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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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Doc. No. AMS–FV–14–0054; FV14–906–3 FIR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2014–15 and subsequent fiscal periods from $0.16 to $0.11 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. The Committee locally administers the marketing order, which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The interim rule was necessary to decrease the assessment rate to reflect reductions to the marketing program and management fees while still providing adequate funding to meet program expenses.

DATES: Effective January 23, 2015.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

Under the order, Texas orange and grapefruit handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable Texas oranges and grapefruit for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on August 1, and ends on July 31.

In an interim rule published in the **Federal Register** on August 14, 2014, and effective on August 15, 2014, (79 FR 47551, Doc. No. AMS–FV–14–0054, FV14–906–3 IR), § 906.235 was amended by decreasing the assessment rate established for Texas citrus for the 2014–2015 and subsequent fiscal periods from $0.16 to $0.11 per 7/10-bushel carton or equivalent. The decrease in the assessment rate is based on reductions in funding for its marketing program and management fees while still providing adequate funding to meet program expenses.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 170 producers of oranges and grapefruit in the production area and 13 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistics Service, the weighted average grower price for Texas citrus during the 2012–13 season was around $12.98 per box and total shipments were near 8.5 million boxes. Using the weighted average price and shipment information, and assuming a normal distribution, the majority of growers would have annual receipts of less than $750,000. In addition, based on available information, the majority of handlers have annual receipts of less than $7,000,000 and could be considered small businesses under SBA's definition. Thus, the majority of producers and handlers of Texas citrus may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2014–15 and subsequent fiscal periods from $0.16 to $0.11 per 7/10-bushel carton or equivalent of Texas citrus. The Committee recommended 2014–15 expenditures of $809,500 and an assessment rate of $0.11 per 7/10-bushel carton or equivalent handled. The assessment rate of $0.11 is $0.05 lower than the 2013–14 rate. The quantity of assessable oranges and grapefruit for the 2014–15 fiscal period is estimated at 8.2 million 7/10-bushel cartons. Thus, the $0.11 rate should provide $902,000 in assessment income and be adequate to meet this year's expenses. This action decreases the assessment rate to reflect

reduced funding for the marketing program and management fees while still providing adequate funding to meet program expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Texas citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 5, 2014, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 Generic Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Comments on the interim rule were required to be received on or before October 14, 2014. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-14-0054-0001*.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (79 FR 47551, August 14, 2014) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ Accordingly, the interim rule amending 7 CFR part 906, which was published at 79 FR 47551 on August 14, 2014, is adopted as a final rule, without change.

Dated: January 15, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–01016 Filed 1–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS–FV–14–0092; FV15–948–1 IR]

Irish Potatoes Grown in Colorado; Relaxation of the Handling Regulation for Area No. 3

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the minimum quantity exception for potatoes handled under the Colorado potato marketing order, Area No. 3 (order). The order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Colorado Potato Administrative Committee, Area No. 3 (Committee). This rule increases the quantity of potatoes that may be handled under the order without regard to the order's handling regulation requirements from 1,000 to 2,000 pounds. This action is expected to benefit producers and handlers.

DATES: Effective January 23, 2015; comments received by March 23, 2015 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Sue Coleman, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Sue.Coleman@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act

provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the minimum quantity exception currently prescribed in the handling regulation for potatoes handled under the order. This rule will increase the quantity of potatoes that may be handled without regard to the order's handling requirements from 1,000 to 2,000 pounds. Relaxing the minimum quantity exception is expected to benefit producers and handlers. The rule was unanimously recommended by the Committee at a meeting on May 14, 2014.

Section 948.4 of the order divides the State of Colorado into three areas of regulation for marketing order purposes. These areas include: Area No. 1, commonly known as the Western Slope; Area No. 2, commonly known as San Luis Valley; and, Area No. 3, which consists of the remaining producing areas within the State of Colorado not included in the definition of Area No. 1 or Area No. 2. Currently, the order only regulates the handling of potatoes produced in Area No. 2 and Area No. 3. Regulation for Area No. 1 has been suspended.

