracts pursuant to section 7(d)(i)(D) of the Executive Order. As was mentioned in the NPRM, coverage of this section only extends to contracts that are ''in connection with Federal property or lands.'' 79 FR 9853. The Department does not interpret section 7(d)(i)(D)'s reference to ''Federal property'' to encompass money; as a result, purely financial transactions with the Federal Government, *i.e.,* contracts that are not in connection with physical property or lands, would not be covered by the Executive Order or this final rule. Section 7(d)(i)(D) coverage additionally only extends to contracts ''related to offering services for Federal employees, their dependents, or the general public.'' Thus, if a Federal agency contracts with a company to solely supply materials in connection with Federal property or lands, the Department will not consider the contract to be covered by section 7(d)(i)(D) because it is not a contract related to offering services. Likewise, because a license or permit to conduct a wedding on Federal property or lands generally would not relate to offering services for Federal employees, their dependents, or the general public, but rather would only relate to offering services to the specific individual applicant(s), the Department would not consider such a contract covered by section 7(d)(i)(D).

Relation to the Walsh-Healey Public Contracts Act: Finally, the Department noted in the proposed rule that contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, *i.e.,* those subject to the Walsh-Healey Public Contracts Act (PCA), 41 U.S.C. 6501 *et seq.,* are not covered by Executive Order 13658 or this part. The Department stated that it intended to follow the SCA's regulations at 29 CFR 4.117 in distinguishing between work that is subject to the PCA and work that is subject to the SCA (and therefore the Executive Order). The Department similarly proposed to follow the regulations set forth in the FAR at 48 CFR 22.402(b) in addressing whether the DBA (and thus the Executive Order) applies to construction work on a PCA contract. Under that proposed approach, where a PCA-covered contract involves a substantial and segregable amount of construction work that is subject to the DBA, workers whose wages are governed by the DBA or FLSA are covered by the Executive Order for the hours that they spend performing on such DBA-covered construction work.

The EEAC and Ogletree Deakins submitted comments expressing support for the NPRM's provision that the Executive Order does not apply to contracts subject to the PCA and recommending that the Department include some of the preamble discussion on this issue in the regulatory text of the final rule. The Department also received comments from NELP and the National Center for Law and Economic Justice (NCLEJ) expressing disappointment that Executive Order 13658 does not cover workers subject to the PCA.

The Executive Order expressly only applies to the enumerated types of service and construction contracts under which workers' wages are governed by the FLSA, SCA, or the DBA. The Department does not have the authority to extend coverage beyond the terms of the Order to PCA-covered workers or contracts. Because the lack of PCA contract coverage is an important limitation on the coverage of the Executive Order, the Department agrees with the comments recommending that the Department include some of its preamble discussion of this issue in the regulatory text itself. Accordingly, the Department has added a provision at § 10.3(d) clarifying that neither the Executive Order nor this part apply to PCA contracts.

Coverage of Subcontracts

The Department also received comments from ABC, AGC, the Association/IFA, the AOA, the Chamber/NFIB, and others requesting clarification of the Executive Order's coverage of subcontracts. AGC, for example, asked whether a subcontract for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government between a manufacturer or other supplier and a high-tier construction subcontractor for use on a DBA-covered construction project would be covered by the Order. The Chamber/NFIB similarly questioned whether, for example, a soft drink supplier to a fast food restaurant franchise on a military base would be considered a covered subcontractor under the Executive Order. The Mercatus Center at George Mason University also asserted that the Department overreached in its proposed interpretations and that ''if a federal contractor ordered materials from [a] construction materials retailer, it is conceivable that the rule could be applied to the retailer.'' The Mercatus Center noted that, if such an interpretation was applied, the retailer would then be considered a subcontractor and ''any supplier from whom the retailer purchased would also be considered bound by the rule.''

In response to these comments, the Department notes that the same test for determining application of the Executive Order to prime contracts applies to the determination of whether a subcontract is covered by the Order, with the sole distinction that the value threshold requirements set forth in section 7(e) of the Order do not apply to subcontracts. In other words, in order for the requirements of the Order to apply to a subcontract, the subcontract must satisfy all of the following prongs: (1) It must qualify as a *contract* or *contract-like instrument* under the definition set forth in this part, (2) it must fall within one of the four specifically enumerated types of contracts set forth in section 7(d) of the Order and § 10.3, and (3) the wages of workers under the contract must be governed by the DBA, SCA, or FLSA.

Pursuant to this approach, only covered subcontracts of covered prime contracts are subject to the requirements of the Executive Order. The Department has endeavored to clarify this point by referring to ''covered subcontracts'' rather than ''subcontracts'' more generally in the contract clause set forth at Appendix A. Just as the Executive

Order does not apply to prime contracts that are subject to the PCA, it likewise does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment. In other words, the Executive Order does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment between a manufacturer or other supplier and a covered contractor for use on a covered Federal contract (*e.g.,* a contract to supply napkins and utensils to a fast food restaurant franchise on a military base is not a covered subcontract for purposes of this Order). The Executive Order likewise does not apply to contracts under which a contractor orders materials from a construction materials retailer; the Mercatus Center's concerns about overreaching are therefore misplaced.

Coverage of Workers

Proposed § 10.3(a)(2) implemented section 7(d)(ii) of Executive Order 13658, which provides that the minimum wage requirements of the Order only apply to contracts covered by section 7(d)(i) of the Order if the wages of workers under such contracts are subject to the FLSA, SCA, or DBA. 79 FR 9853. The Executive Order thus provides that its protections only extend to workers performing on or in connection with contracts covered by the Executive Order whose wages are governed by the FLSA, SCA, or DBA. *Id.* For example, the Order does not extend to workers whose wages are governed by the PCA. Moreover, as discussed below, the Department proposes that, except for workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) and workers who are otherwise covered by the SCA or DBA, employees who are exempt from the minimum wage protections of the FLSA under 29 U.S.C. 213(a) are similarly not subject to the minimum wage protections of Executive Order 13658 and this part.

In determining whether a worker's wages are ''governed by'' the FLSA for purposes of section 7(d)(ii) of the Executive Order and this part, the Department interpreted this provision as referring to employees who are entitled to the minimum wage under FLSA section 6(a)(1), employees whose wages are calculated pursuant to special certificates issued under FLSA section 14(c), and tipped employees under FLSA section 3(t) who are not otherwise covered by the SCA or the DBA. *See* 29 U.S.C. 203(t), 206(a)(1), 214(c).

In evaluating whether a worker's wages are ''governed by'' the SCA for purposes of the Executive Order, the Department interpreted such provision as referring to service employees who are entitled to prevailing wages under the SCA. *See* 29 CFR 4.150–56. The Department noted that workers whose wages are subject to the SCA include individuals who are employed on an SCA contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

The Department also interpreted the language in section 7(d)(ii) of Executive Order 13658 and proposed § 10.3(a)(2) as extending coverage to FLSA-covered employees who provide support on an SCA-covered contract but who are not entitled to prevailing wages under the SCA. 41 U.S.C. 6701(3).[7] In the NPRM, the Department explained that such workers would be covered by the plain language of section 7(d) of the Executive Order because they are performing in connection with a contract covered by the Order and their wages are governed by the FLSA.

In evaluating whether a worker's wages are ''governed by'' the DBA for purposes of the Order, the proposed rule interpreted such language as referring to laborers and mechanics who are covered by the DBA. This includes any individual who is employed on a DBA-covered contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. The Department also interpreted the language in section 7(d)(ii) of Executive Order 13658 and proposed § 10.3(a)(2) as extending coverage to workers performing on or in connection with DBA-covered contracts for construction who are not laborers or mechanics but whose wages are governed by the FLSA. Although such workers are not covered by the DBA itself because they are not ''laborers and mechanics,'' 40 U.S.C. 3142(b), such individuals are workers performing on or in connection with a contract subject to the Executive Order whose wages are governed by the FLSA and thus are covered by the plain language of section 7(d) of the Executive Order. 79 FR 9853. The NPRM extended this coverage to FLSA-covered employees working on or in connection with DBA-covered contracts regardless of whether such employees are physically present on the DBA-covered construction worksite.

The Department noted in the NPRM that where state or local government workers are performing on covered contracts and their wages are subject to the FLSA or the SCA, such workers are entitled to the protections of the Executive Order and this part. The DBA does not apply to construction performed by state or local government workers.

The Department received a number of comments regarding the coverage of workers under the Executive Order. Some of these comments raised questions or concerns regarding the general application of the Order to workers, while others addressed very specific coverage issues pertinent to particular subsets of workers performing on or in connection with covered contracts. All of these comments are addressed below.

FLSA-Covered Workers on DBA and SCA Contracts

The Department received a number of comments regarding its proposed coverage of FLSA-covered workers performing on or in connection with SCA- and DBA-covered contracts. Some of the commenters, including NELP, the AFL–CIO, and the Building Trades, strongly supported the proposed coverage of such workers. However, other commenters, such as ABC and the National Industry Liaison Group, expressed significant concern regarding the inclusion of such workers. ABC, for example, generally argued that coverage of FLSA workers ''creates unnecessary confusion and imposes administrative burdens'' for SCA and DBA contractors by creating new wage and recordkeeping obligations for workers who are not ''laborers and mechanics'' or ''service employees'' and therefore are not subject to the prevailing wage laws, and who may not even be physically present on ''the site of the work.'' Many of these commenters similarly raised concerns regarding the meaning and scope of the Department's statement that the Executive Order minimum wage must be paid to all

[7] The Department notes that, under the SCA, ''service employees'' directly engaged in providing specific services called for by the SCA-covered contract are entitled to SCA prevailing wage rates. Meanwhile, ''service employees'' who do not perform the services required by an SCA-covered contract but whose duties are necessary to the contract's performance must be paid at least the FLSA minimum wage. *See* 29 CFR 4.150–155; WHD FOH ¶ 14b05(c). For purposes of clarity, the Department refers to this latter category of workers who are entitled to receive the FLSA minimum wage as ''FLSA-covered'' workers throughout this rule even though those workers' right to the FLSA minimum wage technically derives from the SCA itself. *See* 41 U.S.C. 6704(a).

covered workers ''performing on or in connection with'' a covered contract, which will be addressed in the section following this discussion of FLSA-covered workers.

The Department disagrees with such comments challenging its proposed inclusion of FLSA-covered workers performing on or in connection with SCA and DBA contracts. The Department views the plain language of section 7 of the Executive Order as compelling such coverage because it extends its minimum wage requirements to all SCA- and DBA-covered contracts where ''the wages of workers under such contract . . . are governed by the Fair Labor Standards Act.'' The Department thus believes that it reasonably and appropriately interpreted both the plain language and intent of the Executive Order to cover FLSA-covered employees that provide support on a SCA-covered contract but are not ''service employees'' for purposes of the SCA as well as workers who provide support on DBA-covered contracts for construction who are not ''laborers'' or ''mechanics'' for purposes of the DBA but whose wages are governed by the FLSA.

Workers ''Performing on or in Connection With'' Covered Contracts

In the NPRM, the Department proposed that all covered workers engaged in working ''on or in connection with'' a covered contract are entitled to the Executive Order minimum wage for all hours spent performing on the covered contract. The Department explained that this standard was intended to cover workers directly performing the specific services called for by the contract's terms (*i.e.,* ''service employees'' on SCA contracts and ''laborers and mechanics'' on DBA contracts) as well as those workers performing other duties necessary to the performance of the contract (*i.e.,* FLSA-covered administrative personnel on SCA and DBA contracts).

The Department received many comments regarding the meaning and scope of its proposed interpretation that workers performing ''on or in connection with'' a covered contract are entitled to the Executive Order minimum wage for all hours worked on the covered contract. A few commenters agreed with the Department's proposed interpretation. Demos, for example, expressed support for the Department's proposed interpretation and urged the Department ''to adopt an expansive interpretation of the duties necessary to the performance of a contract so that this clause does not become an unwarranted loophole used to limit the coverage of the Executive Order.'' Some commenters, including Bond, Schoeneck, and King, PLLC, requested that the Department clarify whether a worker who performs work on a covered contract for only part of a workweek needs to be paid the Executive Order minimum wage for all hours worked or only for the hours spent performing on or in connection with the covered contract.

Many other commenters, such as AGC, the PSC, the EEAC, the Association/IFA, and FortneyScott sought clarification of the meaning and scope of the ''performing on or in connection with'' standard for worker coverage. Several commenters asked the Department to provide more examples of FLSA-covered workers that the Department would consider to be performing ''in connection with'' a covered contract or to provide a list of the types of duties that the Department would regard as ''necessary'' to contractual performance. Several of these commenters also requested clarification regarding whether a worker would be covered by the Executive Order if he or she only spends an insubstantial amount of time performing on covered contract work. The Association/IFA asked, for example, whether an FLSA-covered accounting clerk who processes a single SCA-contract-related invoice out of 2,000 invoices processed during her workweek would be covered by the Executive Order. AGC requested inclusion of a provision in the Department's final rule whereby a worker would only be entitled to the Executive Order minimum wage if the worker spends 20 percent or more of his or her hours worked in a given workweek performing ''in connection with'' covered contracts. Commenters raising this issue noted that it would be difficult for contractors to record and segregate the hours that their workers spend on covered and non-covered contracts, particularly with respect to FLSA-covered workers performing work in connection with SCA and DBA contracts who may not be located at the site of contractual work.

As a threshold matter, the Department notes that the Executive Order minimum wage requirements only extend to the hours worked by covered workers performing on or in connection with covered contracts. The NPRM explained that in situations where contractors are not exclusively engaged in contract work covered by the Executive Order, and there are adequate records segregating the periods in which work was performed on covered contracts subject to the Order from periods in which other work was performed, the Executive Order minimum wage does not apply to hours spent on work not covered by the Order. *See* 79 34582. Accordingly, the regulatory text of § 10.22(a) emphasizes that contractors must pay covered workers performing on or in connection with a covered contract no less than the applicable Executive Order minimum wage for hours worked on or in connection with the covered contract.

In response to the large number of comments received on the Department's proposed interpretation that the Executive Order minimum wage applies to all hours in which a covered worker performs ''on or in connection with'' a covered contract, the Department notes that this standard was derived from the SCA's regulations at 29 CFR 4.150-.155, which provide that all service employees who are engaged in working on or in connection with an SCA-covered contract, either in performing the specific services called for by the contract's terms or in performing other duties necessary to contractual performance, are covered by the SCA unless a specific exemption is applicable. *See* 29 CFR 4.150. Under the SCA, ''service employees'' directly engaged in providing specific services called for by the SCA-covered contract are entitled to SCA prevailing wage rates. Meanwhile, employees who do not perform the services required by an SCA-covered contract but whose duties are necessary to the contract's performance must be paid at least the FLSA minimum wage. *See* 29 CFR 4.150-.155; WHD FOH ¶ 14b05(c). Thus, contrary to the assertion of the PSC and others that the Department should ''delet[e] the undefinable phrase 'in connection with'" and instead use the ''SCA formulation'' for worker coverage, the worker coverage standard applied in the NPRM and in this final rule is in fact adopted from the SCA's regulations.

Because section 7(d) of the Executive Order expressly requires payment of the Executive Order minimum wage to FLSA-covered workers in the performance of a SCA- or DBA-covered contract as explained above, the Department believes that the narrow interpretation urged by some commenters under which the Executive Order minimum wage would apply only to workers performing the specific duties called for by the terms of a covered contract (*e.g.,* a ''laborer'' on a DBA construction contract) would undermine the broad coverage directed by the plain language of the Order. The Department thus concludes that the economy and efficiency purposes of the Order are best effectuated by reaffirming

its interpretation that covered workers performing work ''on or in connection with'' a covered contract are entitled to the Executive Order's protections. The Executive Order evinces a clear intent that its minimum wage requirement extend to *all* DBA-, SCA-, and FLSA-covered workers ''in the performance of'' the covered contract, not merely those workers who are performing the specific duties called for by the contract's terms. *See* 79 FR 9851. Accordingly, the Department declines to implement the suggestion made by several commenters to narrow or limit the meaning of the ''in connection with'' standard.

However, the Department recognizes the concerns expressed by many commenters that such an interpretation could place new burdens on contractors, particularly DBA-covered contractors that did not previously segregate hours worked by FLSA-covered workers, including those who were not present on the site of the construction work. The responsibility to pay such workers performing in connection with covered contracts the Executive Order minimum wage may be regarded as particularly burdensome for SCA- and DBA-covered prime contractors because, under this part, they may be held liable for violations committed by their subcontractors.

The Department recognizes that it has utilized a 20 percent threshold for coverage determinations in a variety of SCA and DBA contexts. For example, 29 CFR 4.123(e)(2) exempts from SCA coverage contracts for seven types of commercial services, such as financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards and similar card services), contracts with hotels for conferences, transportation by common carriers of persons by air, real estate services, and relocation services. Certain criteria must be satisfied for the exemption to apply to a contract, including that each service employee spend only ''a small portion of his or her time'' servicing the contract. 29 CFR 4.123(e)(2)(ii)(D). The exemption defines ''small portion'' in relative terms and as ''less than 20 percent'' of the employee's available time. *Id.* Likewise, the Department has determined that the DBA applies to certain categories of workers (*i.e.,* air balance engineers, employees of traffic service companies, material suppliers, and repair employees) only if they spend 20 percent or more of their hours worked in a workweek performing laborer or mechanic duties on the covered site. *See* WHD FOH ¶¶ 15e06, 15e10(b), 15e16(c), and 15e19.

The Department has thoroughly reviewed and considered the numerous comments received regarding the Department's proposed interpretation that the Executive Order applies to all covered workers performing on or in connection with covered contracts. Based on its careful review and in light of the administrative practice under the SCA and the DBA of applying a 20 percent threshold to certain coverage determinations, the Department has decided in this final rule to create an exclusion whereby any covered worker performing only ''in connection with'' covered contracts for less than 20 percent of his or her hours worked in a given workweek will not be entitled to the Executive Order minimum wage for any hours worked. The Department expects that this exclusion will significantly mitigate the recordkeeping concerns identified by commenters without substantially affecting the Executive Order's economy and efficiency interests. The Department similarly does not believe that this exclusion undermines the Order's intent that the minimum wage protections extend broadly to protect FLSA-, SCA-, and DBA-covered workers directly performing the specific services (or construction) called for by the contract's terms as well as those workers performing other duties necessary to the performance of the contract. A detailed discussion of this new exclusion (which will be referred to as the ''20 percent of hours worked exclusion'') is set forth below, and the new exclusion itself appears in the regulatory text at § 10.4(f).

This new exclusion does not apply to any worker ''performing on'' a covered contract whose wages are governed by the FLSA, SCA, or DBA. Such workers will be entitled to the Executive Order minimum wage for all hours worked performing on or in connection with covered contracts. This approach is consistent with the interpretation proposed in the NPRM. However, for a worker solely ''performing in connection with'' a covered contract, the Executive Order minimum wage requirements will only apply if that worker spends 20 percent or more of his or her hours worked in a given workweek performing in connection with covered contracts. Thus, in order to apply this exclusion correctly, contractors must accurately distinguish between workers performing ''on'' a covered contract and those workers performing ''in connection with'' a covered contract based on the guidance provided in this section. The 20 percent of hours worked exclusion does not apply to any worker who spends any hours performing ''on'' a covered contract; rather, it applies only to workers ''performing in connection with'' a covered contract who do not spend any hours worked ''performing on'' the contract.

For purposes of administering the 20 percent of hours worked exclusion under the Executive Order, the Department views workers performing ''on'' a covered contract as those workers directly performing the specific services called for by the contract. Whether a worker is performing ''on'' a covered contract will be determined in part by the scope of work or a similar statement set forth in the covered contract that identifies the work (*e.g.,* the services or construction) to be performed under the contract. Specifically, consistent with the SCA, *see, e.g.,* 29 CFR 4.153, a worker will be considered to be performing ''on'' a covered contract if he or she is directly engaged in the performance of specified contract services or construction. All laborers and mechanics engaged in the construction of a public building or public work on the site of the work thus will be regarded as performing ''on'' a DBA-covered contract. All service employees performing the specific services called for by an SCA-covered contract will also be regarded as performing ''on'' a contract covered by the Executive Order. In other words, any worker who is entitled to be paid DBA or SCA prevailing wages is entitled to receive the Executive Order minimum wage for all hours worked on covered contracts, regardless of whether such covered work constitutes less than 20 percent of his or her overall hours worked in a particular workweek. For purposes of concessions contracts and contracts in connection with Federal property and related to offering services that are not covered by the SCA, the Department will regard any employee performing the specific services called for by the contract as performing ''on'' the covered contract in the same manner described above. Such workers will therefore be entitled to receive the Executive Order minimum wage for all hours worked on covered contracts, even if such time represents less than 20 percent of his or her overall work hours in a particular workweek.

However, for purposes of the Executive Order, the Department will view any worker who performs solely ''in connection with'' covered contracts for less than 20 percent of his or her hours worked in a given workweek to be excluded from the Order and this part. In other words, such workers will not be entitled to be paid the Executive Order

minimum wage for any hours that they spend performing in connection with a covered contract if such time represents less than 20 percent of their hours worked in a given workweek. For purposes of this exclusion, the Department regards a worker performing ''in connection with'' a covered contract as any worker who is performing work activities that are necessary to the performance of a covered contract but who are not directly engaged in performing the specific services called for by the contract itself.

Therefore, the 20 percent of hours worked exclusion may apply to any FLSA-covered employees who are not directly engaged in performing the specific construction identified in a DBA contract (*i.e.,* they are not DBA-covered laborers or mechanics) but whose services are necessary to the performance of the DBA contract. In other words, workers who may fall within the scope of this exclusion are FLSA-covered workers who do not perform the construction identified in the DBA contract either due to the nature of their non-physical duties and/or because they are not present on the site of the work, but whose duties would be regarded as essential for the performance of the contract.

In the context of DBA-covered contracts, workers who may qualify for this exclusion if they spend less than 20 percent of their hours worked performing in connection with covered contracts could include an FLSA-covered security guard patrolling or monitoring a construction worksite where DBA-covered work is being performed or an FLSA-covered clerk who processes the payroll for DBA contracts (either on or off the site of the work). However, if the security guard or clerk in these examples also performed the duties of a DBA-covered laborer or mechanic (for example, by painting or moving construction materials), the 20 percent of hours worked exclusion would not apply to any hours worked on or in connection with the contract because that worker performed ''on'' the covered contract at some point in the workweek.

The Department also reaffirms that the protections of the Order do not extend at all to workers who are not engaged in working on or in connection with a covered contract. For example, an FLSA-covered technician who is hired to repair a DBA contractor's electronic time system or an FLSA-covered janitor who is hired to clean the bathrooms at the DBA contractor's company headquarters are not covered by the Order because they are not performing the specific duties called for by the contract or other services or work necessary to the performance of the contract.

In the context of SCA-covered contracts, the 20 percent of hours worked exclusion may apply to any FLSA-covered employees performing in connection with an SCA contract who are not directly engaged in performing the specific services identified in the contract (*i.e.,* they are not ''service employees'' entitled to SCA prevailing wages) but whose services are necessary to the performance of the SCA contract. Any workers performing work in connection with an SCA contract who are not entitled to SCA prevailing wages but are entitled to at least the FLSA minimum wage pursuant to 41 U.S.C. 6704(a) would fall within the scope of this exclusion.

Examples of workers in the SCA context who may qualify for this exclusion if they perform in connection with covered contracts for less than 20 percent of their hours worked in a given workweek include an accounting clerk who processes a few invoices for SCA contracts out of thousands of other invoices for non-covered contracts during the workweek or an FLSA-covered human resources employee who assists for short periods of time in the hiring of the workers performing on the SCA-covered contract in addition to the hiring of workers on other non-covered projects. Neither the Executive Order nor the exclusion would apply, however, to an FLSA-covered landscaper at the home office of an SCA contractor because that worker is not performing the specific duties called for by the SCA contract or other services or work necessary to the performance of the contract.

With respect to concessions contracts and contracts in connection with Federal property or lands and related to offering services, the 20 percent of hours worked exclusion may apply to any FLSA-covered employees performing in connection with such contracts who are not at any time directly engaged in performing the specific services identified in the contract but whose services or work duties are necessary to the performance of the covered contract. One example of a worker who may qualify for this exclusion if he or she performed in connection with covered contracts for less than 20 percent of his or her hours in a given workweek includes an FLSA-covered clerk who handles the payroll for a child care center that leases space in a Federal agency building as well as the center's other locations that are not covered by the Executive Order. Another such example of a worker who may qualify for this exclusion if he or she performed in connection with covered contracts for less than 20 percent of his or her hours worked in a given workweek would be a job coach whose wages are governed by the FLSA who assists FLSA section 14(c) workers in performing work at a fast food franchise located on a military base as well as that franchisee's other restaurant locations off the base. Neither the Executive Order nor the exclusion would apply, however, to an FLSA-covered employee hired by a covered concessionaire to redesign the storefront sign for a snack shop in a national park unless the redesign of the sign was called for by the SCA contract itself or otherwise necessary to the performance of the contract.

As explained above, pursuant to this exclusion, if a covered worker performs ''in connection with'' contracts covered by the Executive Order as well as on other work that is not within the scope of the Order during a particular workweek, the worker will not be entitled to the Executive Order minimum wage for any hours worked if the number of his or her work hours spent performing in connection with the covered contract is less than 20 percent of that worker's total hours worked in that workweek. Importantly, however, this rule is only applicable if the contractor has correctly determined the hours worked and if it appears from the contractor's properly kept records or other affirmative proof that the contractor appropriately segregated the hours worked in connection with the covered contract from other work not subject to the Executive Order for that worker. *See, e.g.,* 29 CFR 4.169, 4.179. As discussed in greater detail in the preamble pertaining to rate of pay and recordkeeping requirements in §§ 10.22 and 10.26, if a covered contractor during any workweek is not exclusively engaged in performing covered contracts, or if while so engaged it has workers who spend a portion but not all of their hours worked in the workweek in performing work on or in connection with such contracts, it is necessary for the contractor to identify accurately in its records, or by other means, those periods in each such workweek when the contractor and each such worker performed work on or in connection with such contracts. *See* 29 CFR 4.179.

In the absence of records adequately segregating non-covered work from the work performed on or in connection with a covered contract, all workers working in the establishment or department where such covered work is performed will be presumed to have worked on or in connection with the contract during the period of its

performance, unless affirmative proof establishing the contrary is presented. Similarly, in the absence of such records, a worker performing any work on or in connection with the contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented. *Id.*

The quantum of affirmative proof necessary to adequately segregate non-covered work from the work performed on or in connection with a covered contract—or to establish, for example, that all of a worker's time associated with a contract was spent performing ''in connection with'' rather than ''on'' the contract—will vary with the circumstances. For example, it may require considerably less affirmative proof to satisfy the 20 percent of hours worked exclusion with respect to an FLSA-covered accounting clerk who only occasionally processes an SCA-contract-related invoice than would be necessary to establish the 20 percent of hours worked exclusion with respect to a security guard who works on a DBA-covered site at least several hours each week.

Finally, the Department notes that in calculating hours worked by a particular worker in connection with covered contracts for purposes of determining whether this exclusion may apply, contractors must determine the aggregate amount of hours worked on or in connection with covered contracts in a given workweek by that worker. For example, if an FLSA-covered administrative assistant works 40 hours per week and spends two hours each week handling payroll for each of four separate SCA contracts, the eight hours that the worker spends performing in connection with the four covered contracts must be aggregated for that workweek in order to determine whether the 20 percent of hours worked exclusion applies; in this case, the worker would be entitled to the Executive Order minimum wage for all eight hours worked in connection with the SCA contracts because such work constitutes 20 percent of her total hours worked for that workweek.

FLSA Section 14(c) Workers

The Department received numerous comments pertaining to the coverage of workers with disabilities whose wage rates are calculated pursuant to special certificates issued under section 14(c) of the FLSA. Executive Order 13658 expressly provides that its minimum wage protections extend to such workers. *See* 79 FR 9851. Many of the comments received by the Department, such as those submitted by the National Down Syndrome Congress, the American Association of People with Disabilities, the National Industries for the Blind, the National Federation of the Blind, and the State of Alaska's Governor's Council on Disabilities and Special Education, generally supported the inclusion of FLSA section 14(c) workers in the scope of the Order's coverage. A few commenters, including MVW Services, opposed the payment of the Executive Order minimum wage to workers paid pursuant to 14(c) certificates and requested that the Department exempt such workers from coverage of the Order. Comments questioning the coverage of such workers are not within the purview of this rulemaking action because the Executive Order explicitly provided that FLSA section 14(c) workers performing on or in connection with covered contracts are entitled to its protections. *See* 79 FR 9851.

The Department received many comments, including those submitted by the National Down Syndrome Congress, the Association for People Supporting EmploymentFirst (APSE), the Autism Society of America, and the World Institute on Disability, requesting that it include additional language in the contract clause set forth in Appendix A explicitly stating that workers with disabilities whose wages are calculated pursuant to special certificates issued under section 14(c) of the FLSA must be paid at least the Executive Order minimum wage (or the applicable commensurate wage rate under the certificate, if such rate is higher than the Executive Order minimum wage) for hours spent performing on or in connection with covered contracts. The Department agrees with this proposed addition to the contract clause because it helps to clarify the scope of the Executive Order's coverage and has thus made this change to the contract clause in Appendix A.

The National Association of Councils on Developmental Disabilities also suggested that the Department create a specific section of the final rule that would address all of the relevant issues regarding the coverage of FLSA section 14(c) workers. This commenter also recommended that the Department clarify that all of the contractor requirements set forth in the final rule apply with equal force to Federal contractors employing workers performing on or in connection with covered contracts pursuant to FLSA section 14(c) certificates. As noted, the Department has adopted this commenter's suggestion by creating a separate section of the preamble in the final rule addressing specific issues that were raised in comments regarding the coverage of FLSA section 14(c) workers. However, because the Department has expressly included FLSA section 14(c) workers within its definition of the term *worker* and has specifically revised the contract clause to expressly state that such workers are entitled to the Executive Order minimum wage, the Department does not believe that it is necessary to create a specific subsection of the regulatory text devoted to FLSA section 14(c) workers or the contractors that employ them. All workers performing on or in connection with covered contracts whose wages are governed by FLSA section 14(c), regardless of whether they are considered to be ''employees,'' ''clients,'' or ''consumers,'' are covered by the Executive Order (unless the 20 percent of hours worked exclusion applies). Moreover, all of the Federal contractor requirements set forth in this final rule apply with equal force to contractors employing FLSA section 14(c) workers performing on or in connection with covered contracts.

Some commenters, such as SourceAmerica, stated that they supported the payment of the Executive Order minimum wage to FLSA section 14(c) workers performing on covered contracts but also expressed concerns that such inclusion could potentially lead to a loss of employment or public benefits for those workers. A few of these commenters, like Goodwill Industries International, Inc., ACCSES, PRIDE Industries, and SourceAmerica, suggested that, in order to mitigate these potential problems, the Department should direct Federal agencies to subsidize the wage differential between the Executive Order minimum wage rate and the wage rate currently paid under the workers' FLSA section 14(c) certificate and/or direct Federal agencies to increase the funding of government contracts covered by the Order to allow disability service providers and other employers to pay the wage differential. Other commenters, such as Easter Seals, The Arc, and Goodwill Industries International, Inc., suggested that the Department implement a variety of other initiatives to mitigate potential problems, such as ensuring that all Federal contracts are designed to promote the hiring and retention of individuals with significant disabilities; annually tracking and monitoring the number of individuals with significant disabilities that may be displaced or shifted to non-Federal contract work

after implementation of the Executive Order minimum wage; or dedicating funds for on-the-job coaches, accommodations, and training to help promote the retention of workers with disabilities performing on Federal contracts.

The Department appreciates the concerns raised by these commenters regarding the potential loss of employment or reduction in public benefits that could result by requiring that the Executive Order minimum wage be paid to FLSA section 14(c) workers performing on or in connection with covered contracts, particularly with respect to workers with severe disabilities. The Department believes that many of these potential adverse employment effects will be mitigated by the economy and efficiency benefits that contractors will experience by paying their workforce, including workers with disabilities, the Executive Order minimum wage. The concerns raised by a few commenters that some workers with disabilities will lose their public benefits because, as a result of the Executive Order, they will now earn more than the statutory amount allowed (*e.g.,* their earnings will exceed the Substantial Gainful Activity limit for purposes of Social Security benefits) reflects a recognition that many workers will not experience a loss of employment or reduction in their work hours. The Department recognizes the concerns raised by commenters regarding a potential loss of public benefits that could result from application of the Executive Order minimum wage to workers receiving disability benefits, but lacks the regulatory authority to alter the criteria used by other Federal, State, and local agencies in determining eligibility for public benefits.

With respect to other commenters' suggestions that the Department could mitigate all of these potential adverse effects by engaging in a variety of different measures (*e.g.,* ordering contracting agencies to pay the resulting wage differential; ensuring that all Federal contracts are designed to promote the hiring and retention of individuals with significant disabilities; annually tracking and monitoring the number of individuals with disabilities that may be displaced or shifted to non-Federal contract work after implementation of the Executive Order; or dedicating funds for on-the-job coaches, accommodations, and training), the Department has carefully considered all of these suggestions but ultimately concludes that they are beyond the scope of the Department's rulemaking authority to implement the Executive Order.

Apprentices, Students, Interns, and Seasonal Workers

Several commenters, including AGC, Advocacy, the Chamber/NFIB, and ABC, expressed confusion regarding whether the Executive Order minimum wage requirements apply to apprentices. Several of these commenters opposed the payment of the Executive Order minimum wage to apprentices. The Chamber/NFIB, for example, argued that apprentices should not be covered because it would be ''inconsistent with the way apprentices have been treated and will reduce or eliminate the financial advantage of using them, thus damaging their ability to get the necessary experience to complete their training.''

The Department's proposed rule explained that individuals who are employed on an SCA- or DBA-covered contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are entitled to the Executive Order minimum wage for the hours they spend working on covered contracts. *See* 79 FR 34577. The NPRM further explained, however, that apprentices whose wages are calculated pursuant to special certificates issued under section 14(a) of the FLSA are not entitled to the Executive Order minimum wage. *See* 79 FR 34579.

After careful review of the comments received, the Department has decided to adopt its proposed interpretation that DBA- and SCA-covered apprentices are subject to the Executive Order but that workers whose wages are governed by special subminimum wage certificates under FLSA sections 14(a) and (b) are excluded from the Order. With respect to a few commenters' confusion regarding the coverage of apprentices, the Department notes that the vast majority of apprentices employed by contractors on covered contracts will be individuals who are registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. Such apprentices are entitled to receive the full Executive Order minimum wage for all hours worked. The Executive Order directs that the minimum wage applies to workers performing on or in connection with a covered contract whose wages are governed by the DBA and the SCA. Moreover, the Department believes that the Federal Government's interests in economy and efficiency are best promoted by extending coverage of the Order to apprentices covered by the DBA and the SCA.

However, the Department interprets the plain language of the Executive Order as excluding workers whose wages are governed by FLSA sections 14(a) and (b) subminimum wage certificates (*i.e.,* FLSA-covered apprentices, learners, messengers, and full-time students). The Order expressly states that the minimum wage must ''be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).'' 79 FR 9851. The Department believes that the explicit inclusion of FLSA section 14(c) workers reflects an intent to omit from coverage workers whose wages are calculated pursuant to special certificates issued under FLSA sections 14(a) and (b). Accordingly, the Department has adopted this proposed exclusion in the final rule.

With respect to other comments received regarding particular categories of workers, Advocacy commented that its members in the recreation and hospitality industry need clarification as to whether seasonal workers and students are covered by the Executive Order and this part. It also stated that the Alliance for International Educational and Cultural Exchange seeks clarification as to whether the Executive Order minimum wage applies to exchange students performing seasonal work in camps and restaurants located in National Parks. Advocacy further noted that a small camp would like for the Department to clarify whether this rule applies to their summer employees who are college graduates and graduate students that provide educational programming for a set summer rate, particularly in light of the adverse economic effects that the camp anticipates if this rule applies to it. EAP Lifestyle Management, LLC similarly requested clarification as to whether the Executive Order applies to students and interns.

The Department's proposed rule did not contain a general exclusion for seasonal workers or students. However, except with respect to workers who are otherwise covered by the SCA or the DBA, the proposed rule stated that this part does not apply to employees who are not entitled to the minimum wage set forth at 29 U.S.C. 206(a)(1) of the FLSA pursuant to 29 U.S.C. 213(a) and 214(a)–(b). Pursuant to this exclusion,

the Executive Order does not apply to full-time students whose wages are calculated pursuant to special certificates issued under section 14(b) of the FLSA, unless they are otherwise covered by the DBA or SCA. The exclusion would also apply to employees employed by certain seasonal and recreational establishments pursuant to 29 U.S.C. 213(a)(3).

Because the Department does not know the specific details regarding the types of seasonal workers and students employed by the small businesses mentioned in the above comments, the Department cannot opine on whether such workers are covered. Such commenters are encouraged to contact the Wage and Hour Division as necessary for compliance assistance in determining their rights and obligations under the Executive Order. Insofar as these commenters are generally requesting that the Department exclude such workers because of the alleged financial hardships that will result, the Department disagrees with these assertions and finds that they are insufficiently persuasive or unique to warrant creation of a broad exclusion for all seasonal workers or students. Notably, such assertions fail to account for the economy and efficiency benefits that the Department anticipates contractors will realize by paying their workers, including students and seasonal workers, the Executive Order minimum wage rate.

Scope of Department's Rulemaking Authority Regarding Worker Coverage

The ABC commented on the Department's proposed interpretation of workers covered by the Executive Order, stating that in order to ''avoid . . . unnecessary confusion'' and to ''preserve comity with both the governing statutes and the Department's own DBA and SCA rules,'' the Department should preserve all current DBA and SCA wage determinations and limit coverage of this part solely to employees who are *not* performing work covered by the DBA or the SCA. ABC asserted that section 4 of the Order instructs the Department to incorporate existing definitions, procedures, and processes under the DBA, the SCA, and the FLSA and thus ''confer[s] upon the Department all the discretion necessary to decline to enforce the Executive Order in a manner that is inconsistent with Congressional authority (i.e., by declining to set a new minimum wage for any employee covered by the DBA, SCA or FLSA that differs from the Congressionally mandated minimum wages under the foregoing statutes).''

The Department strongly disagrees with ABC's comment on the scope of its rulemaking authority and, in any event, declines to implement the truly sweeping limitation on worker coverage suggested by ABC. Section 4(a) of the Executive Order must be read in harmony with the entire Order, particularly with sections 1 and 7. When read as a whole, the Executive Order clearly does not confer authority on the Department to essentially nullify the policy, premise, and basic coverage protections of the Order, as suggested by ABC, by declining to extend the Executive Order minimum wage to any worker covered by the FLSA, SCA, or DBA that differs from the applicable minimum wages established under those statutes. As ABC recognizes, the FLSA, SCA and DBA set ''minimum'' wages, and thus it is not inconsistent with these wage floors to establish a higher minimum wage rate. Moreover, ABC's proposal is inconsistent with nearly every other comment received on worker coverage under the Executive Order. The Department thus reaffirms its conclusion that the Executive Order minimum wage must be paid to all workers performing on or in connection with covered contracts whose wages are governed by the FLSA, the SCA, or the DBA, unless specifically exempted; as explained in the Executive Order and throughout this part, the Federal Government's interests in economy and efficiency are best promoted through the broad inclusion of all such workers.

Geographic Scope

Finally, proposed § 10.3(c) provided that the Executive Order and this part only apply to contracts with the Federal Government requiring performance in whole or in part within the United States. This interpretation was similarly reflected in the Department's proposed definition of the term *United States,* which provided that when used in a geographic sense, the *United States* means the 50 States and the District of Columbia. Under this approach, the minimum wage requirements of the Executive Order and this part would not apply to contracts with the Federal Government to be performed in their entirety outside the geographical limits of the United States as thus defined. However, if a contract with the Federal Government is to be performed in part within and in part outside these geographical limits and is otherwise covered by the Executive Order and this part, the minimum wage requirements of the Order and this part would apply with respect to that part of the contract that is performed within these geographical limits. This proposed approach was consistent with the SCA's regulations. *See* 29 CFR 4.112(b).

The PSC commented that it supports proposed § 10.3(c), but noted that the preamble discussion of the geographic scope of the rule was more clear than the regulatory text itself. Specifically, the PSC stated that the regulatory text should reflect the preamble's discussion that, if a contract with the Federal Government is to be performed in part within and in part outside the United States and is otherwise covered by the Executive Order and this part, the minimum wage requirements apply only with respect to that portion of the contract that is performed within the United States. The Department agrees with this proposed change because it improves clarity of the regulatory text and will assist the regulated community in obtaining and maintaining compliance with the final rule. Accordingly, the Department has amended § 10.3(c) to reflect this change.

Section 10.4 Exclusions

Proposed § 10.4 addressed and implemented the exclusionary provisions expressly set forth in section 7(f) of Executive Order 13658 and provided other limited exclusions to coverage as authorized by section 4(a) of the Executive Order. *See* 79 FR 9852–53. Specifically, proposed §§ 10.4(a)–(d) set forth the limited categories of contractual arrangements for services or construction that are excluded from the minimum wage requirements of the Executive Order and this part, while proposed § 10.4(e) established narrow categories of workers that are excluded from coverage of the Order and this part. Each of these proposed exclusions is discussed below.

Proposed § 10.4(a) implemented section 7(f) of Executive Order 13658, which states that the Order does not apply to ''grants.'' 79 FR 9853. The Department interpreted this provision to mean that the minimum wage requirements of the Executive Order and this part do not apply to grants, as that term is used in the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.* That statute defines a ''grant agreement'' as ''the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—(1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States

Government; and (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' 31 U.S.C. 6304. Section 2.101 of the FAR similarly excludes ''grants,'' as defined in the Federal Grant and Cooperative Agreement Act, from its coverage of contracts. 48 CFR 2.101. Several appellate courts have similarly adopted this construction of ''grants'' in defining the term for purposes of other Federal statutory schemes. *See, e.g., Chem. Service, Inc.* v. *Environmental Monitoring Systems Laboratory,* 12 F.3d 1256, 1258 (3rd Cir. 1993) (applying same definition of ''grants'' for purposes of 15 U.S.C. 3710a); *East Arkansas Legal Services* v. *Legal Services Corp.,* 742 F.2d 1472, 1478 (D.C. Cir. 1984) (applying same definition of ''grants'' in interpreting 42 U.S.C. 2996a). If a contract or contract-like instrument qualifies as a grant within the meaning of the Federal Grant and Cooperative Agreement Act, it would thereby be excluded from coverage of Executive Order 13658 and this part pursuant to the proposed rule. The Department did not receive any comments on this provision and thus implements it as proposed.

Proposed § 10.4(b) implemented the other exclusion set forth in section 7(f) of Executive Order 13658, which states that the Order does not apply to ''contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended.'' 79 FR 9853. The Department did not receive any comments on this provision; accordingly, it is adopted as set forth in the NPRM.

The remaining exclusionary provisions of the proposed rule were derived from the authority granted to the Secretary pursuant to section 4(a) of the Executive Order to ''provid[e] exclusions from the requirements set forth in this order where appropriate'' in implementing regulations. 79 FR 9852. In issuing such regulations, the Executive Order instructs the Secretary to ''incorporate existing definitions'' under the FLSA, SCA, and DBA ''to the extent practicable.'' *Id.* Accordingly, the proposed exclusions discussed below incorporated existing applicable statutory and regulatory exclusions and exemptions set forth in the FLSA, SCA, and DBA.

As discussed in the coverage section above, the Department proposed to interpret section 7(d)(i)(A) of the Executive Order, which states that the Order applies to ''procurement contract[s] for . . . construction,'' 79 FR 9853, as referring to any contract covered by the DBA, as amended, and its implementing regulations. *See* proposed § 10.3(a)(1)(i). In order to provide further definitional clarity to the regulated community for purposes of proposed § 10.3(a)(1)(i), the Department thus established in proposed § 10.4(c) that any procurement contracts for construction that are not subject to the DBA are similarly excluded from coverage of the Executive Order and this part. To assist all interested parties in understanding their rights and obligations under Executive Order 13658, the Department proposed to make coverage of construction contracts under the Executive Order and this part consistent with coverage under the DBA to the greatest extent possible. No comments were submitted on proposed § 10.4(c) and it is thus adopted as proposed.

Similarly, the Department proposed to implement the coverage provisions set forth in sections 7(d)(i)(A) and (B) of the Executive Order, which state that the Order applies respectively to a ''procurement contract for services'' and a ''contract or contract-like instrument for services covered by the Service Contract Act,'' 79 FR 9853, by providing that the requirements of the Order apply to all service contracts covered by the SCA. *See* proposed § 10.3(a)(1)(ii). Proposed § 10.4(d) provided additional clarification by incorporating, where appropriate, the SCA's exclusion of certain service contracts into the exclusionary provisions of the Executive Order. This proposed provision excluded from coverage of the Executive Order and this part any contracts for services, except for those expressly covered by proposed § 10.3(a)(1)(ii)–(iv), that are exempted from coverage under the SCA. The SCA specifically exempts from coverage seven types of contracts (or work) that might otherwise be subject to its requirements. *See* 41 U.S.C. 6702(b). Pursuant to this statutory provision, the SCA expressly does not apply to (1) a contract of the Federal Government or the District of Columbia for the construction, alteration, or repair, including painting and decorating, of public buildings or public works; (2) any work required to be done in accordance with chapter 65 of title 41; (3) a contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect; (4) a contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934, 47 U.S.C. 151 *et seq.;* (5) a contract for public utility services, including electric light and power, water, steam, and gas; (6) an employment contract providing for direct services to a Federal agency by an individual; or (7) a contract with the United States Postal Service, the principal purpose of which is the operation of postal contract stations. *Id.; see* 29 CFR 4.115–4.122; WHD FOH ¶ 14c00.

The SCA also authorizes the Secretary to ''provide reasonable limitations'' and to ''prescribe regulations allowing reasonable variation, tolerances, and exemptions with respect to this chapter . . . but only in special circumstances where the Secretary determines that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Federal Government business, and is in accord with the remedial purpose of this chapter to protect prevailing labor standards.'' 41 U.S.C. 6707(b); *see* 29 CFR 4.123. Pursuant to this authority, the Secretary has exempted a specific list of contracts from SCA coverage to the extent regulatory criteria for exclusion from coverage are satisfied as provided at 29 CFR 4.123(d) and (e). To assist all interested parties in understanding their rights and obligations under Executive Order 13658, the Department proposed to make coverage of service contracts under the Executive Order and this part consistent with coverage under the SCA to the greatest extent possible.

Therefore, the Department provided in proposed § 10.4(d) that contracts for services that are exempt from SCA coverage pursuant to its statutory language or implementing regulations are not subject to this part unless expressly included by proposed § 10.3(a)(1)(ii)–(iv). For example, the SCA exempts contracts for public utility services, including electric light and power, water, steam, and gas, from its coverage. *See* 41 U.S.C. 6702(b)(5); 29 CFR 4.120. Such contracts would also be excluded from coverage of the Executive Order and this part under the proposed rule. Similarly, certain contracts principally for the maintenance, calibration, or repair of automated data processing equipment and office information/word processing systems are exempted from SCA coverage pursuant to the SCA's implementing regulations at 29 CFR 4.123(e)(1)(i)(A); such contracts would thus not be covered by the Executive Order or the proposed rule. However, certain types of concessions contracts are excluded from SCA coverage

pursuant to 29 CFR 4.133(b) but are explicitly covered by the Executive Order and this part under proposed § 10.3(a)(1)(iii). 79 FR 9853. Moreover, to the extent that a contract is excluded from SCA coverage but subject to the DBA (*e.g.,* a contract with the Federal Government for the construction, alteration, or repair, including painting and decorating, of public buildings or public works that would be excluded from the SCA under 41 U.S.C. 6702(b)(1)), such a contract would be covered by the Executive Order and this part as a ''procurement contract for . . . construction.'' 79 FR 9853; proposed § 10.3(a)(1)(i).

The Department received a few comments on its proposed exclusion set forth at § 10.4(d). The Association/IFA criticized the language in proposed § 10.4(d) as ''circular and unnecessarily confusing.'' It argued that, by referencing § 10.3(a)(1)(ii), the Department's description of the exclusion in this provision actually reads: ''Service contracts, except for those [contracts for services covered by the SCA], that are exempt from coverage of the Service Contract Act pursuant to its statutory language or implementing regulations are not subject to this part.'' The Association/IFA stated that this circular construction cannot be what was intended by the Department because, as drafted, it appears to state that all covered service contracts are excluded from the use of exemptions and thus that there are no exemptions. The Association/IFA thus suggested that the Department rewrite proposed § 10.4(d) to clarify that, with the exception of concessions contracts, all of the SCA's exemptions are applicable to the Executive Order. It also requested that the Department include within the regulatory text a specific citation to those exemptions. Ogletree Deakins also requested that the Department insert specific citations to the SCA's statutory and regulatory text of the final rule.

The Department agrees with the Association/IFA's comment regarding the need for clarification of the scope of § 10.4(d) and clarifies that all of the SCA's exemptions are applicable to the Executive Order, unless such SCA-exempted contracts are otherwise covered by the Executive Order and this final rule (*e.g.,* they qualify as concessions contracts or contracts in connection with Federal land and related to offering services). Accordingly, the Department has modified the regulatory text of § 10.4(d) by deleting the reference to § 10.3(a)(1)(ii). The Department also agrees with the suggestion made by the Association/IFA and Ogletree Deakins and has added specific citations to the SCA exemptions to the regulatory text to better assist the regulated community in understanding its obligations and rights under the Executive Order. The Department notes that subregulatory and other coverage determinations made by the Department for purposes of the SCA will also govern whether a contract is covered by the SCA for purposes of the Executive Order.

The Department proposed to provide in § 10.4(e) that, except for workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) and workers who are otherwise covered by the SCA or DBA, employees who are exempt from the minimum wage protections of the FLSA under 29 U.S.C. 213(a) are similarly not subject to the minimum wage protections of Executive Order 13658 and this part. Proposed §§ 10.4(e)(1)–(3), which are discussed briefly below, highlighted some of the narrow categories of employees that are not entitled to the minimum wage protections of the Order and this part pursuant to this exclusion.

Proposed §§ 10.4(e)(1) and (2) specifically excluded from the requirements of Executive Order 13658 and this part workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a) and (b). Specifically, proposed § 10.4(e)(1) excluded from coverage learners, apprentices, or messengers employed under special certificates pursuant to 29 U.S.C. 214(a). *Id.; see* 29 CFR part 520. Proposed § 10.4(e)(2) also excluded from coverage full-time students employed under special certificates issued under 29 U.S.C. 214(b). *Id.; see* 29 CFR part 519. Proposed § 10.4(e)(3) provided that the Executive Order and this part do not apply to individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in 29 CFR part 541. This proposed exclusion was consistent with the FLSA, SCA, and DBA and their implementing regulations. *See, e.g.,* 29 U.S.C. 213(a)(1) (FLSA); 41 U.S.C. 6701(3)(C) (SCA); 29 CFR 5.2(m) (DBA).

Because the Department did not receive any comments requesting revisions to proposed § 10.4(e), the Department adopts the provision as proposed.

For reasons discussed earlier, § 10.4 now includes an explicit exclusion for FLSA-covered workers performing ''in connection with'' covered contracts for less than 20 percent of their hours worked in a given workweek. This new exclusion at § 10.4(f) is explained in greater detail in the preamble for § 10.3 discussing this part's coverage of workers ''performing on or in connection with'' covered contracts.

Section 10.5 Executive Order 13658 Minimum Wage for Federal Contractors and Subcontractors

Proposed § 10.5 set forth the minimum wage rate requirement for Federal contractors and subcontractors established in Executive Order 13658. *See* 79 FR 9851–52. This section generally discussed the minimum hourly wage protections provided by the Executive Order for workers performing on covered contracts with the Federal Government, as well as the methodology that the Secretary will utilize for determining the applicable minimum wage rate under the Executive Order on an annual basis beginning at least 90 days before January 1, 2016. The Executive Order provides that the minimum wage beginning January 1, 2016, and annually thereafter, will be an amount determined by the Secretary. It further provides that such rates be increased by the annual percentage increase in the CPI for the most recent month, quarter, or year available as determined by the Secretary. The Secretary proposed to base such increases on the most recent year available to minimize the impact of seasonal fluctuations on the Executive Order minimum wage rate. This section emphasized that nothing in the Executive Order or this part shall excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Executive Order and this part. *See* 79 FR 9851. This section has been retained in the final rule as proposed.

Section 10.6 Antiretaliation

Proposed § 10.6 established an antiretaliation provision stating that it shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or this part, or has testified or is about to testify in any such proceeding. This language was derived from the FLSA's antiretaliation provision set forth at 29 U.S.C. 215(a)(3) and was consistent with the Executive Order's direction to adopt enforcement mechanisms as consistent as practicable with the FLSA, SCA, or DBA. As explained in the NPRM, the Department believes that such a provision will help

ensure effective enforcement of Executive Order 13658. Consistent with the Supreme Court's observation in interpreting the scope of the FLSA's antiretaliation provision, enforcement of Executive Order 13658 will depend ''upon information and complaints received from employees seeking to vindicate rights claimed to have been denied.'' *Kasten* v. *Saint-Gobain Performance Plastics Corp.,* 131 S. Ct. 1325, 1333 (2011) (internal quotation marks omitted). Accordingly, the Department proposed to include an antiretaliation provision based on the FLSA's antiretaliation provision. *See* 29 U.S.C. 215(a)(3). Importantly, and consistent with the Supreme Court's interpretation of the FLSA's antiretaliation provision, the Department's proposed rule would protect workers who file oral as well as written complaints. *See Kasten,* 131 S. Ct. at 1336.

Moreover, as under the FLSA, the proposed antiretaliation provision under this part would protect workers who complain to the Department as well as those who complain internally to their employers about alleged violations of the Order or this part. *See, e.g., Minor* v. *Bostwick Laboratories,* 669 F.3d 428, 438 (4th Cir. 2012); *Hagan* v. *Echostar Satellite, LLC,* 529 F.3d 617, 626 (5th Cir. 2008); *Lambert* v. *Ackerley,* 180 F.3d 997, 1008 (9th Cir. 1999) (en banc); *Valerio* v. *Putnam Associates,* 173 F.3d 35, 43 (1st Cir. 1999); *EEOC* v. *Romeo Community Sch.,* 976 F.2d 985, 989 (6th Cir. 1992). The Department also noted that the antiretaliation provision set forth in the proposed rule, like the FLSA's antiretaliation provision, would apply in situations where there is no current employment relationship between the parties; for example, it would protect a worker from retaliation by a prospective or former employer.

Several commenters, including the Building Trades, Demos, the AFL–CIO, the EEAC, and the PSC, expressed their general support for the Department's inclusion of an antiretaliation provision in the rule. The AFL–CIO particularly supported the Department's statement that the proposed antiretaliation provision would extend to protect workers who file oral as well as written complaints because such an interpretation is appropriate and consistent with Supreme Court precedent.

The PSC and the EEAC commented, however, that the preamble discussion of the NPRM stated that this protection would apply where there is no current employment relationship (*e.g.,* retaliation by ''a prospective or former employer''). The PSC, the Association/IFA, and the EEAC questioned whether current case law permits such coverage because some courts have determined that prospective employees cannot bring an antiretaliation claim under the FLSA. The EEAC further commented that the Supreme Court has never held that the FLSA's antiretaliation provision extends to internal complaints and urged the Department to interpret the antiretaliation provision in the final rule consistently with interpretations under the FLSA.

The Department appreciates the general support for its inclusion of an antiretaliation provision reflected in the comments received on the proposed rule and continues to believe that the antiretaliation provision serves an important purpose in effectuating and enforcing the Executive Order. With respect to the comments received regarding the scope of this provision, the Executive Order's antiretaliation provision is intended to mirror the scope of the FLSA's antiretaliation provision, as interpreted by the Department. The Department regards the FLSA's antiretaliation provision as extending to job applicants and internal complaints, and the NPRM and this final rule reflect this interpretation as well. At the same time, the Department recognizes, for example, that the U.S. Court of Appeals for the Fourth Circuit has disagreed with its interpretation with respect to the coverage of job applicants, *see Dellinger* v. *Science Applications Int'l Corp.,* 649 F.3d 226 (4th Cir. 2011), and the Department therefore would not enforce its interpretation on this issue in that circuit. To the extent that application of the FLSA's antiretaliation provision to job applicants or internal complaints is definitively resolved through the judicial process by the Supreme Court or otherwise, the Department would interpret the antiretaliation provision under the Executive Order in accordance with such precedent. The Department adopts § 10.6 as proposed without modification.

Section 10.7 Waiver of Rights

Proposed § 10.7 provided that workers cannot waive, nor may contractors induce workers to waive, their rights under Executive Order 13658 or this part. The Supreme Court has consistently concluded that an employee's rights and remedies under the FLSA, including payment of minimum wage and back wages, cannot be waived or abridged by contract. *See, e.g., Tony & Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 302 (1985); *Barrentine* v. *Arkansas-Best Freight Sys., Inc.,* 450 U.S. 728, 740 (1981); *D.A. Schulte, Inc.* v. *Gangi,* 328 U.S. 108, 112–16 (1946); *Brooklyn Sav. Bank* v. *O'Neil,* 324 U.S. 697, 706–07 (1945). The Supreme Court has reasoned that the FLSA was intended to establish a ''uniform national policy of guaranteeing compensation for all work'' performed by covered employees. *Jewell Ridge Coal Corp.* v. *Local No. 6167, United Mine Workers,* 325 U.S. 161, 167 (1945) (internal quotation marks omitted). Consequently, the Court has held that ''[a]ny custom or contract falling short of that basic policy, like an agreement to pay less than the minimum wage requirements, cannot be utilized to deprive employees of their statutory rights.'' *Id.* (internal quotation marks omitted). In *Barrentine,* the Supreme Court reaffirmed the ''nonwaivable nature'' of these fundamental FLSA protections and stated that ''FLSA rights cannot be abridged by contract or otherwise waived because this would 'nullify the purposes' of the statute and thwart the legislative policies it was designed to effectuate.'' 450 U.S. at 740 (quoting *Brooklyn Sav. Bank,* 324 U.S. at 707). Moreover, FLSA rights are not subject to waiver because they serve an important public interest by protecting employers against unfair methods of competition in the national economy. *See Tony & Susan Alamo Found.,* 471 U.S. at 302. Releases and waivers executed by employees for unpaid wages (and fringe benefits) due them under the SCA are similarly without legal effect. 29 CFR 4.187(d). Because the public policy interests underlying the issuance of the Executive Order would be similarly thwarted by permitting workers to waive, or contractors to induce workers to waive, their rights under Executive Order 13658 or this part, proposed § 10.7 made clear that such waiver of rights is impermissible.

The Department received a number of comments, including comments submitted by Demos and the AFL–CIO, expressing support for the Department's proposed prohibition on waiver of rights. The Department did not receive any comments opposing this provision. Section 10.7 of this part is adopted as proposed.

Subpart B—Federal Government Requirements

In the NPRM, the Department proposed subpart B of part 10 to establish the requirements for the Federal Government to implement and comply with Executive Order 13658. The Department proposed § 10.11 to address contracting agency requirements and proposed § 10.12 to

address the requirements placed upon the Department.

Section 10.11 Contracting Agency Requirements

Proposed § 10.11(a) implemented section 2 of Executive Order 13658, which directs that executive departments and agencies must include a contract clause in any new contracts or solicitations for contracts covered by the Executive Order. 79 FR 34580. The proposed section described the basic function of the contract clause, which is to require that workers performing work on or in connection with covered contracts be paid the applicable Executive Order minimum wage. The proposed section stated that for all contracts subject to Executive Order 13658, except for procurement contracts subject to the FAR, the contracting agency must include the Executive Order minimum wage contract clause set forth in Appendix A of this part in all covered contracts and solicitations for such contracts, as described in § 10.3. It further stated that the required contract clause directs, as a condition of payment, that all workers performing work on or in connection with covered contracts must be paid the applicable, currently effective minimum wage under Executive Order 13658 and § 10.5. The proposed section additionally provided that for procurement contracts subject to the FAR, contracting agencies must use the clause that will be set forth in the FAR to implement this rule. The FAR clause will accomplish the same purposes as the clause set forth in Appendix A and be consistent with the requirements set forth in this rule.

Two commenters, the NILG and the EEAC, requested that the Department allow for incorporation of the contract clause by reference. The NILG suggested that the length of the clause rendered it burdensome and environmentally unfriendly to incorporate in its entirety, while the EEAC asserted that ''the utility of including such a detailed clause in each and every contract and contract-like instrument is questionable.''

Including the full contract clause in a covered contract is an effective and practical means of ensuring that contractors receive notice of their obligations under the Executive Order and this final rule, and the Department therefore prefers that covered contracts include the contract clause in full. At the same time, there will be instances in which a contracting agency, or a contractor, does not include the entire contract clause verbatim in a covered contract, but the facts and circumstances establish that the contracting agency, or contractor, sufficiently apprised a prime or lower-tier contractor that the Executive Order and its requirements apply to the contract. It will be appropriate to find in such circumstances that the full contract clause has been properly incorporated by reference. *See Nat'l Electro-Coatings, Inc.* v. *Brock,* Case No. C86–2188, 1988 WL 125784 (N.D. Ohio 1988); *In the Matter of Progressive Design & Build, Inc.,* WAB Case No. 87–31, 1990 WL 484308 (WAB Feb. 21, 1990). The Department notes, for example, that the full contract clause will be deemed to have been incorporated by reference in a covered contract if the contract provides that ''Executive Order 13658—Establishing a Minimum Wage for Contractors, and its implementing regulations, including the applicable contract clause, are incorporated by reference into this contract as if fully set forth in this contract,'' with a citation to a Web page that contains the contract clause in full, to the provision of the Code of Federal Regulations containing the contract clause set forth at Appendix A of this part, or to the provision of the FAR containing the contract clause promulgated by the FARC to implement this rule.

The EEAC questioned how parties might include a contract clause in a verbal agreement. The Department anticipates that the vast majority of covered contracts will be written. However, the Department's decision to include verbal agreements as part of its definition of the term ''contract'' derives from the SCA's regulations. *See* 29 CFR 4.110. Under the SCA, a contract may be embodied in a verbal agreement, *see id.,* notwithstanding the regulatory obligation to include the SCA contract clause found at 29 CFR 4.6 in the contract. The purpose of including verbal agreements in the definition of contract and contract-like instrument is to ensure that the Executive Order's minimum wage protections apply in instances where the contracting parties, for whatever reason, rely on a verbal rather than written contract. As noted, such instances are likely to be exceedingly rare, but workers should not be deprived of the Executive Order's minimum wage because contracting parties neglected to memorialize their understanding in a written contract.

The Department of Defense (DoD) commented that the proposed clause is ''inefficient as portions are duplicative with other NAF [non-appropriated fund] clauses, and any modifications would require a change to the CFR.'' This commenter expressed their view that ''[n]owhere else in the CFR are clauses mandated for use by NAFIs [non-appropriated fund instrumentalities], and they should not be in this [part].'' The DoD requested that rather than requiring contracting agencies to incorporate the contract clause prescribed in the NPRM, the Department should permit contracting agencies to create and incorporate their own contract clause into covered contracts. As discussed more fully later in this preamble, the Department believes requiring non-procurement contractors potentially to become familiar with distinct Executive Order contract clauses whenever they contract with more than one Federal agency, as opposed to the single, uniform clause attached as Appendix A, imposes on them an unnecessary inconvenience and burden. The Department additionally believes that requiring such contractors to use multiple contract clauses could result in confusion, potentially undercutting the Department's mandate under the Executive Order to adopt regulations that obtain compliance with the Order. Therefore, the Department is not adopting the DoD's request to allow contracting agencies that enter into non-procurement contracts subject to the Executive Order to create their own contract clauses.

Upon careful review and consideration of the comments, the Department has accordingly decided to adopt § 10.11(a) as proposed, except that the Department has made a technical modification to the section's first sentence. As discussed more fully later in this preamble with respect to the contract clause, the sentence retains the same meaning as in the NPRM by requiring the contracting agency to include the Executive Order minimum wage contract clause set forth in Appendix A of this part in all covered contracts and solicitations for such contracts, as described in § 10.3, except for procurement contracts subject to the FAR. For procurement contracts subject to the FAR, contracting agencies shall use the clause set forth in the FAR developed to implement this rule; that clause must both accomplish the same purposes as the clause set forth in Appendix A and be consistent with the requirements set forth in this rule.

Proposed § 10.11(b) stated the consequences in the event that a contracting agency fails to include the contract clause in a covered contract. Proposed § 10.11(b) provided that if a contracting agency made an erroneous determination that Executive Order 13658 or this part did not apply to a particular contract or failed to include the applicable contract clause in a contract to which the Executive Order

applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department, must include the clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed. The Department noted in the NPRM that the Administrator possesses analogous authority under the DBA, *see* 29 CFR 1.6(f), and it believed a similar mechanism for addressing an agency's failure to include the contract clause in a contract subject to the Executive Order would enhance its ability to obtain compliance with the Executive Order.

Some commenters, including the Association/IFA, the EEAC, and the NILG, expressed concern that contractors might have to absorb costs associated with retroactive enforcement of a contract clause that should have been originally inserted by the contracting agency. The commenters expressed the view that it would be unfair to hold contractors financially responsible under such circumstances, and pointed to existing language under the regulations implementing the SCA and DBA that they asserted provide for reimbursement of contractors where the contracting agency fails to include an appropriate wage determination under those statutes. *See* 29 CFR 4.5 (SCA) (permitting contracting agencies to exercise their authority ''where necessary . . . to pay any necessary additional costs''); 29 CFR 1.6(f) (DBA) (authorizing retroactive incorporation of an omitted wage determination ''provided that the contractor is compensated for any increases in wages resulting from such change''). Upon further consideration of this issue, the Department agrees that a contractor is entitled to an adjustment where necessary to pay any necessary additional costs when a contracting agency initially omits and then subsequently includes the contract clause in a covered contract. This approach, which is consistent with the SCA's implementing regulations, *see* 29 CFR 4.5(c), is therefore reflected in revised § 10.44(e). The Department recognizes that the mechanics of providing such an adjustment may differ between covered procurement contracts and the non-procurement contracts that the Department's contract clause covers. With respect to covered non-procurement contracts, the Department believes that the authority conferred on agencies that enter into such contracts under section 4(b) of the Executive Order includes the authority to provide such an adjustment. The Department notes that such an adjustment is not warranted under the Executive Order or this part when a contracting agency includes the applicable Executive Order contract clause but fails to include an applicable SCA or DBA wage determination. This final rule requires inclusion of a contract clause, not a wage determination, in covered contracts; thus, unlike the DBA's regulations at 29 CFR 1.6(f), it is a contracting agency's failure to include the required contract clause, not a failure to include a wage determination, that triggers the entitlement to an adjustment as described in this paragraph.

Aside from the insertion of this language in the event that a contracting agency fails to include the applicable contract clause in a covered contract, § 10.11(b) is adopted as originally proposed.

Proposed § 10.11(c) addressed the obligations of a contracting agency in the event that the contract clause has been included in a covered contract but the contractor may not have complied with its obligations under the Executive Order or this part. Specifically, proposed § 10.11(c) provided that the contracting agency must, upon its own action or upon written request of an authorized representative of the Department, withhold or cause to be withheld from the prime contractor under the contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be necessary to pay workers the full amount of wages required by the Executive Order. Both the SCA and DBA provide for withholding to ensure the availability of monies for the payment of back wages to covered workers when a contractor or subcontractor has failed to pay the full amount of required wages. 29 CFR 4.6(i); 29 CFR 5.5(a)(2). Withholding likewise is an appropriate remedy under the Executive Order for all covered contracts because the Order directs the Department to adopt SCA and DBA enforcement processes to the extent practicable and to exercise authority to obtain compliance with the Order. 79 FR 9852. Consistent with withholding procedures under the SCA and DBA, proposed § 10.11(c) allowed the contracting agency and the Department to withhold or cause to be withheld funds from the prime contractor not only under the contract on which covered workers were not paid the Executive Order minimum wage, but also under any other contract that the prime contractor has entered into with the Federal Government. Finally, the NPRM noted that a withholding remedy is consistent with the requirement in section 2(a) of the Executive Order that compliance with the specified obligations is an express ''condition of payment'' to a contractor or subcontractor. 79 FR 9851. The Department received no substantive comments on proposed § 10.11(c) and adopts the regulation as proposed.

Proposed § 10.11(d) described a contracting agency's responsibility to forward to the WHD any complaint alleging a contractor's non-compliance with Executive Order 13658, as well as any information related to the complaint. Although the Department proposed in § 10.41 that complaints be filed with the WHD rather than with contracting agencies, the Department recognizes that some workers or other interested parties nonetheless may file formal or informal complaints concerning alleged violations of the Executive Order or this part with contracting agencies. Proposed § 10.11(d) therefore specifically required the contracting agency to transmit the complaint-related information identified in § 10.11(d)(1)(ii)(A)–(E) to the WHD's Branch of Government Contracts Enforcement within 14 calendar days of receipt of a complaint alleging a violation of the Executive Order or this part, or within 14 calendar days of being contacted by the WHD regarding any such complaint. This language is substantially similar to an analogous provision in the Department's regulations implementing Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts. *See* 29 CFR 9.11(d). The Department explained that it believes adoption of the language in proposed § 10.11(d), which includes an obligation to send such complaint-related information to WHD even absent a specific request (*e.g.,* when a complaint is filed with a contracting agency rather than with the WHD), is appropriate because prompt receipt of such information from the relevant contracting agency will allow the Department to fulfill its charge under the Order to implement enforcement mechanisms for obtaining compliance with the Order. 79 FR 9852.

NELP commended the Department for specifying that contracting agencies must report all complaint-related information to the WHD's Branch of Government Contract Enforcement within 14 days of receipt of a complaint. The FS sought confirmation that if it receives a complaint regarding payment of wages under the contract clause, it should refer that complaint to the Department. This confirms that

contracting agencies must refer all complaints lodged under the Executive Order to the Department in accordance with the procedures described in § 10.11(d). This further confirms that the Department will process the complaint received and will notify the contractor and the contracting agency should it be necessary for either or both to take corrective action. No comments were received in opposition to proposed § 10.11(d) and the Department therefore adopts § 10.11(d) as proposed.

Section 10.12 Department of Labor Requirements

Proposed § 10.12 addressed the Department's requirements under the Executive Order. The Order requires the Secretary to establish a minimum wage that contractors must pay to workers on covered contracts. 79 FR 9851. Proposed § 10.12(a) set forth the Secretary's obligation to establish the Executive Order minimum wage on an annual basis in accordance with the Order. No comments were received regarding proposed § 10.12(a) and the Department thus adopts the regulation as proposed.

Proposed § 10.12(b) explained that the Secretary will determine the applicable minimum wages on an annual basis by utilizing the method set forth in proposed § 10.5(b). The AOA commented on this provision, contending that ''[a]llowing the Secretary of Labor to set and raise the minimum wage annually for businesses included under the Proposed Rule (presumably raising it consistent with the CPI) will present significant complications for members of our industry.'' The commenter expressed concern about contractors' ability to forecast and adjust prices. The Department has carefully considered the comment and has decided to adopt § 10.12(b) as proposed. As discussed in greater detail in the preamble section for § 10.22, contractors concerned about potential increases in the minimum wage provided under the Executive Order may consult the CPI–W, which the Federal Government publishes monthly, to monitor the likely magnitude of the annual increase. Furthermore, the Department has decided to include language in the required contract clause (provided in Appendix A of this part) that, if appropriate, requires contractors to be compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order minimum wage beginning on January 1, 2016. This new provision in the contract clause should mitigate contractors' concerns about unanticipated financial burdens associated with annual increases in the Executive Order minimum wage.

Section 10.12(c) explained how the Secretary will provide notice to contractors and subcontractors of the applicable Executive Order minimum wage on an annual basis. The proposed section indicated that the WHD Administrator will publish a notice in the **Federal Register** on an annual basis at least 90 days before any new minimum wage is to take effect. Additionally, the proposed provision stated that the Administrator would publish and maintain on Wage Determinations OnLine (WDOL), *www.wdol.gov,* or any successor Web site, the applicable minimum wage to be paid to workers on covered contracts, including the cash wage to be paid to tipped employees. The proposed section further stated that the Administrator may also publish the applicable wage to be paid to workers on covered contracts, including the cash wage to be paid to tipped employees, on an annual basis at least 90 days before any such minimum wage is to take effect in any other media the Administrator deems appropriate.

AGC expressed concern that few contractors have staff devoted to reading the **Federal Register** on a daily basis and contractor staff generally visit Wage Determinations Online only when they need specific information from the Web site. The organization expressed its view that such notification is inadequate. AGC recommended that the Department work with the FARC to direct contracting agencies to notify their current and recent contractors individually and in writing of any increase in the Executive Order minimum wage within a short span of time (*e.g.,* 14 days from publication in the **Federal Register**). The NCLEJ and NELP also expressed their view that the notice provisions proposed in the NPRM were ''inadequate notice to affected workers in a system that depends upon their monitoring of their own pay.'' NELP and the NCLEJ added that ''[t]he Administrator of the WHD should be required to publish the annual applicable minimum wage in mainstream media outlets.'' A few commenters, including Women Construction Owners & Executives, USA, recommended that the Department include the Executive Order minimum wage on DBA and SCA wage determinations because DBA and SCA contractors go ''first and foremost to the published wage determination to determine'' the applicable wage rates on a project. The Building Trades also suggested that SCA and DBA wage determinations should include a short explanation of contractors' wage payment obligations under the Executive Order.

After careful review of the comments received regarding proposed § 10.12(c), the Department has decided to modify § 10.12(c) of this final rule. The Department shares the concerns of commenters who raised the notice issue for both contractors and workers. Therefore, the Department intends to publish a prominent general notice on SCA and DBA wage determinations that will state the Executive Order minimum wage and that the Executive Order minimum wage applies to all DBA- and SCA-covered contracts. The Department also intends to update this general notice on all DBA and SCA wage determinations annually to reflect any inflation-based adjustments to the Executive Order minimum wage. As will be discussed in more detail in the preamble section pertaining to § 10.29 in subpart C, the Department has also decided to develop a poster regarding the Executive Order minimum wage for contractors with FLSA-covered workers performing on or in connection with a covered contract. The Department has added a provision to the final rule requiring that contractors provide notice of the Executive Order minimum wage to FLSA-covered workers performing work on or in connection with covered contracts via posting of the poster that will be provided by the Department. This new notice provision is discussed below in the preamble section pertaining to § 10.29 of this final rule.

Proposed § 10.12(d) addressed the Department's obligation to notify a contractor in the event of a request for the withholding of funds. Under § 10.11(c), the WHD Administrator may direct that payments due on the covered contract or any other contract between the contractor and the Federal Government may be withheld as may be considered necessary to pay unpaid wages. If the Administrator exercises his or her authority under § 10.11(c) to request withholding, proposed § 10.12(d) required the Administrator or the contracting agency to notify the affected prime contractor of the Administrator's withholding request to the contracting agency. No comments were received on proposed § 10.12(d) and the Department has adopted the section as proposed with a slight modification. The modification in the final rule text clarifies that both the Administrator and the contracting agency may notify the contractor in the event of a withholding even though notice is required from only one of them. The proposed text merely required one or the other to notify the affected prime contractor of the

Administrator's withholding request to the contracting agency, without also noting that the other could choose in its discretion to provide notice as well.

Subpart C—Contractor Requirements

Proposed subpart C articulated the requirements that contractors must comply with under Executive Order 13658 and this part. This section set forth the general obligation to pay no less than the applicable Executive Order minimum wage to workers for all hours worked on or in connection with the covered contract, and to include the Executive Order minimum wage contract clause in all contracts and subcontracts of any tier thereunder. Proposed subpart C also set forth contractor requirements pertaining to permissible deductions, frequency of pay, and recordkeeping, as well as a prohibition against taking kickbacks from wages paid on covered contracts.

Section 10.21 Contract Clause

Proposed § 10.21(a) required the contractor, as a condition of payment, to abide by the terms of the Executive Order minimum wage contract clause described in proposed § 10.11(a). The contract clause contains the obligations with which the contractor must comply on the covered contract and is reflective of the contractor's requirements as stated in the proposed regulations. Proposed § 10.21(b) articulated the obligation that contractors and subcontractors must insert the Executive Order minimum wage contract clause in any covered subcontracts and must require, as a condition of payment, that subcontractors include the clause in all lower-tier subcontracts. Under the proposal, the prime contractor and upper-tier contractor would be responsible for compliance by any covered subcontractor or lower-tier subcontractor with the Executive Order minimum wage contract clause. This responsibility on the part of prime and upper-tier contractors for subcontractor compliance parallels that of the SCA and DBA. *See* 29 CFR 4.114(b) (SCA); 29 CFR 5.5(a)(6) (DBA).

The Department received several comments regarding the flow-down obligations of contractors under § 10.21(a). AGC expressed its view, shared by other commenters, that it is ''unfair'' to hold the prime or any upper-tier subcontractor responsible for all tiers of subcontractor compliance with the Executive Order's requirement to flow-down the contract clause. It also expressed the view that it is unfair to hold such contractors responsible for all lower-tier subcontractors' compliance with the Executive Order's minimum wage requirements. While AGC acknowledged that construction contractors already may be held responsible for lower-tier subcontractor violations of the DBA, it expressed the view that holding contractors responsible for such violations of the Executive Order is a significant expansion of potential liability because coverage of the Executive Order on DBA-covered projects extends to workers whose wages are governed by the FLSA. AGC accordingly requested that WHD include a ''safe harbor'' for prime contractors and upper-tier subcontractors with regard to lower-tier subcontractors' violations.

After careful consideration of the comments received, the Department has decided to adopt § 10.21 as proposed. Specifically, the Department declines to adopt the request to provide a safe harbor from flow-down liability to a contractor that includes the contract clause in its contracts with subcontractors. As discussed more fully in the preamble section for § 10.44, which discusses remedies and sanctions under this part, neither the SCA nor DBA, both of which have long permitted the Department to hold a contractor responsible for compliance by any lower-tier contractor and to which the Executive Order directs the Department to look in adopting remedies, contain a safe harbor. Such a safe harbor could diminish the level of care contractors exercise in selecting subcontractors on covered contracts and reduce contractors' monitoring of the performance of subcontractors—two ''vital functions'' served by the flow-down responsibility. *In the Matter of Bongiovanni,* WAB Case No. 91–08, 1991 WL 494751 (WAB April 19, 1991). Additionally, a contractor's responsibility for the compliance of its lower-tier subcontractors would enhance the Department's ability to obtain compliance with the Executive Order. With respect to the concern AGC expressed regarding coverage of workers on DBA-covered contracts whose wages are governed solely by the FLSA, the Department expects the percentage of workers on SCA- and DBA-covered contracts who are covered by the SCA and/or DBA to greatly exceed those whose wages are solely governed by the FLSA. Thus, the vast majority of covered workers on SCA- and DBA-covered contracts will almost certainly be workers covered by the SCA and/or DBA to which the contractor already has a flow-down obligation. Moreover, as explained above in the preamble for subpart A, the Department has created an exclusion under which workers performing work in connection with covered contracts for less than 20 percent of their hours worked in a given workweek are not subject to the Executive Order. For these reasons, the Department declines to grant the request for a safe harbor.

Finally, AGC sought clarification as to how ''far down the line'' a contractor's flow-down responsibility extends. The Department notes that, as under the SCA and DBA, a contractor under this part is responsible for compliance by all covered lower-tier subcontractors. This obligation applies regardless of the number of covered lower-tier subcontractors and regardless of how many levels of subcontractors separate the responsible prime or upper-tier contractor from the subcontractor that failed to comply with the Executive Order.

Section 10.22 Rate of Pay

Proposed § 10.22 addressed contractors' obligations to pay the Executive Order minimum wage to workers performing work on or in connection with a covered contract under Executive Order 13658. Proposed § 10.22(a) stated the general obligation that contractors must pay workers on a covered contract the applicable minimum wage under Executive Order 13658 for all hours spent performing work on the covered contract. The proposed section also provided that workers performing work on or in connection with contracts covered by the Executive Order must receive not less than the minimum hourly wage of $10.10 beginning January 1, 2015. Under the proposal, in order to comply with the Executive Order's minimum wage requirement, a contractor could compensate workers on a daily, weekly, or other time basis (no less often than semi-monthly), or by piece or task rates, so long as the measure of work and compensation used, when translated or reduced by computation to an hourly basis each workweek, will provide a rate per hour that is no lower than the applicable Executive Order minimum wage. Whatever system of payment is used, however, must ensure that each hour of work in performance of the contract is compensated at not less than the required minimum rate. Failure to pay for certain hours at the required rate cannot be transformed into compliance with the Executive Order or this part by reallocating portions of payments made for other hours that are in excess of the specified minimum.

In determining whether a worker is performing within the scope of a covered contract, the Department proposed that all workers who, on or

after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are subject to the Executive Order and this part unless a specific exemption is applicable. This standard was derived from the SCA's implementing regulations at 29 CFR 4.150.

In the NPRM, the Department explained that, because workers covered by the Executive Order are entitled to its minimum wage protections for all hours worked in performance of a covered contract, a computation of their hours worked on the covered contract in each workweek is essential. *See* 29 CFR 4.178. The proposed rule provided that, for purposes of the Executive Order, the hours worked by a worker generally include all periods in which the worker is suffered or permitted to work, whether or not required to do so, and all time during which the worker is required to be on duty or to be on the employer's premises or to be at a prescribed workplace. *Id.* The hours worked which are subject to the minimum wage requirement of the Executive Order are those in which the worker is engaged in performing work on or in connection with a contract subject to the Executive Order. *Id.* However, unless such hours are adequately segregated or there is affirmative proof to the contrary that such work did not continue throughout the workweek, as discussed below, compensation in accordance with the Executive Order will be required for all hours worked in any workweek in which the worker performs any work on or in connection with a contract covered by the Executive Order. *Id.*

In the NPRM, the Department further stated that, in situations where contractors are not exclusively engaged in contract work covered by the Executive Order, and there are adequate records segregating the periods in which work was performed on or in connection with contracts subject to the Order from periods in which other work was performed, the minimum wage requirement of the Executive Order need not be paid for hours spent on work not covered by the Order. *See* 29 CFR 4.169, 4.178–.179. However, in the absence of records adequately segregating non-covered work from the work performed on or in connection with the covered contract, all workers working in the establishment or department where such covered work is performed shall be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. *Id.* Similarly, a worker performing any work on or in connection with the covered contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented. *Id.*

The Department's proposed rule noted that if a contractor desires to segregate covered work from non-covered work under the Executive Order for purposes of applying the minimum wage established in the Order, the contractor must identify such covered work accurately in its records or by other means. As explained in the NPRM, the Department believes that the principles, processes, and practices that it utilizes in its implementing regulations under the SCA, which incorporate by reference the principles applied under the FLSA as set forth in 29 CFR part 785, will be useful to contractors in determining and segregating hours worked on contracts with the Federal Government subject to the Executive Order. *See* 29 CFR 4.169, 4.178–.179; WHD FOH ¶¶ 14c07, 14g00–01.[8] In this regard, an arbitrary assignment of time on the basis of a formula, as between covered and non-covered work, is not sufficient. However, if the contractor does not wish to keep detailed hour-by-hour records for segregation purposes under the Executive Order, records can be segregated on the wider basis of departments, work shifts, days, or weeks in which covered work was performed. For example, if on a given day no work covered by the Executive Order was performed by a contractor, that day could be segregated and shown in the records. *See* WHD FOH ¶ 14g00.

Finally, the Department noted that the Supreme Court has held that when an employer has failed to keep adequate or accurate records of employees' hours under the FLSA, employees should not effectively be penalized by denying them recovery of back wages on the ground that the precise extent of their uncompensated work cannot be established. *See Anderson* v. *Mt. Clemens Pottery Co.,* 328 U.S. 680, 687 (1946). Specifically, the Supreme Court concluded that where an employer has not maintained adequate or accurate records of hours worked, an employee need only prove that ''he has in fact performed work for which he was improperly compensated'' and produce ''sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.'' *Id.* Once the employee establishes the amount of uncompensated work as a matter of ''just and reasonable inference,'' the burden then shifts to the employer ''to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence.'' *Id.* at 687–88. If the employer fails to meet this burden, the court may award damages to the employee ''even though the result be only approximate.'' *Id.* at 688. These principles for determining hours worked and accompanying back wage liability apply with equal force to the Executive Order.

In response to these rate of pay issues discussed in the preamble, the NCLEJ commented that workers should be provided with clear information about which of their work hours were performed on or in connection with a contract subject to the Executive Order if the contractor intends to assign them both covered and uncovered job duties. The Department notes that contractors are required under this rule to notify workers of the Executive Order minimum wage and to maintain records for each worker stating, inter alia, the number of hours worked and rate of pay for all hours worked. Because the Department anticipates that such notice will be sufficient to inform workers of their rights under the Order, the Department declines this request.

The Department did not receive any comments opposing its proposed interpretation of the rate of pay and hours worked principles set forth above and reaffirms all of its discussion and guidance set forth in the NPRM regarding determining and segregating hours worked and calculating the rate of pay.

AGC and ABC suggested that the applicable minimum wage rate under the Executive Order should remain frozen for the duration of covered multi-year contracts. Both commenters asserted that wage determinations applicable at the beginning of a multi-year contract covered by the DBA remain unchanged for the life of the contract, and AGC argued that allowing ''mid-performance'' changes in the applicable minimum wage rate could lead to ''claims and change orders that could cause project delays or cost overruns.'' As a ''less ideal alternative,''

[8] In the NPRM, the Department noted that contractors subject to the Executive Order are likely already familiar with these segregation principles and should, as a matter of usual business practices, already have recordkeeping systems in place that enable the segregation of hours worked on different contracts or at different locations. The Department further expressed its belief that such systems will enable contractors to identify and pay for hours worked subject to the Executive Order without having to employ additional systems or processes.

AGC requested the insertion of a mandatory clause that would allow for contract adjustments based on increases in the applicable minimum wage rate.

The Department declines to adopt the proposal to freeze the applicable minimum wage rate for the duration of multi-year contracts. Nothing in the Executive Order suggests that the minimum wage requirement can remain stagnant during the span of a covered multi-year contract. Allowing the applicable minimum wage to increase throughout the duration of multi-year contracts fulfills the Executive Order's intent to raise the minimum wage of workers according to annual increases in the CPI–W. It additionally ensures simultaneous application of the same minimum wage rate to all covered workers. For these reasons, the Department has declined to include any new language in § 10.22(a) ''freezing'' the applicable minimum wage rate for the duration of multi-year contracts. With respect to AGC's alternative suggestion on this issue, as mentioned in the preamble to § 10.11(b) and discussed in further detail in relation to § 10.44(e), the Department has revised the language of the contract clause contained in Appendix A to require contracting agencies, if appropriate, to ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016.

Proposed § 10.22(a) explained that the contractor's obligation to pay the applicable minimum wage to workers on covered contracts does not excuse noncompliance with any applicable Federal or State prevailing wage law, or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under Executive Order 13658. This provision implemented section 2(c) of the Executive Order. 79 FR 9851.

The Department noted that the minimum wage requirements of Executive Order 13658 are separate and distinct legal obligations from the prevailing wage requirements of the SCA and the DBA. If a contract is covered by the SCA or DBA and the wage rate on the applicable SCA or DBA wage determination for the classification of work the worker performs is less than the applicable Executive Order minimum wage, the contractor must pay the Executive Order minimum wage in order to comply with the Order and this part. If, however, the applicable SCA or DBA prevailing wage rate exceeds the Executive Order minimum wage rate, the contractor must pay that prevailing wage rate to the SCA- or DBA-covered worker in order to be in compliance with the SCA or DBA.[9]

In the NPRM, the Department indicated that the minimum wage requirements of Executive Order 13658 are also separate and distinct from the commensurate wage rates under 29 U.S.C. 214(c). If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. The Department noted in the NPRM that if the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage. In response to a suggestion submitted by many commenters, the Department has decided to add a provision to paragraph (b)(5) of the contract clause that states this point explicitly. A more detailed discussion of that provision is included in the preamble section for Appendix A.

The Chamber/NFIB requested suspension of application of the Executive Order minimum wage to contractors that have negotiated a wage below the Order's minimum wage in collective bargaining agreements (CBAs) until the contractors' current CBAs expire. The Chamber/NFIB submit that suspending application of the Executive Order in this manner will preserve the terms bargained by the contractor with its workers' union and provide contractors with the wage certainty associated with a CBA. Another commenter, SourceAmerica, similarly sought guidance regarding the relationship between CBA rates and the Order's minimum wage requirement.

In response to these comments, the Department notes that in the event that a collectively bargained wage rate is below the applicable DBA rate, a DBA-covered contractor must pay no less than the applicable DBA rate to covered workers on the project. Although a successor contractor on an SCA-covered contract is required only to pay wages and fringe benefits not less than those contained in the predecessor contractor's CBA even if an otherwise applicable area-wide SCA wage determination contains higher wage and fringe benefit rates, that requirement is derived from a specific statutory provision that expressly bases SCA obligations on the predecessor contractor's CBA wage and fringe benefit rates in particular circumstances. *See* 41 U.S.C. 6707(c); 29 CFR 4.1b. There is no similar indication in the Executive Order of an intent to permit a CBA rate lower than the Executive Order minimum wage rate to govern the wages of workers covered by the Order. The Department accordingly concludes that permitting payment of CBA wage rates below the Executive Order minimum wage is inconsistent with the Executive Order and declines to suspend application of the Executive Order minimum wage for contractors that have negotiated a CBA wage rate lower than the Order's minimum wage.

After careful review of the comments, the Department has decided to adopt § 10.22(a) as proposed, except that the Department has revised the regulatory text to correct a typographical error (the word ''this'' instead of ''thus'') that was identified by a number of commenters.

Proposed § 10.22(b) explained how a contractor's obligation to pay the applicable Executive Order minimum wage applies to workers who receive fringe benefits. It proposed that a contractor may not discharge any part of its minimum wage obligation under the Executive Order by furnishing fringe benefits or, with respect to workers whose wages are governed by the SCA, the cash equivalent thereof. Under the proposed rule contractors must pay the Executive Order minimum wage rate in monetary wages, and may not receive credit for the cost of fringe benefits furnished.

Two commenters, ABC and the Association/IFA, requested that the Department permit construction contractors performing on an Executive Order covered contract to satisfy the minimum wage obligation by paying any combination of wages and bona fide fringe benefits. The Association/IFA commented that the Department should expressly state, as it does for the SCA, how fringe benefits should be handled under the DBA. Additionally, the Association/IFA asked that the Department reconsider its position with respect to the SCA fringe benefits and allow cash equivalent payments related to such benefits to satisfy the Executive Order minimum wage.

As the Department noted in the NPRM, Executive Order 13658

[9] The Department further notes that if a contract is covered by a state prevailing wage law that establishes a higher wage rate applicable to a particular worker than the Executive Order minimum wage, the contractor must pay that higher prevailing wage rate to the worker. Section 2(c) of the Order expressly provides that it does not excuse noncompliance with any applicable State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the Executive Order minimum wage.

increases, initially to $10.10, ''the hourly minimum wage'' paid by contractors with the Federal Government. 79 FR 9851. By repeatedly referencing that it is establishing a higher hourly minimum wage, without any reference to fringe benefits, the text of the Executive Order makes clear that a contractor cannot discharge its minimum wage obligation by furnishing fringe benefits. This interpretation is consistent with the SCA, which does not permit a contractor to meet its minimum wage obligation through the furnishing of fringe benefits, but rather imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)–(2); 29 CFR 4.177(a). Similarly, the FLSA does not allow a contractor to meet its minimum wage obligation through the furnishing of fringe benefits. Although the DBA specifically includes fringe benefits within its definition of minimum wage, thereby allowing a contractor to meet its minimum wage obligation, in part, through the furnishing of fringe benefits, 40 U.S.C. 3141(2), Executive Order 13658 contains no similar provision expressly authorizing a contractor to discharge its Executive Order minimum wage obligation through the furnishing of fringe benefits. Consistent with the Executive Order, § 10.22(b) of the final rule precludes a contractor from discharging its minimum wage obligation by furnishing fringe benefits.