Section 948.50 of the order establishes committees as administrative agencies for each of the areas set forth under § 948.4. Section 948.22(a) of the order authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the order's production area. Further, section 948.22(b)(2) of the order provides authority for each area committee to recommend modification of regulations to provide for minimum quantities that should be relieved of regulatory or administrative obligations.

Section 948.387 of the order's administrative rules prescribes grade, size, maturity, and inspection requirements for Colorado Area No. 3 potatoes. Paragraph (f) of that section prescribes the minimum quantity of potatoes that are exempt from regulation. Currently, each person may handle up to 1,000 pounds of potatoes without regard to the order's handling requirements.

At its meeting on May 14, 2014, the Committee unanimously recommended increasing the order's minimum quantity exception from 1,000 to 2,000 pounds. The recommendation was made at the request of producers and handlers who wanted greater flexibility in distributing smaller quantities of potatoes. In its deliberations, the Committee commented that 2,000 pounds is consistent with the current weight of a pallet of potatoes. One pallet is typically the smallest lot of potatoes distributed, since most delivery vehicles are now capable of transporting at least 2,000 pounds.

Handlers also feel that the value of one pallet of potatoes does not warrant the cost of complying with the order's regulations. Based on an estimated average f.o.b. price of $10.70, the value of one pallet of potatoes is approximately $214.00. Increasing the minimum quantity exception from 1,000 to 2,000 pounds of potatoes will allow a handler to ship one pallet of potatoes without regard to the order's handling requirements. Relaxing the minimum quantity is expected to benefit producers and handlers.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 6 handlers of Colorado Area No. 3 potatoes subject to regulation under the order and approximately 6 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

During the 2013–2014 fiscal period, the most recent for which statistics are available, 663,025 hundredweight of Colorado Area No. 3 potatoes were inspected under the order and sold into the fresh market. The USDA Market News Service reported a 2013–2014 average f.o.b. price of $10.70 per hundredweight. Multiplying $10.70 by the shipment quantity of 663,025 hundredweight yields a shipping point revenue estimate of $7,094,368. The average annual fresh potato revenue for each of the 6 Colorado Area No. 3 potato handlers is therefore calculated to be approximately $1,182,395 ($7,094,368 divided by 6), which is less than the SBA threshold of $7,000,000. In view of the foregoing, the majority of Colorado Area No. 3 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for the 2013 Colorado fall potato crop was $7.25 per hundredweight. Multiplying $7.25 by the shipment quantity of 663,025 hundredweight yields an annual crop revenue estimate of $4,806,931. The average annual fresh potato revenue for each of the 6 Colorado Area No. 3 potato producers is therefore calculated to be approximately $801,155 ($4,806,931 divided by 6), which is greater than the SBA threshold of $750,000. Consequently, on average, most of the Colorado Area No. 3 potato producers may not be classified as small entities.

This rule revises the quantity of potatoes that may be handled without regard to the requirements of § 948.387(a) and (b) of the order from 1,000 to 2,000 pounds. At the May 14, 2014 meeting, the Committee unanimously recommended increasing the minimum quantity exception to be consistent with the approximate weight of one pallet of potatoes. Authority for the establishment and modification of a minimum quantity exception is provided in § 948.22(b)(2) of the order. This rule amends the provisions in § 948.387(f).

This action is not expected to increase the costs associated with the order's requirements. Rather, it is anticipated that this change will have a beneficial impact. The Committee believes it will provide greater flexibility in the distribution of small quantities of potatoes. Currently, the distribution of potatoes between 1,000 and 2,000 pounds requires an inspection and certification that the product conforms to the grade, size, and maturity requirements of the order. This translates into a cost for handlers of both time and inspection fees, which is high in relation to the small value (approximately $214.00 per pallet) of these transactions. This action will allow shipments of up to 2,000 pounds of potatoes without regard to the order's handling requirements and the related costs. The benefits for this rule are expected to be equally available to all fresh potato producers and handlers, regardless of their size.