Proposed § 10.22(b) also prohibited a contractor from discharging its Executive Order minimum wage obligation to workers whose wages are governed by the SCA by furnishing the cash equivalent of fringe benefits. As noted, the SCA imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)–(2); 29 CFR 4.177(a). A contractor cannot satisfy any portion of its SCA minimum wage obligation by furnishing fringe benefits or their cash equivalent. *Id.* Consistent with the treatment of fringe benefits or their cash equivalent under the SCA, § 10.22(b) of the final rule does not allow contractors to discharge any portion of their minimum wage obligation under the Executive Order to workers whose wages are governed by the SCA through the provision of either fringe benefits or their cash equivalent.

After careful consideration of the views submitted, the Department has decided to adopt § 10.22(b) as proposed. Consistent with the Executive Order, and for the reasons discussed in the proposed rule and above, the Department declines to adopt the suggestion of the Association/IFA with respect to SCA fringe benefits and cash equivalent payments.

Proposed § 10.22(c) stated that a contractor may satisfy the wage payment obligation to a tipped employee under the Executive Order through a combination of an hourly cash wage and a credit based on tips received by such employee pursuant to the provisions in proposed § 10.28. The Department received no comments on this provision and implements § 10.22(c) as proposed. Comments received concerning the implementation of the Executive Order minimum wage with respect to tipped employees are addressed in § 10.28.

As mentioned above, NELP and the NCLEJ requested that the Department require the Administrator of WHD to ''publish the annual applicable minimum wage in mainstream media outlets.'' They further requested that the Department require contractors to provide the applicable wage rate to workers on a regular basis. The Department has concluded that additional notice to workers will promote compliance with the Order and has accordingly adopted, in part, the commenters' request by adding § 10.29 to this final rule, as discussed later in this preamble.

Section 10.23 Deductions

Proposed § 10.23 explained that deductions that reduce a worker's wages below the Executive Order minimum wage rate may only be made under the limited circumstances set forth in this section. Proposed § 10.23(a) permitted deductions required by Federal, State, or local law, including Federal or State withholding of income taxes. *See* 29 CFR 531.38 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 3.5(a) (DBA). Proposed § 10.23(b) permitted deductions for payments made to third parties pursuant to court orders. Permissible deductions made pursuant to a court order may include such deductions as those made for child support. *See* 29 CFR 531.39 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 3.5(c) (DBA). The EEAC asked whether the phrase ''court order'' in proposed § 10.23(b) precludes deductions made pursuant to garnishment orders ''issued by an administrative tribunal and not necessarily a court of law.'' Proposed § 10.23(b) echoes the principle established under the FLSA, SCA and DBA that only garnishment orders made pursuant to an ''order of a court of competent and appropriate jurisdiction'' may deduct a worker's hourly wage below the minimum wage set forth under the Executive Order. 29 CFR 531.39(a) (FLSA); 29 CFR 4.168(a) (SCA) (permitting garnishment deductions ''required by court order''); 29 CFR 3.5(c) (DBA) (permitting garnishment deductions ''required by court process''). For purposes of deductions made under Executive Order 13658, the phrase ''court order'' includes orders issued by Federal, state, local, and administrative courts.

The EEAC further asked whether the Executive Order minimum wage will affect the formula establishing the maximum level of garnishment under the Consumer Credit Protection Act (CCPA). The Executive Order minimum wage will not affect the formula for establishing the maximum amount of wage garnishment permitted under the CCPA, which, as the commenter noted, is derived in part from the FLSA minimum wage. *See* 15 U.S.C. 1673(a)(2).

Proposed § 10.23(c) permitted deductions directed by a voluntary assignment of the worker or his or her authorized representative. *See* 29 CFR 531.40 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA). Deductions made for voluntary assignments include items such as, but not limited to, deductions for the purchase of U.S. savings bonds, donations to charitable organizations, and the payment of union dues. Deductions made for voluntary assignments must be made for the worker's account and benefit pursuant to the request of the worker or his or her authorized representative. *See* 29 CFR 531.40 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA).

In commenting on this subsection, the Association/IFA asked the Department to clarify whether deductions for health insurance premiums that reduce a worker's wages below the Executive Order minimum wage are permissible. Deductions for health insurance premiums that reduce a worker's wages below the minimum wage required by the Executive Order are generally impermissible under § 10.22(b). However, a contractor may make deductions for health insurance premiums that reduce a worker's wages below the Executive Order minimum wage if the health insurance premiums are the type of deduction that 29 CFR 531.40(c) permits to reduce a worker's wages below the FLSA minimum wage. The regulations at 29 CFR 531.40(c) allow deductions for insurance premiums paid to independent insurance companies provided that such deductions occur as a result of a voluntary assignment from the employee or his or her authorized representative, where the employer is under no obligation to supply the insurance and derives, directly or

indirectly, no benefit or profit from it. The Department reiterates, however, that in accordance with § 10.22(b), a contractor may not discharge any part of its minimum wage obligation under the Executive Order by furnishing fringe benefits or, with respect to workers whose wages are governed by the SCA, the cash equivalent thereof. This provision similarly does not change a contractor's obligation under the SCA to furnish fringe benefits (including health insurance) or the cash equivalent thereof ''separate from and in addition to the specified monetary wages'' under that Act. 29 CFR 4.170.

Finally, proposed § 10.23(d) permitted deductions made for the reasonable cost or fair value of board, lodging, and other facilities. *See* 29 CFR part 531 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA). Deductions made for these items must be in compliance with the regulations in 29 CFR part 531. The Department noted that an employer may take credit for the reasonable cost or fair value of board, lodging, or other facilities against a worker's wages, rather than taking a deduction for the reasonable cost or fair value of these items. *See* 29 CFR part 531. The Department did not receive any comments about proposed § 10.23(d).

After carefully considering all of the comments received regarding the categories of deductions permitted under this section, the Department has decided to implement § 10.23 as it was originally proposed.

Section 10.24 Overtime Payments

Proposed § 10.24(a) explained that workers who are covered under the FLSA or the Contract Work Hours and Safety Standards Act (CWHSSA) must receive overtime pay of not less than one and one-half times the regular hourly rate of pay or basic rate of pay, respectively, for all hours worked over 40 hours in a workweek. *See* 29 U.S.C. 207(a); 40 U.S.C. 3702(a). These statutes, however, do not require workers to be compensated on an hourly rate basis; workers may be paid on a daily, weekly, or other time basis, or by piece rates, task rates, salary, or some other basis, so long as the measure of work and compensation used, when reduced by computation to an hourly basis each workweek, will provide a rate per hour (*i.e.,* the regular rate of pay) that will fulfill the requirements of the Executive Order or applicable statute. The regular rate of pay under the FLSA is generally determined by dividing the worker's total earnings in any workweek by the total number of hours actually worked by the worker in that workweek for which such compensation was paid. *See* 29 CFR 778.5–.7, .105, .107, .109, .115 (FLSA); 29 CFR 4.166, 4.180–.182 (SCA); 29 CFR 5.32(a) (DBA).

Proposed § 10.24(b) addressed the payment of overtime premiums to tipped employees who are paid with a tip credit. In calculating overtime payments, the regular rate of an employee paid with a tip credit consists of both the cash wages paid and the amount of the tip credit taken by the contractor. Overtime payments are not computed based solely on the cash wage paid; for example, if after January 1, 2015, a contractor pays a tipped employee performing on a covered contract a cash wage of $4.90 and claims a tip credit of $5.20, the worker is entitled to $15.15 per hour for each overtime hour ($10.10 × 1.5), not $7.35 ($4.90 × 1.5). A contractor may not claim a higher tip credit in an overtime hour than in a straight time hour. Accordingly, as of January 1, 2015, for contracts covered by the Executive Order, if a contractor pays the minimum cash wage of $4.90 per hour and claims a tip credit of $5.20 per hour, then the cash wage due for each overtime hour would be $9.95 ($15.15 − $5.20). Tips received by a tipped employee in excess of the amount of the tip credit claimed are not considered to be wages under the Executive Order and are not included in calculating the regular rate for overtime payments.

The Department did not receive any comments addressing the payment of overtime under the Executive Order provided in proposed § 10.24. As such, the language in proposed § 10.24 has been adopted without change, except that the Department has, as a technical edit, added a reference to the FLSA in the second sentence of § 10.24(a).

Section 10.25 Frequency of Pay

Proposed § 10.25 described how frequently the contractor must pay its workers. Under the proposed rule, wages must be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. Proposed § 10.25 also provided that a pay period under the Executive Order may not be of any duration longer than semi-monthly. (The Department notes that workers whose wages are governed by the DBA must be paid no less often than once a week and reiterates that compliance with the Executive Order does not excuse noncompliance with applicable FLSA, SCA, or DBA requirements.) The Department derived § 10.25 from the contract clauses applicable to contracts subject to the SCA and the DBA, *see* 29 CFR 4.6(h) (SCA); 29 CFR 5.5(a)(1) (DBA). While the FLSA does not expressly specify a minimum pay period duration, it is a violation of the FLSA not to pay a worker on his or her regular payday. *See Biggs* v. *Wilson,* 1 F.3d 1537, 1538 (9th Cir. 1993) (holding that ''under the FLSA wages are 'unpaid' unless they are paid on the employees' regular payday''). *See also* 29 CFR 778.106 (''The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends.''). As the Department's experience suggests that most covered contractors pay no less frequently than semi-monthly, the Department believes § 10.25 as proposed will not be a burden to FLSA-covered contractors.

The Department received one comment addressing the frequency of pay requirements provided in proposed § 10.25. That commenter, the AFL–CIO, voiced support for the proposed language. The language in proposed § 10.25 has been adopted without change.

Section 10.26 Records To Be Kept by Contractors

Proposed § 10.26 explained the recordkeeping and related requirements for contractors. The obligations set forth in proposed § 10.26 are derived from and consistent across the FLSA, SCA, and DBA. *See* 29 CFR 516.2(a) (FLSA); 29 CFR 4.6(g)(1) (SCA); 29 CFR 5.5(a)(3)(i) (DBA). Proposed § 10.26(a) stated that contractors and subcontractors shall make and maintain, for three years, records containing the information enumerated in that section for each worker. The proposed section further provided that contractors performing work subject to the Executive Order must make such records available for inspection and transcription by authorized representatives of the WHD.

The Department received comments from Advocacy, the Chamber/NFIB, and others, which expressed concern that recordkeeping obligations of this rule are ''burdensome'' for contractors with workers performing both covered and non-covered work. As discussed earlier in this preamble, the records required to be kept by contractors pursuant to this part are coextensive with recordkeeping requirements that already exist under the FLSA, SCA, and DBA. Therefore, compliance with these obligations by a covered contractor will not impose any obligations to which the contractor is not already subject under the FLSA, SCA, or DBA. With respect to contractors' concerns regarding the burden associated with segregating hours worked on covered and non-

covered work, the Department has already responded to this concern in subpart A of this part, in which it explained that it has created a new exclusion for workers who perform in connection with covered contracts for less than 20% of their hours worked in a given workweek.

As the Department received no other substantive comments on this section, the final rule implements § 10.26(a) as proposed, with two modifications. In addition to the four recordkeeping requirements enumerated in proposed § 10.26(a)(1)–(4) of the NPRM, two additional recordkeeping requirements have been included in the final rule publication: The requirement to maintain records reflecting each worker's occupation or classification (or occupations/classifications), and the requirement to maintain records reflecting total wages paid. Contractor obligations to maintain these records derive from and are consistent across the FLSA, SCA, and DBA, just as with those records enumerated in the NPRM. The addition of these two new recordkeeping requirements thus imposes no new burdens on contractors.[10] The Department notes that while the concept of ''total wages paid'' is consistent in the FLSA's, SCA's, and DBA's implementing regulations, the exact wording of the requirement varies (''total wages paid each pay period,'' *see* 29 CFR 516.2(a)(11) (FLSA); ''total daily or weekly compensation of each employee,'' *see* 29 CFR 4.6(g)(1)(ii) (SCA); ''actual wages paid,'' *see* 29 CFR 5.5(a)(3)(i) (DBA)). The Department has opted to use the language ''total wages paid'' in this rule for simplicity; however, compliance with this recordkeeping requirement will be determined in relation to the applicable statute (FLSA, SCA, and/or DBA).

Proposed § 10.26(b) required the contractor to permit authorized representatives of the WHD to conduct interviews of workers at the worksite during normal working hours. Proposed § 10.26(c) provided that nothing in this part limits or otherwise modifies a contractor's payroll and recordkeeping obligations, if any, under the FLSA, SCA, or DBA, or their implementing regulations, respectively. The Department received no comments related to proposed § 10.26(b) or § 10.26(c) and the final rule adopts those provisions as proposed, except that it has changed the word ''employees'' to ''workers'' in § 10.26(b) to be consistent with the terminology used in the Executive Order and this part.

Section 10.27 Anti-Kickback

Proposed § 10.27 made clear that all wages paid to workers performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (unless set forth in proposed § 10.23), rebate, or kickback on any account. Kickbacks directly or indirectly to the contractor or to another person for the contractor's benefit for the whole or part of the wage are also prohibited. This provision was intended to ensure full payment of the applicable Executive Order minimum wage to covered workers. The Department also notes that kickbacks may be subject to civil penalties pursuant to the Anti-Kickback Act, 41 U.S.C. 8701–07. The Department received no comments related to proposed § 10.27 and has accordingly retained the section in its proposed form.

Section 10.28 Tipped Employees

Proposed § 10.28 explained how tipped workers must be compensated under the Executive Order on covered contracts. Section 3 of the Executive Order governs how the minimum wage for Federal contractors and subcontractors applies to tipped employees. Section 3 of the Order provides: (a) For workers covered by section 2 of the Order who are tipped employees pursuant to 29 U.S.C. 203(t), the hourly cash wage that must be paid by an employer to such workers shall be at least: (i) $4.90 an hour, beginning on January 1, 2015; (ii) for each succeeding 1-year period [beginning on January 1, 2016] until the hourly cash wage under this section equals 70 percent of the wage in effect under section 2 of the Order for such period, an hourly cash wage equal to the amount determined under this section for the preceding year, increased by the lesser of: (A) $0.95; or (B) the amount necessary for the hourly cash wage under this section to equal 70 percent of the wage under section 2 of the Order; and (iii) for each subsequent year, 70 percent of the wage in effect under section 2 for such year rounded to the nearest multiple of $0.05; (b) Where workers do not receive a sufficient additional amount on account of tips, when combined with the hourly cash wage paid by the employer, such that their wages are equal to the minimum wage under section 2 of the Order, the cash wage paid by the employer, as set forth in this section for those workers, shall be increased such that their wages equal the minimum wage under section 2 of the Order. Consistent with applicable law, if the wage required to be paid under the Service Contract Act, 41 U.S.C. 6701 et seq., or any other applicable law or regulation is higher than the wage required by section 2, the employer shall pay additional cash wages sufficient to meet the highest wage required to be paid.

Accordingly, as of January 1, 2015, section 3 of the Executive Order requires contractors to pay tipped employees covered by the Executive Order performing on covered contracts a cash wage of at least $4.90, provided the employees receive sufficient tips to equal the minimum wage under section 2 when combined with the cash wage. In each succeeding year, beginning January 1, 2016, the required cash wage increases by $0.95 (or a lesser amount if necessary) until it reaches 70 percent of the minimum wage under section 2 of the Executive Order. For subsequent years, the cash wage for tipped employees is 70 percent of the Executive Order minimum wage rounded to the nearest $0.05. At all times, the amount of tips received by the employee must equal at least the difference between the cash wage paid and the Executive Order minimum wage; if the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive Order minimum wage. If the contractor is required to pay a wage higher than the Executive Order minimum wage by the Service Contract Act or other applicable law or regulation, the contractor must pay additional cash wages equal to the difference between the higher required wage and the Executive Order minimum wage.

The Department received a number of comments addressing the pace of future increases in the minimum cash wage due to tipped employees covered by section 3 of the Executive Order. The Association/IFA expressed concern that such increases are ''unsustainable,'' warning that ''such a rapid increase in the labor costs . . . will be crippling to the restaurants that employee (sic) tipped employees.'' NELP and the

[10] To alleviate concerns that § 10.26 might impose any new recordkeeping burdens on employers, the Department is specifically providing here the FLSA, SCA, and DBA regulatory citations from which these recordkeeping obligations are derived. The citations for all records named in the final rule are as follows: Name, address, and Social Security number (*see* 29 CFR 516.2(a)(1)–(2) (FLSA); 29 CFR 4.6(g)(1)(i) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); the occupation or occupations in which employed (*see* 29 CFR 516.2(a)(4) (FLSA); 29 CFR 4.6(g)(1)(ii) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); the rate or rates of wages paid to the worker (*see* 29 CFR 516.2(a)(6)(i)–(ii) (FLSA); 29 CFR 4.6(g)(1)(ii) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); the number of daily and weekly hours worked by each worker (*see* 29 CFR 516.2(a)(7) (FLSA); 29 CFR 4.6(g)(1)(iii) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); any deductions made (*see* 29 CFR 516.2(a)(10) (FLSA); 29 CFR 4.6(g)(1)(iv) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)).

NCLEJ, however, argued that increases in the minimum cash wages provided under section 3 of the Executive Order ''could prove slow for workers who are struggling to make ends meet.'' Similarly, National Consumers League argued that ''in light of the extraordinarily low base pay earned by many tipped workers today, the Executive Order could—and should—have accelerated the increase of the tipped minimum wage.'' While the Department takes note of these comments, the pace of future increases in the minimum cash wage for tipped employees is a factor outside the scope of the Department's rulemaking authority, as the formula for determining the minimum cash wage for tipped employees is clearly provided in section 3 of the Executive Order itself.

For purposes of the Executive Order and this part, tipped workers (or tipped employees) are defined by section 3(t) of the FLSA. 29 U.S.C. 203(t). The FLSA defines a tipped employee as ''any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.'' *Id.* Section 3 of the Executive Order sets forth a wage payment method for tipped employees that is similar to the tipped employee wage provision of the FLSA. 29 U.S.C. 203(m). As with the FLSA ''tip credit'' provision, the Executive Order permits contractors to take a partial credit against their wage payment obligation to a tipped employee under the Order based on tips received by the employee. The wage paid to the tipped employee comprises both the cash wage paid under section 3(a) of the Executive Order and the amount of tips used for the tip credit, which is limited to the difference between the cash wage paid and the Executive Order minimum wage. Because contractors with a contract subject to the Executive Order may be required by the SCA or any other applicable law or regulation to pay a wage in excess of the Executive Order minimum wage, section 3(b) of the Order provides that in such circumstances contractors must pay the difference between the Executive Order minimum wage and the higher required wage in cash to the tipped employees and may not make up the difference with additional tip credit.

In the proposed regulations implementing section 3 of the Executive Order, the Department set forth procedures that closely follow the FLSA requirements for payment of tipped employees with which employers are already familiar. This was consistent with the directive in section 4(c) of the Executive Order that regulations issued pursuant to the order should, to the extent practicable, incorporate existing procedures from the FLSA, SCA and DBA. 79 FR 9852. In an effort to assist contractors who employ tipped workers and avoid the need for extensive cross references to the FLSA tip credit regulations, the requirements for paying tipped employees under the Executive Order were fully set forth in proposed § 10.28. The Department also sought to use plain language in the proposed tipped employee regulations to make clear contractors' wage payment obligations to tipped employees under the Executive Order. Because the Department did not receive any substantive comments addressing the text of proposed § 10.28, the Department has adopted the section as proposed with only one minor modification.

Section 10.28(a) of the final rule sets forth the provisions of section 3 of the Executive Order explaining contractors' wage payment obligation under section 2 to tipped employees. Section 10.28(a)(1) and (2) makes clear that the wage paid to a tipped employee under section 2 of the Executive Order consists of two components: A cash wage payment (which must be at least $4.90 as of January 1, 2015, and rises yearly thereafter) and a credit based on tips (tip credit) received by the worker equal to the difference between the cash wage paid and the Executive Order minimum wage. Accordingly, on January 1, 2015, if a contractor pays a tipped employee performing on a covered contract a cash wage of $4.90 per hour, the contractor may claim a tip credit of $5.20 per hour (assuming the worker receives at least $5.20 per hour in tips). Under no circumstances may a contractor claim a higher tip credit than the difference between the required cash wage and the Executive Order minimum wage; contractors may, however, pay a higher cash wage than required by section 3 and claim a lower tip credit. Because the sum of the cash wage paid and the tip credit equals the Executive Order minimum wage, any increase in the amount of the cash wage paid will result in a corresponding decrease in the amount of tip credit that may be claimed, except as provided in proposed § 10.28(a)(4). For example, if on January 1, 2015, a contractor on a contract subject to the Executive Order paid a tipped worker a cash wage of $5.50 per hour instead of the minimum requirement of $4.90, the contractor would only be able to claim a tip credit of $4.60 per hour to reach the $10.10 Executive Order minimum wage. If the tipped employee does not receive sufficient tips in the workweek to equal the amount of the tip credit claimed, the contractor must increase the cash wage paid so that the amount of cash wage paid and tips received by the employee equal the section 2 minimum wage for all hours in the workweek.

Section 10.28(a)(3) of the final rule makes clear that a contractor may pay a higher cash wage than required by subsection (3)(a)(i) of the Executive Order—and claim a correspondingly lower tip credit—but may not pay a lower cash wage than that required by section 3(a)(i) of the Executive Order and claim a higher tip credit. In order for the contractor to claim a tip credit the employee must receive tips equal to at least the amount of the credit claimed. If the employee receives less in tips than the amount of the credit claimed, the contractor must pay the additional cash wages necessary to ensure the employee receives the Executive Order minimum wage in effect under section 2 on the regular pay day.

Section 10.28(a)(4) sets forth the contractors' wage payment obligation when the wage required to be paid under the SCA or any other applicable law or regulation is higher than the Executive Order minimum wage. In such circumstances, the contractor must pay the tipped employee additional cash wages equal to the difference between the Executive Order minimum wage and the highest wage required to be paid by other applicable State or Federal law or regulation. This additional cash wage is on top of the cash wage paid under § 10.28(a)(1) and any tip credit claimed. Unlike raising the cash wage paid under § 10.28(a)(1), additional cash wages paid under § 10.28(a)(4) do not impact the calculation of the amount of tip credit the employer may claim.

Section 10.28(b) follows section 3(t) of the FLSA, 29 U.S.C. 203(t), in defining a *tipped employee* as one who customarily and regularly receives more than $30 a month in tips. If an employee receives less than that amount, he or she is not considered a tipped employee and is entitled to not less than the full Executive Order minimum wage in cash. Workers may be considered tipped employees regardless of whether they work full time or part time, but the amount of tips required per month to be considered a tipped employee is not prorated for part time workers. Only the tips actually retained by the employee may be considered in determining if he or she is a tipped employee (*i.e.,* only tips retained after any redistribution of tips through a valid tip pool). As explained in proposed § 10.28(b), the tip credit may only be taken for hours an

employee works in a tipped occupation. Accordingly, where a worker works in both a tipped and a non-tipped occupation for the contractor (dual jobs), the tip credit may only be used for the hours worked in the tipped occupation and no tip credit may be taken for the hours worked in the non-tipped occupation. As further explained in § 10.28(b), the tip credit may be used for some time spent performing incidental activities related to the tipped occupation that do not directly produce tips, such as cleaning tables and filling salt shakers, etc. In response to a comment from the CPL, the phrase, ''In general'' was deleted from the beginning of proposed § 10.28(b) and replaced with the phrase, ''As provided in § 10.2,''.

Section 10.28(c) of the final rule defines what constitutes a tip. Consistent with common understanding, a tip is defined as a sum presented by a customer in recognition of a service performed for the customer. Whether a tip is to be given and its amount are determined solely by the customer. Thus, a tip is different from a fixed charge assessed by a business for service. Tips may be made in cash presented to, or left for, the worker, or may be designated on a credit card bill or other electronic payment. Gifts that are not cash equivalents are not considered to be tips for purposes of wage payments under the Executive Order. A contractor with a contract subject to the Executive Order is prohibited from using an employee's tips, whether it has claimed a tip credit or not, for any reason other than as a credit against the contractor's wage payment obligations under section 3 of the Executive Order, or in furtherance of a valid tip pool. Employees and contractors may not agree to waive the employee's right to retain his or her tips.

Section 10.28(d) addresses payments that are not considered to be tips. Paragraph (d)(1) addresses compulsory service charges added to a bill by the business, which are not considered tips. Compulsory service charges are considered to be part of the business' gross receipts and, even if distributed to the worker, cannot be counted as tips for purposes of determining if a worker is a tipped employee. Paragraph (d)(2) of this section addresses a contractor's use of service charges to pay wages to tipped employees. Where the contractor distributes compulsory service charges to workers the money will be considered wages paid to the worker and may be used in their entirety to satisfy the minimum wage payment obligation under the Executive Order.

Section 10.28(e) addresses a common practice at many tipped workplaces of pooling all or a portion of employees' tips and redistributing them to other employees. Contractors may not use employees' tips to supplement the wages paid to non-tipped employees. Accordingly, a valid tip pool may only include workers who customarily and regularly receive tips; inclusion of employees who do not receive tips such as ''back of the house'' workers (dishwashers, cooks, etc.), will invalidate the tip pool and result in denial of the tip credit for any tipped employees who contributed to the invalid tip pool. A contractor that requires tipped employees to participate in a tip pool must notify workers of any required contribution to the tip pool, may only take a credit for the amount of tips ultimately received by a tipped employee, and may not retain any portion of the employee's tips for any other purpose.

Section 10.28(f) addresses the requirements for a contractor with a contract subject to the Executive Order to avail itself of a tip credit in paying wages to a tipped employee under the Executive Order. These requirements follow the requirements for taking a tip credit under the FLSA and are familiar to employers of tipped employees. Before a contractor may claim a tip credit it must inform the tipped employee of the amount of the cash wage that will be paid; the additional amount of tip credit that will be claimed in determining the wages paid to the employee; that the amount of tip credit claimed may not be greater than the amount of tips received by the employee in the workweek and that the contractor has the obligation to increase the cash wage paid in any workweek in which the employee does not receive sufficient tips; that all tips received by the worker must be retained by the employee except for tips that are redistributed through a valid tip pool and the amount required to be contributed to any such pool; and that the contractor may not claim a tip credit for any employee who has not been informed of its use of the tip credit.

Section 10.29 Notice

As discussed earlier in the preamble for § 10.12(c) in subpart B, the Department has established a new notice requirement for contractors in § 10.29. Specifically, contractors must notify all workers performing on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. This notice requirement was created in response to comments submitted by NELP and the NCLEJ expressing concern that the proposed rule did not contain a mechanism for adequately informing workers of their rights under the Executive Order. Given that the regulations implementing the FLSA, SCA and DBA each contain separate notice requirements for the employers covered by those statutes, the Department agrees with the commenters who raised this issue that a similar notice requirement is necessary for effective implementation of the Executive Order. *See, e.g.,* 29 CFR 516.4 (FLSA); 29 CFR 4.6(e) (SCA); 29 CFR 5.5(a)(1)(i) (DBA).

Contractors may satisfy this notice requirement in a variety of ways. For example, with respect to service employees on contracts covered by the SCA and laborers and mechanics on contracts covered by the DBA, § 10.29(a) clarifies that contractors may meet the notice requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination.[11] As stated earlier, the Department intends to publish a prominent general notice on all SCA and DBA wage determinations informing workers of the applicable Executive Order minimum wage rate, to be updated on an annual basis in the event of any inflation-based increases to the rate pursuant to § 10.5(b)(2). Because contractors covered by the SCA and DBA are already required to display the applicable wage determination in a prominent and accessible place at the worksite pursuant to those statutes, *see* 29 CFR 4.6(e) (SCA), 29 CFR 5.5(a)(1)(i) (DBA), the notice requirement in § 10.29 will not impose any additional burden on contractors with respect to those workers already covered by the SCA or DBA.

Section 10.29(b) provides that contractors with FLSA-covered workers performing on or in connection with a covered contract may satisfy the notice requirement by displaying a poster provided by the Department of Labor in a prominent or accessible place at the worksite. This poster is appropriate for contractors with FLSA-covered workers performing work ''in connection with'' a covered SCA or DBA contract, as well as for contractors with FLSA-covered

[11] SCA contractors are required by 29 CFR 4.6(e) to notify workers of the minimum monetary wage and any fringe benefits required to be paid, or to post the wage determination for the contract. DBA contractors similarly are required by 29 CFR 5.5(a)(1)(i) to post the DBA wage determination and a poster at the site of the work in a prominent and accessible place where they can be easily seen by the workers. SCA and DBA contractors may use these same methods to notify workers of the Executive Order minimum wage under section 10.29 of this rule.

workers performing on or in connection with concessions contracts and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. The Department will make the poster available on the WHD Web site and will provide the poster in a variety of languages.

Finally, § 10.29(c) provides that contractors that customarily post notices to workers electronically may post the notice required by this section electronically, provided that such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and is customarily used for notices to workers about terms and conditions of employment. This kind of an electronic notice may be made in lieu of physically displaying the notice poster in a prominent or accessible place at the worksite.

As discussed earlier in the preamble for § 10.3, some FLSA-covered workers performing ''in connection with'' a covered contract may not work at the main worksite with other covered workers. These covered off-site workers nonetheless are entitled to adequate notice of the Executive Order minimum wage rate under § 10.29. For example, an off-site administrative assistant spending more than 20% of her weekly work hours processing paperwork for a DBA-covered contract would be entitled to notice under this section separate from the physical posting of the DBA wage determination at the main worksite where the DBA-covered laborers and mechanics perform ''on'' the contract. Contractors may notify these off-site workers of the Executive Order minimum wage rate by displaying the poster for FLSA-covered workers described in § 10.29(b) at the off-site worker's location, or if they customarily post notices to workers electronically, by providing an electronic notice that meets the criteria described in § 10.29(c).

The Department does not anticipate that this new notice requirement will impose a significant burden on contractors. As mentioned earlier, contractors are already required to notify workers of the required wage and/or to display the applicable wage determination for workers covered by the SCA or DBA in a prominent and accessible place at the worksite, which will satisfy this section's notice requirement with respect to those workers. To the extent that § 10.29 imposes a new notice requirement with respect to workers whose wages are governed by the FLSA, such a requirement is not significantly different from the existing notice requirement for FLSA-covered workers provided at 29 CFR 516.4, which requires employers to post a notice explaining the FLSA in conspicuous places in every establishment where such employees are employed. Moreover, the Department will develop and provide the Executive Order minimum wage poster. If display of the poster is necessary at more than one site in order to ensure that it is seen by all workers performing on or in connection with covered contracts, additional copies of the poster may be obtained without cost from the Department. Moreover, as discussed above, the Department will also permit contractors that customarily post notices electronically to utilize electronic posting of the notice. The Department's experience enforcing the FLSA, SCA and DBA reflect that this notice provision will serve an important role in obtaining and maintaining contractor compliance with the Executive Order.

Subpart D—Enforcement

Section 5 of Executive Order 13658, titled ''Enforcement,'' grants the Secretary ''authority for investigating potential violations of and obtaining compliance with th[e] order.'' 79 FR 9852. Section 4(c) of the Order directs that the regulations the Secretary issues should, to the extent practicable, incorporate existing procedures, remedies, and enforcement processes under the FLSA, SCA and DBA. *Id.* The Department has adhered to these requirements in drafting subpart D.

Specifically, consistent with these requirements, subpart D of this part incorporates FLSA, SCA, and DBA remedies, procedures, and enforcement processes that the Department believes will facilitate investigations of potential violations of the Order, address and remedy violations of the Order, and promote compliance with the Order. Most of the enforcement procedures and remedies contained in this part accordingly are based on the statutory text or implementing regulations of the FLSA, SCA, and DBA. The Department also adopts, in instances where it is appropriate, enforcement procedures set forth in the Department's regulations implementing Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts. *See* 29 CFR part 9.

Section 10.41 Complaints

The Department proposed a procedure for filing complaints in § 10.41. Proposed § 10.41(a) outlined the procedure to file a complaint with any office of the WHD. It additionally provided that a complaint may be filed orally or in writing and that the WHD would accept a complaint in any language if the complainant was unable to file in English. Proposed § 10.41(b) stated the well-established policy of the Department with respect to confidential sources. *See* 29 CFR 4.191(a); 29 CFR 5.6(a)(5). As the Department received no substantive comments on this section, the final rule implements § 10.41 as proposed.

NELP suggested the Department ensure the integration of complaints under the Executive Order into the Federal Awardee Performance Integrity Information System (FAPIIS) database. The Department understands that the purpose of the FAPIIS database is to collect data related to certain ''dispositions'' in civil, criminal or administrative proceedings, rather than to gather documents evincing the filing of a complaint. *See* Duncan Hunter National Defense Authorization Act of 2009, Public Law 110–417, Section 872(c). It is the Department's further understanding that, consistent with the statutory mandate, the database is not used to collect data related to complaints. Thus, while the Department appreciates the commenter's recommendation, it declines to ensure integration of complaint data into the FAPIIS database.

Section 10.42 Wage and Hour Division Conciliation

Proposed § 10.42 would establish an informal complaint resolution process for complaints filed with the WHD. The provision would allow WHD, after obtaining the necessary information from the complainant regarding the alleged violations, to contact the party against whom the complaint is lodged and attempt to reach an acceptable resolution through conciliation. The Department received no comments pertinent to § 10.42 and has adopted the section as proposed.

Section 10.43 Wage and Hour Division Investigation

The Department derived proposed § 10.43, which outlined WHD's investigative authority, primarily from regulations implementing the SCA and the DBA, *see* 29 CFR 4.6(g)(4) and 29 CFR 5.6(b). Proposed § 10.43 would permit the Administrator to initiate an investigation either as the result of a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator would be able to inspect the relevant records of the applicable contractors (and make copies or transcriptions thereof) as well

as interview the contractors. The Administrator would additionally be able to interview any of the contractors' workers at the worksite during normal work hours, and require the production of any documentary or other evidence deemed necessary to determine whether a violation of this part (including conduct warranting imposition of debarment) has occurred. The section would also require Federal agencies and contractors to cooperate with authorized representatives of the Department in the inspection of records, in interviews with workers, and in all aspects of investigations. The Department received no comments on proposed § 10.43, and the final rule thus implements the provision as proposed.

Section 10.44 Remedies and Sanctions

The Department proposed remedies and sanctions to assist in enforcement of the Executive Order in § 10.44. Proposed § 10.44(a), which the Department derived from the back wage and withholding provisions of the SCA and the DBA, provided that when the Administrator determined a contractor had failed to pay the Executive Order's minimum wage to workers, the Administrator would notify the contractor and the contracting agency of the violation and request the contractor to remedy the violation. It additionally stated that if the contractor did not remedy the violation, the Administrator would direct the contractor to pay all unpaid wages in the Administrator's investigation findings letter issued pursuant to proposed § 10.51. Proposed § 10.44(a) further provided that the Administrator could additionally direct that payments due on the contract or any other contract between the contractor and the Government be withheld as necessary to pay unpaid wages, and that, upon the final order of the Secretary that unpaid wages were due, the Administrator could direct the relevant contracting agency to transfer the withheld funds to the Department for disbursement.

NELP specifically endorsed the Department's proposal to permit withholding as necessary to pay unpaid wages. Because the Department received no additional comments related to § 10.44(a), the final rule adopts the section as proposed.

Proposed § 10.44(b), which the Department derived from the FLSA's antiretaliation provision set forth at 29 U.S.C. 215(a)(3), stated that the Administrator could provide for any relief appropriate, including employment, reinstatement, promotion and payment of unpaid wages, when the Administrator determined that any person had discharged or in any other manner retaliated against a worker because such worker had filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or this part, or had testified or was about to testify in any such proceeding. *See* 29 U.S.C. 215(a)(3), 216(b)(2). For the reasons described in the preamble to subpart A, the Department believes that such a provision will promote compliance with the Executive Order, and has accordingly retained the provision as proposed.

In the NPRM, § 10.44(c) provided that if the Administrator determined a contractor had disregarded its obligations to workers under the Executive Order or this part, a standard the Department derived from the DBA implementing regulations at 29 CFR 5.12(a)(2), the Secretary would order that the contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or responsible officers have an interest, would be ineligible to be awarded any contract or subcontract subject to the Executive Order for a period of up to three years from the date of publication of the name of the contractor or person(s) on the ineligible list. Proposed § 10.44(c) further provided that neither an order for debarment of any contractor or responsible officer from further Government contracts under this section nor the inclusion of a contractor or its responsible officers on a published list of noncomplying contractors would be carried out without affording the contractor or responsible officers an opportunity for a hearing.

As the SCA and DBA contain debarment provisions, inclusion of a debarment provision reflects both the Executive Order's instruction that the Department incorporate remedies from the FLSA, SCA, and DBA to the extent practicable and the Executive Order's conferral of authority on the Secretary to adopt an enforcement scheme that will both remedy violations and obtain compliance with the Order. Debarment is a long-established remedy for a contractor's failure to fulfill its labor standard obligations under the SCA and the DBA. 41 U.S.C. 6706(b); 40 U.S.C. 3144(b); 29 CFR 4.188(a); 29 CFR 5.5(a)(7); 29 CFR 5.12(a)(2). The possibility that a contractor will be unable to obtain Government contracts for a fixed period of time due to debarment promotes contractor compliance with the SCA and DBA. Since the Government contract statutes whose remedies the Executive Order instructs the Department to incorporate include a debarment remedy to promote contractor compliance, the Department has also included debarment as a remedy for certain violations of the Executive Order by covered contractors.

NELP explicitly supported the NPRM's debarment provision. AGC recommended that the final rule include ''knowingly or recklessly'' in front of the term ''disregard'' throughout the section on debarment. The commenter expressed concern that otherwise the term ''disregarded'' could mandate a strict liability standard for violation of the Executive Order.

As the NPRM stated, the Department derived the disregard of obligations standard from the DBA's implementing regulations. The Administrative Review Board (ARB) interprets this standard to require a level of culpability beyond mere negligence in order to justify debarment. *See, e.g., Thermodyn Contractors, Inc.,* ARB Case No. 96–116, 1996 WL 697838, at *4 (ARB Oct. 25, 1996) (noting ''[v]iolations of the DBA do not per se constitute a disregard of obligations''). The Department intends for the same standard to apply under the Executive Order. The requirement to show some form of culpability beyond mere negligence confirms the Executive Order debarment standard is not one involving strict liability. However, a showing of ''knowing or reckless'' disregard of obligations is not necessary in order to justify a debarment. Adopting a ''knowing or reckless disregard'' standard would constitute a departure from the DBA's debarment standard and would therefore be inconsistent with the Executive Order's directive to adopt FLSA, SCA, and DBA remedies and enforcement processes to the extent practicable. The Department accordingly declines to adopt AGC's request to require a showing of ''knowing or reckless'' disregard to justify debarment under the Executive Order. The Department adopts proposed § 10.44(c) in this final rule without change.

ABC sought a ''safe harbor'' from debarment for contractors that comply with the DBA, SCA, and FLSA. Debarment, as discussed above, is an important remedy to obtain compliance with the Executive Order. The Department is accordingly unwilling to provide a waiver from a possible debarment remedy for violations of the Executive Order.

Proposed § 10.44(d), which the Department derived from the SCA, 41 U.S.C. § 6705(b)(2), would allow for initiation of an action, following a final order of the Secretary, against a contractor in any court of competent jurisdiction to collect underpayments

when the amounts withheld under § 10.11(c) are insufficient to reimburse workers' lost wages. Proposed § 10.44(d) would also authorize initiation of an action, following the final order of the Secretary, in any court of competent jurisdiction when there are no payments available to withhold. As the Department explained in the NPRM, the Executive Order covers concessions and other contracts under which the contractor may not receive payments from the Federal Government. As the proposed rule additionally noted, in some instances the Administrator may be unable to direct withholding of funds because at the time it discovers a contractor owes wages to workers no payments remain owing under the contract or another contract between the same contractor and the Federal Government. With respect to such contractors, there will be no funds to withhold. Proposed section § 10.44(d) accordingly provided that the Department may pursue an action in any court of competent jurisdiction to collect underpayments against such contractors. Proposed § 10.44(d) additionally provided that any sums the Department recovered would be paid to affected workers to the extent possible, but that sums not paid to workers because of an inability to do so within three years would be transferred into the Treasury of the United States. The Department received no comments on this section and it has therefore adopted the language as proposed.

In proposed § 10.44(e), the Department addressed what remedy would be available when a contracting agency failed to include the contract clause in a contract subject to the Executive Order. The section provided that the contracting agency would, on its own initiative or within 15 calendar days of notification by the Department, incorporate the clause retroactive to commencement of performance under the contract through the exercise of any and all authority necessary. As the NPRM stated, this incorporation would provide the Administrator authority to collect underpayments on behalf of affected workers on the applicable contract retroactive to commencement of performance under the contract. The NPRM noted the Administrator possesses comparable authority under the DBA, 29 CFR 1.6(f), and that the Department believed a similar mechanism for addressing a failure to include the contract clause in a contract subject to the Executive Order will further the interest in both remedying violations and obtaining compliance with the Executive Order.

The EEAC and NILG generally requested that the Department provide that if a contracting agency's failure to include the contract clause in a covered contract resulted in any changed cost of performance of the contract due to the Executive Order, then the contracting agency should bear the expense of the changed cost of performance. NILG specifically stated that the Department adopt the language from the SCA regulations, *see* 29 CFR 4.5(c), or the DBA regulations, *see* 29 CFR 1.6(f), to address this situation. Upon further consideration of this issue, the Department agrees that a contractor is entitled to an adjustment or to pay any necessary additional costs when a contracting agency initially omits and then subsequently includes the contract clause in a covered contract. This approach, which is consistent with the SCA's implementing regulations, *see* 29 CFR 4.5(c), is therefore reflected in revised § 10.44(e). The Department recognizes that the mechanics of effectuating such an adjustment may differ between covered procurement contracts and the non-procurement contracts that the Department's contract clause covers. With respect to covered non-procurement contracts, the Department believes that the authority conferred on agencies that enter into such contracts under section 4(b) of the Executive Order includes the authority to provide such an adjustment.

Several commenters, including Demos, NELP, and the NCLEJ, recommended that the Department include liquidated damages as a remedy for workers to whom a contractor failed to pay wages required by the Executive Order. Those commenters specifically directed the Department to section 216(b) of the FLSA, which makes employers who fail to pay the minimum wage or overtime to employees liable for not only the minimum wage and/or overtime amounts owed but also an additional, equal amount as liquidated damages. Writing in response to such comments, the EEAC urged the Department to refrain from including liquidated damages as a remedy under the final rule. Because the Department believes that the remedies it proposed in the NPRM and adopts here will be sufficient to obtain compliance with the Executive Order, and because the type of liquidated damages available under the FLSA is not available under the SCA or DBA, the Department has decided not to include a liquidated damages remedy in the final rule.

The AOA asked to what extent contractors covered by the Executive Order must enforce the Order's requirements on their subcontractors. Contractors are responsible for compliance by any covered lower-tier subcontractor(s) with the Executive Order minimum wage. In other words, a contractor's responsibility for compliance flows down to all covered lower-tier subcontractors. Thus, to the extent a lower-tier subcontractor fails to pay its workers the applicable Executive Order minimum wage even though its subcontract contains the required contract clause, an upper-tier contractor may still be responsible for any back wages owed to the workers. Similarly, a contractor's failure to fulfill its responsibility for compliance by covered lower-tier subcontractors may warrant debarment if the contractor's failure constituted a disregard of obligations to workers and/or subcontractors. The Department notes that its general practice under the SCA and DBA is to seek payment of back wages from the subcontractor that directly committed the violation before seeking payment from the prime contractor or any other upper-tier subcontractors. The Department intends to follow this general practice under the Executive Order.

The Department is not adopting the request from AGC to provide a ''safe harbor'' from flow-down liability to a contractor that includes the contract clause in its contracts with subcontractors. Neither the SCA nor DBA, both of which have long permitted the Department to hold a contractor responsible for compliance by any lower-tier contractor and to which the Executive Order directs the Department to look in adopting remedies, contains a safe harbor. In addition, a contractor's responsibility for the compliance of its lower-tier subcontractors enhances the Department's ability to obtain compliance with the Executive Order. Thus, the Department is not granting the commenter's request for a safe harbor.

AGC also sought clarification as to how ''far down the line'' a contractor's flow-down responsibility extends. As under the SCA and DBA, a contractor is responsible for compliance by all covered lower-tier subcontractors. This obligation applies regardless of the number of covered lower-tier subcontractors and regardless of how many levels of subcontractors separate the contractor from the subcontractor that failed to comply with the Executive Order.

The Department understands, as FortneyScott observed in its comment, that contractors would prefer not to be responsible for lower-tier subcontractors' compliance with the Executive Order. The Department's experience under the DBA and SCA,

however, has demonstrated that the flow-down model is an effective means to obtain compliance. As the Executive Order charges the Department with the obligation to adopt SCA and DBA (and/or FLSA) remedies and enforcement processes to obtain compliance with the Order, the final rule reflects the flow-down approach to compliance responsibility contained in the SCA and DBA.

The NDRN suggested the Department take advantage of the nationwide network of Protection and Advocacy (P&A) and Client Assistance Program (CAP) systems to help enforce the Executive Order's provisions. The commenter submits the P&A and CAP network is the largest provider of legally-based advocacy services for people with disabilities in the United States and requests that the Department contract with these entities to help investigate and monitor compliance with the Executive Order. While the Department appreciates the recommendation and welcomes input from the public on how to promote enforcement of the Executive Order and its implementing regulations, the Order authorizes the Department to enforce its provisions. Thus, the Department will be the entity enforcing the Executive Order and its implementing regulations.

The NDRN also suggested that the Department coordinate the enforcement and compliance assistance efforts of WHD, the Office of Disability Employment Policy (ODEP), and the Office of Federal Contract Compliance Programs (OFCCP). The Department appreciates this comment and notes that, when coordination advances the Department's enforcement efforts and is otherwise feasible, its agencies collaborate to ensure effective enforcement of and compliance with the law. The Department expects there may be instances where collaboration between the WHD, ODEP, and/or OFCCP will promote compliance with the Executive Order. Assuming collaboration in such instances is otherwise feasible, the Department anticipates the agencies will work together to ensure enforcement of and compliance with the Executive Order.

As previously mentioned with respect to contracting agency responsibilities, the FS sought confirmation that if it receives a complaint regarding payment of wages under the contract clause, it should refer that complaint to the Department. The Department confirms that contracting agencies must refer all complaints under the Executive Order to the Department in accordance with the procedures described in § 10.11(d). The Department will process the complaint received and will notify the contractor and the contracting agency should it be necessary for either or both to take corrective action.

Finally, as noted in the preamble to subpart A, the Executive Order covers certain non-procurement contracts. Because the FAR does not apply to all contracts covered by the Executive Order, there will be instances where, pursuant to section 4(b) of the Executive Order, a contracting agency takes steps to the extent permitted by law, including but not limited to insertion of the contract clause set forth in Appendix A, to exercise any applicable authority to ensure that covered contracts as described in section 7(d)(i)(C) and(D) of the Executive Order comply with the requirements set forth in sections 2 and 3 of the Executive Order, including payment of the Executive Order minimum wage. In such instances, the enforcement provisions contained in subpart D (as well as the remainder of this part) fully apply to the covered contract, consistent with the Secretary's authority under section 5 of the Executive Order to investigate potential violations of, and obtain compliance with, the Order.

Subpart E—Administrative Proceedings

Section 5 of Executive Order 13658, titled ''Enforcement,'' grants the Secretary ''authority for investigating potential violations of and obtaining compliance with th[e] order.'' 79 FR 9852. Section 4(c) of the Order directs that the regulations the Secretary issues should, to the extent practicable, incorporate existing procedures, remedies, and enforcement processes under the FLSA, SCA and DBA. *Id.*

Accordingly, subpart E of this part incorporates, to the extent practicable, the DBA and SCA administrative procedures necessary to remedy potential violations and ensure compliance with the Executive Order. The administrative procedures included in this subpart also closely adhere to existing procedures of the Office of Administrative Law Judges and the Administrative Review Board.

Section 10.51 Disputes Concerning Contractor Compliance

Proposed § 10.51, which the Department derived primarily from 29 CFR 5.11, addressed how the Administrator would process disputes regarding a contractor's compliance with this part. Proposed § 10.51(a) provided that the Administrator or a contractor may initiate a proceeding covered by § 10.51. Proposed § 10.51(b)(1) provided that when it appears that relevant facts are at issue in a dispute covered by § 10.51(a), the Administrator would notify the affected contractor (and the prime contractor, if different) of the investigation's findings by certified mail to the last known address. Pursuant to the NPRM, if the Administrator determined there were reasonable grounds to believe the contractor should be subject to debarment, the investigative findings letter would so indicate. The Department did not receive any comments on these proposed provisions. The final rule therefore adopts the provisions as proposed.

Proposed § 10.51(b)(2) provided that a contractor desiring a hearing concerning the investigative findings letter is required to request a hearing by letter postmarked within 30 calendar days of the date of the Administrator's letter. It further required the request to set forth those findings which are in dispute with respect to the violation(s) and/or debarment, as appropriate, and to explain how such findings are in dispute, including by reference to any applicable affirmative defenses. The Department received no comments on proposed § 10.51(b)(2) and has adopted the language as proposed.

Proposed § 10.51(b)(3) provided that the Administrator, upon receipt of a timely request for hearing, will refer the matter to the Chief Administrative Law Judge (ALJ) by Order of Reference for designation of an ALJ to conduct such hearings as may be necessary to resolve the disputed matter in accordance with the procedures set forth in 29 CFR part 6. It also required the Administrator to attach a copy of the Administrator's letter, and the response thereto, to the Order of Reference that the Administrator sends to the Chief ALJ. No party submitted a comment related to proposed § 10.51(b)(3). The Department has adopted the language as proposed.

Proposed § 10.51(c)(1) would apply when it appears there are no relevant facts at issue and there was not at that time reasonable cause to institute debarment proceedings. It required the Administrator to notify the contractor, by certified mail to the last known address, of the investigative findings and to issue a ruling on any issues of law known to be in dispute. Proposed § 10.51(c)(2)(i) would apply when a contractor disagrees with the Administrator's factual findings or believes there are relevant facts in dispute. It allowed the contractor to advise the Administrator of such disagreement by letter postmarked within 30 calendar days of the date of the Administrator's letter, and required that the response explain in detail the

facts alleged to be in dispute and attach any supporting documentation. The Department did not receive any comments on this proposed provision. The final rule therefore adopts the provision as proposed.

Section 10.51(c)(2)(ii) of the NPRM required the Administrator to examine the information submitted in the response alleging the existence of a factual dispute. Where the Administrator determines there is a relevant issue of fact, the Administrator will refer the case to the Chief ALJ as under § 10.51(b)(3). If the Administrator determines there was no relevant issue of fact, the Administrator will so rule and advise the contractor(s) accordingly. The Department did not receive any comments on this proposed provision. The final rule adopts the provision as proposed, except that it clarifies that the information submitted in the response alleging the existence of a factual dispute must be timely submitted in order for the Administrator to examine such information.

Proposed § 10.51(d) provided that the Administrator's investigative findings letter becomes the final order of the Secretary if a timely response to the letter was not made or a timely petition for review was not filed. It additionally provided that if a timely response or a timely petition for review was filed, the investigative findings letter would be inoperative unless and until the decision is upheld by the ALJ or the ARB, or the letter otherwise became a final order of the Secretary. The Department received no comments on this provision and the final rule adopts the provision as proposed.

Section 10.52 Debarment Proceedings

Proposed § 10.52, which the Department primarily derived from 29 CFR 5.12, addressed debarment proceedings. Proposed § 10.52(a)(1) provided that whenever any contractor was found by the Administrator to have disregarded its obligations to workers or subcontractors under Executive Order 13658 or this part, such contractor and its responsible officers, and/or any firm, corporation, partnership, or association in which such contractor or responsible officers have an interest, would be ineligible for a period of up to three years to receive any contracts or subcontracts subject to the Executive Order from the date of publication of the name or names of the contractor or persons on the ineligible list.

Proposed § 10.52(b)(1) provided that where the Administrator found reasonable cause to believe a contractor had committed a violation of the Executive Order or this part that constituted a disregard of its obligations to its workers or subcontractors, the Administrator would notify by certified mail to the last known address the contractor and its responsible officers (and/or any firms, corporations, partnerships, or associations in which the contractor or responsible officers are known to have an interest) of the finding. Pursuant to proposed § 10.52(b)(1), the Administrator would additionally furnish those notified a summary of the investigative findings and afford them an opportunity for a hearing regarding the debarment issue. Those notified would have to request a hearing on the debarment issue, if desired, by letter to the Administrator postmarked within 30 calendar days of the date of the letter from the Administrator. The letter requesting a hearing would need to set forth any findings which were in dispute and the reasons therefore, including any affirmative defenses to be raised. Proposed § 10.52(b)(1) also required the Administrator, upon receipt of a timely request for hearing, to refer the matter to the Chief ALJ by Order of Reference, to which would be attached a copy of the Administrator's investigative findings letter and the response thereto, for designation to an ALJ to conduct such hearings as may be necessary to determine the matters in dispute. Proposed § 10.52(b)(2) provided that hearings under § 10.52 would be conducted in accordance with 29 CFR part 6. If no timely request for hearing was received, the Administrator's findings would become the final order of the Secretary. The Department did not receive any comments on this proposed provision. The final rule adopts the provision as proposed.

Section 10.53 Referral to Chief Administrative Law Judge; Amendment of Pleadings

The Department derived proposed § 10.53 from the SCA and DBA rules of practice for administrative proceedings in 29 CFR part 6. Proposed § 10.53(a) provided that upon receipt of a timely request for a hearing under § 10.51 (where the Administrator has determined that relevant facts are in dispute) or § 10.52 (debarment), the Administrator would refer the case to the Chief ALJ by Order of Reference, to which would be attached a copy of the investigative findings letter from the Administrator and the response thereto, for designation of an ALJ to conduct such hearings as may be necessary to decide the disputed matters. It further provided that a copy of the Order of Reference and attachments thereto would be served upon the respondent and that the investigative findings letter and the response thereto would be given the effect of a complaint and answer, respectively, for purposes of the administrative proceeding.

Section 10.53(b) of the NPRM stated that at any time prior to the closing of the hearing record, the complaint or answer may be amended with permission of the ALJ upon such terms as he/she shall approve, and that for proceedings initiated pursuant to § 10.51, such an amendment could include a statement that debarment action was warranted under § 10.52. It further provided that such amendments would be allowed when justice and the presentation of the merits are served thereby, provided there was no prejudice to the objecting party's presentation on the merits. It additionally stated that when issues not raised by the pleadings were reasonably within the scope of the original complaint and were tried by express or implied consent of the parties, they would be treated as if they had been raised in the pleadings, and such amendments could be made as necessary to make them conform to the evidence. Proposed § 10.53(b) further provided that the presiding ALJ could, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which had happened since the date of the pleadings and which are relevant to any of the issues involved. It also authorized the ALJ to grant a continuance in the hearing, or leave the record open, to enable the new allegations to be addressed. The Department received no comments related to proposed § 10.53 and the final rule adopts the provision as proposed.

Section 10.54 Consent Findings and Order

Proposed § 10.54, which the Department derived from 29 CFR 6.18 and 6.32, provided a process whereby parties may at any time prior to the ALJ's receipt of evidence or, at the ALJ's discretion, at any time prior to issuance of a decision, agree to dispose of the matter, or any part thereof, by entering into consent findings and an order. Proposed § 10.54(b) identified four requirements of any agreement containing consent findings and an order. Proposed § 10.54(c) provided that within 30 calendar days of receipt of any proposed consent findings and order, the ALJ would accept the agreement by issuing a decision based on the agreed findings and order, provided the ALJ was satisfied with the proposed agreement's form and

substance. As the Department received no comments related to proposed § 10.54, the final rule adopts the provision as proposed.

Section 10.55 Proceedings of the Administrative Law Judge

Proposed § 10.55, which the Department primarily derived from 29 CFR 6.19 and 6.33, addressed the ALJ's proceedings and decision. Proposed § 10.55(a) provided that the Office of Administrative Law Judges has jurisdiction to hear and decide appeals concerning questions of law and fact from the Administrator's determinations issued under § 10.51 or § 10.52. It further provided that any party could, when requesting an appeal or during the pendency of a proceeding on appeal, timely move an ALJ to consolidate a proceeding initiated thereunder with a proceeding initiated under the SCA or DBA. The purpose of the proposed language was to allow the Office of Administrative Law Judges and interested parties to efficiently dispose of related proceedings arising out of the same contract with the Federal Government.

Proposed § 10.55(b) provided that each party may file with the ALJ proposed findings of fact, conclusions of law, and a proposed order, together with a brief, within 20 calendar days of filing of the transcript (or a longer period if the ALJ permitted). It also provided that each party would serve such proposals and brief on all other parties.

Proposed § 10.55(c)(1) required an ALJ to issue a decision within a reasonable period of time after receipt of the proposed findings of fact, conclusions of law, and order, or within 30 calendar days after receipt of an agreement containing consent findings and an order disposing of the matter in whole. It further provided that the decision would contain appropriate findings, conclusions of law, and an order and be served upon all parties to the proceeding. Proposed § 10.55(c)(2) provided that if the Administrator requested debarment, and the ALJ concluded the contractor has violated the Executive Order or this part, the ALJ would issue an order regarding whether the contractor is subject to the ineligible list that would include any findings related to the contractor's disregard of its obligations to workers or subcontractors under the Executive Order or this part.

Proposed § 10.55(d) provided that the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. 504, does not apply to proceedings under this part. In the NPRM, the Department explained that the proceedings proposed were not required by an underlying statute to be determined on the record after an opportunity for an agency hearing. Therefore, an ALJ would have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the EAJA for any proceeding under this part.

Proposed § 10.55(e) provided that if the ALJ concluded a violation occurred, the final order would require action to correct the violation, including, but not limited to, monetary relief for unpaid wages. It also required an ALJ to determine whether an order imposing debarment was appropriate, if the Administrator had sought debarment. Proposed § 10.55(f) provided that the ALJ's decision would become the final order of the Secretary, provided a party did not timely appeal the matter to the ARB.

The Department received no comments related to proposed § 10.55. The final rule accordingly adopts the provision as proposed.

Section 10.56 Petition for Review

In the NPRM, the Department proposed § 10.56, which it derived from 29 CFR 6.20 and 6.34, as the process to apply to petitions for review to the ARB from ALJ decisions. Proposed § 10.56(a) provided that within 30 calendar days after the date of the decision of the ALJ, or such additional time as the ARB granted, any party aggrieved thereby who desired review would have to file a petition for review with supporting reasons in writing to the ARB with a copy thereof to the Chief ALJ. It further required the petition to refer to the specific findings of fact, conclusions of law, and order at issue and that a petition concerning a debarment decision state the disregard of obligations to workers and subcontractors, or lack thereof, as appropriate. It additionally required a party to serve the petition for review, and all briefs, on all parties and on the Chief ALJ. It also stated a party must timely serve copies of the petition and all briefs on the Administrator and the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor.

Proposed § 10.56(b) provided that if a party files a timely petition for review, the ALJ's decision would be inoperative unless and until the ARB issued an order affirming the letter or decision, or the letter or decision otherwise became a final order of the Secretary. It further provided that if a petition for review concerned only the imposition of debarment, the remainder of the decision would be effective immediately. Proposed § 10.56(b) additionally stated that judicial review would not be available unless a timely petition for review to the ARB was first filed. Failure of the aggrieved party to file a petition for review with the ARB within 30 calendar days of the ALJ decision would render the decision final, without further opportunity for appeal. The Department received no comments related to proposed § 10.56, the final rule adopts the provision as proposed.

Section 10.57 Administrative Review Board Proceedings

Proposed § 10.57, which the Department derived primarily from 29 CFR 9.35, outlined the ARB proceedings under the Executive Order. Proposed § 10.57(a)(1) stated the ARB has jurisdiction to hear and decide in its discretion appeals from the Administrator's investigative findings letters issued under § 10.51(c)(1) or § 10.51(c)(2), Administrator's rulings issued under § 10.58, and from ALJ decisions issued under § 10.55. It further provided that in considering the matters within its jurisdiction, the Board would be the Secretary's authorized representative and would act fully and finally on behalf of the Secretary. Proposed § 10.57(a)(2) identified the limitations on the ARB's scope of review, including a restriction on passing on the validity of any provision of this part, a general prohibition on receiving new evidence in the record (because the ARB is an appellate body and must decide cases before it based on substantial evidence in the existing record), and a bar on granting attorney's fees or other litigation expenses under the EAJA.

Proposed § 10.57(b) required the ARB to issue a final decision within a reasonable period of time following receipt of the petition for review and to serve the decision by mail on all parties at their last known address, and on the Chief ALJ, if the case involved an appeal from an ALJ's decision. Proposed § 10.57(c) required the ARB's order to mandate action to remedy the violation, including, but not limited to, providing monetary relief for unpaid wages, if the ARB concluded a violation occurred. If the Administrator had sought debarment, the ARB would determine whether a debarment remedy was appropriate. Finally, proposed § 10.57(d) provided the ARB's decision would become the Secretary's final order in the matter.

The Department received no comments related to proposed § 10.57. The final rule adopts the provision as proposed.

Section 10.58 Administrator Ruling

Proposed § 10.58 set forth a procedure for addressing questions regarding the application and interpretation of the rules contained in this part. Proposed § 10.58(a), which the Department derived primarily from 29 CFR 5.13, provided that such questions could be referred to the Administrator. It further provided that the Administrator would issue an appropriate ruling or interpretation related to the question. Requests for rulings under this section would need to be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Any interested party could, pursuant to § 10.58(b), appeal a final ruling of the Administrator issued pursuant to § 10.58(a) to the ARB. The Department received no comments on proposed § 10.58 and the final rule retains the proposed language.

Appendix A to Part 10 (Contract Clause)

This section discusses the comments received in response to the Department's proposed contract clause. Many of the issues raised here are discussed elsewhere in this preamble. The Department believes having the information in multiple places in this preamble aids stakeholders who may refer to this preamble in the future when seeking guidance. Such repetition allows stakeholders to more expeditiously find the information they seek.

Section 2 of Executive Order 13658 provides that executive departments and agencies must, to the extent permitted by law, ensure that new contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors must incorporate into lower-tier subcontracts, specifying, as a condition of payment, the minimum wage to be paid to workers under the Order. 79 FR 9851. Section 4 of the Executive Order provides that the Secretary shall issue regulations by October 1, 2014, to the extent permitted by law and consistent with the requirements of the Federal Property and Administrative Services Act, to implement the requirements of the Order. *Id.* at 9852. Section 4 of the Order also requires that, to the extent permitted by law, within 60 days of the Secretary issuing such regulations, the FARC shall issue regulations in the FAR to provide for inclusion of the contract clause in Federal procurement solicitations and contracts subject to the Executive Order. *Id.* The Order further specifies that any regulations issued pursuant to section 4 of the Order should, to the extent practicable and consistent with section 8 of the Order, incorporate existing definitions, procedures, remedies, and enforcement processes under the FLSA, SCA, and DBA. *Id.* Section 5 of the Order grants authority to the Secretary to investigate potential violations of and obtain compliance with the Order. *Id.* Because a contract clause is a requirement of the Order, the Department set forth the text of a proposed contract clause as Appendix A to the proposed rule. As required by the Order, the proposed contract clause specified the minimum wage to be paid to workers under the Order. Consistent with the Secretary's authority to obtain compliance with the Order, as well as the Secretary's responsibility to issue regulations implementing the requirements of the Order that incorporate, to the extent practicable, existing procedures, remedies, and enforcement processes under the FLSA, SCA, and DBA, the provisions of the contract clause were based on the statutory text or implementing regulations of the FLSA, SCA, and DBA.

The Department has made a technical change to the first sentence of the contract clause. The sentence, however, maintains the meaning of the first sentence as written in the NPRM. The sentence still requires that the contracting agency must include the Executive Order minimum wage contract clause set forth in Appendix A of this part in all covered contracts and solicitations for such contracts, as described in § 10.3, except for procurement contracts subject to the FAR. It further stated that the required contract clause directs, as a condition of payment, that all workers performing on or in connection with covered contracts must be paid the applicable, currently effective minimum wage under Executive Order 13658 and § 10.5. It additionally provided that for procurement contracts subject to the FAR, contracting agencies shall use the clause set forth in the FAR developed to implement this rule and that such clause must both accomplish the same purposes as the clause set forth in Appendix A and be consistent with the requirements set forth in this rule.

The DoD requested that with respect to covered contracts not subject to the FAR the Department authorize the applicable contracting ''entity'' to adopt a contract clause that ''accomplishes the same purposes as the clause set forth in Appendix A'' and that ''shall be consistent with the requirements set forth'' in the Department's final rule. The Department anticipates that various Federal agencies will enter into non-procurement contracts that are covered by the Executive Order. Some commenters' submissions (*e.g.,* those from the AOA and O.A.R.S.) indicate that there will be contractors that enter into non-procurement contracts subject to the Executive Order with multiple Federal agencies. The Department believes requiring such contractors to become familiar with distinct Executive Order contract clauses, as opposed to the single, uniform clause proposed by the Department, imposes on them an unnecessary inconvenience and burden. The Department additionally believes that requiring such contractors to understand multiple contract clauses could result in confusion, potentially undercutting the Department's mandate under the Executive Order to adopt regulations that obtain compliance with the Order. The Department is accordingly declining the DoD's request to allow contracting agencies that enter into non-procurement contracts subject to the Executive Order to create their own contract clauses. Rather, it will be incumbent upon such contracting agencies to use the contract clause contained in Appendix A.

The DoD additionally suggested that it is often not clear whether there is an intent to include nonappropriated fund instrumentalities in laws or regulations. It accordingly requested that the Department use the term ''entity'' in lieu of ''agency'' throughout the final rule. The Department noted in the NPRM that, consistent with the SCA, the proposed definition of the term *Federal Government* includes nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or of other Federal agencies. *See* 29 CFR 4.107(a). Thus, the Executive Order covers contracts entered into with nonappropriated fund instrumentalities, provided the contract falls within one of the four specifically enumerated categories of contracts covered by the Order. Because the Department believes that this part clearly states the application of the Executive Order to nonappropriated fund instrumentalities, it is declining to adopt the commenter's request to substitute ''entity'' for ''agency'' throughout the final rule.

Paragraph (a) of the proposed contract clause set forth in Appendix A provided that the contract in which the clause is included is subject to Executive Order 13658, the regulations issued by the Secretary of Labor at 29 CFR part 10 to implement the Order's requirements, and all the provisions of the contract clause. The Department did not receive any comments on proposed paragraph (a) of the contract clause and thus implements the paragraph as proposed.

Paragraph (b) specified the contractor's minimum wage obligations to workers pursuant to the Executive Order. Paragraph (b)(1) stipulated that each worker employed in the performance of the contract by the prime contractor or any subcontractor, regardless of any contractual relationship that may be alleged to exist between the contractor and the worker, shall be paid not less than the Executive Order's applicable minimum wage. In both the NPRM and the final rule, the Department has been clear that the term *worker* includes any person engaged in performing work on or in connection with a contract covered by the Executive Order whose wages under such contract are governed by the FLSA, the SCA, or the DBA, regardless of the contractual relationship alleged to exist between the individual and the contractor. The Department has accordingly substituted as a technical correction ''engaged'' for ''employed'' in contract clause paragraph (b)(1) of the final rule in order to be consistent with the terminology used throughout the rule.

Paragraph (b)(2) provided that the minimum wage required to be paid to each worker performing work on or in connection with the contract between January 1, 2015, and December 31, 2015, is $10.10 per hour. It specified that the applicable minimum wage required to be paid to each worker performing work on or in connection with the contract should thereafter be adjusted each time the Secretary's annual determination of the applicable minimum wage under section 2(a)(ii) of the Executive Order results in a higher minimum wage. Section (b)(2) further provided that adjustments to the Executive Order minimum wage would be effective January 1st of the following year, and would be published in the **Federal Register** no later than 90 days before such wage is to take effect. It also provided the applicable minimum wage would be published on *www.wdol.gov* (or any successor Web site) and was incorporated by reference into the contract.

The effect of paragraphs (b)(1) and (b)(2) would be to require the contractor to adjust the minimum wage of workers performing work on or in connection with a contract subject to the Executive Order each time the Secretary's annual determination of the minimum wage results in a higher minimum wage than the previous year. For example, paragraph (b)(1) would require a contractor on a contract subject to the Executive Order in 2015 to pay covered workers at least $10.10 per hour for work performed on or in connection with the contract. If workers continued to perform work on or in connection with the covered contract in 2016 and the Secretary determined the applicable minimum wage to be effective January 1, 2016 was $10.20 per hour, sections (b)(1) and (b)(2) would require the contractor to pay covered workers $10.20 for work performed on or in connection with the contract beginning January 1, 2016, thereby raising the wages of any workers paid $10.10 per hour prior to January 1, 2016.

AGC and ABC requested that the final rule ''freeze'' Executive Order wage rates for the duration of covered contracts, as is done under contracts covered by the DBA. For example, if a contractor entered into a covered contract in 2015 scheduled to last five years, the commenters requested that $10.10 remain the minimum wage for the entire duration of the contract. ABC additionally sought a ''multi-year grace period'' prior to implementation of the final rule. The AOA identified a list of difficulties it claimed its members will experience based on annual adjustments in the Executive Order minimum wage. Similarly, CSCUSA and NSAA requested that the Department gradually increase the required minimum wage to covered workers over a three- or four-year period. Section 2 of the Executive Order, however, requires that covered contracts include a clause, which covered contractors must incorporate into contracts with lower-tier subcontractors, specifying that the minimum wage paid to workers on or in connection with the contract must be at least $10.10 per hour beginning on January 1, 2015, and a higher amount each January 1 thereafter to the extent the CPI–W increases. Since Section 2 of the Executive Order requires payment of the applicable minimum wage and there is no indication in the Order that the Department may provide relief from the operation of the minimum wage mandate in Section 2, the Department is not adopting the request to freeze rates for the duration of a contract, or to gradually increase the required minimum wage to covered workers over a three- or four-year period.

AGC suggested that a change in the applicable minimum wage ''late in the pre-award contracting process'' will present problems in the procurement process. The Department does not anticipate such a scenario will impose an unreasonable challenge to contracting agencies or contractors. All contractors bidding on a covered contract will be subject to the change in the minimum wage, ensuring equal treatment of competitive bidders. The Department further notes that both the DBA's and SCA's implementing regulations require incorporation of updated wage determinations into contracts covered by those statutes under shorter notice periods than provided for in the Executive Order. *See* 29 CFR 1.6(c)(3); 29 CFR 4.5. Moreover, both the contractors and contracting agencies should be aware of the timing of the Secretary's (possible) annual increase in the minimum wage, meaning that no unfair surprise should befall a contractor or contracting agency if a change in the minimum wage occurs late in the pre-award contracting process.

As discussed earlier in the preamble for § 10.22, the Department is adopting AGC's recommendation to include a provision in the contract clause that would require contracting agencies to ensure that contractors are compensated for any increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Department agrees that an adjustment of this type is warranted in this circumstance and has revised the contract clause accordingly. The Department notes, however, that such compensation is only warranted ''if appropriate.'' For example, if the contracting agency and contractor have already anticipated an increase in labor costs in pricing the applicable contract, it would not be appropriate for a contractor to receive compensation in addition to whatever consideration it has already received for any increase in labor costs in the applicable contract. The Department further notes that contractors shall be compensated ''only for'' increases in labor costs resulting from operation of the annual inflation increases. Thus, contractors are entitled to be compensated under the provision only for any increases in labor costs directly resulting from operation of the annual inflation increase. (For example, contractors are not entitled to be compensated for labor costs they allege they incurred related to non-covered workers due to operation of the annual inflation increase). Such compensation adjustments will necessarily be made on a contract-by-contract basis, and where any annual inflation increase does not increase labor costs (because, for example, of the efficiency and other benefits resulting from the increase), the contractor will not ultimately receive additional compensation as a result of the annual inflation increase.

The Department notes that this approach and the language it has added to the contract clause generally are consistent with the Class Deviation issued by the FARC in June, 2014. That Class Deviation requires contracting

officers on procurement contracts to ''adjust the contract price or contract unit price under this clause only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016.'' The Department recognizes that the mechanics of providing an adjustment to the economic terms of a covered contract likely differ between covered procurement and non-procurement contracts. With respect to covered non-procurement contracts subject to the Department's contract clause, the Department believes that the authority conferred on agencies that enter into such contracts under section 4(b) of the Executive Order includes the authority to provide the type of adjustment contained in the Department's contract clause.

FortneyScott requested that the Department's final rule require publication of any annual increase in the minimum wage at least 180 days before the wage is to take effect. FortneyScott submits it will be difficult for contractors to modify wage rates in 90 days. The Department believes that a 90-day notice period, however, which is approximately three months, is sufficient time for a contractor to adjust its workers' wages and is consistent with the Executive Order, particularly since it will ensure that any adjustments to the Executive Order minimum wage are based on more current data. Thus, the Department is not adopting the commenter's request.

As discussed elsewhere in this preamble, the Department has decided to provide notice of the Executive Order minimum wage on SCA and DBA wage determinations to help inform contractors and workers of their rights and obligations under the Order. As discussed in more detail in the preamble to subpart C, the Department has also decided to develop a poster for contractors with FLSA-covered workers performing work on or in connection with a contract covered by the Executive Order.

The Department intended paragraph (b)(3), which it derived from the contract clauses applicable to contracts subject to the SCA and the DBA, *see* 29 CFR 4.6(h) (SCA), 29 CFR 5.5(a)(1) (DBA), to ensure full payment of the applicable Executive Order minimum wage to covered workers. Specifically, paragraph (b)(3) required the contractor to pay unconditionally to each covered worker all wages due free and clear and without deduction (except as otherwise provided by § 10.23), rebate or kickback on any account. Paragraph (b)(3) further required that wages shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. Paragraph (b)(3) also required that a pay period under the Executive Order could not be of any duration longer than semi-monthly (a duration permitted under the SCA, *see* 29 CFR 4.165(b)). The Department did not receive any comments seeking to alter the language of paragraph (b)(3) of the required contract clause, and it has been adopted as originally proposed.

Paragraph (b)(4) of the proposed contract clause provided that the contractor and any subcontractor(s) responsible would be liable for unpaid wages in the event of any violation of the minimum wage obligation of these clauses. The Department has added language to paragraph (b)(4) in the final rule clarifying, as the NPRM had already specified at § 10.21, that the prime contractor and any upper-tier contractor will be responsible for the compliance by any subcontractor or lower-tier subcontractors with the Executive Order minimum wage requirements. AGC and FortneyScott suggested it is unreasonable to place on contractors the responsibility for lower-tier subcontractors' compliance, including liability for unpaid wages. AGC further sought a ''safe harbor'' from the compliance failures of lower-tier subcontractors for contractors that fulfill their duty to flow-down the contract clause into their own contracts with subcontractors. As the commenter itself noted, however, contractors on DBA-covered contracts are already responsible for lower-tier subcontractors' violations of the DBA contract clause. As discussed earlier, the Department has found this flow-down model of responsibility, which also applies in the SCA context, to be an effective method to obtain compliance with the DBA and SCA, and to ensure that covered workers receive the wages to which they are statutorily entitled even if, for example, the subcontractor that employed them is insolvent. The Department believes the flow-down model of responsibility will likewise prove an effective model to enforce the Executive Order's obligations and ensure payment of wages to covered workers, and it has accordingly retained the approach in the final rule.

In support of its request for a safe harbor from flow-down responsibility, AGC contends that contractors will be unable to identify the workers on covered construction (and service) contracts who are engaged in the performance of the applicable contract and whose wages are governed by the FLSA, not the SCA or DBA; such a concern, however, is not a reason to abandon the flow-down model. The Department expects the percentage of workers on SCA- and DBA-covered contracts who are covered by the SCA and/or DBA to greatly exceed those workers engaged in the performance of the contract whose wages are solely governed by the FLSA. Thus, the vast majority of covered workers on SCA- and DBA-covered contracts will almost certainly be workers covered by the DBA and/or SCA to which the contractor already has a flow-down obligation. To discard the flow-down model of liability because of perceived difficulties relating to the application of flow-down principles to a relatively small number of additional workers would unduly undercut the Department's ability to obtain compliance with the Order. The Department is accordingly retaining the flow-down model of contractor responsibility for compliance. The Department notes, however, that it has created a new exclusion in the final rule for workers performing in connection with covered contracts for less than 20 percent of their work hours in a given workweek. As explained in greater detail in subpart A, the Department expects that this exclusion will help to alleviate some of the concerns raised by contractors.

The Department received many comments, including those submitted by the National Down Syndrome Congress, the APSE, the Autism Society of America, and the World Institute on Disability, requesting that it include additional language in the contract clause set forth in Appendix A explicitly stating that workers with disabilities whose wages are calculated pursuant to special certificates issued under section 14(c) of the FLSA must be paid at least the Executive Order minimum wage (or the applicable commensurate wage rate under the certificate, if such rate is higher than the Executive Order minimum wage) for time spent performing work on or in connection with covered contracts. The Department agrees with this proposed addition to the contract clause because it helps to clarify the scope of the Executive Order's coverage and has added paragraph (b)(5) to the contract clause in Appendix A.

The Department derived proposed paragraphs (c) and (d) of the contract clause, which specified remedies in the event of a determination of a violation of Executive Order 13658 or this part, primarily from the contract clauses applicable to contracts subject to the SCA and the DBA, *see* 29 CFR 4.6(i) (SCA); 29 CFR 5.5(a)(2), (7) (DBA).

Paragraph (c) provided that the contracting officer shall, upon its own action or upon written request of an authorized representative of the Department, withhold or cause to be withheld from the prime contractor under the contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by the contract. Consistent with withholding procedures under the SCA and the DBA, paragraph (c) would allow the contracting agency and the Department to effect withholding of funds from the prime contractor on not only the contract covered by the Executive Order but also on any other contract that the prime contractor has entered into with the Federal Government.

Proposed paragraph (d) stated the circumstances under which the contracting agency and/or the Department could suspend, terminate, or debar a contractor for violations of the Executive Order. It provided that in the event of a failure to comply with any term or condition of the Executive Order or 29 CFR part 10, including failure to pay any worker all or part of the wages due under the Executive Order, the contracting agency could on its own action, or after authorization or by direction of the Department and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Paragraph (d) additionally provided that any failure to comply with the contract clause could constitute grounds for termination of the right to proceed with the contract work and, in such event, for the Federal Government to enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. Paragraph (d) also provided that a breach of the contract clause could be grounds to debar the contractor as provided in 29 CFR part 10. The Department received no comments specifically related to operation of paragraphs (c) and (d) and accordingly retained the paragraphs in the final rule as proposed.

Proposed paragraph (e) provided that contractors could not discharge any portion of their minimum wage obligation under the contract by furnishing fringe benefits, or with respect to workers whose wages are governed by the SCA, the cash equivalent thereof. As noted earlier, Executive Order 13658 increases ''the hourly minimum wage'' paid by contractors with the Federal Government. 79 FR 9851. By repeatedly referencing that it is establishing a higher hourly minimum wage, without any reference to fringe benefits, the text of the Executive Order makes clear that a contractor cannot discharge its minimum wage obligation by furnishing fringe benefits. This interpretation is consistent with the SCA, which does not permit a contractor to meet its minimum wage obligation through the furnishing of fringe benefits, but rather imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)–(2). Similarly, the FLSA does not allow a contractor to meet its minimum wage obligation through the furnishing of fringe benefits. Although the DBA specifically includes fringe benefits within its definition of minimum wage, thereby allowing a contractor to meet its minimum wage obligation, in part, through the furnishing of fringe benefits, 40 U.S.C. 3141(2), Executive Order 13658 contains no similar provision expressly authorizing a contractor to discharge its Executive Order minimum wage obligation through the furnishing of fringe benefits. Consistent with the Executive Order, paragraph (e) would accordingly preclude a contractor from discharging its minimum wage obligation by furnishing fringe benefits.

Paragraph (e), as proposed, also prohibited a contractor from discharging its minimum wage obligation to workers whose wages are governed by the SCA by providing the cash equivalent of fringe benefits, including vacation and holidays. As discussed above, the SCA imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)–(2). A contractor cannot satisfy any portion of its SCA minimum wage obligation through the provision of fringe benefit payments or cash equivalents furnished or paid pursuant to 41 U.S.C. 6703(2). 29 CFR 4.177(a). Consistent with the treatment of fringe benefit payments or their cash equivalents under the SCA, proposed paragraph (e) would not allow contractors to discharge any portion of their minimum wage obligation under the Executive Order to workers whose wages are governed by the SCA through the provision of either fringe benefits or their cash equivalent.

ABC and the Association/IFA requested that the Department permit construction contractors to satisfy the Executive Order minimum wage obligation by paying any combination of wages and bona fide fringe benefits. As the Department stated in the NPRM, the DBA allows contractors to fulfill the statutory minimum wage obligation through such a combination. There is, however, a specific statutory allowance for meeting the DBA minimum wage obligation through a combination of wages and fringe benefits. 40 U.S.C. 3141(2). In contrast, there is no language in the Executive Order suggesting such a combination is a permissible method to satisfy the Order's minimum wage obligation. Absent such language, and given the FLSA and SCA's prohibition on satisfying their minimum wage obligation through the furnishing of fringe benefits, the Department has concluded that prohibiting all Executive Order covered contractors, including construction contractors, from satisfying the minimum wage obligation through the provision of fringe benefits most faithfully implements the Executive Order. Accordingly, the Department adopts paragraph (e) of the contract clause as proposed.

Paragraph (f), as proposed, provided that nothing in the contract clause would relieve the contractor from compliance with a higher wage obligation to workers under any other Federal, State, or local law, or under contract. This provision would implement section 2(c) of the Executive Order, which provides that nothing in the Order excuses noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Order. 79 FR 9851. For example, if a municipal law required a contractor to pay a worker $10.75 per hour on January 1, 2015, a contractor could not rely on the $10.10 Executive Order minimum wage to pay the worker less than $10.75 per hour.

The Building Trades requested inclusion of additional language in paragraph (f) specifying that an employer cannot rely on a published wage rate that is lower than the Executive Order minimum wage to pay less than $10.10 per hour (or the minimum wage as established annually beginning January 1, 2016). The language proposed by the commenter is consistent with the purpose of the Executive Order and with examples the Department included in the preamble to the NPRM and this final rule. The Department is adopting the commenter's suggested language and has amended the final rule accordingly. The Department otherwise adopts paragraph (f) of the contract clause as proposed in the NPRM.

As previously discussed, the Chamber/NFIB requested suspension of application of the Executive Order minimum wage to contractors that have negotiated a wage below the Order's

minimum wage in CBAs until the contractors' current collective bargaining agreement expires. SourceAmerica similarly sought guidance regarding the relationship between CBA rates and the Order's minimum wage requirement. The Chamber/NFIB submit that suspending application of the Executive Order in the manner they propose will preserve the terms bargained by the contractor with its workers' union and provide contractors with the wage certainty associated with a CBA.

In response to these comments, the Department notes that in the event that a collectively bargained wage rate is below the applicable DBA rate, a DBA-covered contractor must pay no less than the applicable DBA rate to covered workers on the project. While a predecessor CBA rate lower than the otherwise prevailing SCA rate can become the applicable SCA rate, the SCA itself contains a provision specifying the CBA rate becomes the applicable SCA rate. *See* 41 U.S.C. 6707(c); 29 CFR 4.1(b), 4.152. There is no indication in the Executive Order of an intent to permit a CBA rate lower than the minimum wage rate to govern the wages of workers covered by the Order. The Department accordingly concludes that permitting payment of CBA wage rates below the Executive Order minimum wage is inconsistent with the Executive Order and therefore declines to suspend application of the Executive Order minimum wage to contractors that have negotiated a CBA wage rate lower than the Order's minimum wage. The Department therefore adopts paragraph (f) of the contract clause as proposed in the NPRM.

Proposed paragraph (g) set forth recordkeeping and related obligations that were consistent with the Secretary's authority under section 5 of the Order to obtain compliance with the Order, and that the Department viewed as essential to determining whether the contractor had paid the Executive Order minimum wage to covered workers. The Department derived the obligations set forth in paragraph (g) from the FLSA, SCA, and DBA. Paragraph (g)(1) listed specific payroll records obligations of contractors performing work subject to the Executive Order, providing in particular that such contractors had to make and maintain for three years, work records containing the following information for each covered worker: Name, address, and social security number; the rate or rates paid to the worker; the number of daily and weekly hours worked by each worker; and any deductions made. The records required to be kept by contractors pursuant to proposed paragraph (g)(1) were coextensive with recordkeeping requirements that already exist under, and were consistent across, the FLSA, SCA, and DBA; as a result, compliance by a covered contractor with the proposed payroll records obligations would not impose any obligations to which the contractor is not already subject under the FLSA, SCA, or DBA. As discussed earlier in the preamble in relation to § 10.26(a), two additional recordkeeping requirements have been included in the final rule publication: The requirement to maintain records reflecting each worker's occupation(s) or classification(s) and the requirement to maintain records reflecting total wages paid. These two recordkeeping requirements derive from and are consistent across the FLSA, SCA, and DBA, just as with those records enumerated in the NPRM.

Paragraph (g)(1) further provided that the contractor performing work subject to the Executive Order would make such records available for inspection and transcription by authorized representatives of the WHD.

Proposed paragraph (g)(2) required the contractor to make available a copy of the contract for inspection or transcription by authorized representatives of the WHD. Paragraph (g)(3), as proposed, provided that failure to make and maintain, or to make available to the WHD for transcription and copying, the records identified in section (g)(1) would be a violation of the regulations implementing Executive Order 13658 and the contract. Paragraph (g)(3) additionally provided that in the case of a failure to produce such records, the contracting officer, upon direction of the Department and notification of the contractor, would take action to cause suspension of any further payment or advance of funds until such violation had ceased. Proposed paragraph (g)(4) required the contractor to permit authorized representatives of the WHD to conduct the investigation, including interviewing workers at the worksite during normal working hours. Paragraph (g)(5), as proposed, provided that nothing in the contract clause would limit or otherwise modify a contractor's recordkeeping obligations, if any, under the FLSA, SCA, and DBA, and their implementing regulations, respectively. Thus, for example, a contractor subject to both Executive Order 13658 and the DBA with respect to a particular project would be required to comply with all recordkeeping requirements under the DBA and its implementing regulations. The Department received no comments on paragraph (g) and has adopted the paragraph as proposed, except for adding the requirements discussed above.

Paragraph (h), as proposed, required the contractor to both insert the contract clause in all its subcontracts and to require its subcontractors to include the clause in any lower–tiered subcontracts. Paragraph (h) further made the prime contractor or upper-tier contractor responsible for the compliance by any subcontractor or lower tier subcontractor with the contract clause.

The EEAC requested the Department modify paragraph (h) to clarify that a contractor's obligation to insert the contract clause in subcontracts only applies to subcontracts covered by the Executive Order. The commenter's suggestion is consistent with the Department's interpretation of subcontract coverage as explained in subpart A and the Department has accordingly modified paragraph (h) in the final rule to clarify that a contractor's obligation to insert the contract clause in subcontracts only applies to subcontracts covered by the Executive Order. The Department has also added language to clarify, consistent with the approach contained in § 10.21 of the NPRM and the flow-down obligations described in the NPRM and the final rule, that ''any upper-tier contractor'' is responsible for the compliance by any subcontractor or lower-tier subcontractor with the contract clause. Except for these modifications, the Department implements paragraph (h) as proposed.

Proposed paragraph (i), which the Department derived from the SCA contract clause, 29 CFR 4.6(n), set forth the certifications of eligibility the contractor makes by entering into the contract. Paragraph (i)(1) stipulated that by entering into the contract, the contractor and its officials would be certifying that neither the contractor, the certifying officials, nor any person or firm with an interest in the contractor's firm was a person or firm ineligible to be awarded Federal contracts pursuant to section 5 of the SCA, section 3(a) of the DBA, or 29 CFR 5.12(a)(1). Paragraph (i)(2) constituted a certification that no part of the contract would be subcontracted to any person or firm ineligible to receive Federal contracts. Paragraph (i)(3) contained an acknowledgement by the contractor that the penalty for making false statements is prescribed in the U.S. Criminal Code at 18 U.S.C. 1001. The Department received no comments related to paragraph (i) and has adopted the provision's language as proposed.

The Department based paragraph (j) on section 3 of the Executive Order. It addressed the employer's ability to use a partial wage credit based on tips received by a tipped employee (tip credit) to satisfy the wage payment obligation under the Executive Order. The provision set the requirements an employer must meet in order to claim a tip credit. To the extent the Department received comments related to tipped employees, it has discussed them elsewhere in this preamble. The Department has retained paragraph (j) as proposed.

Paragraph (k), as proposed, established a prohibition on retaliation that the Department derived from the FLSA's antiretaliation provision that was consistent with the Secretary's authority under section 5 of the Order to obtain compliance with the Order. It prohibited any person from discharging or discriminating against a worker because such worker had filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or this part, or had testified or was about to testify in any such proceeding. The Department proposed to interpret the prohibition on retaliation in paragraph (k) in accordance with its interpretation of the analogous FLSA provision. Paragraph (k) of the final rule adopts the language of the proposed rule.

The Department based proposed paragraph (l) on section 5(b) of the Executive Order. It accordingly provided that disputes related to the application of the Executive Order to the contract would not be subject to the contract's general disputes clause. Instead, such disputes would be resolved in accordance with the dispute resolution process set forth in 29 CFR part 10. Paragraph (l) also provided that disputes within the meaning of the clause included disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

The Department has added paragraph (m) to the contract clause in response to various comments it received related to providing notice to workers of the applicable Executive Order minimum wage. The methods of notice contained in paragraph (m) reflect those contained in § 10.29 of the final rule. A full discussion of the relevant comments, and the methods of notice contained in paragraph (m), can accordingly be found in the preamble describing the operation of § 10.29.

With respect to other issues pertaining to implementation of the proposed contract clause, the NILG and EEAC requested that the Department allow for incorporation of the contract clause by reference. The Department's analysis of these comments also is discussed in the preamble to § 10.11. In summary, including the full contract clause in a covered contract is an effective and practical means of ensuring that contractors receive notice of their obligations under the Executive Order and this final rule, and the Department therefore prefers that covered contracts include the contract clause in full At the same time, there will be instances in which a contracting agency or a contractor does not include the entire contract clause verbatim in a covered contract but the facts and circumstances establish that the contracting agency or contractor sufficiently apprised a prime or lower-tier contractor that the Executive Order and its requirements apply to the contract. In particular, the full contract clause will be deemed to have been incorporated by reference in a covered contract if the contract provides that ''Executive Order 13658—Establishing a Minimum Wage for Contractors, and its implementing regulations, including the applicable contract clause, are incorporated by reference into this contract as if fully set forth in this contract,'' with a citation to a Web page that contains the contract clause in full, to the provision of the Code of Federal Regulations containing the contract clause set forth at Appendix A of this part, or to the provision of the FAR containing the contract clause promulgated by the FARC to implement this rule.

The EEAC questioned how parties might include a contract clause in a verbal agreement. The Department anticipates that the vast majority of covered contracts will be written. However, the Department's decision to include verbal agreements as part of its definition of the term ''contract'' derives from the SCA's regulations. *See* 29 CFR 4.110. Under the SCA, a contract may be embodied in a verbal agreement, *see id.,* notwithstanding the regulatory obligation to ''include'' the SCA contract clause found at 29 CFR 4.6 ''in full'' in the contract. Similarly, it is possible that the facts and circumstances of the parties' relationship will render appropriate a finding of incorporation by reference of the contract clause in a verbal agreement. For example, a contracting agency and contractor might be parties to a written contract that includes the Executive Order contract clause and agree to renew the contract orally, rather than in writing. In such a circumstance, WHD likely would conclude that the parties' verbal agreement incorporated the contract clause by reference.

The purpose of including verbal agreements in the definition of contract and contract-like instrument is to ensure that the Executive Order's minimum wage protections apply in instances where the contracting parties, for whatever reason, rely on a verbal rather than written contract. As noted, such instances are likely to be exceedingly rare, but workers should not be deprived of the Executive Order's minimum wage because contracting parties neglected to memorialize their understanding in a written contract.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. Under the PRA, an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. *See* 5 CFR 1320.8(b)(3)(vi). The OMB has assigned control number 1235–0018 to the general recordkeeping provisions of various labor standards that the WHD administers and enforces and control number 1235–0021 to the information collection which gathers information from complainants alleging violations of such labor standards. In accordance with the PRA, the Department solicited public comments on the proposed changes to those information collections in the NPRM, as discussed below. *See* 79 FR 34568 (June 17, 2014). The Department also submitted a contemporaneous request for OMB review of the proposed revisions to the information collections in accordance with 44 U.S.C. 3507(d). On August 15, 2014, the OMB issued a notice that continued the previous approval of the information collections under the existing terms of clearance and asked the Department to resubmit the information collection requests upon promulgation of the final rule and after consideration of public comments received.