As an alternative to this action, the Committee discussed leaving the handling regulation unchanged. The Committee rejected this idea because a

pallet of potatoes weighs approximately 2,000 pounds and the 1,000 pound minimum quantity exception did not accommodate this size shipment. No other alternatives were discussed.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178 (Generic Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule relaxes the minimum quantity exception under the order from 1,000 to 2,000 pounds. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Colorado Area No. 3 potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 3 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 14, 2014, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on an increase to the quantity of potatoes that may be handled under the order without regard to the handling requirements. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Any changes resulting from this rule should be effective as soon as practicable because the shipping season for Colorado potatoes began in September of 2014; (2) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; (3) potato handlers are aware of this action and want to take advantage of this relaxation; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 948.387(f) to read as follows:

§ 948.387 Handling regulation.

* * * * *

(f) *Minimum quantity.* For purpose of regulation under this part, each person may handle up to but not to exceed 2,000 pounds of potatoes per shipment without regard to the requirements of paragraphs (a) and (b) of this section, but this exception shall not apply to any shipment of over 2,000 pounds of potatoes.

* * * * *

Dated: January 15, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–01014 Filed 1–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–13–0087; FV14–985–1B IR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2014–2015 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule revises the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year under the Far West spearmint oil marketing order. This rule increases the Native spearmint oil salable quantity from 1,090,821 pounds to 1,280,561 pounds and the allotment percentage from 46 percent to 54 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of maintaining orderly marketing conditions in the Far West spearmint oil market.

DATES: Effective January 22, 2015 and applicable to the 2014–2015 marketing year; comments received by March 23, 2015 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed

at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This interim rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year, which began on June 1, 2014, and ends on May 31, 2015.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year under the Far West spearmint oil marketing order. This rule increases the Native spearmint oil salable quantity from 1,090,821 pounds to 1,280,561 pounds and the allotment percentage from 46 percent to 54 percent.

Under the volume regulation provisions of the order, the Committee meets each year to adopt a marketing policy for the ensuing year. When the Committee's marketing policy considerations indicate a need for limiting the quantity of spearmint oil available to the market to establish or maintain orderly marketing conditions, the Committee submits a recommendation to the Secretary for volume regulation.

Volume regulation under the order is effectuated through the establishment of a salable quantity and allotment percentage applicable to each class of spearmint oil handled in the production area during a marketing year. The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle on behalf of, producers during a given marketing year. The allotment percentage for each class of oil is derived by dividing the salable quantity by the total industry allotment base for that same class of oil. The total industry allotment base is the aggregate of all allotment base held individually by producers. Producer allotment base is the quantity of each class of spearmint oil that the Committee has determined is representative of a producer's spearmint oil production. Each producer is allotted a pro rata share of the total salable quantity of each class of spearmint oil each marketing year. Each producer's annual allotment is determined by applying the allotment percentage to the producer's individual allotment base for each applicable class of spearmint oil.

The full Committee met on November 6, 2013, to consider its marketing policy for the ensuing year. At that meeting, the Committee determined that marketing conditions indicated a need for volume regulation of both classes of spearmint oil for the 2014–2015 marketing year. The Committee recommended salable quantities of 1,149,030 pounds and 1,090,821 pounds, and allotment percentages of 55 percent and 46 percent, respectively, for Scotch and Native spearmint oil. A proposed rule to that effect was published in the **Federal Register** on March 14, 2014 (79 FR 14441). Comments on the proposed rule were solicited from interested persons until March 31, 2014. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2014–2015 marketing year was published in the **Federal Register** on May 8, 2014 (79 FR 26359).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the full eight member Committee met again on September 11, 2014, to consider pertinent market information on the current supply, demand, and price of spearmint oil. After some deliberation, the Committee recommended increasing the 2014–2015 marketing year Scotch spearmint oil salable quantity from 1,149,030 pounds to 1,984,423 pounds and the allotment percentage from 55 percent to 95 percent. An interim rule to that effect was published in the **Federal Register** on October 31, 2014 (79 FR 64657). Comments regarding the interim rule received by December 30, 2014, will be considered prior to issuance of a final rule.

The full Committee met again on November 5, 2014, for a regularly scheduled annual meeting to evaluate the current year's volume control regulation and to adopt a marketing policy for the 2015–2016 marketing year. At the meeting, the Committee assessed the current market conditions for spearmint oil in relation to the salable quantities and allotment percentages established for the 2014–2015 marketing year. The Committee considered a number of factors, including the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil. The Committee determined that the salable quantity and allotment percentage previously established for Native spearmint oil for the 2014–2015 marketing year should be increased to take into account the recent unanticipated rise in market demand for that class of spearmint oil.