Circumstances Necessitating Collection: Executive Order 13658 provides that agencies must, to the extent permitted by law, ensure that new contracts, as described in section 7 of the Order, include a clause specifying, as a condition of payment, that the minimum wage to be paid to workers in the performance of the

contract shall be at least: (i) $10.10 per hour beginning January 1, 2015; and (ii) an amount determined by the Secretary, beginning January 1, 2016, and annually thereafter. 79 FR 9851. Section 7(d) of the Executive Order establishes that this minimum wage requirement only applies to a new contract if: (i) (A) It is a procurement contract for services or construction; (B) it is a contract for services covered by the SCA; (C) it is a contract for concessions, including any concessions contract excluded by the Department's regulations at 29 CFR 4.133(b); or (D) it is a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (ii) the wages of workers under such contract are governed by the FLSA, the SCA, or the DBA. 79 FR 9853. Section 7(e) of the Order states that, for contracts covered by the SCA or the DBA, the Order applies only to contracts at the thresholds specified in those statutes. *Id.* It also specifies that, for procurement contracts where workers' wages are governed by the FLSA, the Order applies only to contracts that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to the Order pursuant to regulations or actions taken under section 4 of the Order. 79 FR 9853. The NPRM contained several provisions that could be considered to entail collections of information: The section 10.21 requirement for a contractor and its subcontractors to include the applicable Executive Order minimum wage contract clause in any covered subcontract, the section 10.26 recordkeeping requirements, the section 10.41 complaint process, and the subpart E administrative proceedings.

Proposed subpart C stated the contractor's requirements in complying with the Executive Order. Proposed § 10.21 stated that the contractor and any subcontractor, as a condition of payment, must abide by the Executive Order minimum wage contract clause and must include in any covered subcontracts the minimum wage contract clause in any lower-tier subcontracts.

The Department noted that the proposed rule did not require contractors to comply with an employee notice requirement. However, in response to commenter concerns, the Department has added an employee notice requirement to this final rule at § 10.29. Disclosure of information originally supplied by the Federal Government for the purpose of disclosure is not included within the definition of a collection of information subject to the PRA. *See* 5 CFR 1320.3(c)(2). The Department has thus determined that § 10.29 does not include an information collection subject to the PRA. The Department also notes that the recordkeeping requirements in the final rule are requirements that contractors must already comply with under the FLSA, SCA, or DBA under an OMB approved collection of information (OMB control number 1235–0018). In the NPRM, the Department indicated that the proposed rule did not impose any additional notice or recordkeeping requirements on contractors for PRA purposes and therefore, the burden for complying with the recordkeeping requirements in this proposed rule was subsumed under the current approval. An information collection request (ICR), however, was submitted to the OMB that would revise the existing PRA authorization for control number 1235–0018 to incorporate the recordkeeping regulatory citations in the proposed rule.

The WHD obtains PRA clearance under control number 1235–0021 for an information collection covering complaints alleging violations of various labor standards that the agency administers and enforces. An ICR was submitted to OMB to revise the approval to incorporate the regulatory citations in the proposed rule applicable to complaints and adjust burden estimates to reflect any increase in the number of complaints filed against contractors who fail to comply with the minimum wage requirement.

Proposed Subpart E established administrative proceedings to resolve investigation findings. Particularly with respect to hearings, the proposed rule imposed information collection requirements. The Department notes that information exchanged between the target of a civil or an administrative action and the agency in order to resolve the action would be exempt from PRA requirements. *See* 44 U.S.C. 3518(c)(1)(B); 5 CFR 1320.4(a)(2). This exemption applies throughout the civil or administrative action (such as an investigation and any related administrative hearings); therefore, the Department determined the administrative requirements contained in subpart E of this rule are exempt from needing OMB approval under the PRA.

Information and technology: There is no particular order or form of records prescribed by the final rule. A contractor may meet the requirements of this rule using paper or electronic means. The WHD, in order to reduce burden caused by the filing of complaints that are not actionable by the agency, uses a complaint filing process that has complainants discuss their concerns with WHD professional staff. This process allows agency staff to refer complainants raising concerns that are not actionable under wage and hour laws and regulations to an agency that may be able to offer assistance.

Public comments: The Department sought public comments regarding the potential burdens imposed by information collections contained in the proposed rule which reflected a slight increase in paperwork burden associated with ICR 1235–0021 but did not create a paperwork burden on the regulated community of the information collection provisions contained in ICR 1235–0018. The Department received some comments with respect to the paperwork. The FS commented that ''it could be argued that inclusion of the minimum wage clause itself in instruments such as FS concession instruments that do not already contain a minimum wage provision constitutes a new information collection requirement.'' To address this concern, the FS suggested that the preamble to the final rule expressly state that ''inclusion of the minimum wage clause in contracts or contract-like instruments that do not already contain a minimum wage provision does not constitute a new information collection requirement'' since all the information collected under the clause is already being collected under existing federal law. The Department agrees that the information required to be collected pursuant to the contract clause set forth in Appendix A is already required to be collected under existing Federal law.

The Chamber/NFIB estimated that the Department's Paperwork Reduction Act burden estimate provided in the NPRM is low. They contended that the Department's assertion of only 35 additional complaints filed was not credible. They suggested that a more reasonable estimate of the number of complaints, given the large numbers of persons becoming entitled to this new wage level, would be in the thousands. Additionally, the commenter expressed their view that the employer burden under ICR 1235–0018 will also increase. They stated that employers will have to keep new records identifying separate wage rates to document both Federal and non-Federal contract projects. The AOA agreed that tracking different wage rates might be problematic, calling it ''cost prohibitive'' to track more than one wage rate for a worker. The Department disagrees that tracking the rate of pay for a worker is a new information collection requirement.

Rate of pay is already a required record under the FLSA, SCA and DBA. The Department further notes that in its experience many types of employers track different rates of pay for workers.

Other commenters expressed the view that their recordkeeping costs would increase without describing the underlying reasons for their view. For example, O.A.R.S. indicated that their ''recordkeeping and compliance costs for our seasonal business, which employs up to 250 seasonal staff members would be monumental.'' Still others referenced a general increase in burden but did not address the PRA burdens specifically or offer alternative methods for calculating burden.

The George Washington University Regulatory Studies Center suggested that the Department should identify or commit to collecting the information needed to measure the rule's success. They expressed their view that the Department should collect after the implementation of the minimum wage increase data on productivity of workers, morale of workers (if quantifiable), turnover reduction, turnover costs, and supervisory costs. They also suggested that the Department should collect data on employment levels, number of contracts, number of workers assigned to contracts, and hours of work performed on contracts by minimum wage/low-income laborers.

With respect to the potential increase to the number of complaints, the Department notes a partial error in the publication of the NPRM. In ICR 1235–0021, the currently approved responses for the Employment Information Form used to collect complainant information is 35,000 annually. The Department notes that in the NPRM, the number was increased to 35,350 (although it incorrectly identified only 35 new responses in the subsequent brackets to this rulemaking). The correct number is 35,350 which was listed in the NPRM but 350 of that amount is from this rulemaking. Some commenters thought this should be listed in the thousands. The Department does not agree with such an assessment. Of the millions of employees that are included in the FLSA information collection, the Department only receives about .06% in annual complaints. Of the 183,814 affected workers estimated in the NPRM, the Department estimates it will receive approximately 350 complaints (or .19%). This amount is approximately triple the percentage of complaints the Department currently receives for the FLSA, SCA, and DBA combined. As a result, the Department declines to incorporate the ''thousands'' of complaints suggested by some commenters into its burden estimates.

With respect to suggestions that the Department commit to collecting more information to evaluate the success of the rule, the Department notes that the weight of the comments were opposed to increasing burden. As a result, the Department declines to add additional burden and instead holds the burden increases to as little as possible to carry out Executive Order 13658 effectively.

With respect to the objections to the notice provisions in the NPRM, the Department has added § 10.29 to the final rule. Most workers will still be alerted to the Executive Order minimum wage rate by the posting of the wage determination as is currently required. However, for those workers who are not covered by the DBA or SCA but are covered by the Executive Order 13658, the Department will develop a poster and require that contractors or subcontractors who engage such workers post this notice developed by the Department. Electronic posting is allowed as long as it meets the requirement of the regulation.

An agency may not conduct an information collection unless it has a currently valid OMB approval, and the Department submitted the identified information collection contained in the proposed rule to OMB for review in accordance with the PRA under Control numbers 1235–0021 and 1235–0018. See 44 U.S.C. 3507(d); 5 CFR 1320.11. The Department has resubmitted the revised information collections to OMB for approval, and the Department intends to publish a notice announcing OMB's decision regarding this information collection request. A copy of the information collection request can be obtained by contacting the Wage and Hour Division as shown in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Comments to the OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for the Wage and Hour Division, Office of Management and Budget, Room 10235, Washington, DC 20503; Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers). The OMB will consider all written comments that agency receives within 30 days of publication of this final rule.

The OMB and the Department are particularly interested in comments that:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Total burden for the recordkeeping and complaint process information collections, including the burdens that will be unaffected by this proposed rule and any changes are summarized as follows:

Type of review: Revisions to currently approved information collections.

Agency: Wage and Hour Division, Department of Labor.

Title: Employment Information Form.

OMB Control Number: 1235–0021.

Affected public: Private sector, businesses or other for-profits and Individuals or Households.

Estimated number of respondents: 35,350 (350 from this rulemaking).

Estimated number of responses: 35,350 (350 from this rulemaking).

Frequency of response: On occasion.

Estimated annual burden hours: 11,783 (116 burden hours due to this rulemaking).

Estimated annual burden costs: $286,562.00.

Title: Records to be kept by Employers.

OMB Control Number: 1235–0018.

Affected public: Private sector, businesses or other for-profits and Individuals or Households.

Estimated number of respondents: 3,911,600 (0 from this rulemaking).

Estimated number of responses: 40,998,533 (0 from this rulemaking).

Frequency of response: Weekly.

Estimated annual burden hours: 1,250,164 (0 from this rulemaking).

Estimated annual burden costs: 0.

IV. Executive Orders 12866 and 13563

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, select those

approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Under Executive Order 12866, the Department must determine whether a regulatory action is significant and therefore subject to the requirements of the Executive Order and to review by OMB. 58 FR 51735. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. *Id.*

The Department has determined that this final rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866 because it is economically significant based on the analysis set forth below. As a result, OMB has reviewed this final rule.

Executive Order 13658 requires an increase in the minimum wage to $10.10 for workers on covered Federal contracts where the solicitation for such contracts has been issued on or after January 1, 2015. Beginning January 1, 2016, and annually thereafter, the Secretary of Labor will determine the applicable minimum wage in accordance with section 2 of Executive Order 13658. Workers performing work on or in connection with covered contracts as described in the Executive Order and this rule are entitled to the minimum wage protections of this part. The Executive Order applies only to new contracts, which in accordance with § 10.2, are those that result from a solicitation issued on or after January 1, 2015, or those awarded outside the solicitation process on or after January 1, 2015.

In order to determine whether the proposed rule would have an annual effect on the economy of $100 million or more, it was necessary to determine how many workers on contracts covered by the Executive Order are earning below $10.10 (affected workers). Because no single source contained data reflecting how many Federal contract workers receive wages below $10.10, the Department relied on a variety of data sources to estimate the number of affected workers. First, the Department used the Principal North American Industry Classification System (NAICS) to identify the industries most likely to employ workers covered by the Executive Order. Second, the Department utilized the Current Population Survey (CPS) to estimate the number of workers within a state within the applicable NAICS category receiving less than $10.10 per hour. The Department then relied on ratios it derived from *USASpending.gov* and the Bureau of Labor Statistics Office of Employment and Unemployment Statistics (OEUS) data to determine what percentage of the applicable CPS workers receiving less than $10.10 per hour were working on Federal contracts. Finally, the Department relied on ratios again derived from *USAspending.gov* data to determine what percentage of workers receiving less than $10.10 per hour while working on Federal contracts were performing work on Federal contracts covered by the Executive Order. Using this methodology, the Department estimated in the NPRM that there are 183,814 affected workers.

It was additionally necessary in the NPRM to estimate both the average wage rate of affected workers and how many hours affected workers would spend on covered contracts. The Department estimated affected workers receive an average wage of $8.79, or $1.31 below the Executive Order minimum wage, and work 2,080 hours per year on Executive Order covered contracts. The Department further estimated that twenty percent (20%) of contracts extant in 2015 will qualify as ''new'' for purposes of the Executive Order and that approximately all contracts extant by 2019 will be ''new'' for purposes of the Executive Order. Based on these estimates, the Department anticipated that the annual effect of the rule in 2015 and 2019 would be approximately $100.2 million (183,814*$1.31*2080*.20 = $100.2 million) and $501 million (183,814*$1.31*2080), respectively.

In estimating the annual effect on the economy of this rule in the NPRM, the Department proceeded in steps. The first step was to estimate the number of affected workers who currently earn less than $10.10 per hour. The second step was to estimate the average wage increase for the affected workers. The average increase in wages will reflect the range of hourly wage rates of the affected workers currently earning between $7.25 and $10.10. In the third step, the Department calculated the total increase in hourly wages for the affected workers by multiplying the number of affected workers (Step 1) by the average increase in wages of the affected workers (Step 2) and the estimated number of work hours per year. Because this rule would apply only to new contracts as defined in § 10.2, the Department also needed to estimate in the proposed rule the percentage of extant contracts that would be ''new'' in the years covered by this analysis.

The Federal Government does not collect data that precisely quantifies the number of private sector workers performing work on Federal contracts. The Department accordingly used various methods based on the data sources available to derive an estimate of the number of affected workers. First, the Department gathered data on Federal contracts from *USAspending.gov,* which classifies government contract spending based on the products or services being purchased, to determine the types of Federal contracts covered by the Executive Order.[12] Specifically, the Department's estimate of spending on contracts that are covered by this Executive Order included contracts for work related to Research and Development (''A'' codes), Special Studies and Analyses—Not R&D (''B'' codes), Architect and Engineering—Construction (''C'' codes), Automatic Data Processing and Telecommunication (''D'' codes), Purchase of Structures and Facilities (''E'' codes), Natural Resources and Conservation (''F'' codes), Social Services (''G'' codes), Quality Control, Testing, and Inspection (''H'' codes), Maintenance, Repair, and Rebuilding of Equipment (''J'' codes), Modification of Equipment (''K'' codes), Technical Representative (''L'' codes), Operation of Government Owned Facilities (''M'' codes), Installation of Equipment (''N'' codes), Salvage Services (''P'' codes), Medical Services (''Q'' codes), Professional, Administrative and Management Support (''R'' codes), Utilities and Housekeeping Services (''S'' codes), Photographic, Mapping, Printing, and Publications (''T'' codes), Education and Training (''U'' codes),

[12] The Department excluded all contracts for products from its estimate because the Executive Order generally does not cover such contracts.

Transportation, Travel and Relocation (''V'' codes), Lease or Rental of Equipment (''W'' codes), Lease or Rental of Facilities (''X'' codes), Construction of Structures and Facilities (''Y'' codes), and Maintenance, Repair or Alteration of Real Property (''Z'' codes).

The Department focused in the NPRM on information found in the *USASpending.gov* Prime Award Spending database, which enabled it to discern how some Federal contracts are further redistributed to subcontractors. For example, a business performing a Professional, Administrative and Management Support contract may subcontract with other businesses to complete their work. *USASpending.gov* is not a perfect data source from which to estimate all the Federal contracts subject to the Executive Order because a portion of contracts in several of the product service codes may not be covered by this final rule. In addition, *USASpending.gov* does not capture some concessions contracts and contracts in connection with Federal property or lands related to offering services for Federal employees, their dependents or the general public that will be covered by this final rule. Therefore, the Department noted in the NPRM that its estimate of the number of affected workers may be somewhat imprecise. As the Department further noted, however, the inclusion of all contracts in the aforementioned product service codes and the exclusion of some concessions contracts and covered contracts in connection with Federal property or lands likely offset each other to at least some degree in calculating the total number of affected workers under this final rule.

Second, the Department utilized 2012 [13] OEUS data on total output and employment by industry in conjunction with the data on total spending on Federal contracts by industry from *USAspending.gov* to calculate the share of workers in each industry sector employed under Federal contracts. According to *USASpending.gov,* the Federal Government spent $461.48 billion on procurement contracts in 2013. Subtracting amounts spent on contract work performed outside of the United States that the Executive Order does not cover resulted in Federal Government spending on procurement contracts of approximately $407.68 billion in 2013. The Department illustrated its approach in the NPRM using the example of the information industry; OEUS data indicated that total output and total employment for the information industry (NAICS code: 51) in 2012 were $1.25 trillion and 2.74 million workers, respectively. Total Federal contract spending for the information industry according to *USASpending.gov* was $10.4 billion in 2013. The Department then divided the total Federal contract spending for the information industry by the total output for the information industry to derive a *share of industry output* in the information sector of .83 percent ($10.4 billion/$1.25 trillion). Using this method, the Department estimated the share for each industry sector from *USAspending.gov* that it identified as containing Federal contracts subject to the Executive Order (*see* Table A below).

In the proposed rule, the Department additionally augmented the national contracting data with information on state-based geographic differences in the minimum wage and contracting services purchased. By integrating state-level data, the Department captured some of the variation in the minimum wage level and contracting within states. The Department determined where Federal agencies were investing by the place of performance data associated with each entry in the *USASpending.gov* database, which is typically the zip code of the location where the contract work takes place. In order to avoid overstating the contracts covered by this final rule, the Department developed an estimate to measure the proportion of total Federal spending on services and products in a given state. To measure *the ratio of covered contracts,* the Department divided a state-industry pair's total Federal spending on contracts covered by Executive Order 13658 by the state-industry pair's total Federal spending on all contracts (including both services and products) in 2013. The Department defined the industries in the state-industry pairs using the principal NAICS of the contractor providing the service (*see* Table B). For simplicity, the Department chose to aggregate the data by two-digit NAICS industries. Affected workers were estimated based on contracts by industry two-digit NAICS level. The Department noted that its estimate included all industry classifications of contracts, and that this approach captured all vendors irrespective of industry whose contracts are covered by this final rule.

Third, the Department used wage and industry data from the CPS [14] to calculate the total number of workers in each state by two-digit NAICS level who earn less than $10.10 per hour.[15] The Department then applied the *share of industry output* ratios to this CPS data to estimate the total number of workers within an industry within a state who earn less than $10.10 per hour working on a Federal contract. Implicit in the Department's use of the *USASpending.gov* and CPS data in this manner was the Department's assumption that the industry distribution of Federal contractors was the same as that in the rest of the U.S. economy. For example, according to CPS data, there were 5,991 workers in the information industry in Maryland who earn less than $10.10 per hour, so applying the *share of industry output* ratio estimate of 0.83 percent indicated that there were 50 workers in the information industry who earned less than $10.10 and were performing work on a Federal contract in Maryland. The Department then accounted for those workers who were performing on a covered contract by employing the applicable *ratio of covered contracts.* By example, the Department noted the *ratio of covered contracts* in the information industry in Maryland was 67 percent. The Department accordingly calculated that the number of affected workers in the information industry in Maryland who earn less than $10.10 per hour is 33 (67% × 50). By following this procedure for each state-industry pair, the Department estimated that out of the 868,834 workers on covered Federal contract jobs, 183,814 (21 percent) were paid $10.10 per hour or less. *See* Table C for calculation of the number of affected workers.

The Department has closely reviewed the economic analysis it utilized in the NPRM, and carefully considered all the pertinent comments received. Based on its review and its consideration of the comments, the Department has concluded that the method it used to conduct the economic analysis in the NPRM reasonably estimated the annual effect of the proposed rule, based on the data sources available to the

[13] The total spending data on Federal contracts by industry in 2012 was similar to the total spending data on Federal contracts by industry in 2013. The Department accordingly concluded it was appropriate to compare the total spending data on Federal contracts from *USASpending.gov* in 2013 to the 2012 data on total output and employment from the OEUS.

[14] The CPS, sponsored jointly by the U.S. Census Bureau and the BLS, is the primary source of labor force statistics for the population of the United States. The CPS is the source of numerous high-profile economic statistics, including the national unemployment rate, and provides data on a wide range of issues relating to employment and earnings.

[15] While the ideal data set for the number of affected workers would be Federal procurement data that shows a wage distribution for all contract and subcontract workers, such a data set is not available.

Department. The Department is accordingly adopting the proposed rule's economic analysis for purposes of this final rule. As the Department's estimate of the annual effect of the rule exceeds $100 million, the Department has concluded its implementing regulations constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866.

Demos, the Chamber/NFIB, and Advocacy expressed their views on the Department's estimate of the number of affected workers subject to this Executive Order. Demos estimated the number of affected workers to be 350,721. It represented that it derived its estimate from use of the American Community Survey (ACS) and requested that the Department use ACS, rather than the CPS, to estimate the number of affected workers.

The Department understands that Demos derived its estimate of the number of affected workers by considering data that included workers performing work on all Federal procurement contracts, including contracts for products to which the Executive Order does not apply. Demos' estimate of workers receiving less than $10.10 accordingly includes workers the Executive Order does not cover. Because the Department concludes its exclusion of contracts for products more accurately identifies the number of affected workers than Demos' inclusion of contracts for products, it is not adopting Demos' estimate of the number of affected workers. The Department additionally notes that estimates of affected workers derived from CPS data are similar to the estimates derived from ACS data, provided one excludes from each estimate workers performing work on contracts for products.[16]

Demos also commented that low-wage workers at companies with federal concession agreements and private entities that lease space in federal buildings must be accounted for in the estimates of the number of affected workers. It further stated that, while there is little comprehensive data on these workers, there could be more than 10,000 low-wage workers at companies with federal concession agreements and private entities that lease space in Federal buildings. Advocacy similarly expressed concern that the Department's economic analysis in the NPRM does not consider the impact on small businesses that employ affected workers on federal concession agreements and contracts related to leases of space in Federal buildings.

The Department agrees that there are likely some affected workers working on or in connection with covered concession agreements or leases in federal buildings that its estimate may not include. The Department, however, has identified no data source that allows it to reasonably estimate the number of those affected workers. Indeed, as Demos itself notes, there is little comprehensive data on these workers. In this context, the Department has concluded it is not feasible to include such workers in its estimate. Moreover, the inclusion of all contracts in the product service codes and the exclusion of some concessions contracts and covered contracts in connection with Federal property or lands likely offset each other, to at least some degree, in calculating the total number of affected workers under this Executive Order.

The Chamber/NFIB asserted that there is no basis to support the Department's assumption that wages among Federal contract workers follow the same distribution in terms of below and above $10.10 per hour as the wider group of private sector wage earners for whom the data is available. The Chamber/NFIB added that much of the required data may already be available through information currently collected by the Department's Office of Federal Contract Compliance Programs (OFCCP) in relation to its enforcement of affirmative action/non-discrimination regulations. The commenter also said the Department should conduct a survey of contractors to obtain definitive data regarding the number of affected workers.

The Department disagrees with these comments. The Department used wage and industry data from the CPS to calculate the total number of affected workers assuming the industry and wage distribution is the same for federal contractors and those in the rest of the U.S. economy. The Department believes this assumption is reasonable because the wage rates workers receive under the Federal construction and service contracts within the CPS are frequently derived from the applicable SCA or DBA wage rates, both of which are derived from data the Department primarily collects from private sector employers. The Department further notes that CPS data includes both contractor and non-contractor firms, and that a data source reflecting only wages paid by Federal contractors is not available. In particular, the OFCCP does not collect or maintain a database of wages paid by all Federal contractors. Lastly, the Department did not conduct a survey of contractors to determine the number of affected workers because a reasonable estimate of the number of affected workers can be made by using CPS data.

This regulation affects only new contracts as that term is defined at § 10.2; it does not affect existing contracts. The Department, as explained in the NPRM, found no precise data with which to measure the number of construction and service contracts that are new each year. According to a 2012 Small Business Administration (SBA) study, between FY 2005 and FY 2009, an average of 17.6 percent of all Federal contracts with small businesses were awarded to small businesses that were new to Federal contracting (and thus must have been new contracts) based on data from the Federal Procurement Data System (FPDS).[17] In the economic analysis of the final rule of ''Nondisplacement of Qualified Workers Under Service Contracts,'' the Department assumed that slightly more than 20 percent of all SCA covered contracts would be successor contracts subject to the nondisplacement provisions.[18] After considering these factors, and recognizing in particular that some contracts covered by the Executive Order (including those exempted from SCA coverage under 29 CFR 4.133(b)) are for terms of more than five years, the Department conservatively assumed for purposes of this analysis that roughly 20 percent of Federal contracts are initiated each year; therefore, it will take at least five years for the final rule's impact to fully manifest itself.

Transfers From Federal Contractor Employers and Taxpayers to Workers

The most accurate way to measure the pay increase that affected workers can expect to receive as a result of the minimum wage increase would be to calculate the difference between $10.10 and the average wage rate currently paid to the affected workers. However, the Department was unable to find data reflecting the distribution of the wages currently paid to the affected workers who earn less than $10.10 per hour.

[16] If Demos had used the ACS after excluding workers performing work on contracts for products, the estimated number of affected workers would be approximately 176,025 with the percentage of affected workers at 20.26 percent of all workers on covered Federal contract jobs. The percentage of affected workers from CPS data was estimated at 21.16 percent, resulting in 183,814 affected workers.

[17] Small Business Administration, ''Characteristics of Recent Federal Small Business Contracting,'' May 2012, *http://www.sba.gov/sites/default/files/397tot.pdf.*

[18] Department of Labor, ''Nondisplacement of Qualified Workers Under Service Contracts,'' Final Rule, Wage and Hour Division, 2011, *https://www.federalregister.gov/articles/2011/08/29/2011-21261/nondisplacement-of-qualified-workers-under-service-contracts.*

Thus, it is not possible to directly calculate the average wage rate the affected workers are currently paid.

Given this data limitation, the Department used earnings data from the CPS to calculate the average wage rate for U.S. workers who earn less than $10.10 per hour in the construction and service industries. Assuming that the wage distribution of Federal contract workers in the construction and service industries is the same as that in the rest of the U.S. economy, the Department estimated that the average wage for the affected workers associated with this final rule is $8.79 per hour. The difference between the estimated average wage rate of $8.79 per hour and $10.10 is $1.31 per hour.

The Chamber/NFIB, the AOA, Anthony Pannone, and Advocacy stated the Department's estimate of the direct impact of the minimum wage increase mandate is incomplete because this rule would also increase payroll taxes and workers' compensation insurance premiums in addition to the increase in wage payments (*e.g.,* $1.31 per hour). The Department recognizes that it will be incumbent upon contractors to pay the applicable percentage increase in payroll and unemployment taxes and that it has not factored these costs into its analysis. Similarly, the Department is not including within the estimates of the costs imposed by the minimum wage increase costs that Advocacy, Ski New Hampshire, the AOA, Louise Tinkler, and the Chamber/NFIB assert they, or their members, will incur based on the asserted need to adjust upward the wages of workers not covered by the Order. While some contractors may choose to increase wages of workers who currently earn more than $10.10, the Department has not quantified this potential ancillary impact to contractors in the economic analysis of this rule.

The Association/IFA contended that there will be an increase in costs associated with the employment of tipped employees on a covered contract. The commenter said that on January 1, 2015, the minimum cash wage for tipped employees will more than double (*i.e.,* increase by $2.77 ($4.90–$2.13)) and that within three years after that date, the minimum cash wage for tipped employees will nearly quadruple. The commenter also said that the increased costs will mean that these contractors will need to either significantly increase their prices or fundamentally restructure the method of payment to these employees. The Association/IFA also contended that the Department failed to account for the increased direct wage payment to tipped employees in the NPRM.

There is no credible data source that allows the Department to estimate the number of tipped employees covered by this Executive Order. The Department expects, however, that the number of tipped employees covered by the Executive Order will be small because contractors on the most commonly occurring DBA- and SCA-covered contracts rarely engage tipped employees on or in connection with such contracts, and the Department has received no data from interested commenters, including the Association/IFA, indicating that there will be a significant number of tipped employees covered by the Executive Order. Moreover, the Association/IFA's comment fails to account for the benefits, discussed in greater detail below, that may accrue to its members in conjunction with the new Executive Order minimum wage, including anticipated increases in productivity, lower absenteeism, less turnover and reduced supervisory costs.

The Department then applied the estimated average $1.31 increase in the applicable minimum wage to the Federal contract workers who will be potentially affected by the change. The Department also needed to account for the fact that this rule applies only to new contracts. As noted, the Department estimated that about 20 percent of covered contracts are new each year.[19] To estimate the total wage increase per year, the Department needed to calculate the total work hours in a year. The Department assumed a forty hour workweek, and by multiplying 40 hours per week by 52 weeks in a year, concluded that affected workers work 2,080 hours in a year.

The Department calculated the total increase that Federal contractors will pay their employees by multiplying the number of affected workers by the average wage increase of $1.31 per hour and 2,080 work hours per year. Based on the assumption that only 20 percent of contracts in 2015 will be new, the total increase that Federal contractors will pay affected workers by the end of 2015 is estimated to be $100.20 million ($183{,}814 \times \$1.31 \times 2{,}080 \times 20\%$).[20] When this rule's impact is fully manifested by the end of 2019, the total increase in hourly wages for affected workers is expected to be $501 million (in 2014 dollars) ($100.20 million $\times$ 5 years).[21] There is however, a possibility that this estimate is overstated because the analysis does not account for changes in state and local minimum wages that will raise wages independently of this final rule.[22] An additional reason to believe the transfer may be overestimated is because firms may respond to minimum wage increases by cutting fringe benefits and overtime (as found by Fairris, Runstein, Briones, and Goodheart (2005) in their examination of the results of a living wage ordinance in Los Angeles).

This $501 million is the estimated transfer cost from employers and taxpayers to workers in 2019. The Department expects these transfers to be accompanied by workers' increased productivity, reduced turnover, and other benefits to employers and the Federal Government as discussed in the Benefits section. Overall, the Department believes that the combined benefits to employers and the Federal Government justify the costs that would be incurred.

NELP, Ski New Hampshire, the AOA, and the Chamber/NFIB expressed their views on the increased wage cost to contractors as a result of this rule. NELP commented that the Department overstated the increased cost to contractors because five states (Massachusetts, Vermont, Connecticut, Maryland, and Hawaii) have recently raised their minimum wage, and the minimum wage in California, the nation's largest state, will be only 10 cents less than $10.10 an hour. It additionally noted that if a contract is

[19] Because many of the affected permits and authorizations are issued for one-year terms, the rule's impact on concessionaires—which the Department has not quantified—will likely be experienced more immediately than the linear increase over five years estimated for other types of contractors.

[20] Because the rate is effective for contracts resulting from solicitations on or after January 1, 2015, it is likely that work on covered contracts will not commence until later in 2015. Therefore, our analysis overstates the cost estimate as we used 2,080 hours to reflect the full year for 2015.

[21] Beginning January 1, 2016, the minimum wage will be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Accordingly, this will adjust upward our estimated wage increase in 2016 and after. However, our estimates of wage increases for the affected workers are measured in 2014 constant dollars and therefore remain unchanged.

[22] The estimate of rule-induced transfers is based on an assumption that the final rule would have no impact on employment. According to the Council of Economic Advisers, the bulk of the empirical literature shows that raising the minimum wage by a moderate amount has little or no negative effect on employment. The published literature has primarily studied the impact of minimum wages in the private sector and thus may be more directly predictive of rule-induced outcomes for concessionaires and lessees than for other contracting entities affected by the final rule. In the public sector, many of the same factors that affect private companies, like the impact on the productivity of workers, are relevant for considering any impact on employment. However, ultimately employment related to federal contracts will largely depend on the future decisions of policymakers, such as budget and procurement decisions.

covered by the SCA or the DBA, the wage rates under those statutes can be higher than the minimum wage established by the Executive Order.

The Department's analysis accounted for states with minimum wage rates higher than the Federal minimum wage rate. It also accounted for instances where SCA and DBA wage rates are higher than the current Federal minimum wage rate of $7.25. However, the Department's estimate of the wage increase does not reflect the minimum wage increase to $10.00 in California that is scheduled to take effect on January 1, 2016, or the minimum wage increase to $11.50 in the District of Columbia that is scheduled to take effect on July 1, 2016; therefore, there may be a very slight overestimate of the average wage increase for affected workers in 2016 and thereafter.

Ski New Hampshire contended that a $10.10 rate will represent a 40 percent differential in pay scales between New Hampshire ski areas operating on Federal lands and New Hampshire ski areas that do not. While $10.10 is approximately 40 percent greater than $7.25, the commenter submitted no data related to what its member ski resorts pay workers for work performed at ski resorts on private land. In addition, the Executive Order minimum wage requirements apply only to ''new contracts'' as defined in § 10.2. The Executive Order thus ensures that contracting agencies and contractors will generally have sufficient notice of any obligations under Executive Order 13658 and can take into account any potential economic impact of the Order on projected labor costs after January 1, 2015.

The Chamber/NFIB commented that indexing the minimum wage to inflation implies a permanence that may inspire firms to make deep cuts in labor costs. To the extent the commenter is asserting that cuts in labor costs will result from the Executive Order's minimum wage requirements, the Department believes that any downward pressure on hiring is likely to be mitigated by the impacts of higher wages on worker productivity, reduced turnover, lessened supervisory costs and other benefits. Moreover, the bulk of the empirical literature suggests that, on net, minimum wages have little to no adverse impact on employment. The Department additionally notes that the purpose of indexing the minimum wage to inflation is to approximately maintain the value of, not increase, the minimum wage after the initial increase. Indeed, the Executive Order's inflation index provides workers a wage that keeps pace with the rising costs of goods and services consistent with the manner in which the prices of goods and services provided by contractors generally increase in a manner commensurate with inflation. Therefore, the Department disagrees with the commenter that indexing the minimum wage to inflation would cause employers to make cuts in labor costs.

The Chamber/NFIB and HR Policy Association asserted that empirical literature and economic theory firmly indicate that across-the-board hikes in the minimum wage will directly benefit some workers but reduce overall employment. The George Washington Regulatory Studies Center asserted it is conceivable that the Executive Order minimum wage increase will result in a decrease in worker hours or the number of workers assigned to a contract. All three commenters cited the Congressional Budget Office's estimate that if such a wage increase to $10.10 were implemented nationally, it would reduce employment by 500,000 workers. The Mercatus Center at George Mason University similarly asserted that raising the minimum wage is an incentive for employers to lay off less productive workers.

The Department has carefully considered the comments, and closely scrutinized the potential effect on employment associated with the wage increase to the affected workers covered by federal contracts. For the following reasons, the Department disagrees with the suggestion that the Executive Order minimum wage increase will necessarily reduce overall employment. The CBO study estimated that increasing the minimum wage to $10.10 nationwide would reduce total employment by 0.3 percent (or 500,000 workers). The study also indicated that the total reduction in employment might be smaller in the long run because a higher minimum wage tends to increase the employment of higher-wage workers. Moreover, a higher minimum wage for low-wage workers, who tend to spend a larger fraction of their earnings, can increase demand for goods and services which, in turn, would boost employment and economic growth. Furthermore, empirical evidence shows that firms are able to respond to mandatory increases in minimum wages without significantly reducing employment.[23] A possible partial explanation for this result is that firms experience increased productivity of labor through better screening, training, and improved production practices, and that these measures help mitigate reductions in employment in response to wage increases (such as the increase mandated by the Executive Order). The Department accordingly expects that an increase in the minimum wage to $10.10 for workers on covered federal contracts would have, on net, little or no negative effect on employment.

Additional Compliance Costs

This rule requires executive departments and agencies to include a contract clause in any contract covered by the Executive Order. The clause describes the requirement to pay all workers performing work on or in connection with covered contracts at least the Executive Order minimum wage. Contractors and their subcontractors will need to incorporate the contract clause into covered lower-tier subcontracts. The Department believes that the compliance cost of incorporating the contract clause will be negligible for contractors and subcontractors.

The Department has drafted this final rule consistent with the directive in section 4(c) of the Executive Order that any regulations issued pursuant to the Order should, to the extent practicable, incorporate existing procedures from the FLSA, SCA and DBA. As a result, most contractors subject to this rule generally will not face any new requirements, other than payment of a wage no less than the minimum wage required by the Order. The final rule does not require contractors to make other changes to their business practices. Therefore, the Department posits that the only regulatory familiarization cost related to this final rule is the time necessary for contractors to read the contract clause, evaluate and adjust their pay rates to ensure workers on covered contracts receive a rate not less than the Executive Order minimum wage, and modify their contracts to include the required contract clause. For this activity, the Department estimates that contractors will spend one hour. The estimated cost of this burden is based on data from the Bureau of Labor Statistics in the publication ''Employer Costs for Employee Compensation'' (September 2013), which lists hourly compensation for the Management, Professional, and Related occupational group as $51.74. There are approximately 500,000 contractor firms registered in the General Services Administration's (GSA) System for Award Management (SAM). Therefore, the estimated hours for rule

[23] *See* Dale Belman and Paul J. Wolfson, ''The New Minimum Wage Research,'' UPJOHN Institute for Employment Research 21, no. 2 (2014), for a comprehensive review of the wage literature on the impact of minimum wage on employment, *http://research.upjohn.org/cgi/viewcontent.cgi?article=1220&context=empl_research.*

familiarization is 500,000 hours (500,000 contractor firms × 1 hour = 500,000 hours). The Department calculated the total estimated cost as $25.87 million (500,000 hours × $51.74/hour = $25,870,000).

Four commenters, the Association/IFA, the AOA, Advocacy, and the Chamber/NFIB, asserted the Department underestimated the ''additional compliance costs'' associated with this rule and that the Department's proposal to make contractors responsible for subcontractors' compliance would result in significant costs to contractors. The Department disagrees that the rule will result in significant compliance costs to contractors based on their responsibility for subcontractors' compliance. As discussed previously, contractors subject to the SCA and/or DBA have long had a comparable flow-down obligation by operation of the SCA and DBA. Thus, upper-tier contractors' flow-down responsibility, and lower-tier subcontractors' need to comply with prevailing wage-related legal requirements so that upper-tier contractors do not incur flow-down liability, are well understood concepts to SCA and DBA contractors. *See* 29 CFR 5.5(a)(6) and 4.114(b). While the flow-down structure may be less familiar to some sub-set of contractors subject to the Executive Order under sections 7(d)(i)(C) and (D), the fact that the SCA applies to many contracts that are covered by section 7(d)(i)(C) and (D) should substantially reduce the number of contractors with no familiarity with flow-down liability.

The Association/IFA and AOA asserted that the proposed contract clause must be read and understood by a prudent contractor, a task that would take more than an hour. The commenters said the idea that only one member of the contractor company management would be sufficient to read and implement the clause is not credible except for the smallest of contractors. For the typical contractor company with fifty to one hundred employees, the commenters contended a core management senior group of three to five executives, each of whom would need to read and understand the rule as well as their attorneys paid at higher hourly rates, would likely also need to be involved.

The Department expects the regulatory familiarization cost to vary by contractor. While some contractors may need more than one hour to become familiar with the regulations, others will likely need less than one hour. That this rule incorporates existing procedures from the FLSA, SCA, and DBA to the extent practicable should, however, simplify the familiarization process for contractors. Indeed, the Department anticipates most contractors subject to the rule, particularly contractors with experience complying with the FLSA, SCA and DBA, generally will not face significant new requirements, other than payment of a wage no less than the minimum wage required by this Order. Therefore, the Department adopts its estimation from the NPRM that contractors will spend one hour on average to read the contract clause and evaluate and adjust their pay rates to ensure affected workers on covered contracts receive a rate not less than the Executive Order minimum wage.

Seven commenters (Anthony Pannone, Advocacy, the AOA, CSCUSA, Ski New Hampshire, the Association/IFA, and the Chamber/NFIB) expressed their views on the increased cost burden to contractors with Federal concession agreements and lease contracts. Mr. Pannone contended that implementation of this rule will create an uneven playing field for small business concessions on military installations relative to their direct competitors off base because they do not receive money from the government contract; rather, they pay commissions to provide their services on base while absorbing additional costs not imposed on their competitors off base. Advocacy asserted that affected small businesses are concerned that they cannot pass on the costs of a higher minimum wage to the government or customers and that fast-food franchisees at Advocacy's roundtable expressed concern that the Department is imposing labor costs that are almost double inside the military base compared to outside the military base. The AOA asserted that many of its members compete with other recreational or experimental service providers that do not operate on Federal lands and, therefore, requiring outfitters and guides who operate on Federal lands to pay a higher minimum wage will place them at a serious competitive disadvantage relative to operators on non-Federal lands who will not be subject to similar increased costs unless the state in which they operate adopts a similar requirement. CSCUSA and Ski New Hampshire asserted that the Executive Order will increase the costs of ski resorts that operate on Federal lands and place their businesses in an uncompetitive position with similarly situated ski resorts that do not operate on Federal lands. The Association/NFIB represented that contractors with concession contracts and contracts in connection with Federal property or lands often are in direct competition with other businesses and that application of the Executive Order's minimum wage would put businesses operating on Federal property or lands at a significant competitive disadvantage. The Chamber/NFIB asserted that, unlike contractors who are reimbursed for costs by the government for their construction or operational services to the government, concessionaires on defense bases cannot raise their prices to mitigate increased costs. It further asserted that concessionaires (*e.g.,* restaurant franchise operators) on military base property are required by law to charge prices no higher than they charge at their civilian property locations in the same area.

In response to these comments, the Department acknowledges that concessionaires and lessees, selling goods and services directly to private consumers, experience different rule-induced economic consequences (including price consequences) than other contracting entities affected by this rule. However, the commenters do not account for a number of factors that the Department anticipates will substantially offset many potential adverse economic effects on their businesses. These commenters did not consider that increasing the minimum wage of their workers could help reduce absenteeism and turnover in the workplace, improve employee morale and productivity, reduce supervisory costs, and increase the quality of services provided to the Federal Government and the general public. These commenters similarly do not address the possibility that increased efficiency and quality of services will attract more customers and result in increased sales. Furthermore, these commenters do not consider the offsetting effect of contractors' ability to negotiate a lower percentage of sales paid as rent or royalty to the Federal Government in new contracts.[24]

Moreover, the Executive Order minimum wage requirements apply only to ''new contracts'' as defined at § 10.2. The Executive Order thus ensures that contracting agencies and contractors will have sufficient notice of any obligations under Executive Order 13658 and can take into account any potential economic impact of the Order on projected labor costs prior to negotiating ''new contracts'' after January 1, 2015.

[24] This ability to negotiate is not universal. For example, permits for ski areas, marinas, and organizational camps are subject to land use fees that are determined by federal statute or agency regulations or directives.

Benefits

As the Department noted in the NPRM, it expects that increasing the minimum wage of Federal contract workers would generate several important benefits, including reduced absenteeism and turnover in the workplace, improved employee morale and productivity, reduced supervisory costs, and increased quality of government services.

Research shows that absenteeism is negatively correlated with wages, meaning that better-paid workers are absent less frequently (Dionne and Dostie 2007; Pfeifer 2010).[25] Pfeifer (2010) finds that a one percent increase in wages is associated with a reduction in absenteeism of about one percent (but also notes that ''the costs of higher absenteeism of workers at the lower tail of the wage distribution are rather low''). According to a study by Fairris, Runstein, Briones, and Goodheart (2005)—which, unlike the rest of the cited absenteeism literature, has identified a causal relationship between wages and absenteeism, rather than just correlation between absenteeism and either wages or productivity—managers reported that absenteeism decreased following the passage of a living wage ordinance in Los Angeles because employees had more to lose if they did not show up for work, and employees placed greater value on their jobs because they knew they would receive a lower wage at other jobs.[26] When workers are paid higher wages, they are absent from work less often. Finally, according to studies by Allen (1983), Zhang, Sun, Woodcock, and Anis (2013), reduced absenteeism has been associated with higher productivity.[27]

A higher minimum wage is also associated with reduced worker turnover (Reich, Hall, and Jacobs 2003; Fairris, Runstein, Briones, and Goodheart 2005).[28] In a study of homecare workers in San Francisco, Howes (2005) found that the turnover rate fell by 57 percent following implementation of a living wage policy. Furthermore, Howes found that a $1.00 per hour raise from an $8.00 hourly wage increased the probability of a new worker remaining with his or her employer for one year by 17 percentage points.[29] In their study of the effects of the living wage in Baltimore, Niedt, Ruiters, Wise, and Schoenberger (1999) found that most workers who received a pay raise expressed an improved attitude toward their job, including greater pride in their work and an intention to stay on the job longer.[30]

Reduced worker turnover is also associated with lower costs to employers arising from recruiting and training replacement workers. Because seeking and training new workers is costly, reduced turnover leads to savings for employers. Research indicates that decreased turnover costs partially offset increased labor costs (Reich, Hall, and Jacobs 2003; Fairris, Runstein, Briones, and Goodheart 2005). Holzer (1990) finds that high-wage firms can partially offset their higher wage costs through improved productivity and lower hiring and turnover costs. More specifically, Holzer finds that firms with higher wages spend fewer hours on informal training, have longer job tenure, more years of previous job experience, higher performance ratings, lower vacancy rates, and greater perceived ease in hiring. Holzer concludes that firms respond to higher wage costs in a variety of ways that sometimes offset more than half those costs.[31]

A body of literature predicts that companies may pay higher wages to reduce the need for direct monitoring and related supervisory costs. Workers in higher-wage jobs exhibit greater self-policing in order to protect their higher-wage positions. Empirical studies show that higher wages are associated with less intensive supervision (Groshen and Krueger 1990; Osterman 1994; Rebitzer 1995; Georgiadis 2013).[32] Therefore, increasing the minimum wage of Federal contract workers may lead to a reduction in the costs associated with supervisory expenses. Higher wages can substitute for other costly forms of supervising workers, such as hiring additional managers or including more supervisory duties in senior employees' duties.

Higher wages can also boost employee morale, thereby leading to increased effort and greater productivity. Akerlof (1982, 1984) contends that higher wages increase employee morale, which raises employee productivity.[33] Furthermore, higher productivity can have a positive spillover effect, boosting the productivity of co-workers (Mas and Moretti 2009).[34] This means that raising the minimum wage of Federal contract workers may not only increase the productivity of Federal contract workers, but may also improve the productivity of Federal workers.

The Department also expects the quality of government services to improve when the minimum wage of Federal contract workers is raised. In some cases, higher-paying contractors may be able to attract better quality workers who are able to provide better quality services, thereby improving the experience of citizens who engage with these government contractors. For example, a study by Reich, Hall, and

[25] Dionne, Georges and Benoit Dostie, ''New Evidence on the Determinants of Absenteeism Using Linked Employer-Employee Data,'' *Industrial and Labor Relations Review,* Vol. 61, No. 1, 2007.

Pfeifer, Christian, ''Impact of Wages and Job Levels on Worker Absenteeism,'' *International Journal of Manpower,* Vol. 31, No. 1, pp 59–72, 2010.

[26] Fairris, David, David Runsten, Carolina Briones, and Jessica Goodheart, ''Examining the Evidence: The Impact of the Los Angeles Living Wage Ordinance on Workers and Businesses,'' LAANE, 2005.

[27] Allen, Steven, ''How Much Does Absenteeism Cost?'' *Journal of Human Resources,* Vol. 18, No. 3, pp 379–393, 1983.

Mefford, Robert, ''The Effects of Unions on Productivity in a Multinational Manufacturing Firm,'' *Industrial and Labor Relations Review,* Vol. 40, No. 1, pp 105–114, 1986.

Zhang, Wei, Huiying Sun, Simon Woodcock, and Aslam Anis, ''Valuing Productivity Loss Due to Absenteeism: Firm-level Evidence from a Canadian Linked Employer-Employee Data,'' Canadian Health Economists' Study Group, The 12th Annual CHESG Meeting, Manitoba, Canada, May 2013.

[28] Reich, Michael, Peter Hall, and Ken Jacobs, ''Living Wages and Economic Performance: The San Francisco Airport Model,'' Institute of Industrial Relations, University of California, Berkeley, March 2003.

Dube, Arindrajit, T. William Lester, and Michael Reich, ''Minimum Wage Shocks, Employment Flows and Labor Market Frictions,'' UC Berkeley Institute for Research on Labor and Employment, Working Paper, July 20, 2013.

Brochu, Pierre and David Green, ''The Impact of Minimum Wages on Labor Market Transitions,'' *The Economic Journal,* Vol. 123, No. 573, pp 1203–1235, December 2013.

[29] Howes, Candace, ''Living Wages and Retention of Homecare Workers in San Francisco,'' *Industrial Relations,* Vol. 44, No. 1, pp 139–163, 2005.

[30] Niedt, Christopher, Greg Ruiters, Dana Wise, and Erica Schoenberger, ''The Effect of the Living Wage in Baltimore,'' Working Paper No. 119, Department of Geography and Environmental Engineering, Johns Hopkins University, 1999.

[31] Holzer, Harry, ''Wages, Employer Costs, and Employee Performance in the Firm,'' *Industrial and Labor Relations Review,* Vol. 43, No. 3, pp 147–164, 1990.

[32] Groshen, Erica L. and Alan B. Krueger, ''The Structure of Supervision and Pay in Hospitals,'' *Industrial and Labor Relations Review,* Vol. 43, No. 3, pp 134–146, 1990.

Osterman, Paul, ''Supervision, Discretion, and Work Organization,'' *The American Economic Review,* Vol. 84, No. 2, pp 380–84, 1994.

Rebitzer, James, ''Is There a Trade-Off Between Supervision and Wages? An Empirical Test of Efficiency Wage Theory,'' *Journal of Economic Behavior and Organization,* Vol. 28, No. 1, pp 107–129, 1995.

Georgiadis, Andreas, ''Efficiency Wages and the Economic Effects of the Minimum Wage: Evidence from a Low-Wage Labour Market,'' *Oxford Bulletin of Economics and Statistics,* Vol. 75, No. 6, pp 962–979, 2013.

[33] Akerlof, George, ''Labor Contracts as Partial Gift Exchange,'' *The Quarterly Journal of Economics,* Vol. 97, No. 4, pp 543–569, 1982.

Akerlof, George, ''Gift Exchange and Efficiency-Wage Theory: Four Views,'' *The American Economic Review,* Vol. 74, No. 2, pp 79–83, 1984.

[34] Mas, Alexandre and Enrico Moretti, ''Peers at Work,'' *American Economic Review,* Vol. 99, No. 1, pp 112–45, 2009.

Jacobs (2003) found that increased wages paid to workers at the San Francisco airport increased productivity and shortened airport lines. In addition, higher wages can be associated with a higher number of bidders for government contracts, which can be expected to generate greater competition and an improved pool of contractors. Multiple studies have shown that the bidding for municipal contracts remained competitive or even improved when living wage ordinances were implemented (Thompson and Chapman 2006).[35]

The Department expects the increase in the minimum wage for Federal contract workers to result in less absenteeism, reduced labor turnover, lower supervisory costs, and higher productivity. Moreover, higher-paid contract workers who demonstrate higher productivity may also boost the productivity of those around them, including Federal employees. Furthermore, the quality of government services may improve as contractors who raise the wage rates paid to their workers incur these benefits and attract better quality workers, thereby improving the experience of citizens who use government services.

The Chamber/NFIB, the HR Policy Association, and the George Washington Regulatory Studies Center stated that this rule cites studies demonstrating that higher minimum wages increase morale, productivity, and quality of work and reduce absenteeism, worker turnover, and the costs associated with supervisory expenses without providing a quantitative cost-benefit analysis of the specific wage increases for current and future beneficiaries of this rule. The HR Policy Association noted that the Department acknowledges that the evidence is based on analysis of firms that have voluntarily raised wages and that there may be differences between such firms and the contractors that would newly increase wages as a result of the NPRM.

The Department agrees that its expectation that the increase in the minimum wage for federal contract workers will result in less absenteeism, reduced labor turnover, lower supervisory costs, and higher productivity is based on a review of studies, many of which examined why firms voluntarily pay higher wages. Therefore, there may be differences between such firms and the federal contractors that would newly increase wages as a result of this final rule. The Department has not quantified the benefits it expects these regulations will engender because there is insufficient data to allow the Department to quantify the benefits of this rule. However, the Department believes the combined benefits to contractors and the Federal Government will justify the costs that will be incurred as a result of this final rule, leading to improved economy and efficiency in government procurement.[36]

The Mercatus Center at George Mason University stated that even if the cited studies in the NPRM suggest that increased wages lead to increased productivity, they do not indicate that the value of the increased productivity exceeds the cost of the increased wage. The Mercatus Center further stated that ''by not comparing the value of increased productivity with the cost of achieving the increased productivity, the DOL cannot say whether the rule will be net benefit or detriment to the economy at large.'' Therefore, the Mercatus Center contends, the cited studies fail to support the fundamental premise of the NPRM.

Although most of the cited studies do not quantitatively value productivity increases resulting particularly from the wage increase to $10.10 to workers covered by this final rule, the cited studies do support the conclusion that increased wages can enhance productivity. The Department expects this increase in productivity, coupled with the anticipated reductions in absenteeism and turnover, lowered supervisory costs, and increased quality of government services, to result in substantial offsetting of many of the costs to contractors of the increased wage.

The Mercatus Center additionally questioned the manner in which the Department's NPRM relied on economic studies, contending the Department misinterpreted research, inappropriately generalized results and failed to mention important caveats. The Department has carefully reviewed the economic studies it cited in the NPRM in light of the commenter's assertions. Finally, the George Washington Regulatory Studies Center's comment invoked the retrospective review process identified in Executive Order 13563, Improving Regulation and Regulatory Review. The Department appreciates the comment and notes that its Regulatory Agendas, which are published with the Unified Agenda of Federal Regulatory and Deregulatory Actions, *see, e.g.,* 79 FR 896, 1020, contain information on how the Department implements the retrospective review process contained in Executive Order 13563.

Discussion of Regulatory Alternatives

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. As discussed above, this rule has been designated an economically significant regulatory action under section 3(f)(1) of Executive Order 12866.

The Department notes that, as the E.O. 12866 analysis of the proposed rule explained, Executive Order 13658 delegates to the Secretary the authority only to issue regulations to ''implement the requirements of this order.'' Because the Executive Order itself establishes the basic coverage provisions and minimum wage requirements that the Department is responsible for implementing, many potential regulatory alternatives are beyond the scope of the Department's authority in issuing this final rule. For illustrative purposes only, however, this section presents immediately below two possible alternatives to the provisions set forth in this final rule. The Regulatory Flexibility Act section that follows also contains a discussion of regulatory alternatives, including an analysis of comments received.

Alternative 1: The Minimum Wage Increases by the Annual Percentage Increase in the Consumer Price Index for All Urban Consumers (CPI–U)

Executive Order 13658 directs the Secretary of Labor to determine the minimum wage beginning on January 1, 2016, by indexing future increases to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). *See* 79 FR 9851. The CPI–W is based on the expenditures of households in which more than 50 percent of household income comes from clerical or wage occupations. The CPI–W population represents about 32 percent of the total U.S. population and is a subset, or part, of the CPI–U population.

A broader CPI is the CPI–U, which covers all urban consumers, who represent about 88 percent of the total U.S. population. While the CPI–W is used to calculate Social Security cost-of-living adjustments (COLAs), most other COLAs cited in Federal legislation, such as the indexation of Federal income tax

[35] Thompson, Jeff and Jeff Chapman, ''The Economic Impact of Local Living Wages,'' Economic Policy Institute, Briefing Paper #170, 2006.

[36] The phrase ''economy and efficiency'' is used here only in the sense implied by the Federal Property and Administrative Services Act.

brackets, use the CPI–U. Under this alternative, the minimum wage increases by the annual percentage in the CPI–U. Table 1 below shows the annual percentage changes of the CPI–W and CPI–U for 2008–2013.

TABLE 1—THE CPI–W AND CPI–U FOR 2008–2013

Year	CPI–W (%)	CPI–U (%)
2008	4.1	3.8
2009	−0.7	−0.4
2010	2.1	1.6
2011	3.6	3.2
2012	2.1	2.1
2013	1.4	1.5

(Source: US DOL, BLS, All items (1982–84 = 100)

The CPI–U generally has lower annual percentage changes and therefore, the minimum wage increase by the annual percentage increase in the CPI–U would likely result in a slightly smaller impact of this final rule. The CPI–U is about 0.2 percent lower than the CPI–W per year on average. Thus, the annual impact of this rule, starting in the second year of the rule's implementation, would be approximately 0.2 percent smaller if the CPI–U were used rather than the CPI–W. The Department rejected this regulatory alternative because it was beyond the scope of the Department's authority in issuing this final rule. Executive Order 13658 specifically requires the Department to utilize the CPI–W in determining the Executive Order minimum wage beginning January 1, 2016, and annually thereafter. *See* 79 FR 9851.

Alternative 2: The Minimum Wage Increases by the Annual Percentage Increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) on a Quarterly Basis

Executive Order 13658 directs the Secretary of Labor, when calculating the annual percentage increase in the CPI–W, to compare the CPI–W for the most recent month, quarter, or year available with that for the same month, quarter, or year in the preceding year. *See* 79 FR 9851. As explained above, the Secretary has proposed to base such increases on the most recent year available.

Under this alternative, the annual percentage increase in the CPI–W is calculated only by comparing the CPI–W for the most recent quarter with the same quarter in the preceding year. The impact of this alternative will be either higher or lower than that of the final rule. However, the Department expects that the difference would be less than one per cent of the total impact of this final rule.

The Department rejected this regulatory alternative because utilizing the most recent year available, rather than the most recent month or quarter, minimizes the impact of seasonal fluctuations on the Executive Order minimum wage rate.

TABLE A—SHARES OF INDUSTRY OUTPUT BY INDUSTRY

Industry	NAICS code	Share of sector (%)
Total Wage and Salary	.....	1.87
Mining	21	0.07
Oil and gas extraction	211	0.04
Mining, except oil and gas	212	0.12
Utilities	22	0.33
Construction	23	3.31
Manufacturing	31–33	4.10
Wholesale trade	42	1.31
Retail trade	44, 45	0.30
Transportation and warehousing	48, 492, 493	1.15
Information	51	0.83
Finance and insurance	52	0.62
Real estate, rental, and leasing	53	0.10
Professional, scientific, and technical services	54	8.74
Management of companies and enterprises	55	0.00
Administrative and support and waste management and remediation services	56	5.24
Administrative and support services	561	4.78
Waste management and remediation services	562	8.53
Education services	61	2.61
Health care and social assistance	62	0.42
Arts, entertainment, and recreation	71	0.03
Accommodation and food services	72	0.17
Accommodation	721	0.12
Food services and drinking places	722	0.19
Other services	81	0.59
Agriculture, forestry, fishing, and hunting	11	0.12

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Table B: Ratios of covered contracts by state and industry

State	Agricultural, forestry, fishing, and hunting	Mining	Construction	manufacturing	Wholesale trade	Retail trade	Transportation and warehousing	Utilities	Information	Finance and insurance	Real estate and rental and leasing	Professional and technical services	Management, administrative and waste management services	Educational services	Health care and social assistance	Arts, enterainment, and recreation	Accommodation and food services	Other services, except private households
AK	0.84	0	0.94	0.14	0.17	0.09	0.98	0.97	0.89	0.82	0.69	0.95	0.97	0.93	1	0.85	1	0.88
AL	0.63	0.62	0.96	0.13	0.12	0.21	0.91	0.98	0.49	0.84	0.68	0.94	0.96	0.93	0.88	0.93	0.92	0.85
AR	0.9	0	0.97	0.11	0.04	0.12	0.92	0.83	0.82	0.5	0.95	0.93	0.68	0.91	0.97	1	0.73	0.83
AZ	0.87	0.34	0.93	0.12	0.2	0.2	0.96	0.92	0.61	0.97	0.81	0.91	0.97	0.93	0.96	0.9	0.83	0.86
CA	0.78	0.2	0.95	0.11	0.03	0.06	0.93	0.85	0.62	0.95	0.82	0.91	0.97	0.85	0.95	0.89	0.69	0.75
CO	0.86	0.36	0.95	0.13	0.06	0.18	0.92	0.97	0.65	1	0.87	0.88	0.94	0.89	0.95	0.91	0.89	0.88
CT	0.47	0.13	0.96	0.04	0.05	0.12	0.92	0.98	0.65	0.87	0.86	0.84	0.96	0.95	0.93	0.92	0.25	0.83
DC	0.24	0.53	0.95	0.31	0.14	0.33	0.96	0.81	0.73	0.86	0.88	0.9	0.96	0.91	0.93	0.97	0.95	0.84
DE	1	0.93	0.13		0.18	0.81		0.96		1	0.88	0.92	0.94	0.97	0.93	0.91	0.79	0.87
FL	0.68	0.06	0.95	0.1	0.07	0.14	0.91	0.88	0.69	0.92	0.81	0.9	0.97	0.87	0.82	0.99	0.89	0.86
GA	0.61	0.48	0.95	0.1	0.06	0.17	0.93	0.93	0.63	0.99	0.87	0.92	0.96	0.8	0.82	0.91	0.89	0.82
HI	0.74	0.19	0.98	0.15	0.05	0.13	0.99	0.9	0.79	1	0.97	0.94	0.99	0.93	0.98	1	0.98	0.89
IA	0.2	0	0.97	0.08	0.08	0.07	0.73	0.95	0.77	1	0.63	0.9	0.96	0.93	0.97	0.83	0.73	0.91
ID	0.74	0.14	0.96	0.12	0.05	0.26	0.98	0.96	0.78	1	0.89	0.94	0.99	0.91	0.99	0.9	0.45	0.93
IL	0.7	0.11	0.93	0.07	0.01	0.08	0.9	0.95	0.42	0.89	0.86	0.87	0.93	0.97	0.95	0.67	0.98	0.82
IN	0.38	0.36	0.89	0.05	0.06	0.16	0.8	0.72	0.66	1	0.71	0.88	0.99	0.93	0.92	1	0.99	0.76
KS	0.83	0.06	0.96	0.1	0.1	0.18	0.91	0.96	0.63	0.97	0.79	0.93	0.99	0.93	1	0.96	0.98	0.88
KY	0.83	0.06	0.94	0.06	0.07	0.11	0.93	0.98	0.63	0.98	0.91	0.9	0.97	0.94	0.99	0.95	0.96	0.85
LA	0.8	0.44	0.96	0.09	0.05	0.2	0.98	0.94	0.61	0.93	0.9	0.95	0.94	0.93	0.98	0.97	0.94	0.77
MA	0.4	0.54	0.95	0.08	0.06	0.1	0.95	0.94	0.47	0.95	0.92	0.95	0.89	0.88	0.93	0.88	0.77	0.83
MD	0.25	0.28	0.94	0.16	0.12	0.25	0.92	0.93	0.67	0.89	0.89	0.92	0.95	0.94	0.93	0.9	0.96	0.83
ME	0.47	0	0.97	0.18	0.13	0.22	0.93	0.7	0.62	1	0.99	0.91	0.97	0.94	0.94	1	0.29	0.86
MI	0.96	0.41	0.9	0.04	0.05	0.11	0.94	0.94	0.62	0.34	0.8	0.91	0.98	0.83	0.89	0.88	0.87	0.91
MN	0.84	0	0.95	0.04	0.05	0.1	0.84	0.99	0.48	0.99	0.91	0.89	0.96	0.91	0.96	1	0.85	0.82
MO	0.68	0.36	0.95	0.08	0.02	0.21	0.95	0.94	0.37	0.96	0.77	0.79	0.98	0.93	0.97	0.9	0.98	0.85
MS	0.89	0.07	0.94	0.14	0.03	0.21	0.87	0.95	0.56	1	0.85	0.92	0.97	0.87	1	0.86	0.92	0.87
MT	0.91	0.54	0.95	0.08	0.06	0.1	0.98	0.94	0.83	1	0.96	0.93	0.97	0.86	0.96	1	0.83	0.87
NC	0.74	0.03	0.96	0.08	0.08	0.24	0.97	0.9	0.7	0.95	0.91	0.91	0.95	0.92	0.95	0.9	0.97	0.84
ND	0.6	0.14	0.97	0.13	0.03	0.03	0.95	0.99	0.89	1	0.77	0.94	0.98	0.98	0.95	0.8	0.9	0.96
NE	0.82	0.1	0.96	0.1	0.13	0.16	0.95	0.93	0.66	1	0.73	0.97	0.98	0.89	0.97	0.9	0.88	0.89
NH	0.89	0.15	0.95	0.1	0.13	0.1	0.93	0.97	0.52	0.98	0.84	0.63	0.98	0.86	0.94	1	0.97	0.7
NJ	0.7	0.28	0.95	0.05	0.01	0.08	0.91	0.88	0.64	0.88	0.91	0.93	0.95	0.93	0.99	0.96	0.7	0.8
NM	0.91	0.53	0.94	0.14	0.07	0.19	0.98	0.97	0.74	0.97	0.84	0.93	0.98	0.94	0.91	1	0.97	0.87
NV	0.86	0.3	0.95	0.19	0.06	0.11	0.98	0.91	0.57	1	0.96	0.91	0.98	0.96	0.98	0.97	0.91	0.84
NY	0.5	0.21	0.93	0.05	0.03	0.06	0.71	0.93	0.56	0.82	0.93	0.92	0.96	0.82	0.99	0.87	0.93	0.82
OH	0.42	0.11	0.96	0.06	0	0.15	0.94	0.91	0.62	1	0.9	0.96	0.99	0.94	0.97	0.77	0.92	0.88
OK	0.86	0.32	0.95	0.15	0.08	0.16	0.99	0.84	0.72	1	0.83	0.9	0.98	0.91	0.96	0.94	0.66	0.91
OR	0.93	0.44	0.93	0.13	0.08	0.1	0.92	0.92	0.59	0.86	0.96	0.96	0.94	0.9	0.99	0.88	0.82	0.84
PA	0.52	0.1	0.92	0.05	0	0.2	0.91	0.77	0.69	0.95	0.92	0.91	0.97	0.92	0.95	0.82	0.33	0.8
RI	0.5	1	0.03		0.15	0.37		0.96		0.5	0.98	0.9	0.91	0.94	0.9	0.95	0.9	0.85
SC	0.93	0.17	0.94	0.08	0.04	0.21	0.91	0.95	0.65	0.98	0.8	0.95	0.95	0.92	0.85	0.94	0.72	0.83
SD	0.94	0	0.98	0.11	0.14	0.2	1	0.98	0.87	0.95	0.76	0.96	0.93	0.98	0.98	0.91	0.96	0.89
TN	0.93	0.32	0.93	0.06	0.08	0.19	0.92	0.92	0.73	0.97	0.95	0.78	0.98	0.84	0.88	1	0.9	0.82
TX	0.52	0.16	0.9	0.1	0.08	0.24	0.91	0.92	0.53	0.88	0.88	0.91	0.94	0.94	0.98	0.88	0.88	0.83
UT	0.83	0.04	0.94	0.13	0.07	0.13	0.95	0.99	0.55	0.97	0.9	0.94	0.97	0.64	0.94	0.89	0.68	0.9
VA	0.32	0.07	0.93	0.2	0.05	0.3	0.93	0.91	0.72	0.96	0.92	0.89	0.96	0.87	0.96	0.92	0.93	0.74
VT	1	0	0.96	0.05	0.13	0.3	1	0.76	0.5	1	0.76	0.87	0.96	0.95	0.96	0.83	0.95	0.88
WA	0.73	0.13	0.95	0.11	0.09	0.13	0.91	0.96	0.69	0.9	0.94	0.95	0.98	0.9	0.97	0.91	0.97	0.9
WI	0.76	0.09	0.95	0.04	0.04	0.04	0.97	0.96	0.75	0.96	0.99	0.9	0.96	0.91	0.88	0.87	0.63	0.84
WV	0.84	0	0.93	0.11	0.09	0.15	0.97	0.94	0.7	1	0.9	0.86	0.96	0.96	0.98	0.73	0.94	0.84
WY	0.81	0.11	0.95	0.19	0.13	0.18	1	0.97	0.64	1	0.85	0.89	0.98	0.97	0.96	0.83	0.92	0.89

Table C: Number of affected workers by state and industry

Table C: Number of affected workers by state and industry

Number of workers paid hourly rates bewteen $7.25 and $10.09 by state and major industry, 2013 annual averages.

States	Total	Agricultural, forestry, fishing, and hunting	Mining	Construction	Durable goods manufacturing	Nondurable goods manufacturing	Wholesale trade	Retail trade	Transportation and warehousing	Utilities	Information
	183,814	345	6	21,333	2,835	2,729	239	2,338	6,800	108	1,299
AK	200	0.2	0.0	10.9	1.6	1.6	1.4	2.8	18.4	1.2	3.7
AL	2,784	0.8	0.0	407.7	187.1	83.3	9.9	56.9	113.9	3.9	7.4
AR	974	5.6	0.0	164.2	18.3	49.8	1.6	14.7	7.2	1.2	10.1
AZ	5,076	9.4	0.0	617.3	97.1	68.1	22.6	48.1	174.6	0.0	22.7
CA	23,362	149.2	0.3	2239.1	477.3	577.4	16.7	99.4	940.6	17.8	149.3
CO	3,026	1.5	0.4	271.9	45.2	31.9	2.3	37.2	69.0	4.3	28.2
CT	893	0.6	0.0	100.6	6.5	3.6	0.3	13.5	20.0	1.5	8.1
DC	166	0.0	0.0	21.9	0.0	1.8	0.2	4.2	2.1	0.0	1.2
DE	502	2.7	0.0	6.2	0.0	0.0	2.8	42.3	0.0	0.0	0.0
FL	11,261	5.6	0.0	1244.2	50.2	98.8	13.9	133.8	401.9	2.7	134.2
GA	7,229	4.9	0.0	821.8	138.9	122.4	11.9	83.0	316.0	10.9	21.4
HI	727	1.5	0.0	112.6	1.1	15.8	1.1	7.4	50.9	0.7	3.2
IA	2,103	1.2	0.0	176.9	32.2	52.0	3.3	14.1	27.5	1.4	36.3
ID	1,138	6.8	0.0	160.8	16.1	34.0	1.3	29.6	55.3	1.3	18.1
IL	6,560	6.1	0.1	567.9	139.1	79.1	1.7	46.8	396.5	0.0	45.3
IN	4,496	4.8	0.3	467.5	73.2	51.8	4.6	59.7	94.7	3.2	45.2
KS	2,327	0.8	0.0	231.0	52.6	31.3	3.3	27.5	42.1	0.0	13.4
KY	3,304	5.0	0.1	307.5	45.4	32.2	5.3	30.5	183.7	2.2	23.4
LA	2,490	2.8	1.3	631.8	39.9	8.4	4.5	62.5	99.5	8.4	11.4
MA	2,480	1.6	0.0	213.7	22.7	38.7	4.4	29.7	94.3	0.0	4.8
MD	3,312	0.6	0.0	294.5	22.6	69.1	4.8	71.9	43.1	0.0	33.3
ME	575	0.9	0.0	70.7	18.6	10.0	2.9	21.6	3.6	1.6	7.9
MI	5,443	19.9	0.0	418.2	76.1	39.2	7.5	56.9	150.2	4.0	62.1
MN	2,602	7.8	0.0	189.2	12.1	24.2	2.5	31.6	108.2	2.3	19.0
MO	2,841	8.2	0.2	232.5	37.3	41.5	1.0	63.9	125.3	5.3	4.4
MS	1,403	6.4	0.1	190.4	93.2	89.2	0.8	36.2	72.6	2.1	3.2
MT	437	1.6	0.1	34.6	4.3	4.3	0.2	4.3	17.9	0.6	5.6
NC	7,630	10.7	0.0	777.4	53.2	149.7	19.6	124.8	269.9	0.0	20.8
ND	328	1.2	0.1	11.4	10.2	6.0	0.1	1.3	14.7	0.5	8.3
NE	1,331	7.3	0.0	162.7	22.8	45.3	5.3	19.2	30.4	0.0	12.8
NH	660	1.2	0.0	68.4	11.6	5.8	2.0	8.8	18.2	0.4	4.5
NJ	3,753	1.1	0.0	471.7	21.2	34.5	1.3	25.5	143.2	1.7	8.3
NM	1,619	1.3	0.4	192.8	4.0	23.6	0.9	18.2	7.7	0.0	16.7
NV	1,609	1.0	0.1	106.3	21.3	13.9	2.2	14.1	89.4	0.0	14.0
NY	8,778	1.9	0.0	649.5	56.3	58.9	5.0	45.7	344.2	0.0	69.2
OH	5,483	4.9	0.0	352.5	85.8	75.5	0.0	70.0	217.1	2.2	40.0
OK	2,418	1.8	0.5	366.9	52.5	20.0	3.5	38.1	83.4	0.0	18.8
OR	1,000	5.0	0.0	94.3	21.7	26.6	1.9	10.0	43.3	0.0	8.7
PA	6,011	12.2	0.0	628.3	58.4	63.4	0.0	128.1	278.4	2.3	87.1
RI	377	0.1	0.0	0.8	0.0	0.0	1.1	16.3	0.0	0.0	0.0
SC	3,503	0.0	0.0	403.6	74.6	61.4	1.4	61.5	124.2	0.0	11.5
SD	470	2.4	0.0	42.3	7.5	8.6	1.2	11.3	8.2	0.0	3.7
TN	4,513	4.8	0.0	525.9	49.4	28.5	5.7	69.3	278.6	0.0	39.2
TX	22,416	11.5	2.3	4593.4	329.9	239.7	36.2	347.1	804.0	14.1	87.3
UT	2,348	1.6	0.0	338.7	63.5	40.9	2.0	25.0	84.9	1.5	16.8
VA	5,235	2.3	0.0	815.5	123.7	77.1	2.7	119.5	98.6	0.0	43.1
VT	165	1.0	0.0	12.2	1.2	1.9	0.8	5.7	5.8	0.0	2.3
WA	1,206	7.8	0.0	158.9	15.4	23.3	7.4	14.5	37.6	0.0	12.2
WI	3,934	6.4	0.0	173.2	34.3	45.5	3.0	13.6	123.8	6.5	41.6
WV	1,091	0.0	0.0	161.0	4.9	16.4	3.1	14.9	59.6	1.5	5.4
WY	227	0.7	0.1	20.4	3.0	3.3	0.3	5.8	6.3	0.3	3.8

Table C: Number of affected workers by state and industry

Number of workers paid hourly rates bewteen $7.25 and $10.09 by state and major industry, 2013 annual averages.

States	Total	Finance and insurance	Real estate and rental and leasing	Professional and technical services	Management, administrative and waste management services	Educational services	Health care and social assistance	Arts, enterainment, and recreation	Accommodation and food services	Other services, except private households
	183,814	1,803	254	27,865	69,505	25,168	10,244	229	6,411	4,302
AK	200	2.4	0.1	12.4	59.5	50.5	13.1	0.3	15.8	4.4
AL	2,784	12.1	3.3	301.2	832.2	383.5	146.7	3.8	121.5	109.0
AR	974	8.4	2.8	78.2	354.9	47.7	131.4	1.2	44.5	32.3
AZ	5,076	43.3	9.2	663.9	2083.4	774.0	244.1	7.0	134.8	56.7
CA	23,362	241.8	22.1	2979.2	10868.4	2374.9	994.5	30.0	700.9	482.8
CO	3,026	16.1	4.2	754.5	1089.8	393.3	77.2	2.9	119.0	76.9
CT	893	5.8	0.7	164.1	279.5	197.1	61.7	2.2	9.3	17.6
DC	166	1.8	0.0	12.6	62.3	33.0	9.6	0.2	9.6	5.0
DE	502	8.4	0.1	57.3	216.7	106.0	30.6	1.1	17.5	10.7
FL	11,261	95.7	19.7	1697.6	5161.2	1099.5	464.0	21.3	385.9	231.0
GA	7,229	63.0	6.0	786.3	3506.6	720.2	235.0	5.0	248.8	126.5
HI	727	6.3	1.0	67.4	244.8	114.9	29.0	0.9	49.3	18.8
IA	2,103	16.7	1.4	317.2	821.7	347.9	149.0	2.1	68.0	34.6
ID	1,138	16.4	1.5	140.4	385.7	177.6	59.1	1.4	19.4	13.0
IL	6,560	80.4	3.2	1201.0	2290.0	939.5	326.9	5.0	307.7	123.5
IN	4,496	26.1	2.4	285.3	2092.8	767.7	185.0	6.8	197.5	127.6
KS	2,327	17.6	2.9	419.8	708.2	484.8	138.7	3.2	93.4	56.0
KY	3,304	21.6	10.2	436.0	1233.1	554.7	213.6	1.8	120.3	77.8
LA	2,490	12.8	2.8	302.1	684.9	164.9	274.0	2.4	108.1	67.0
MA	2,480	15.1	4.6	365.4	1085.4	238.4	178.5	7.2	88.8	86.8
MD	3,312	15.8	3.7	863.1	1069.4	484.8	109.1	3.9	117.5	105.0
ME	575	10.3	1.0	47.2	158.3	129.7	66.3	1.5	11.0	12.2
MI	5,443	45.8	7.0	647.9	2115.7	1032.3	338.1	9.6	234.5	178.3
MN	2,602	28.6	1.8	359.2	1082.8	324.9	170.8	5.6	137.9	93.6
MO	2,841	36.9	4.1	316.4	873.8	636.8	273.0	6.0	126.5	48.1
MS	1,403	16.2	1.3	62.0	446.9	147.7	134.5	3.0	53.3	43.6
MT	437	14.4	0.5	17.6	156.6	96.2	40.3	0.5	29.4	8.1
NC	7,630	62.1	8.3	1055.1	3323.1	841.4	470.2	8.1	264.9	170.5
ND	328	3.2	0.5	87.2	62.0	72.3	26.7	0.7	14.7	6.9
NE	1,331	23.4	2.8	230.2	432.8	186.2	79.8	1.4	43.5	24.5
NH	660	2.0	0.2	89.5	240.2	135.3	31.1	1.1	30.7	9.3
NJ	3,753	30.5	8.5	599.7	1571.9	473.1	223.2	3.7	88.3	45.4
NM	1,619	3.8	1.0	476.2	302.1	387.9	110.3	3.0	46.2	23.0
NV	1,609	7.5	2.9	367.4	700.7	123.3	46.2	6.9	73.2	18.0
NY	8,778	90.7	22.1	2785.4	2299.3	1171.1	661.8	8.8	292.1	215.7
OH	5,483	87.2	12.1	663.4	2261.9	662.3	511.2	6.5	298.4	131.8
OK	2,418	53.1	5.0	122.3	711.8	681.0	148.3	3.9	69.3	37.6
OR	1,000	1.7	1.2	186.6	298.8	178.7	47.4	0.9	45.3	28.1
PA	6,011	114.6	8.0	702.6	1806.9	1365.1	470.2	9.2	104.3	171.3
RI	377	2.5	0.9	33.8	173.8	70.8	34.6	0.5	25.7	16.2
SC	3,503	28.8	8.0	755.4	1137.6	519.6	153.4	3.2	104.1	54.7
SD	470	10.4	0.0	53.7	108.2	127.0	45.7	1.1	27.4	11.7
TN	4,513	13.0	3.6	567.6	1799.9	561.5	275.6	6.3	155.8	128.1
TX	22,416	222.4	33.2	3465.0	6927.3	2936.7	1153.5	10.3	651.9	550.4
UT	2,348	30.4	1.3	784.3	486.4	269.2	92.7	2.2	52.7	54.0
VA	5,235	56.7	9.8	628.1	1931.1	823.1	177.7	4.6	192.5	128.4
VT	165	1.5	0.0	10.7	50.8	48.5	10.6	0.2	7.3	4.3
WA	1,206	5.1	2.0	128.3	427.6	176.9	62.1	2.6	82.9	41.9
WI	3,934	42.2	2.3	592.0	2027.7	366.1	188.2	6.0	108.1	153.7
WV	1,091	30.3	1.4	109.8	389.3	119.4	112.8	0.9	40.6	19.8
WY	227	0.0	0.8	15.7	69.2	48.9	17.0	0.6	20.5	10.3

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V. Regulatory Flexibility Act/Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' Public Law 96–354. To achieve that objective, the Act requires agencies promulgating proposed or final rules to prepare a certification and a statement of the factual basis supporting the certification, when drafting regulations that will not have a significant economic impact on a substantial number of small entities. The Act requires the consideration of the impact of a regulation on a wide range of small entities, including small

businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA. *Id.*

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. *See* 5 U.S.C. 605. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. *Id.*

As explained in the NPRM, the Department published an initial regulatory flexibility analysis to aid stakeholders in understanding the economic impact of the proposed rule upon small entities and to obtain additional information on any such impact. *See* 79 FR 34602. The Department requested comments on the initial regulatory flexibility analysis set forth in the NPRM, including information regarding the number of small entities affected by the minimum wage requirements of Executive Order 13658, compliance cost estimates for such entities, and whether regulatory alternatives exist that could reduce the burden on small entities while still remaining consistent with the objective of the Order. *See* 79 FR 34602–09. The Department received several comments on the initial regulatory flexibility analysis.

After careful consideration of the comments received and based on the analysis below, the Department believes that this final rule will not have an appreciable economic impact on the vast majority of small businesses subject to the Executive Order. However, in the interest of transparency, the Department has prepared the following Final Regulatory Flexibility Analysis (FRFA) to aid the public in understanding the small entity impacts of the final rule. The Department modified its analysis to some extent from the initial regulatory flexibility analysis based on comments received from the public; such changes will be discussed below.

Why the Department is Considering Action: The Department has published this final rule to implement the requirements of Executive Order 13658, ''Establishing a Minimum Wage for Contractors.'' The Executive Order grants responsibility for enforcement of the Order to the Secretary of Labor.

Objectives of and Legal Basis for Rule: This rule establishes requirements and provides guidance for contracting agencies, contractors, and workers regarding how to comply with Executive Order 13658 and how the Department intends to administer and enforce such requirements. Section 5(a) of the Executive Order grants authority to the Secretary to investigate potential violations of and obtain compliance with the Order. 79 FR 9852. Section 4(a) of the Executive Order directs the Secretary to issue regulations to implement the requirements of the Order. *Id.*

Compliance Requirements of the Final Rule Including Reporting and Recordkeeping: As explained in this final rule, Executive Order 13658 provides that agencies must, to the extent permitted by law, ensure that new contracts, as described in section 7 of the Order, include a clause specifying, as a condition of payment, that the minimum wage to be paid to workers in the performance of the contract shall be at least: (i) $10.10 per hour beginning January 1, 2015; and (ii) an amount determined by the Secretary, beginning January 1, 2016, and annually thereafter. 79 FR 9851. Section 7(d) of the Executive Order establishes that this minimum wage requirement only applies to a new contract if: (i)(A) It is a procurement contract for services or construction; (B) it is a contract for services covered by the SCA; (C) it is a contract for concessions, including any concessions contract excluded from the SCA by the Department's regulations at 29 CFR 4.133(b); or (D) it is a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (ii) the wages of workers under such contract are governed by the FLSA, the SCA, or the DBA. 79 FR 9853. Section 7(e) of the Order states that, for contracts covered by the SCA or the DBA, the Order applies only to contracts at the thresholds specified in those statutes. *Id.* It also specifies that, for procurement contracts where workers' wages are governed by the FLSA, the Order applies only to contracts that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to the Order pursuant to regulations or actions taken under section 4 of the Order. 79 FR 9853.

This final rule, which implements the coverage provisions and minimum wage requirements of Executive Order 13658, contains several provisions that could be considered to impose compliance requirements on contractors. The general requirements with which contractors must comply are set forth in subpart C of this part. Contractors are obligated by Executive Order 13658 and this final rule to abide by the terms of the Executive Order minimum wage contract clause. Among other requirements set forth in the contract clause, contractors must pay no less than the applicable Executive Order minimum wage to workers for all hours worked on or in connection with a covered contract. Contractors must also include the Executive Order minimum wage contract clause in covered subcontracts and require covered subcontractors to include the clause in covered lower-tier contracts.

The final rule also requires contractors to make and maintain, for three years, records containing the information enumerated in § 10.26(a)(1)–(6) for each worker: Name, address, and Social Security number; the worker's occupation(s) or classification(s); the rate or rates of wages paid to the worker; the number of daily and weekly hours worked by each worker; any deductions made; and the total wages paid. However, the records required to be kept by contractors pursuant to this part are coextensive with recordkeeping requirements that already exist under, and are consistent across, the FLSA, SCA, and DBA; as a result, a contractor's compliance with these payroll records obligations will not impose any obligations to which the contractor is not already subject under the FLSA, SCA, or DBA. The final rule does not impose any reporting requirements on contractors.

Contractors are also obligated to cooperate with authorized representatives of the Department in the inspection of records, in interviews with workers, and in all aspects of investigations. The final rule and the Executive Order minimum wage contract clause set forth other contractor requirements pertaining to, inter alia, permissible deductions and frequency of pay, as well as prohibitions against taking kickbacks from wages paid on covered contracts and retaliating against workers because they have filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or this part, or have testified or are about to testify in any such proceeding.

All small entities subject to the minimum wage requirements of Executive Order 13658 and this final rule will be required to comply with all of the provisions of the final rule. Such

compliance requirements are more fully described above in other portions of this final rule. The following section analyzes the costs of complying with the Executive Order minimum wage requirement for small contractor firms.

Calculating the Impact of the Final Rule on Small Contractor Firms: The Department must determine the compliance cost of this final rule on small contractor firms (*i.e.,* small business firms that enter into covered contracts with the Federal Government), and whether these costs will be significant for a substantial number of small contractor firms. If the estimated compliance costs for affected small contractor firms are less than three percent of small contractor firms' revenues, the Department considers it appropriate to conclude that this final rule will not have a significant economic impact on small contractor firms.

As explained in the NPRM, the Department has chosen three percent as our significance criterion; however, using this benchmark as an indicator of significant impact may overstate the significance of such an impact, due to substantial offsetting of many of the costs to contractors associated with the Executive Order by the benefits of raising the minimum wage, which are difficult to quantify. The benefits, which include reduced absenteeism, reduced employee turnover, increased employee productivity, and improved employee morale, are discussed more fully in the Executive Order 12866 section of this final rule.

The Department received a few comments regarding the proposed significance criterion set forth in the NPRM. The Chamber/NFIB criticized the Department's use of three percent as the appropriate benchmark for testing impact significance, asserting that such a threshold is ''arbitrarily high.'' The commenter further stated that the Department offered no explanation or justification for selecting three percent of revenue as its significance test benchmark. The commenter did not provide its views on what it believes to be a reasonable threshold. The Chamber/NFIB also contended that DOL should have instead analyzed significance based on an examination of the relation of contractor profits to revenue and derived a cost-to-revenue impact test based on the implicit impact on profits.

In response to this comment, the Department notes that the Regulatory Flexibility Act (RFA) does not define ''significant.'' 5 U.S.C. 601. It is widely accepted, however, that ''[t]he agency is in the best position to gauge the small entity impacts of its regulations.'' SBA Office of Advocacy, ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,'' at 18 (May 2012), available at *http://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf* (hereinafter, SBA Guide for Government Agencies). A threshold of three percent of revenues, not profits, has been used in prior rulemakings for the definition of significant economic impact. This threshold is consistent with that sometimes used by other agencies. *See, e.g.,* 79 FR 27106, 27151 (May 12, 2014) (Department of Health and Human Services rule stating that under its agency guidelines for conducting regulatory flexibility analyses, actions that do not negatively affect costs or revenues by more than three percent annually are not economically significant). In light of such precedent and because the Department has received no indication that a three percent threshold constitutes an inappropriate significance criterion in this specific instance, the Department concludes that its use of a three percent of revenues significance criterion is appropriate. Moreover, as noted above, the Department's use of a three percent benchmark as an indicator of significant impact may *overstate* the significance of such an impact because the Department expects substantial offsetting of the cost increase to many contractors due to workers' increased productivity, reduced turnover, and other benefits as discussed in the Executive Order 12866 analysis.

The Chamber/NFIB also commented that the Department should have instead analyzed significance based on an examination of the relation of contractor profits to revenue and derived a cost-to-revenue impact test based on the implicit impact on profits. In response to this comment, the Department used revenue to estimate the cost-to-revenue impact in its analysis as the SBA Guide for Government Agencies explains that the percentage of revenue is one measure for determining economic impact. The Department found no reliable data source that allows the Department to obtain contractors' profit information to measure the impact as a percentage of their profit.

The data sources used in the analysis of small business impact are the Small Business Administration's (SBA) Table of Small Business Size Standards, the Current Population Survey (CPS), and the U.S. Census Bureau's Statistics of U.S. Businesses (SUSB). Because data limitations do not allow us to determine which small firms within each industry are Federal contractors, the Department assumed that these small firms are not significantly different from the small Federal contractors that will be directly affected by the final rule. In the NPRM, the Department focused its analysis on nine industries under which most Federal contractors covered by the Executive Order are classified: Construction (North American Industry Classification System (NAICS) code 23); transportation and warehousing (NAICS codes 48, 492, and 493); data processing, hosting, related services, and other information services (NAICS codes 518 and 519); administrative and support and waste management and remediation services (NAICS code 56); education services (NAICS code 61); health care and social assistance (NAICS code 62); accommodation and food services (NAICS code 72); other services (NAICS code 81); and agriculture, forestry, fishing, and hunting (NAICS code 11).

Two commenters, the AOA and Advocacy, asserted that the nine industrial classifications utilized by the Department did not include the recreation, outfitting and guiding industry under which some contractors covered by the Executive Order may be classified.

In response to this comment, the Department has revised its small business impact analysis to include nineteen industry sectors identified by two-digit NAICS level. The use of these nineteen industry sectors is consistent with the use of the same nineteen industry sectors set forth in Table A of the Department's Executive Order 12866 analysis in the NPRM and this final rule. The Department could not find industry data specific to the recreation, outfitting and guiding industry even at the six-digit NAICS level, but believes that contractors in this industry would be included within the broader industry sectors of agriculture, forestry, fishing, and hunting (NAICS code: 11); arts, entertainment, and recreation (NAICS code: 71); accommodation and food services (NAICS code: 72); and other services (NAICS code: 81). Of these four industry sectors, only the arts, entertainment, and recreation industry was not included in the Initial Regulatory Flexibility Analysis.

The Department used the following steps to estimate the cost of the final rule per small contractor firm as measured by the percentage of total annual receipts. First, the Department utilized Census SUSB data that disaggregates industry information by firm size in order to perform a robust analysis of the impact on small contractor firms. The Department applied the SBA small business size

standards to the SUSB data to determine the number of small firms in each of the nineteen industries set forth in Table A, as well as the total number of employees in small firms. Next, the Department calculated the average number of employees per small firm by dividing the total number of employees in small firms in each of the nineteen industries by the number of small firms.

However, since the Department knows that not all workers in small contractor firms earn less than $10.10 per hour, the Department next estimated how many employees of small firms earn less than $10.10 per hour. (These employees are referred to as ''affected workers'' in the text and summary tables below.) The Department used the same CPS data that is used in the Executive Order 12866 section of this final rule to ascertain the number of workers paid less than $10.10 per hour by industry. The data was then coupled with the employment levels for each industry to derive the percent of workers within an industry who will be affected by the minimum wage increase. The Department assumes that the wage distribution of contract workers covered by this final rule is the same as that of workers in the rest of the U.S. economy.

For each industry, to find the number of affected employees in small firms by revenue category, the Department multiplied the number of employees by the percent of employees earning less than $10.10 per hour in each industry derived from the CPS. The Department then calculated the average number of affected employees per small firm by dividing the total number of affected employees by the number of small firms.

Next, the Department calculated the annual cost of the increased minimum wage per small firm by multiplying the average number of affected workers per small firm by the average wage difference of $1.31 per hour ($10.10 minus the average wage of $8.79 per hour as explained in the economic analysis set forth in the Executive Order 12866 section of this final rule) and by the number of work hours per year (2,080 hours). Finally, the Department used receipts data from the SUSB to calculate the cost per small firm as a percent of total receipts by dividing the estimated annual cost per firm by the average annual receipts per firm. This methodology was applied to all nineteen industries (identified by two-digit NAICS level) and the results by industry are presented in the summary tables below (*see* Tables D–1 to D–19).

With respect to the Department's tables reflecting costs per small firm in each industry set forth in the NPRM, the Department received a comment from the FS recommending that the Department include additional thresholds below $2,500,000 in the table for the Other Services sector, under which the FS stated FS concessions contractors would be classified. The FS asserted that approximately 90 percent of permits for outfitting and guiding services involve annual revenue of less than $100,000 and that 9.5 percent of permits involve annual revenue between $100,000 and $2,500,000. The FS further estimated that only 0.5 percent of outfitting and guiding permits have annual revenue over $2,500,000.

In response to this comment, the Department added more revenue categories below $2,500,000 to account for the distribution of contractors in terms of their revenues for most of the nineteen industries. The added revenue categories include firms with sales/receipts/revenue that are: Below $100,000; from $100,000 to $499,999; from $500,000 to $999,999; and from $1,000,000 to $2,499,999. However, for four industries (mining, utilities, manufacturing, and wholesale trade), the size standard is based on the average number of employees, not on revenues, and therefore the Department's analysis based the distribution of contractors in those industries on their number of employees. The FS did not provide verifiable data on the number of small businesses by revenue category, their employment, or revenue for the Other Services industry sector that would be necessary for the Department to be able to analyze any specific impacts on this particular industry; Table D–19 below represents the Department's best estimate of the costs of the Executive Order minimum wage requirements per small firm in the Other Services industry.

Table D-1: Cost per small firm in the agriculture, forestry, fishing, and hunting industry

Agriculture, Forestry, Fishing, and Hunting Industry									
	Number of Firms	**Total Number of Employees**	**Average Number of Employees per Firm [1]**	**Total Number of Affected Employees [2]**	**Average Number of Affected Employees per Firm [3]**	**Annual Cost per Firm [4]**	**Annual Receipts**	**Average Receipts per Firm [5]**	**Annual Cost per Firm as Percent of Receipts [6]**
Firms with sales/receipts/revenue below $100,000	5,086	N/A	N/A	N/A	N/A	N/A	$247,056,000	$48,576	N/A
Firms with sales/receipts/revenue of $100,000 to $499,999	8,939	21,523	2.4	4,343	0.5	$1,324	$2,231,355,000	$249,620	0.53%
Firms with sales/receipts/revenue of $500,000 to $999,999	3,670	19,631	5.3	3,962	1.1	$2,941	$2,620,344,000	$713,990	0.41%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	3,230	30,944	9.6	6,244	1.9	$5,268	$4,975,078,000	$1,540,272	0.34%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	1,117	20,049	17.9	4,046	3.6	$9,870	$3,811,000,000	$3,411,817	0.29%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	289	8,997	31.1	1,816	6.3	$17,118	$1,730,128,000	$5,986,602	0.29%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	165	7,588	46.0	1,531	9.3	$25,287	$1,340,763,000	$8,125,836	0.31%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	112	6,130	54.7	1,237	11.0	$30,095	$1,288,588,000	$11,505,250	0.26%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	55	4,042	73.5	816	14.8	$40,410	$874,841,000	$15,906,200	0.25%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	44	5,325	121.0	1,075	24.4	$66,546	$858,761,000	$19,517,295	0.34%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	26	2,800	107.7	565	21.7	$59,216	$595,387,000	$22,899,500	0.26%

N/A = not available, not disclosed

Note: The small business size standards for subsectors within the agriculture, forestry, fishing, and hunting industry range from $0.75 million to $27.5 million.

[1] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the average number of employees per firm (2.4) was derived by dividing the total number of employees (21,523) by the number of firms (8,939).

[2] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the total number of affected employees (4,343) was derived by multiplying the total number of employees (21,523) by the estimated percent of employees earning less than $10.10 per hour (20.18%).

[3] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the average number of affected employees per firm (0.5) was derived by dividing the total number of affected employees (4,343) by the number of firms (8,939).

[4] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the annual cost per firm ($1,324) was derived by multiplying the average number of affected employees per firm (0.5) by the average wage difference ($1.31 per hour) and by the number of working hours per year (2,080 hours).

[5] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the average receipts per firm ($249,620) was derived by dividing the total annual receipts ($2,231,355,000) by the number of firms (8,939).

[6] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the annual cost per firm as a percent of receipts (0.53%) was derived by dividing the annual cost per firm ($1,324) by the average receipts per firm ($249,620).

Table D-2: Cost per small firm in the mining industry

Mining Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm [1]	Total Number of Affected Employees [2]	Average Number of Affected Employees per Firm [3]	Annual Cost per Firm [4]	Annual Receipts	Average Receipts per Firm [5]	Annual Cost per Firm as Percent of Receipts [6]
Firms with 0-4 employees	11,223	17,874	1.6	803	0.1	$195	$6,809,517,000	$606,747	0.03%
Firms with 5-9 employees	3,186	21,314	6.7	957	0.3	$818	$6,304,810,000	$1,978,911	0.04%
Firms with 10-19 employees	2,451	33,344	13.6	1,497	0.6	$1,664	$9,092,457,000	$3,709,693	0.04%
Firms with 20-99 employees	2,775	107,447	38.7	4,824	1.7	$4,737	$32,035,288,000	$11,544,248	0.04%
Firms with 100-499 employees	690	102,299	148.3	4,593	6.7	$18,139	$38,463,690,000	$55,744,478	0.03%

Note: The small business size standard for the mining industry is 500 employees.

[1] In the case of mining firms with 0-4 employees, the average number of employees per firm (1.6) was derived by dividing the total number of employees (17,874) by the number of firms (11,223).

[2] In the case of mining firms with 0-4 employees, the total number of affected employees (803) was derived by multiplying the total number of employees (17,874) by the estimated percent of employees earning less than $10.10 per hour (4.49%).

[3] In the case of mining firms with 0-4 employees, the average number of affected employees per firm (0.1) was derived by dividing the total number of affected employees (803) by the number of firms (11,223).

[4] In the case of mining firms with 0-4 employees, the annual cost per firm ($195) was derived by multiplying the average number of affected employees per firm (0.1) by the average wage difference ($1.31 per hour) and by the number of working hours per year (2,080 hours).

[5] In the case of mining firms with 0-4 employees, the average receipts per firm ($606,747) was derived by dividing the total annual receipts ($6,809,517,000) by the number of firms

[6] In the case of mining firms with 0-4 employees, the annual cost per firm as a percent of receipts (0.03%) was derived by dividing the annual cost per firm ($195) by the average receipts per firm ($606,747).

Table D-3: Cost per small firm in the utilities industry

Utilities Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees [1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with 0-4 employees	3,212	6,181	1.9	200	0.1	$170	$7,238,519,000	$2,253,586	0.01%
Firms with 5-9 employees	1,020	6,546	6.4	212	0.2	$567	$4,373,888,000	$4,288,125	0.01%
Firms with 10-19 employees	513	6,722	13.1	218	0.4	$1,157	$5,657,251,000	$11,027,780	0.01%
Firms with 20-99 employees	870	38,602	44.4	1,251	1.4	$3,917	$27,513,924,000	$31,625,200	0.01%
Firms with 100-499 employees	309	52,294	169.2	1,694	5.5	$14,941	$53,091,123,000	$171,815,932	0.01%
Firms with 500+ employees [2]	199	512,412	2,574.9	16,602	83.4	$227,324	$475,894,489,000	$2,391,429,593	0.01%

Note: The small business size standards for subsectors within the utilities industry range from 250 to 1,000 employees.

[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (3.24%).

[2] The small business size standard for several subsectors within the utilities industry is 750 or 1,000 employees; however, data are not disaggregated for firms with more than 500 employees.

Table D-4: Cost per small firm in the construction industry

Construction Industry									
	Number of Firms	**Total Number of Employees**	**Average Number of Employees per Firm**	**Total Number of Affected Employees[1]**	**Average Number of Affected Employees per Firm**	**Annual Cost per Firm**	**Annual Receipts**	**Average Receipts per Firm**	**Annual Cost per Firm as Percent of Receipts**
Firms with sales/receipts/revenue below $100,000	151,986	N/A	N/A	N/A	N/A	N/A	$7,636,718,000	$50,246	N/A
Firms with sales/receipts/revenue of $100,000 to $499,999	316,475	776,806	2.5	62,067	0.2	$534	$81,110,428,000	$256,293	0.21%
Firms with sales/receipts/revenue of $500,000 to $999,999	124,214	642,823	5.2	51,362	0.4	$1,127	$88,028,843,000	$708,687	0.16%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	110,546	1,049,670	9.5	83,869	0.8	$2,067	$173,054,634,000	$1,565,454	0.13%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	47,962	864,701	18.0	69,090	1.4	$3,925	$167,758,626,000	$3,497,740	0.11%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	16,992	492,370	29.0	39,340	2.3	$6,309	$102,502,053,000	$6,032,371	0.10%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	7,801	308,512	39.5	24,650	3.2	$8,610	$66,977,650,000	$8,585,777	0.10%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	8,259	427,159	51.7	34,130	4.1	$11,260	$99,174,146,000	$12,008,009	0.09%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	4,354	289,441	66.5	23,126	5.3	$14,473	$73,881,089,000	$16,968,555	0.09%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	2,611	209,081	80.1	16,706	6.4	$17,434	$56,928,754,000	$21,803,429	0.08%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	1,621	150,754	93.0	12,045	7.4	$20,247	$43,119,720,000	$26,600,691	0.08%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	1,171	121,928	104.1	9,742	8.3	$22,669	$36,848,837,000	$31,467,837	0.07%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	831	94,903	114.2	7,583	9.1	$24,863	$30,307,198,000	$36,470,756	0.07%
N/A = not available, not disclosed									
Note: The small business size standards for subsectors within the construction industry range from $15 million to $36.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (7.99%).									

Table D-5: Cost per small firm in the manufacturing industry

Manufacturing Industry									
	Number of Firms	**Total Number of Employees**	**Average Number of Employees per Firm**	**Total Number of Affected Employees[1]**	**Average Number of Affected Employees per Firm**	**Annual Cost per Firm**	**Annual Receipts**	**Average Receipts per Firm**	**Annual Cost per Firm as Percent of Receipts**
Firms with 0-4 employees	114,635	213,123	1.9	23,806	0.2	$566	$46,236,636,000	$403,338	0.14%
Firms with 5-9 employees	53,500	358,110	6.7	40,001	0.7	$2,037	$53,036,608,000	$991,338	0.21%
Firms with 10-19 employees	44,939	612,113	13.6	68,373	1.5	$4,146	$97,897,887,000	$2,178,462	0.19%
Firms with 20-99 employees	55,603	2,288,585	41.2	255,635	4.6	$12,527	$440,739,564,000	$7,926,543	0.16%
Firms with 100-499 employees	13,945	2,445,779	175.4	273,194	19.6	$53,381	$634,737,830,000	$45,517,234	0.12%
Firms with 500+ employees[2]	4,079	7,402,462	1,814.8	826,855	202.7	$552,345	$4,019,587,050,000	$985,434,432	0.06%
Note: The small business size standards for subsectors within the manufacturing industry range from 500 to 1,500 employees.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (11.17%).									
[2] The small business size standard for many subsectors within the manufacturing industry is 750, 1,000, or 1,500 employees; however, data are not disaggregated for firms with more than 500 employees.									

Table D-6: Cost per small firm in the wholesale trade industry

Wholesale Trade Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with 0-4 employees	190,153	325,412	1.7	31,955	0.2	$458	$297,267,502,000	$1,563,307	0.03%
Firms with 5-9 employees	57,366	377,841	6.6	37,104	0.6	$1,762	$249,842,292,000	$4,355,233	0.04%
Firms with 10-19 employees	39,354	525,216	13.3	51,576	1.3	$3,571	$325,243,478,000	$8,264,560	0.04%
Firms with 20-99 employees	36,783	1,365,914	37.1	134,133	3.6	$9,936	$899,443,843,000	$24,452,705	0.04%
Note: The small business size standard for the wholesale trade industry is 100 employees.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (9.82%).									

Table D-7: Cost per small firm in the retail trade industry

Retail Trade Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	98,659	N/A	N/A	N/A	N/A	N/A	$5,008,702,000	$50,768	N/A
Firms with sales/receipts/revenue of $100,000 to $499,999	251,705	727,585	2.9	246,942	1.0	$2,673	$67,380,242,000	$267,695	1.00%
Firms with sales/receipts/revenue of $500,000 to $999,999	122,575	634,006	5.2	215,182	1.8	$4,783	$87,491,736,000	$713,781	0.67%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	120,985	1,019,672	8.4	346,077	2.9	$7,794	$190,373,341,000	$1,573,528	0.50%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	55,634	774,581	13.9	262,893	4.7	$12,876	$193,186,239,000	$3,472,449	0.37%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	19,594	418,263	21.3	141,958	7.2	$19,741	$117,223,823,000	$5,982,639	0.33%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	9,582	272,697	28.5	92,553	9.7	$26,319	$80,790,141,000	$8,431,449	0.31%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	9,824	366,889	37.3	124,522	12.7	$34,538	$115,236,313,000	$11,730,081	0.29%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	5,310	256,826	48.4	87,167	16.4	$44,729	$86,999,536,000	$16,384,093	0.27%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	3,498	201,289	57.5	68,317	19.5	$53,217	$72,964,681,000	$20,858,971	0.26%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	2,438	167,596	68.7	56,882	23.3	$63,574	$61,987,531,000	$25,425,566	0.25%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	1,835	144,987	79.0	49,209	26.8	$73,070	$55,162,317,000	$30,061,208	0.24%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	1,491	122,188	82.0	41,471	27.8	$75,787	$50,711,404,000	$34,011,673	0.22%
N/A = not available, not disclosed									
Note: The small business size standards for subsectors within the retail trade industry range from $7.5 million to $38.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (33.94%).									

Table D-8: Cost per small firm in the transportation and warehousing industry

Transportation and Warehousing Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	40,510	N/A	N/A	N/A	N/A	N/A	$1,939,749,000	$47,883	N/A
Firms with sales/receipts/revenue of $100,000 to $499,999	67,987	181,924	2.7	20,648	0.3	$828	$16,284,066,000	$239,517	0.35%
Firms with sales/receipts/revenue of $500,000 to $999,999	22,377	151,019	6.7	17,141	0.8	$2,087	$15,756,895,000	$704,156	0.30%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	20,915	271,012	13.0	30,760	1.5	$4,007	$32,305,484,000	$1,544,608	0.26%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	9,183	223,156	24.3	25,328	2.8	$7,515	$31,359,227,000	$3,414,922	0.22%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	3,550	136,436	38.4	15,485	4.4	$11,886	$20,463,648,000	$5,764,408	0.21%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,800	91,408	50.8	10,375	5.8	$15,705	$14,261,554,000	$7,923,086	0.20%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,840	123,966	67.4	14,070	7.6	$20,836	$19,933,921,000	$10,833,653	0.19%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	988	85,367	86.4	9,689	9.8	$26,722	$14,057,603,000	$14,228,343	0.19%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	621	68,836	110.8	7,813	12.6	$34,281	$11,060,118,000	$17,810,174	0.19%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	429	51,989	121.2	5,901	13.8	$37,479	$8,257,805,000	$19,248,963	0.19%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	311	45,274	145.6	5,139	16.5	$45,021	$7,184,425,000	$23,101,045	0.19%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	235	32,922	140.1	3,737	15.9	$43,326	$5,902,588,000	$25,117,396	0.17%
N/A = not available, not disclosed Note: The small business size standards for subsectors within the transportation and warehousing industry range from $7.5 million to $38.5 million. [1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (11.35%).									

Table D-9: Cost per small firm in the information industry

Information Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	15,960	N/A	N/A	N/A	N/A	N/A	$767,642,000	$48,098	N/A
Firms with sales/receipts/revenue of $100,000 to $499,999	27,678	80,336	2.9	7,407	0.3	$729	$6,876,130,000	$248,433	0.29%
Firms with sales/receipts/revenue of $500,000 to $999,999	10,311	67,954	6.6	6,265	0.6	$1,656	$7,260,927,000	$704,192	0.24%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	9,808	120,499	12.3	11,110	1.1	$3,087	$15,248,992,000	$1,554,750	0.20%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	4,508	100,331	22.3	9,251	2.1	$5,591	$15,472,313,000	$3,432,190	0.16%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,837	65,601	35.7	6,048	3.3	$8,972	$10,856,893,000	$5,910,121	0.15%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,018	46,846	46.0	4,319	4.2	$11,561	$8,447,070,000	$8,297,711	0.14%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,092	68,058	62.3	6,275	5.7	$15,657	$12,300,328,000	$11,264,037	0.14%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	601	49,812	82.9	4,593	7.6	$20,822	$9,293,544,000	$15,463,468	0.13%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	389	37,522	96.5	3,460	8.9	$24,233	$7,616,666,000	$19,580,118	0.12%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	270	30,523	113.0	2,814	10.4	$28,401	$6,512,265,000	$24,119,500	0.12%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	175	25,649	146.6	2,365	13.5	$36,821	$4,971,718,000	$28,409,817	0.13%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	136	21,553	158.5	1,987	14.6	$39,814	$4,082,897,000	$30,021,301	0.13%
N/A = not available, not disclosed Note: The small business size standards for subsectors within the information industry range from $7.5 million to $38.5 million. [1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (9.22%).									

Table D-10: Cost per small firm in the finance and insurance industry

Finance and Insurance Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	61,548	N/A	N/A	N/A	N/A	N/A	$2,931,522,000	$47,630	N/A
Firms with sales/receipts/revenue of $100,000 to $499,999	118,169	308,539	2.6	15,520	0.1	$358	$29,379,598,000	$248,624	0.14%
Firms with sales/receipts/revenue of $500,000 to $999,999	33,703	177,822	5.3	8,944	0.3	$723	$23,302,679,000	$691,413	0.10%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	23,023	222,822	9.7	11,208	0.5	$1,326	$35,135,972,000	$1,526,125	0.09%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	9,728	185,783	19.1	9,345	1.0	$2,617	$33,574,070,000	$3,451,282	0.08%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	4,108	118,100	28.7	5,940	1.4	$3,940	$24,483,200,000	$5,959,883	0.07%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	2,405	90,442	37.6	4,549	1.9	$5,154	$20,088,983,000	$8,353,007	0.06%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	2,820	148,252	52.6	7,457	2.6	$7,205	$33,267,079,000	$11,796,837	0.06%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,564	106,896	68.3	5,377	3.4	$9,368	$25,663,650,000	$16,408,983	0.06%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,028	87,611	85.2	4,407	4.3	$11,681	$21,843,640,000	$21,248,677	0.05%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	685	65,621	95.8	3,301	4.8	$13,130	$17,478,694,000	$25,516,342	0.05%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	515	58,481	113.6	2,942	5.7	$15,564	$15,619,023,000	$30,328,200	0.05%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	418	51,263	122.6	2,579	6.2	$16,809	$14,150,222,000	$33,852,206	0.05%
N/A = not available, not disclosed									
Note: The small business size standards for subsectors within the finance and insurance industry range from $7.5 million to $38.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (5.03%).									

Table D-11: Cost per small firm in the real estate and rental and leasing industry

Real Estate and Rental and Leasing Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	86,219	N/A	N/A	N/A	N/A	N/A	$4,165,673,000	$48,315	N/A
Firms with sales/receipts/revenue of $100,000 to $499,999	124,930	299,041	2.4	32,117	0.3	$700	$30,501,166,000	$244,146	0.29%
Firms with sales/receipts/revenue of $500,000 to $999,999	39,747	191,958	4.8	20,616	0.5	$1,413	$27,836,936,000	$700,353	0.20%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	29,717	269,366	9.1	28,930	1.0	$2,653	$45,164,417,000	$1,519,818	0.17%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	10,013	181,600	18.1	19,504	1.9	$5,308	$33,652,743,000	$3,360,905	0.16%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	3,288	95,418	29.0	10,248	3.1	$8,493	$18,788,566,000	$5,714,284	0.15%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,553	62,482	40.2	6,711	4.3	$11,774	$12,221,244,000	$7,869,442	0.15%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,518	81,675	53.8	8,772	5.8	$15,745	$16,329,830,000	$10,757,464	0.15%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	771	48,442	62.8	5,203	6.7	$18,387	$11,037,708,000	$14,316,093	0.13%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	464	36,318	78.3	3,901	8.4	$22,906	$8,012,159,000	$17,267,584	0.13%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	365	32,555	89.2	3,496	9.6	$26,101	$7,621,190,000	$20,879,973	0.13%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	228	25,638	112.4	2,754	12.1	$32,907	$5,610,499,000	$24,607,452	0.13%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	161	17,743	110.2	1,906	11.8	$32,251	$4,144,542,000	$25,742,497	0.13%
N/A = not available, not disclosed									
Note: The small business size standards for subsectors within the real estate and rental and leasing industry range from $7.5 million to $38.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (10.74%).									

Table D-12: Cost per small firm in the professional, scientific and technical services industry

Professional, Scientific and Technical Services Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	207,967	N/A	N/A	N/A	N/A	N/A	$9,968,674,000	$47,934	N/A
Firms with sales/receipts/revenue of $100,000 to $499,999	339,834	814,116	2.4	30,936	0.1	$248	$82,241,004,000	$242,003	0.10%
Firms with sales/receipts/revenue of $500,000 to $999,999	102,144	584,473	5.7	22,210	0.2	$592	$71,850,790,000	$703,426	0.08%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	78,520	870,369	11.1	33,074	0.4	$1,148	$120,442,007,000	$1,533,902	0.07%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	28,337	631,182	22.3	23,985	0.8	$2,306	$97,339,397,000	$3,435,064	0.07%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	9,714	355,210	36.6	13,498	1.4	$3,786	$57,721,674,000	$5,942,112	0.06%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	4,863	245,206	50.4	9,318	1.9	$5,221	$40,592,738,000	$8,347,263	0.06%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	4,658	313,530	67.3	11,914	2.6	$6,969	$53,578,044,000	$11,502,371	0.06%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	2,338	211,940	90.7	8,054	3.4	$9,386	$36,728,134,000	$15,709,210	0.06%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,381	147,737	107.0	5,614	4.1	$11,077	$27,448,191,000	$19,875,591	0.06%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	954	122,039	127.9	4,637	4.9	$13,246	$22,622,723,000	$23,713,546	0.06%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	603	91,258	151.3	3,468	5.8	$15,670	$15,961,413,000	$26,470,005	0.06%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	511	83,414	163.2	3,170	6.2	$16,902	$15,941,272,000	$31,196,227	0.05%
N/A = not available, not disclosed									
Note: The small business size standards for subsectors within the professional, scientific and technical services industry range from $7.5 million to $38.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (3.8%).									

Table D-13: Cost per small firm in the management of companies and enterprises industry

Management of Companies and Enterprises Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	1,895	11,318	6.0	2,536	1.3	$3,647	$44,606,000	$23,539	15.49%
Firms with sales/receipts/revenue of $100,000 to $499,999	1,387	4,529	3.3	1,015	0.7	$1,994	$293,971,000	$211,947	0.94%
Firms with sales/receipts/revenue of $500,000 to $999,999	964	5,082	5.3	1,139	1.2	$3,219	$373,917,000	$387,881	0.83%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	2,039	18,829	9.2	4,220	2.1	$5,639	$1,087,692,000	$533,444	1.06%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	2,242	26,723	11.9	5,989	2.7	$7,278	$1,698,014,000	$757,366	0.96%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,717	28,312	16.5	6,345	3.7	$10,069	$1,855,703,000	$1,080,782	0.93%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,258	22,469	17.9	5,035	4.0	$10,906	$1,711,464,000	$1,360,464	0.80%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,942	41,651	21.4	9,334	4.8	$13,096	$3,120,558,000	$1,606,878	0.82%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,423	34,363	24.1	7,701	5.4	$14,746	$2,997,064,000	$2,106,159	0.70%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,075	30,583	28.4	6,854	6.4	$17,372	$2,508,188,000	$2,333,198	0.74%
Note: The small business size standard for the management of companies and enterprises industry is $20.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (22.41%).									

Table D-14: Cost per small firm in the administrative and support, waste management and remediation services industry

Administrative and Support, Waste Management and Remediation Services Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	99,021	139,832	1.4	31,113	0.3	$856	$4,500,981,000	$45,455	1.88%
Firms with sales/receipts/revenue of $100,000 to $499,999	129,948	513,457	4.0	114,244	0.9	$2,396	$31,661,803,000	$243,650	0.98%
Firms with sales/receipts/revenue of $500,000 to $999,999	40,405	409,563	10.1	91,128	2.3	$6,145	$28,444,220,000	$703,978	0.87%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	31,127	725,649	23.3	161,457	5.2	$14,134	$47,963,623,000	$1,540,901	0.92%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	12,294	678,340	55.2	150,931	12.3	$33,452	$42,093,718,000	$3,423,924	0.98%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	4,589	434,622	94.7	96,703	21.1	$57,419	$26,428,877,000	$5,759,180	1.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	2,411	311,321	129.1	69,269	28.7	$78,285	$19,304,673,000	$8,006,915	0.98%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	2,309	424,912	184.0	94,543	40.9	$111,568	$24,412,659,000	$10,572,828	1.06%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,266	292,501	231.0	65,081	51.4	$140,074	$17,408,483,000	$13,750,776	1.02%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	724	208,939	288.6	46,489	64.2	$174,963	$12,542,375,000	$17,323,722	1.01%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	528	174,359	330.2	38,795	73.5	$200,205	$10,341,768,000	$19,586,682	1.02%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	402	173,953	432.7	38,705	96.3	$262,344	$9,015,658,000	$22,427,010	1.17%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	267	122,013	457.0	27,148	101.7	$277,051	$6,382,657,000	$23,905,082	1.16%
Note: The small business size standards for subsectors within the administrative and support, waste management and remediation services industry range from $5.5 million to $38.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (22.25%).									

Table D-15: Cost per small firm in the educational services industry

Educational Services Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	21,831	50,906	2.3	4,566	0.2	$570	$1,003,931,000	$45,986	1.24%
Firms with sales/receipts/revenue of $100,000 to $499,999	27,938	158,913	5.7	14,254	0.5	$1,390	$6,788,475,000	$242,984	0.57%
Firms with sales/receipts/revenue of $500,000 to $999,999	8,504	112,142	13.2	10,059	1.2	$3,223	$5,984,604,000	$703,740	0.46%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	8,465	213,786	25.3	19,177	2.3	$6,173	$13,376,338,000	$1,580,194	0.39%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	4,302	209,778	48.8	18,817	4.4	$11,918	$14,792,101,000	$3,438,424	0.35%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,588	117,648	74.1	10,553	6.6	$18,108	$9,314,307,000	$5,865,433	0.31%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	888	83,741	94.3	7,512	8.5	$23,049	$7,129,969,000	$8,029,244	0.29%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,003	127,781	127.4	11,462	11.4	$31,138	$11,306,008,000	$11,272,191	0.28%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	461	79,059	171.5	7,092	15.4	$41,916	$6,983,007,000	$15,147,521	0.28%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	355	73,045	205.8	6,552	18.5	$50,291	$6,992,060,000	$19,695,944	0.26%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	268	70,191	261.9	6,296	23.5	$64,014	$6,343,422,000	$23,669,485	0.27%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	172	60,202	350.0	5,400	31.4	$85,548	$5,119,182,000	$29,762,686	0.29%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	138	55,753	404.0	5,001	36.2	$98,745	$4,536,897,000	$32,876,065	0.30%
Note: The small business size standards for subsectors within the educational services industry range from $7.5 million to $38.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (8.97%).									

Table D-16: Cost per small firm in the health care and social assistance industry

Health Care and Social Assistance Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	107,112	162,265	1.5	23,447	0.2	$596	$5,064,756,000	$47,285	1.26%
Firms with sales/receipts/revenue of $100,000 to $499,999	242,566	1,027,234	4.2	148,435	0.6	$1,667	$66,168,531,000	$272,786	0.61%
Firms with sales/receipts/revenue of $500,000 to $999,999	125,095	1,054,985	8.4	152,445	1.2	$3,321	$88,227,442,000	$705,284	0.47%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	84,361	1,466,391	17.4	211,893	2.5	$6,844	$126,989,626,000	$1,505,312	0.45%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	26,466	1,107,445	41.8	160,026	6.0	$16,475	$91,034,690,000	$3,439,685	0.48%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	9,453	712,840	75.4	103,005	10.9	$29,691	$56,541,818,000	$5,981,362	0.50%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	4,867	501,258	103.0	72,432	14.9	$40,551	$41,063,966,000	$8,437,223	0.48%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	5,198	760,603	146.3	109,907	21.1	$57,613	$61,116,459,000	$11,757,687	0.49%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	2,468	497,184	201.5	71,843	29.1	$79,318	$40,851,963,000	$16,552,659	0.48%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,374	347,358	252.8	50,193	36.5	$99,539	$29,140,498,000	$21,208,514	0.47%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	978	284,827	291.2	41,158	42.1	$114,669	$25,026,728,000	$25,589,701	0.45%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	665	230,360	346.4	33,287	50.1	$136,392	$20,167,268,000	$30,326,719	0.45%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	485	185,982	383.5	26,874	55.4	$150,984	$16,744,181,000	$34,524,085	0.44%
Note: The small business size standards for subsectors within the health care and social assistance industry range from $7.5 million to $38.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (14.45%).									

Table D-17: Cost per small firm in the arts, entertainment, and recreation industry

Arts, Entertainment, and Recreation Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	33,186	53,994	1.6	14,341	0.4	$1,177	$1,569,733,000	$47,301	2.49%
Firms with sales/receipts/revenue of $100,000 to $499,999	46,210	199,647	4.3	53,026	1.1	$3,127	$11,295,277,000	$244,434	1.28%
Firms with sales/receipts/revenue of $500,000 to $999,999	15,493	162,642	10.5	43,198	2.8	$7,597	$10,894,947,000	$703,217	1.08%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	12,148	259,480	21.4	68,918	5.7	$15,458	$18,531,141,000	$1,525,448	1.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	4,674	209,762	44.9	55,713	11.9	$32,479	$16,040,448,000	$3,431,846	0.95%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,718	120,586	70.2	32,028	18.6	$50,797	$9,983,571,000	$5,811,159	0.87%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	806	74,628	92.6	19,821	24.6	$67,008	$6,466,756,000	$8,023,270	0.84%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	660	77,131	116.9	20,486	31.0	$84,576	$7,102,423,000	$10,761,247	0.79%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	344	49,061	142.6	13,031	37.9	$103,214	$4,965,644,000	$14,435,012	0.72%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	224	40,309	180.0	10,706	47.8	$130,232	$4,136,002,000	$18,464,295	0.71%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	155	33,220	214.3	8,823	56.9	$155,107	$3,428,904,000	$22,121,961	0.70%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	115	28,855	250.9	7,664	66.6	$181,587	$2,873,044,000	$24,982,991	0.73%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	84	25,163	299.6	6,683	79.6	$216,793	$2,569,574,000	$30,590,167	0.71%
Note: The small business size standards for subsectors within the arts, entertainment, and recreation industry range from $7.5 million to $38.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (26.56%).									

Table D-18: Cost per small firm in the accommodation and food services industry

Accommodation and Food Services Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	99,592	207,093	2.1	97,437	1.0	$2,666	$4,845,922,000	$48,658	5.48%
Firms with sales/receipts/revenue of $100,000 to $499,999	216,446	1,349,187	6.2	634,792	2.9	$7,991	$55,536,558,000	$256,584	3.11%
Firms with sales/receipts/revenue of $500,000 to $999,999	79,875	1,260,097	15.8	592,876	7.4	$20,225	$55,913,962,000	$700,018	2.89%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	56,476	1,777,649	31.5	836,384	14.8	$40,353	$84,117,236,000	$1,489,433	2.71%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	14,095	896,373	63.6	421,743	29.9	$81,530	$46,231,300,000	$3,279,979	2.49%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	3,720	403,866	108.6	190,019	51.1	$139,184	$21,249,810,000	$5,712,315	2.44%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,621	244,772	151.0	115,165	71.0	$193,586	$12,835,230,000	$7,918,094	2.44%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,628	340,741	209.3	160,319	98.5	$268,327	$17,984,834,000	$11,047,195	2.43%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	859	252,279	293.7	118,697	138.2	$376,515	$13,054,878,000	$15,197,763	2.48%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	446	170,201	381.6	80,080	179.6	$489,239	$8,420,579,000	$18,880,222	2.59%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	363	153,594	423.1	72,266	199.1	$542,453	$7,987,110,000	$22,003,058	2.47%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	241	115,452	479.1	54,320	225.4	$614,156	$6,405,041,000	$26,576,934	2.31%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	170	90,301	531.2	42,487	249.9	$680,986	$4,832,335,000	$28,425,500	2.40%
Note: The small business size standards for subsectors within the accommodation and food services industry range from $7.5 million to $38.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (47.05%).									

Table D-19: Cost per small firm in the other services industry

Other Services Industry									
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Total Number of Affected Employees[1]	Average Number of Affected Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	195,234	322,002	1.6	48,300	0.2	$674	$9,308,948,000	$47,681	1.41%
Firms with sales/receipts/revenue of $100,000 to $499,999	307,613	1,225,144	4.0	183,772	0.6	$1,628	$75,113,021,000	$244,180	0.67%
Firms with sales/receipts/revenue of $500,000 to $999,999	87,833	756,186	8.6	113,428	1.3	$3,519	$61,131,552,000	$695,998	0.51%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	55,883	926,035	16.6	138,905	2.5	$6,773	$84,065,314,000	$1,504,309	0.45%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	16,522	531,104	32.1	79,666	4.8	$13,138	$55,620,907,000	$3,366,475	0.39%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	4,967	252,838	50.9	37,926	7.6	$20,805	$28,838,406,000	$5,806,001	0.36%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	2,326	151,376	65.1	22,706	9.8	$26,599	$18,502,407,000	$7,954,603	0.33%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	2,114	173,393	82.0	26,009	12.3	$33,524	$23,140,184,000	$10,946,161	0.31%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,005	104,997	104.5	15,750	15.7	$42,701	$14,696,909,000	$14,623,790	0.29%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	620	73,209	118.1	10,981	17.7	$48,261	$11,076,548,000	$17,865,400	0.27%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	405	50,974	125.9	7,646	18.9	$51,442	$8,159,095,000	$20,145,914	0.26%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	274	42,041	153.4	6,306	23.0	$62,712	$6,643,223,000	$24,245,339	0.26%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	227	37,259	164.1	5,589	24.6	$67,086	$5,392,740,000	$23,756,564	0.28%
Note: The small business size standards for subsectors within the other services industry range from $5.5 million to $38.5 million.									
[1] The total number of affected employees was derived by multiplying the total number of employees by the estimated percent of employees earning less than $10.10 per hour (15.0%).									

In general, the increased wage cost resulting from the rule is expected to be insignificant relative to the revenue of small firms. For seventeen of the nineteen industries, the economic impact of the rule is expected to be less than 3 percent of small firms' revenue, meaning that the final rule is not expected to have a significant impact on

small businesses in seventeen of the nineteen industries.

Based on the above data and analysis, the final rule is expected to have a significant impact (more than 3 percent of revenue) on the smallest businesses in two industries: 1) the management of companies and enterprises industry, and 2) the accommodation and food services industry. For the management of companies and enterprises industry, the economic impact on small firms earning more than $100,000 per year is expected to be well below the 3 percent threshold. However, for firms with less than $100,000 in revenue, the annual cost per firm is expected to be 15.49 percent of revenue. In the accommodation and food services industry, the economic impact on small firms earning more than $500,000 per year is expected to be below the 3 percent threshold. However, for small firms earning less than $100,000 per year, the annual cost per firm is expected to be 5.48 percent of revenue, and for small firms earning between $100,000 and $499,999, the annual cost per firm is expected to be 3.11 percent of revenue.

The next question to address is whether a substantial number (more than 15 percent) of small firms in the management of companies and enterprises industry and in the accommodation and food services industry will experience a significant economic impact.[37] As shown in Table E, this rule is expected to have a significant impact on 11.89 percent of small businesses in the management of companies and enterprises industry, falling below the 15 percent threshold. As discussed earlier in this preamble in response to comments on the impact to restaurant franchises on military bases, the economic impact on the accommodation and food services industry arising from the Executive Order may be addressed through the offsetting effects of productivity and contractors' ability to negotiate a lower percentage of sales paid as rent or royalty to the Federal Government in new contracts. As shown in Table F, in connection with firms with annual revenue below $100,000, this rule is expected to have a significant impact on 20.94 percent of small businesses in the accommodation and food services industry. As shown in Table F in connection with firms with annual revenue between $100,000 and $499,999, this rule is expected to have a significant impact on 45.52 percent of small businesses.

TABLE E—PERCENT OF SMALL FIRMS WITH SALES/RECEIPTS/REVENUE BELOW $100,000 WITH A SIGNIFICANT ECONOMIC IMPACT IN THE MANAGEMENT OF COMPANIES AND ENTERPRISES INDUSTRY

Management of Companies and Enterprises Industry				
	Annual cost per firm as percent of receipts (%)	Number of firms	Total number of small firms in industry	Number of firms as percent of small firms in industry (%)
Firms with sales/receipts/revenue below $100,000	15.49	1,895	15,942	11.9

TABLE F—PERCENT OF SMALL FIRMS WITH SALES/RECEIPTS/REVENUE BELOW $500,000 WITH A SIGNIFICANT ECONOMIC IMPACT IN THE ACCOMMODATION AND FOOD SERVICES INDUSTRY

Accommodation and Food Services Industry				
	Annual cost per firm as percent of receipts (%)	Number of firms	Total number of small firms in industry	Number of firms as percent of small firms in industry (%)
Firms with sales/receipts/revenue below $100,000	5.48	99,592	475,532	20.9
Firms with sales/receipts/revenue of $100,000 to $499,999	3.11	216,446	475,532	45.5

In conclusion, as stated above, the Department defines significant economic impact to be having an effect of more than 3% of a firm's annual revenue. Our analysis has shown that for seventeen of the nineteen industries covered by the Executive Order, this final rule is not expected to have a significant impact on small business annual revenue.

Estimating the Number of Small Contractor Firms Affected by the Rule

The Department now sets forth its estimate of the number of small contractor firms actually affected by the final rule. Definitive information on the exact number of affected small contractor firms is not available. The best source to estimate the number of small contractor firms that are affected by this final rule is GSA's System for Award Management (SAM). The Department notes, however, that Federal contractor status cannot be discerned from the SBA firm size data: SAM can only be used to estimate the number of small firms, not the number of small contractor firms. The Department accordingly used the SBA data to estimate the impact of the regulation on a 'typical' or 'average' small firm in each of the nineteen industries (identified by the two-digit NAICS level). The Department then assumed that a typical small firm is similar to a small contractor firm.

Based on the most current SAM data available, if the Department defined ''small'' as fewer than 500 employees, then there are 328,552 small contractor firms. If the Department defined ''small'' as firms with less than $35.5 million in revenues, then there are 315,902 small contractor firms. Thus, the Department

[37] The RFA does not define the term ''substantial'' or provide any specific thresholds for determining a substantial number of small entities affected. 5 U.S.C. 601; *see* SBA Guide for Government Agencies at 18. The determination of what constitutes a ''substantial'' number of small entities may be industry or rule-specific. The Department has chosen fifteen percent as its criterion for determining substantiality for purposes of this final rule because that threshold is in accord with the threshold other Federal agencies have used in conducting their regulatory flexibility analyses.

established the range 315,902 to 328,552 as the total number of small contractor firms. Of course, not all of these contractor firms will be impacted by the final rule; only those contractors that are paying less than $10.10 per hour to any of their workers performing on or in connection with covered contracts will be affected. Thus, this range is likely an overestimate of the number of firms affected by the final rule because some of those small contractor firms may pay all of their workers more than $10.10 per hour.

Advocacy commented that the Department's initial regulatory flexibility analysis did not estimate the number of subcontractors affected by the rule. Advocacy stated that the Department utilized SAM data to estimate there are 328,552 small contractor firms that could be affected by this rule, but asserted that subcontractors are not required to be in SAM, particularly if they are not paid directly by the Federal Government.

The Department used SAM data because it was the best source available to estimate the number of affected small contractor firms. SAM includes all prime contractors and some subcontractors.[38] Moreover, as discussed above, the number of affected small contractor firms included in the initial regulatory flexibility analysis and in the analysis set forth in this final rule likely overestimates the actual number of small contractors affected by this Executive Order. Thus, the likely overestimate of affected small contractor firms should offset to some degree any affected subcontractors that may not be registered in SAM. The Department notes that this regulation applies only to new contracts. As explained in the Executive Order 12866 economic analysis, based on the 2012 SBA study, the Department assumed that roughly 18 percent of small contractors are new contractors each year. Assuming that this final rule will impact only 18 percent [39] of the small contractor firms performing Federal contracts in the first year, 59,139 small businesses will be subject to the Executive Order in 2015. When this rule's impact is fully manifested by the end of 2019, all covered Federal contracts held by small firms with workers earning less than $10.10 per hour will be impacted.

Relevant Federal Rules Duplicating, Overlapping, or Conflicting with the Rule: Section 4(a) of the Executive Order requires the FARC to issue regulations to provide for inclusion of the applicable contract clause in Federal procurement solicitations and contracts subject to the Order; thus, the contract clause and some requirements applicable to contracting agencies will appear in both this part and in the FARC regulations. The Department is not aware of any relevant Federal rules that conflict with this final rule.

Differing Compliance and Reporting Requirements for Small Entities: This final rule provides for no differing compliance requirements and reporting requirements for small entities. The Department has strived to have this rule implement the minimum wage requirements of Executive Order 13658 with the least possible burden for small entities. The final rule provides a number of efficient and informal alternative dispute mechanisms to resolve concerns about contractor compliance, including having the contracting agency provide compliance assistance to the contractor about the minimum wage requirements, and allowing for the Department to attempt an informal conciliation of complaints instead of engaging in extensive investigations. These tools will provide contractors with an opportunity to resolve inadvertent errors rapidly and before significant liabilities develop.

Clarification, Consolidation, and Simplification of Compliance and Reporting Requirements for Small Entities: This final rule was drafted to clearly state the compliance requirements for all contractors subject to Executive Order 13658. The final rule does not contain any reporting requirements. The recordkeeping requirements imposed by this final rule are necessary for contractors to determine their compliance with the rule as well as for the Department and workers to determine the contractor's compliance with the law. The rule's recordkeeping provisions apply generally to all businesses—large and small—covered by the Executive Order; no reasonable basis exists for creating an exemption from compliance and recordkeeping requirements for small businesses. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance.

Use of Performance Rather Than Design Standards: This final rule was written to provide clear guidelines to ensure compliance with the Executive Order minimum wage requirements. Under the final rule, contractors may achieve compliance through a variety of means. The Department makes available a variety of resources to contractors for understanding their obligations and achieving compliance.

Exemption from Coverage of the Rule for Small Entities: Executive Order 13658 establishes its own coverage and exemption requirements; therefore, the Department has not exempted small businesses from the minimum wage requirements of the Order.

Discussion of Regulatory Alternatives: In the NPRM, the Department invited commenters to identify alternatives to the proposed rule that would minimize any significant economic impact on small entities while still ensuring the rule accomplished the stated objectives of the Executive Order. In its comment submitted on the NPRM, Advocacy suggested that the Department should include a description of any significant regulatory alternatives to this final rule that accomplish the Executive Order's stated objectives and minimize any significant economic impact of this final rule on small entities. Advocacy further stated the Department should consider any alternatives provided in the comment period that minimize the impact of the rule on small businesses while accomplishing the rule's objectives. As evidenced throughout the analysis contained in the preamble to this part, the Department has adopted Advocacy's request to consider regulatory alternatives suggested by commenters that might minimize any economic impacts of the final rule on contractors, including small entities.

ABC suggested that the Department could exercise authority under section 4 of the Executive Order to provide exclusions from the Order's requirements as a regulatory alternative. The Department has previously responded in the preamble to specific requests for exclusions from the Executive Order's requirements. As explained in the preamble section above, the Department declined to adopt the specific exclusion proposed by ABC whereby DBA- and SCA-covered workers would be excluded from coverage under the Executive Order. However, the Department has exercised its authority under the Order to provide certain other limited exclusions from coverage as set forth in § 10.4 and discussed in the preamble for that

[38] The agency with which a subcontractor works determines whether that subcontractor must register in SAM. SAM itself, however, does not indicate if an entity registered in its database is a prime contractor or a subcontractor.

[39] The Department assumed 18 percent of small contractors are new to Federal contracting each year based on the 2012 SBA study (Small Business Administration, ''Characteristics of Recent Federal Small Business Contracting,'' May, 2012). The 2012 SBA study shows that 17.65 percent of small businesses were new to Federal contracting each year between FY 2005 and FY 2009, and the Department rounded it up to 18 percent in this analysis. This 18 percent is separate and distinct from the Department's use of 20 percent as the number of Federal contracts that are initiated each year, which is used in the Executive Order 12866 economic analysis.

section. For example, in response to comments received, the Department has created an exclusion pursuant to which FLSA-covered workers performing in connection with covered contracts are excluded from coverage of the rule if they spend less than 20 percent of their hours worked in a given workweek performing in connection with covered contracts.

With respect to other commenters' suggestions for regulatory alternatives that could potentially mitigate any economic impacts of the rule on small entities and other contractors, the HR Policy Association suggested that the Department consider leaving the minimum wage at its current level as an alternative. CSCUSA suggested that the Department consider phasing in the minimum wage increase over the next three years to moderate the rule's impact on small businesses. Executive Order 13658 delegates to the Secretary the authority only to issue regulations to ''implement the requirements of this order.'' Because the Executive Order itself establishes the basic coverage provisions, sets the minimum wage and establishes the timeframe when the minimum wage rate becomes effective, the Department is unable to adopt this regulatory alternative suggested by the commenters in the final rule.

The Department also considered, for example, AGC's and ABC's request that the applicable minimum wage rate under the Executive Order should remain frozen for the duration of covered multi-year contracts. The Department similarly considered AGC's request for a safe harbor from contractor flow-down responsibility where a contractor included the contract clause in its subcontracts. While the Department declined to adopt these regulatory alternatives for the reasons explained earlier in the preamble to this final rule, the Department notes that it has made several modifications in this final rule that are responsive to the concerns raised by such commenters. For example, the Department has included a provision whereby a contractor is entitled to an adjustment where necessary to pay any necessary additional costs when a contracting agency initially omits and then subsequently includes the contract clause in a covered contract. The Department has also provided that a contractor is entitled to be compensated, if appropriate, for the increase in labor costs resulting from the annual inflation increases in the Executive Order minimum wage beginning on January 1, 2016.

VI. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, requires that agencies prepare a written statement, which includes an assessment of the Federal mandate's anticipated costs and benefits, before promulgating a final rule that includes any Federal mandate that may result in excess of $100 million (adjusted annually for inflation) in expenditures in any one year by State, local, and tribal governments in the aggregate or by the private sector. The current threshold after adjustment for inflation is $141 million, using the 2012 Implicit Price Deflator for the Gross Domestic Product.

As explained in the economic analysis set forth in the section discussing Executive Orders 12866 and 13563 above, the Department estimates that the final rule may result in transfers of up to $500 million per year (beginning in 2019, with steady increases up to that level over the intervening years). Because this final rule applies only to new contracts, contractors would have the information necessary to factor into their bids the labor costs resulting from the required minimum wage, and thus it may be likely that the Federal Government would bear the burden of the transfers. However, most contracts covered by this final rule are paid through appropriated funds, and how Congress and agencies respond to rising bids is subject to political processes whose unpredictability limits the Department's ability to project rule-induced outcomes. The Department therefore acknowledges that this final rule may yield effects that make it subject to UMRA requirements. The Department carried out the requisite cost-benefit analysis in preceding sections of this document.

The Chamber/NFIB asserted that the Department's analysis in the NPRM under the UMRA was inadequate, contending that the Department must separately assess the effects of the rule on State, local and tribal governments, which the Chamber/NFIB asserts will be substantial. In the Department's experience, however, State and local governments are parties to a relatively small number of SCA- and DBA-covered contracts. The Department also notes that no State or local government submitted a comment expressing concern regarding the cost of compliance with the Executive Order's requirements; in fact, the one comment the Department received from a state agency (Alaska's Department of Health and Human Services) supported the Department's NPRM. In addition, the Executive Order does not apply to contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act. 79 FR 9853. For these reasons, the Department does not expect that the promulgation of this final rule will result in the expenditure by State, local and tribal governments, in the aggregate, of $141 million per year.

VII. Executive Order 13132, Federalism

The Department has (1) reviewed this rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The final rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

VIII. Executive Order 13175, Indian Tribal Governments

This final rule would not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The final rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

IX. Effects on Families

The undersigned hereby certifies that the final rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

X. Executive Order 13045, Protection of Children

This final rule would have no environmental health risk or safety risk that may disproportionately affect children.

XI. Environmental Impact Assessment

A review of this final rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.;* and the Departmental NEPA procedures, 29 CFR part 11, indicates that the rule would not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

XII. Executive Order 13211, Energy Supply

This final rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

XIII. Executive Order 12630, Constitutionally Protected Property Rights

This final rule is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

XIV. Executive Order 12988, Civil Justice Reform Analysis

This final rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The final rule was: (1) reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects in 29 CFR Part 10

Administrative practice and procedure, Construction, Government contracts, Law enforcement, Minimum wages, Reporting and recordkeeping requirements, Wages.

Signed at Washington, DC this 29th day of September, 2014.

David Weil,

Administrator, Wage and Hour Division.

For the reasons set out in the preamble, the Department of Labor amends title 29 of the Code of Federal Regulations by adding part 10 to read as follows:

PART 10—ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

Subpart A—General

Sec.

10.1 Purpose and scope.
10.2 Definitions.
10.3 Coverage.
10.4 Exclusions.
10.5 Minimum wage for Federal contractors and subcontractors.
10.6 Antiretaliation.
10.7 Waiver of rights.

Subpart B—Federal Government Requirements

10.11 Contracting agency requirements.
10.12 Department of Labor requirements.

Subpart C—Contractor Requirements

10.21 Contract clause.
10.22 Rate of pay.
10.23 Deductions.
10.24 Overtime payments.
10.25 Frequency of pay.
10.26 Records to be kept by contractors.
10.27 Anti-kickback.
10.28 Tipped employees.
10.29 Notice.

Subpart D—Enforcement

10.41 Complaints.
10.42 Wage and Hour Division conciliation.
10.43 Wage and Hour Division investigation.
10.44 Remedies and sanctions.

Subpart E—Administrative Proceedings

10.51 Disputes concerning contractor compliance.
10.52 Debarment proceedings.
10.53 Referral to Chief Administrative Law Judge; amendment of pleadings.
10.54 Consent findings and order.
10.55 Proceedings of the Administrative Law Judge.
10.56 Petition for review.
10.57 Administrative Review Board proceedings.
10.58 Administrator ruling.

Appendix A to Part 10—Contract Clause

Authority: 4 U.S.C. 301; section 4, E.O. 13658, 79 FR 9851; Secretary's Order 5—2010, 75 FR 55352.

Subpart A—General

§ 10.1 Purpose and scope.

(a) *Purpose.* This part contains the Department of Labor's rules relating to the administration of Executive Order 13658 (Executive Order or the Order), ''Establishing a Minimum Wage for Contractors,'' and implements the enforcement provisions of the Executive Order. The Executive Order assigns responsibility for investigating potential violations of and obtaining compliance with the Executive Order to the Department of Labor. The Executive Order states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. There is evidence that raising the pay of low-wage workers can increase their morale and productivity and the quality of their work, lower turnover and its accompanying costs, and reduce supervisory costs. The Executive Order thus states that cost savings and quality improvements in the work performed by parties who contract with the Federal Government will lead to improved economy and efficiency in Government procurement. Executive Order 13658 therefore generally requires that the hourly minimum wage paid by contractors to workers performing on or in connection with covered contracts with the Federal Government shall be at least:

(1) $10.10 per hour, beginning January 1, 2015; and

(2) An amount determined by the Secretary of Labor, beginning January 1, 2016, and annually thereafter.

(b) *Policy.* Executive Order 13658 sets forth a general position of the Federal Government that increasing the hourly minimum wage paid by Federal contractors to $10.10 will increase efficiency and cost savings for the Federal Government. The Executive Order therefore establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides that executive departments and agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations (collectively referred to as ''contracts'') include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), in the performance of the contract or any subcontract thereunder, shall be at least:

(1) $10.10 per hour beginning January 1, 2015; and

(2) Beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary pursuant to the Order. Nothing in Executive Order 13658 or this part shall excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Order.

(c) *Scope.* Neither Executive Order 13658 nor this part creates or changes any rights under the Contract Disputes Act or any private right of action. The Executive Order provides that disputes regarding whether a contractor has paid the minimum wages prescribed by the Order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued under the Order. However, nothing in the Order or this part is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. The Order similarly does not preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

§ 10.2 Definitions.

For purposes of this part:

Administrative Review Board (ARB or Board) means the Administrative Review Board, U.S. Department of Labor.

Administrator means the Administrator of the Wage and Hour Division and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

Agency head means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency or any persons authorized to act on behalf of the agency head.

Concessions contract or *contract for concessions* means a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. The term *concessions contract* includes but is not limited to a contract the principal purpose of which is to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment, regardless of whether the services are of direct benefit to the Government, its personnel, or the general public.

Contract or *contract-like instrument* means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term *contract* includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term *contract* shall be interpreted broadly as to include, but not be limited to, any contract that may be consistent with the definition provided in the Federal Acquisition Regulation (FAR) or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. The term *contract* includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contracting officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. This term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

Contractor means any individual or other legal entity that is awarded a Federal Government contract or subcontract under a Federal Government contract. The term *contractor* refers to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. The term *contractor* includes lessors and lessees, as well as employers of workers performing on covered Federal contracts whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c). The term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in various sections of this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of the Executive Order.

Davis-Bacon Act means the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 *et seq.,* and its implementing regulations.

Executive departments and agencies means executive departments, military departments, or any independent establishments within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

Executive Order minimum wage means, for purposes of Executive Order 13658, a wage that is at least:

(1) $10.10 per hour beginning January 1, 2015; and

(2) Beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary pursuant to section 2 of the Executive Order.

Fair Labor Standards Act (FLSA) means the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.,* and its implementing regulations.

Federal Government means an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. For purposes of the Executive Order and this part, this definition does not include the District of Columbia, any Territory or possession of the United States, or any independent regulatory agency within the meaning of 44 U.S.C. 3502(5).

Independent agencies means independent regulatory agencies within the meaning of 44 U.S.C. 3502(5).

New contract means a contract that results from a solicitation issued on or after January 1, 2015, or a contract that is awarded outside the solicitation process on or after January 1, 2015. This term includes both new contracts and replacements for expiring contracts. It does not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government. For purposes of the Executive Order, a contract that is entered into prior to January 1, 2015 will constitute a *new contract* if, through bilateral negotiation, on or after January 1, 2015:

(1) The contract is renewed;

(2) The contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2014 providing for a short-term limited extension; or

(3) The contract is amended pursuant to a modification that is outside the scope of the contract.

Office of Administrative Law Judges means the Office of Administrative Law Judges, U.S. Department of Labor.

Option means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

Procurement contract for construction means a procurement contract for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and which requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. The term *procurement contract for construction* includes any contract subject to the provisions of the Davis-Bacon Act, as amended, and its implementing regulations.

Procurement contract for services means a procurement contract the principal purpose of which is to furnish services in the United States through the use of service employees, and any subcontract of any tier thereunder. The term *procurement contract for services* includes any contract subject to the provisions of the Service Contract Act, as amended, and its implementing regulations.

Service Contract Act means the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.,* and its implementing regulations.

Solicitation means any request to submit offers, bids, or quotations to the Federal Government.

Tipped employee means any employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips. For purposes of the Executive Order, a worker performing on or in connection with a contract covered by the Executive Order who meets this definition is a tipped employee.

United States means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities. When used in a geographic sense, the *United States* means the 50 States and the District of Columbia.

Wage and Hour Division means the Wage and Hour Division, U.S. Department of Labor.

Wage determination includes any determination of minimum hourly wage rates or fringe benefits made by the Secretary of Labor pursuant to the provisions of the Service Contract Act or the Davis-Bacon Act. This term includes the original determination and any subsequent determinations modifying, superseding, correcting, or otherwise changing the provisions of the original determination.

Worker means any person engaged in performing work on or in connection with a contract covered by the Executive Order, and whose wages under such contract are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act, other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541, regardless of the contractual relationship alleged to exist between the individual and the employer. The term *worker* includes workers performing on or in connection with a covered contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), as well as any person working on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the U.S. Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

§ 10.3 Coverage.

(a) This part applies to any new contract with the Federal Government, unless excluded by § 10.4, provided that:

(1)(i) It is a procurement contract for construction covered by the Davis-Bacon Act;

(ii) It is a contract for services covered by the Service Contract Act;

(iii) It is a contract for concessions, including any concessions contract excluded from coverage under the Service Contract Act by Department of Labor regulations at 29 CFR 4.133(b); or

(iv) It is a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and

(2) The wages of workers under such contract are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act.

(b) For contracts covered by the Service Contract Act or the Davis-Bacon Act, this part applies to prime contracts only at the thresholds specified in those statutes. For procurement contracts where workers' wages are governed by the Fair Labor Standards Act, this part applies when the prime contract exceeds the micro-purchase threshold, as defined in 41 U.S.C. 1902(a).

(c) This part only applies to contracts with the Federal Government requiring performance in whole or in part within the United States. If a contract with the Federal Government is to be performed in part within and in part outside the United States and is otherwise covered by the Executive Order and this part, the minimum wage requirements of the Order and this part would apply with respect to that part of the contract that is performed within the United States.

(d) This part does not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government that are subject to the Walsh-Healey Public Contracts Act, 41 U.S.C. 6501 *et seq.*

§ 10.4 Exclusions.

(a) *Grants.* The requirements of this part do not apply to grants within the meaning of the Federal Grant and Cooperative Agreement Act, as amended, 31 U.S.C. 6301 *et seq.*

(b) *Contracts and agreements with and grants to Indian Tribes.* This part does not apply to contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450 *et seq.*

(c) *Procurement contracts for construction that are excluded from coverage of the Davis-Bacon Act.* Procurement contracts for construction that are not covered by the Davis-Bacon Act are not subject to this part.

(d) *Contracts for services that are exempted from coverage under the Service Contract Act.* Service contracts, except for those expressly covered by § 10.3(a)(1)(iii) or (iv), that are exempt from coverage of the Service Contract Act pursuant to its statutory language at 41 U.S.C. 6702(b) or its implementing regulations, including those at 29 CFR 4.115 through 4.122 and 29 CFR 4.123(d) and(e), are not subject to this part.

(e) *Employees who are exempt from the minimum wage requirements of the Fair Labor Standards Act under 29 U.S.C. 213(a) and 214(a)–(b).* Except for workers who are otherwise covered by the Davis-Bacon Act or the Service Contract Act, this part does not apply to employees who are not entitled to the minimum wage set forth at 29 U.S.C. 206(a)(1) of the Fair Labor Standards Act pursuant to 29 U.S.C. 213(a) and 214(a)–(b). Pursuant to this exclusion, individuals that are not subject to the requirements of this part include but are not limited to:

(1) *Learners, apprentices, or messengers.* This part does not apply to learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a).

(2) *Students.* This part does not apply to student workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

(3) *Individuals employed in a bona fide executive, administrative, or professional capacity.* This part does not apply to workers who are employed by Federal contractors in a bona fide executive, administrative, or professional capacity, as those terms are

defined and delimited in 29 CFR part 541.

(f) *FLSA-covered workers performing in connection with covered contracts for less than 20 percent of their work hours in a given workweek.* This part does not apply to FLSA-covered workers performing in connection with covered contracts, *i.e.,* those workers who perform work duties necessary to the performance of the contract but who are not directly engaged in performing the specific work called for by the contract, that spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts. This exclusion is inapplicable to covered workers performing on covered contracts, *i.e.,* those workers directly engaged in performing the specific work called for by the contract.

§ 10.5 Minimum wage for Federal contractors and subcontractors.

(a) *General.* Pursuant to Executive Order 13658, the minimum hourly wage rate required to be paid to workers performing on or in connection with covered contracts with the Federal Government is at least:

(1) $10.10 per hour beginning January 1, 2015; and

(2) Beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary pursuant to section 2 of Executive Order 13658. In accordance with section 2 of the Order, the Secretary will determine the applicable minimum wage rate to be paid to workers on covered contracts on an annual basis beginning at least 90 days before any new minimum wage is to take effect.

(b) *Method for determining the applicable Executive Order minimum wage for workers.* The minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), in the performance of a covered contract shall be at least:

(1) $10.10 per hour beginning January 1, 2015; and

(2) An amount determined by the Secretary, beginning January 1, 2016, and annually thereafter. The applicable minimum wage determined for each calendar year by the Secretary shall be:

(i) Not less than the amount in effect on the date of such determination;

(ii) Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics; and

(iii) Rounded to the nearest multiple of $0.05. In calculating the annual percentage increase in the Consumer Price Index for purposes of this section, the Secretary shall compare such Consumer Price Index for the most recent year available with the Consumer Price Index for the preceding year.

(c) *Relation to other laws.* Nothing in the Executive Order or this part shall excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Executive Order and this part.

§ 10.6 Antiretaliation.

It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or this part, or has testified or is about to testify in any such proceeding.

§ 10.7 Waiver of rights.

Workers cannot waive, nor may contractors induce workers to waive, their rights under Executive Order 13658 or this part.

Subpart B—Federal Government Requirements

§ 10.11 Contracting agency requirements.

(a) *Contract clause.* The contracting agency shall include the Executive Order minimum wage contract clause set forth in appendix A of this part in all covered contracts and solicitations for such contracts, as described in § 10.3, except for procurement contracts subject to the FAR. The required contract clause directs, as a condition of payment, that all workers performing work on or in connection with covered contracts must be paid the applicable, currently effective minimum wage under Executive Order 13658 and § 10.5. For procurement contracts subject to the FAR, contracting agencies must use the clause set forth in the FAR developed to implement this rule. Such clause will accomplish the same purposes as the clause set forth in Appendix A and be consistent with the requirements set forth in this rule.

(b) *Failure to include the contract clause.* Where the Department or the contracting agency discovers or determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that Executive Order 13658 or this part did not apply to a particular contract and/or failed to include the applicable contract clause in a contract to which the Executive Order applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

(c) *Withholding.* A contracting officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under the covered contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by the Executive Order. In the event of failure to pay any covered workers all or part of the wages due under Executive Order 13658, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of Executive Order 13658 may be grounds for termination of the right to proceed with the contract work. In such event, the contracting agency may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(d) *Actions on complaints*—(1) *Reporting*—(i) *Reporting time frame.* The contracting agency shall forward all information listed in paragraph (d)(1)(ii) of this section to the Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 within 14 calendar days of receipt of a complaint alleging contractor noncompliance with the Executive Order or this part or within 14 calendar days of being contacted by the Wage and Hour Division regarding any such complaint.

(ii) *Report contents.* The contracting agency shall forward to the Branch of Government Contracts Enforcement, Wage and Hour Division, U.S.

Department of Labor, Washington, DC 20210 any:

(A) Complaint of contractor noncompliance with Executive Order 13658 or this part;

(B) Available statements by the worker, contractor, or any other person regarding the alleged violation;

(C) Evidence that the Executive Order minimum wage contract clause was included in the contract;

(D) Information concerning known settlement negotiations between the parties, if applicable; and

(E) Any other relevant facts known to the contracting agency or other information requested by the Wage and Hour Division.

(2) [Reserved]

§ 10.12 Department of Labor requirements.

(a) *In general.* The Executive Order minimum wage applicable from January 1, 2015 through December 31, 2015 is $10.10 per hour. The Secretary will determine the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2016.

(b) *Method for determining the applicable Executive Order minimum wage.* The Secretary will determine the applicable minimum wage under the Executive Order, beginning January 1, 2016, by using the methodology set forth in § 10.5(b).

(c) *Notice.* (1) The Administrator will notify the public of the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any new minimum wage is to take effect.

(2) *Method of notification*—(i) **Federal Register**. The Administrator will publish a notice in the **Federal Register** stating the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any new minimum wage is to take effect.

(ii) *Wage Determinations OnLine Web site.* The Administrator will publish and maintain on Wage Determinations OnLine (WDOL), *http://www.wdol.gov,* or any successor site, the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts.

(iii) *Wage Determinations.* The Administrator will publish a prominent general notice on all wage determinations issued under the Davis-Bacon Act and the Service Contract Act stating the Executive Order minimum wage and that the Executive Order minimum wage applies to all workers performing on or in connection with such contracts whose wages are governed by the Fair Labor Standards Act, the Davis-Bacon Act, and the Service Contract Act. The Administrator will update this general notice on all such wage determinations annually.

(iv) *Other means as appropriate.* The Administrator may publish the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any such new minimum wage is to take effect in any other media that the Administrator deems appropriate.

(d) *Notification to a contractor of the withholding of funds.* If the Administrator requests that a contracting agency withhold funds from a contractor pursuant to § 10.11(c), the Administrator and/or contracting agency shall notify the affected prime contractor of the Administrator's withholding request to the contracting agency.

Subpart C—Contractor Requirements

§ 10.21 Contract clause.

(a) *Contract clause.* The contractor, as a condition of payment, shall abide by the terms of the applicable Executive Order minimum wage contract clause referred to in § 10.11(a).

(b) The contractor and any subcontractors shall include in any covered subcontracts the Executive Order minimum wage contract clause referred to in § 10.11(a) and shall require, as a condition of payment, that the subcontractor include the minimum wage contract clause in any lower-tier subcontracts. The prime contractor and any upper-tier contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements, whether or not the contract clause was included in the subcontract.

§ 10.22 Rate of pay.

(a) *General.* The contractor must pay each worker performing work on or in connection with a covered contract no less than the applicable Executive Order minimum wage for all hours worked on or in connection with the covered contract, unless such worker is exempt under § 10.4 of this part. In determining whether a worker is performing within the scope of a covered contract, all workers who, on or after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Executive Order and this part unless a specific exemption is applicable. Nothing in the Executive Order or these regulations shall excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under Executive Order 13658.

(b) *Workers who receive fringe benefits.* The contractor may not discharge any part of its minimum wage obligation under the Executive Order by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(c) *Tipped employees.* The contractor may satisfy the wage payment obligation to a tipped employee under the Executive Order through a combination of an hourly cash wage and a credit based on tips received by such employee pursuant to the provisions in § 10.28.

§ 10.23 Deductions.

The contractor may make deductions that reduce a worker's wages below the Executive Order minimum wage rate only if such deduction qualifies as a:

(a) Deduction required by Federal, State, or local law, such as Federal or State withholding of income taxes;

(b) Deduction for payments made to third parties pursuant to court order;

(c) Deduction directed by a voluntary assignment of the worker or his or her authorized representative; or

(d) Deduction for the reasonable cost or fair value, as determined by the Administrator, of furnishing such worker with ''board, lodging, or other facilities,'' as defined in 29 U.S.C. 203(m) and part 531 of this title.

§ 10.24 Overtime payments.

(a) *General.* The Fair Labor Standards Act and the Contract Work Hours and Safety Standards Act require overtime payment of not less than one and one-half times the regular rate of pay or basic rate of pay for all hours worked over 40 hours in a workweek to covered workers. The regular rate of pay under the Fair Labor Standards Act is generally determined by dividing the worker's total earnings in any workweek by the total number of hours actually worked by the worker in that workweek for which such compensation was paid.

(b) *Tipped employees.* When overtime is worked by tipped employees who are entitled to overtime pay under the Fair Labor Standards Act and/or the Contract Work Hours and Safety Standards Act, the employees' regular rate of pay

includes both the cash wages paid by the employer (*see* §§ 10.22(a) and 10.28(a)(1)) and the amount of any tip credit taken (*see* § 10.28(a)(2)). (*See* part 778 of this title for a detailed discussion of overtime compensation under the Fair Labor Standards Act.) Any tips received by the employee in excess of the tip credit are not included in the regular rate.

§ 10.25 Frequency of pay.

Wage payments to workers shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under Executive Order 13658 may not be of any duration longer than semi-monthly.

§ 10.26 Records to be kept by contractors.

(a) The contractor and each subcontractor performing work subject to Executive Order 13658 shall make and maintain, for three years, records containing the information specified in paragraphs (a)(1) through (6) of this section for each worker and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(1) Name, address, and social security number of each worker;

(2) The worker's occupation(s) or classification(s);

(3) The rate or rates of wages paid;

(4) The number of daily and weekly hours worked by each worker;

(5) Any deductions made; and

(6) The total wages paid.

(b) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with workers at the worksite during normal working hours.

(c) Nothing in this part limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act, or their implementing regulations.

§ 10.27 Anti-kickback.

All wages paid to workers performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (except as set forth in § 10.23), rebate, or kickback on any account. Kickbacks directly or indirectly to the employer or to another person for the employer's benefit for the whole or part of the wage are prohibited.

§ 10.28 Tipped employees.

(a) *Payment of wages to tipped employees.* With respect to workers who are tipped employees as defined in § 10.2 and this section, the amount of wages paid to such employee by the employee's employer shall be equal to:

(1) An hourly cash wage of at least:

(i) $4.90 an hour beginning on January 1, 2015;

(ii) For each succeeding 1-year period until the hourly cash wage equals 70 percent of the wage in effect under section 2 of the Executive Order, the hourly cash wage applicable in the prior year, increased by the lesser of $0.95 or the amount necessary for the hourly cash wage to equal 70 percent of the wage in effect under section 2 of the Executive Order;

(iii) For each subsequent year, 70 percent of the wage in effect under section 2 of the Executive Order for such year rounded to the nearest multiple of $0.05; and

(2) An additional amount on account of the tips received by such employee (tip credit) which amount is equal to the difference between the hourly cash wage in paragraph (a)(1) of this section and the wage in effect under section 2 of the Executive Order. Where tipped employees do not receive a sufficient amount of tips in the workweek to equal the amount of the tip credit, the employer must increase the cash wage paid for the workweek under paragraph (a)(1) of this section so that the amount of the cash wage paid and the tips received by the employee equal the minimum wage under section 2 of the Executive Order.

(3) An employer may pay a higher cash wage than required by paragraph (a)(1) of this section and take a lower tip credit but may not pay a lower cash wage than required by paragraph (a)(1) of this section and take a greater tip credit. In order for the employer to claim a tip credit, the employer must demonstrate that the worker received at least the amount of the credit claimed in actual tips. If the worker received less than the claimed tip credit amount in tips during the workweek, the employer is required to pay the balance on the regular payday so that the worker receives the wage in effect under section 2 of the Executive Order with the defined combination of wages and tips.

(4) If the wage required to be paid under the Service Contract Act, 41 U.S.C. 6701 *et seq.,* or any other applicable law or regulation is higher than the wage required by section 2 of the Executive Order, the employer shall pay additional cash wages equal to the difference between the wage in effect under section 2 of the Executive Order and the highest wage required to be paid.

(b) *Tipped employees.* (1) As provided in § 10.2, a covered worker employed in an occupation in which he or she receives tips is a ''tipped employee'' when he or she customarily and regularly receives more than $30 a month in tips. Only tips actually retained by the employee after any tip pooling may be counted in determining whether the person is a ''tipped employee'' and in applying the provisions of section 3 of the Executive Order. An employee may be a ''tipped employee'' regardless of whether the employee is employed full time or part time so long as the employee customarily and regularly receives more than $30 a month in tips. An employee who does not receive more than $30 a month in tips customarily and regularly is not a tipped employee for purposes of the Executive Order and must receive the full minimum wage in section 2 of the Executive Order without any credit for tips received under the provisions of section 3.

(2) *Dual jobs.* In some situations an employee is employed in a tipped occupation and a non-tipped occupation (dual jobs), as for example, where a maintenance person in a hotel also works as a server. In such a situation if the employee customarily and regularly receives at least $30 a month in tips for the work as a server, the employee is a tipped employee only when working as a server. The tip credit can only be taken for the hours spent in the tipped occupation and no tip credit can be taken for the hours of employment in the non-tipped occupation. Such a situation is distinguishable from that of a tipped employee performing incidental duties that are related to the tipped occupation but that are not directed toward producing tips, for example when a server spends part of his or her time cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses. Related duties may not comprise more than 20 percent of the hours worked in the tipped occupation in a workweek.

(c) *Characteristics of tips.* A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. It is to be distinguished from payment of a fixed charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer. Tips are the property of the employee whether or not the employer has taken a tip credit. The employer is prohibited from using an employee's tips, whether or not it has taken a tip credit, for any reason other than as a credit against its minimum wage obligations under the Executive

Order to the employee, or in furtherance of a valid tip pool. An employer and employee cannot agree to waive the workers right to retain his or her tips. Customers may present cash tips directly to the employee or may designate a tip amount to be added to their bill when paying with a credit card or by other electronic means. Special gifts in forms other than money or its equivalent such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of determining wages paid under the Executive Order.

(d) *Service charges.* (1) A compulsory charge for service, such as 15 percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to its workers, cannot be counted as a tip for purposes of determining if the worker is a tipped employee. Similarly, where negotiations between a hotel and a customer for banquet facilities include amounts for distribution to workers of the hotel, the amounts so distributed are not tips.

(2) As stated above, service charges and other similar sums are considered to be part of the employer's gross receipts and are not tips for the purposes of the Executive Order. Where such sums are distributed by the employer to its workers, however, they may be used in their entirety to satisfy the wage payment requirements of the Executive Order.

(e) *Tip pooling.* Where tipped employees share tips through a tip pool, only the amounts retained by the tipped employees after any redistribution through a tip pool are considered tips in applying the provisions of FLSA section 3(t) and the wage payment provisions of section 3 of the Executive Order. There is no maximum contribution percentage on valid mandatory tip pools, which can only include tipped employees. However, an employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

(f) *Notice.* An employer is not eligible to take the tip credit unless it has informed its tipped employees in advance of the employer's use of the tip credit. The employer must inform the tipped employee of the amount of the cash wage that is to be paid by the employer, which cannot be lower than the cash wage required by paragraph (a)(1) of this section; the additional amount by which the wages of the tipped employee will be considered increased on account of the tip credit claimed by the employer, which amount may not exceed the value of the tips actually received by the employee; that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to tipped employees; and that the tip credit shall not apply to any worker who has not been informed of these requirements in this section.

§ 10.29 Notice.

(a) The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes.

(b) With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers.

(c) Contractors that customarily post notices to workers electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

Subpart D—Enforcement

§ 10.41 Complaints.

(a) Any worker, contractor, labor organization, trade organization, contracting agency, or other person or entity that believes a violation of the Executive Order or this part has occurred may file a complaint with any office of the Wage and Hour Division. No particular form of complaint is required. A complaint may be filed orally or in writing. If the complainant is unable to file the complaint in English, the Wage and Hour Division will accept the complaint in any language.

(b) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual. Disclosure of such statements shall be governed by the provisions of the Freedom of Information Act (5 U.S.C. 552, *see* 29 CFR part 70) and the Privacy Act of 1974 (5 U.S.C. 552a).

§ 10.42 Wage and Hour Division conciliation.

After receipt of a complaint, the Administrator may seek to resolve the matter through conciliation.

§ 10.43 Wage and Hour Division investigation.

The Administrator may investigate possible violations of the Executive Order or this part either as the result of a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator may conduct interviews with the relevant contractor, as well as the contractor's workers at the worksite during normal work hours; inspect the relevant contractor's records (including contract documents and payrolls, if applicable); make copies and transcriptions of such records; and require the production of any documentary or other evidence the Administrator deems necessary to determine whether a violation, including conduct warranting imposition of debarment, has occurred. Federal agencies and contractors shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all aspects of investigations.

§ 10.44 Remedies and sanctions.

(a) *Unpaid wages.* When the Administrator determines a contractor has failed to pay the applicable Executive Order minimum wage to workers, the Administrator will notify the contractor and the applicable contracting agency of the unpaid wage violation and request the contractor to remedy the violation. If the contractor does not remedy the violation of the Executive Order or this part, the Administrator shall direct the contractor to pay all unpaid wages to the affected workers in the investigative findings letter it issues pursuant to § 10.51. The Administrator may additionally direct that payments due on the contract or any other contract between the contractor and the Government be

withheld as necessary to pay unpaid wages. Upon the final order of the Secretary that unpaid wages are due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(b) *Antiretaliation.* When the Administrator determines that any person has discharged or in any other manner retaliated against any worker because such worker filed any complaint or instituted or caused to be instituted any proceeding under or related to the Executive Order or this part, or because such worker testified or is about to testify in any such proceeding, the Administrator may provide for any relief to the worker as may be appropriate, including employment, reinstatement, promotion, and the payment of lost wages.

(c) *Debarment.* Whenever a contractor is found by the Secretary of Labor to have disregarded its obligations under the Executive Order, or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or responsible officers have an interest, shall be ineligible to be awarded any contract or subcontract subject to the Executive Order for a period of up to three years from the date of publication of the name of the contractor or responsible officer on the ineligible list. Neither an order for debarment of any contractor or its responsible officers from further Government contracts nor the inclusion of a contractor or its responsible officers on a published list of noncomplying contractors under this section shall be carried out without affording the contractor or responsible officers an opportunity for a hearing before an Administrative Law Judge.

(d) *Civil action to recover greater underpayments than those withheld.* If the payments withheld under § 10.11(c) are insufficient to reimburse all workers' lost wages, or if there are no payments to withhold, the Department of Labor, following a final order of the Secretary, may bring action against the contractor in any court of competent jurisdiction to recover the remaining amount of underpayments. The Department of Labor shall, to the extent possible, pay any sums it recovers in this manner directly to the underpaid workers. Any sum not paid to a worker because of inability to do so within three years shall be transferred into the Treasury of the United States as miscellaneous receipts.

(e) *Retroactive inclusion of contract clause.* If a contracting agency fails to include the applicable contract clause in a contract to which the Executive Order applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

Subpart E—Administrative Proceedings

§ 10.51 Disputes concerning contractor compliance.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning a contractor's compliance with subpart C of this part. The procedures in this section may be initiated upon the Administrator's own motion or upon request of the contractor.

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor(s) and the prime contractor (if different) of the investigative findings by certified mail to the last known address.

(2) A contractor desiring a hearing concerning the Administrator's investigative findings letter shall request such a hearing by letter postmarked within 30 calendar days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute with respect to the violations and/or debarment, as appropriate, and explain how the findings are in dispute, including by making reference to any affirmative defenses.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation to an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 10.52, the Administrator shall notify the contractor(s) of the investigation findings by certified mail to the last known address, and shall issue a ruling in the investigative findings letter on any issues of law known to be in dispute.

(2)(i) If the contractor disagrees with the factual findings of the Administrator or believes that there are relevant facts in dispute, the contractor shall so advise the Administrator by letter postmarked within 30 calendar days of the date of the Administrator's letter. In the response, the contractor shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a timely response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor accordingly.

(3) If the contractor desires review of the ruling issued by the Administrator under paragraph (c)(1) or (c)(2)(ii) of this section, the contractor shall file a petition for review thereof with the Administrative Review Board postmarked within 30 calendar days of the date of the ruling, with a copy thereof to the Administrator. The petition for review shall be filed in accordance with the procedures set forth in 29 CFR part 7.

(d) If a timely response to the Administrator's investigative findings letter is not made or a timely petition for review is not filed, the Administrator's investigative findings letter shall become the final order of the Secretary. If a timely response or petition for review is filed, the Administrator's letter shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board, or otherwise becomes a final order of the Secretary.

§ 10.52 Debarment proceedings.

(a) Whenever any contractor is found by the Secretary of Labor to have disregarded its obligations to workers or subcontractors under Executive Order 13658 or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which such contractor or responsible officers have an interest, shall be

ineligible for a period of up to three years to receive any contracts or subcontracts subject to Executive Order 13658 from the date of publication of the name or names of the contractor or persons on the ineligible list.

(b)(1) Whenever the Administrator finds reasonable cause to believe that a contractor has committed a violation of Executive Order 13658 or this part which constitutes a disregard of its obligations to workers or subcontractors, the Administrator shall notify by certified mail to the last known address, the contractor and its responsible officers (and any firms, corporations, partnerships, or associations in which the contractor or responsible officers are known to have an interest), of the finding. The Administrator shall afford such contractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under Executive Order 13658 or this part. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter to the Administrator postmarked within 30 calendar days of the date of the investigative findings letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute.

(2) Hearings under this section shall be conducted in accordance with the procedures set forth in 29 CFR part 6. If no hearing is requested within 30 calendar days of the letter from the Administrator, the Administrator's findings shall become the final order of the Secretary.

§ 10.53 Referral to Chief Administrative Law Judge; amendment of pleadings.

(a) Upon receipt of a timely request for a hearing under § 10.51 (where the Administrator has determined that relevant facts are in dispute) or § 10.52 (debarment), the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent. The investigative findings letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

(b) At any time prior to the closing of the hearing record, the complaint (investigative findings letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. For proceedings pursuant to § 10.51, such an amendment may include a statement that debarment action is warranted under § 10.52. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the date of the pleadings and which are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 10.54 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the Administrative Law Judge's discretion prior to the issuance of the Administrative Law Judge's decision, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the Administrator's findings letter and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Administrative Review Board regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 calendar days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 10.55 Proceedings of the Administrative Law Judge.

(a) The Office of Administrative Law Judges has jurisdiction to hear and decide appeals concerning questions of law and fact from the Administrator's investigative findings letters issued under §§ 10.51 and 10.52. Any party may, when requesting an appeal or during the pendency of a proceeding on appeal, timely move an Administrative Law Judge to consolidate a proceeding initiated hereunder with a proceeding initiated under the Service Contract Act or the Davis-Bacon Act.

(b) *Proposed findings of fact, conclusions, and order.* Within 20 calendar days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and a proposed order, together with a supporting brief expressing the reasons for such proposals. Each party shall serve such proposals and brief on all other parties.

(c) *Decision.* (1) Within a reasonable period of time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 calendar days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall issue a decision. The decision shall contain appropriate findings, conclusions, and an order, and be served upon all parties to the proceeding.

(2) If the respondent is found to have violated Executive Order 13658 or this part, and if the Administrator requested debarment, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the

ineligible list, including findings that the contractor disregarded its obligations to workers or subcontractors under the Executive Order or this part.

(d) *Limit on scope of review.* The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, Administrative Law Judges shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(e) *Orders.* If the Administrative Law Judge concludes a violation occurred, the final order shall mandate action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Administrative Law Judge shall determine whether an order imposing debarment is appropriate.

(f) *Finality.* The Administrative Law Judge's decision shall become the final order of the Secretary, unless a timely petition for review is filed with the Administrative Review Board.

§ 10.56 Petition for review.

(a) Within 30 calendar days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Administrative Review Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the disregard of obligations to workers and/or subcontractors, or lack thereof, as appropriate. A party must serve the petition for review, and all briefs, on all parties and the Chief Administrative Law Judge. It must also timely serve copies of the petition and all briefs on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(b) *Effect of filing.* If a party files a timely petition for review, the Administrative Law Judge's decision shall be inoperative unless and until the Administrative Review Board issues an order affirming the letter or decision, or the letter or decision otherwise becomes a final order of the Secretary. If a petition for review concerns only the imposition of debarment, however, the remainder of the decision shall be effective immediately. No judicial review shall be available unless a timely petition for review to the Administrative Review Board is first filed.

§ 10.57 Administrative Review Board proceedings.

(a) *Authority*—(1) *General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under § 10.51(c)(1) or (2), Administrator's rulings issued under § 10.58, and decisions of Administrative Law Judges issued under § 10.55. In considering the matters within the scope of its jurisdiction, the Administrative Review Board shall act as the authorized representative of the Secretary and shall act fully and finally on behalf of the Secretary concerning such matters.

(2) *Limit on scope of review.* (i) The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Board's final decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Board concludes a violation occurred, the final order shall mandate action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Board shall determine whether an order imposing debarment is appropriate.

(d) *Finality.* The decision of the Administrative Review Board shall become the final order of the Secretary.

§ 10.58 Administrator ruling.

(a) Questions regarding the application and interpretation of the rules contained in this part may be referred to the Administrator, who shall issue an appropriate ruling. Requests for such rulings should be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(b) Any interested party may appeal to the Administrative Review Board for review of a final ruling of the Administrator issued under paragraph (a) of this section. The petition for review shall be filed with the Administrative Review Board within 30 calendar days of the date of the ruling.

Appendix A to 29 CFR Part 10—Contract Clause

The following clause shall be included by the contracting agency in every contract, contract-like instrument, and solicitation to which Executive Order 13658 applies, except for procurement contracts subject to the Federal Acquisition Regulation (FAR):

(a) *Executive Order 13658.* This contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

(b) *Minimum Wages.* (1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2015 and December 31, 2015 shall be $10.10 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the **Federal Register** no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum

wage on *www.wdol.gov* (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

(c) *Withholding.* The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

(d) *Contract Suspension/Contract Termination/Contractor Debarment.* In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

(e) The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(f) Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than $10.10 (or the minimum wage as established each January thereafter) to any worker.

(g) *Payroll Records.* (1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(i) Name, address, and social security number.

(ii) The worker's occupation(s) or classification(s)

(iii) The rate or rates of wages paid.

(iv) The number of daily and weekly hours worked by each worker.

(v) Any deductions made; and

(vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

(h) The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

(i) *Certification of Eligibility.* (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(j) *Tipped employees.* In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

(k) *Antiretaliation.* It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

(l) *Disputes concerning labor standards.* Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

(m) *Notice.* The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Establishing a Minimum Wage for Contractors

WORKER RIGHTS
UNDER EXECUTIVE ORDER 13658

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

FEDERAL MINIMUM WAGE FOR CONTRACTORS

$10.10 PER HOUR

EFFECTIVE JANUARY 1, 2015 – DECEMBER 31, 2015

MINIMUM WAGE

On February 12, 2014, the President signed Executive Order 13658, establishing a Minimum Wage for Contractors. The Executive Order requires that parties who contract with the Federal Government pay workers performing work on or in connection with covered Federal contracts at least: (1) $10.10 per hour beginning January 1, 2015; and (2) beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor in accordance with the Executive Order.

TIPS

Covered tipped employees must be paid a cash wage of at least $4.90 per hour effective January 1, 2015 – December 31, 2015. Beginning January 1, 2016, the required cash wage will be defined by the Secretary of Labor in accordance with the Executive Order. If a worker's tips combined with the required cash wage of at least $4.90 per hour paid by the contractor do not equal the hourly minimum wage for contractors (noted above), the contractor must increase the cash wage paid to make up the difference. Certain other conditions must also be met.

ENFORCEMENT

The Wage and Hour Division (WHD) has offices across the country to help. WHD can answer questions, in person or by telephone, about your workplace rights and protections. We can investigate employers and recover wages to which workers may be entitled. All services are free and confidential. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Executive Order. If you are unable to file a complaint in English, WHD will accept the complaint in any language.

ADDITIONAL INFORMATION

- Executive Order 13658 establishes that the Order applies only to new Federal construction and service contracts, as defined by the Secretary in the regulations.
- Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must receive no less than the full minimum wage rate as established by the Executive Order.
- Some workers are excluded. For example, some workers who provide support "in connection with" covered contracts for less than 20 percent of their hours worked in a week may not be entitled to the Executive Order minimum wage. Certain full-time students, learners, and apprentices who are employed under subminimum wage certificates are not entitled to the Executive Order minimum wage. Certain occupations are also exempt from the Executive Order minimum wage.
- Some state or local laws may provide greater worker protections. Employers need to comply with both.

For additional information:

1-866-487-9243 WHD U.S. Wage and Hour Division

www.dol.gov/whd/govcontracts

U.S. Department of Labor | Wage and Hour Division

WH1089 0914

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FEDERAL REGISTER

Vol. 79 Tuesday,
No. 194 October 7, 2014

Part IV

The President

Proclamation 9184—National Manufacturing Day, 2014

Federal Register
Vol. 79, No. 194
Tuesday, October 7, 2014

Presidential Documents

Title 3—

The President

Proclamation 9184 of October 2, 2014

National Manufacturing Day, 2014

By the President of the United States of America

A Proclamation

With ingenuity and a determined spirit, hardworking Americans are creating products and unlocking new technologies that will shape our Nation and grow our economy. In uncertain times, our parents and grandparents built a robust manufacturing sector that spurred the world's largest economy and strongest middle class. When our generation faced an economy in free fall and an industry on the brink of collapse, we bet on American resilience and American workers, and today innovative technologies, new wellsprings of manufacturing entrepreneurship, and our country's increasing competitiveness are fueling a revitalization of American manufacturing. On National Manufacturing Day, we celebrate all those who proudly stand behind our goods and services made in America, and we renew our commitment to winning the race for the jobs of tomorrow.

America's manufacturers have created jobs at the fastest pace in decades, adding more than 700,000 new jobs since February 2010. Factories are reopening their doors and businesses are hiring new workers; companies that were shipping jobs overseas are bringing those jobs back to America. As we work to rebuild a foundation of growth and prosperity, we have an opportunity to capitalize on this momentum and accelerate the resurgence of American manufacturing.

Ensuring that America is at the forefront of 21st century manufacturing requires research, investment, and a workforce with high-tech skills. That is why my Administration is investing in regional manufacturing hubs, which bring together private industry, leading universities, and public agencies to solve technology challenges too significant for any one firm. These partnerships will help develop cutting-edge technology and train workers in the skills they need for the next generation of American manufacturing. Across our country, we are creating magnets that attract good, high-tech manufacturing jobs—they have the potential to lift up our communities, spark technology that jumpstarts new industries, and fundamentally change the way we build things in America.

My Administration continues to encourage manufacturing production and investment because the next revolution in manufacturing should be an American revolution, and our Nation's promise of opportunity should be within the reach of everyone willing to work for it. In response to my call to action and as part of the first-ever White House Maker Faire, more than 90 mayors and local leaders have committed to increase access to manufacturing spaces and equipment in their communities, and to provide the chance for more students and adults to become Makers and manufacturing entrepreneurs. The Federal Government is leading the way by expanding access to more than $5 billion worth of Federal technology. Together, we are building an economy that works for all Americans.

On National Manufacturing Day, more than 1,600 American manufacturers will open their doors and take up the important work of inspiring our young people to pursue careers in manufacturing and engineering. Today's science, technology, engineering, and math graduates will power the next

chapter of American production and innovation, and harnessing their potential is an economic imperative.

When our manufacturing base is strong, our entire economy is strong. Today, we continue our work to bolster the industry at the heart of our Nation. With grit and resolve, we can create new jobs and widen the circle of opportunity for more Americans.

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 3, 2014, as National Manufacturing Day. I call upon the people of the United States to observe this day with programs and activities that highlight the contributions of American manufacturers, and I encourage all Americans to visit a manufacturer in their local community.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of October, 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.

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Reader Aids

Federal Register

Vol. 79, No. 194

Tuesday, October 7, 2014

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

59087–59422 1
59423–59622 2
59623–60056 3
60057–60318 6
60319–60738 7

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
9184 60737

Administrative Orders:
Memorandums:
Memorandum of September 24, 2014 60041

7 CFR

319 ..... 59087, 59089

Proposed Rules:
948 60117
980 60117

10 CFR

72 59623
431 59090

Proposed Rules:
50 60383
72 59693
431 59153
460 59154

11 CFR

Proposed Rules:
100 59459

12 CFR

701 59627
706 59627
790 59627

Proposed Rules:
1263 60384

14 CFR

25 ..... 59423, 59431, 60319
39 ..... 59091, 59093, 59096, 59102, 59630, 59633, 59636, 59640, 59643, 60322, 60325, 60327, 60329, 60331, 60334, 60337, 60339
73 59645

Proposed Rules:
39 ..... 59154, 59157, 59160, 59162, 59459, 59461, 59463, 59465, 59467, 59468, 59695, 59697, 60384, 60389
1245 60119

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

22 CFR

62 60294

23 CFR

771 60100

24 CFR

5 59646
232 59646

Proposed Rules:
891 60590
892 60590

26 CFR

1 59112
54 59130

27 CFR

Proposed Rules:
478 60391
555 60391
771 60391

29 CFR

10 60634
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, 60057

Proposed Rules:
165.....59173, 59701

38 CFR

Proposed Rules:
38.....59176

40 CFR

51.....60343
52 .....59433, 59435, 59663, 60059, 60061, 60064, 60065, 60070, 60073, 60075, 60078, 60081, 60347
81 .....59674, 60078, 60081
93.....60343
180.....59115, 59119
271.....59438
272.....59438
312.....60087

Proposed Rules:
52 .....59471, 59703, 60123, 60124, 60125, 60405
63.....60238
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
54.....60090
73 .....59447, 60090, 60091
95.....60092

Proposed Rules:
54.....60406

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
602.....60349
622.....60100

50 CFR

17 .....59140, 59992, 60365
622.....60379
648.....59150
679.....60381

Proposed Rules:
17 .....59195, 59364, 60406
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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