Therefore, the Committee recommended increasing the Native spearmint oil salable quantity from

1,090,821 pounds to 1,280,561 pounds and the allotment percentage from 46 percent to 54 percent. The recommendation to increase the salable quantity and allotment percentage passed with seven members voting in favor of the motion. The public member, while present, abstained from the vote.

Thus, taking into consideration the following discussion, this rule makes additional amounts of Native spearmint oil available to the market by increasing the salable quantity and allotment percentage previously established under the order for the 2014–2015 marketing year. This rule increases the Native spearmint oil salable quantity 189,740 pounds to 1,280,561 pounds, and raises the allotment percentage 8 percent, to 54 percent. Such additional oil will become available to the market by releasing Native spearmint oil held by producers in the reserve pool. As of May 31, 2014, the Committee records show that the reserve pool for Native spearmint oil contained 446,086 pounds of oil.

The increase in the salable quantity as a result of this rule represents an additional 189,740 pounds of Native spearmint oil being made available to the market. However, as some individual producers do not hold Native spearmint oil from previous year's production in the reserve pool, the Committee expects that only 148,715 pounds of additional Native spearmint oil will actually be made available to the spearmint oil market. The relatively high salable quantity resulting from this action, as compared to the actual quantity of spearmint oil that will be made available to the market, is necessary to ensure that a sufficient quantity of Native spearmint oil is available to fully supply the market. Producers that do not have additional Native spearmint oil in inventory (oil held in the reserve pool) will not be able to utilize the additional annual allotment issued to them as a result of this action and such additional annual allotment will go unused.

The 2014–2015 marketing year began on June 1, 2014, with a Native spearmint oil carry-in of 218,754 pounds (carry-in is salable Native spearmint oil from prior years that was not marketed during the 2013–2014 marketing year). This amount is significantly lower than the Committee's projected carry-in of 307,297 pounds. As such, when the carry-in is added to the initially established 2014–2015 Native spearmint oil salable quantity of 1,090,821 pounds, the result is a total available supply for the 2014–2015 marketing year of 1,309,575 pounds. This amount is 88,543 pounds less than the 1,398,118 pounds that the Committee believed would be available to the market when it initially recommended volume regulation for the 2014–2015 marketing year in November 2013.

In addition, the Committee staff reported that demand for Native spearmint oil is greater than originally anticipated. Committee records indicate that 2014–2015 marketing year sales through the end of October 2014, the most recent full month recorded, are 84,667 pounds higher than for the same period in the 2013–2014 marketing year. The Committee now estimates trade demand for Native spearmint oil for the 2014–2015 marketing year to be approximately 1,341,000 pounds, up from the 1,300,000 pounds initially estimated in the fall of 2013. If realized, trade demand of 1,341,000 pounds would be 31,425 pounds more than the quantity available under the initially established volume control levels (1,309,525 pounds available minus 1,341,000 pounds demanded = 31,425 pound supply deficit). The increased quantity of Native spearmint oil made available to the market as a result of this action would ensure that market demand is satisfied in the current year and that there would be salable inventory available to the market for the start of the 2015–2016 marketing year on June 1, 2015.

In making the recommendation to increase the salable quantity and allotment percentage of Native spearmint oil, the Committee considered all currently available information on the price, supply, and demand of spearmint oil. The Committee also considered reports and other information from handlers and producers in attendance at the meeting. Lastly, the Committee manager presented information and reports that were provided to the Committee staff by handlers and producers who were not in attendance at the November 5, 2014, meeting.

This action increases the 2014–2015 marketing year Native spearmint oil salable quantity by 189,740 pounds, to a total of 1,280,561 pounds. However, as mentioned previously, the net effect of the increase will be much less than the calculated increase due to the amount of actual oil individual producers have available to market from the current year's excess production and from reserve pool inventory. The Committee estimates that this action will actually make an additional 148,715 pounds of Native spearmint oil available to the market. That amount, combined with the 151,962 pounds of salable Native spearmint oil that the Committee estimates is currently available to the market, will make a total of 300,677 pounds that will be available to be marketed through the remainder of the marketing year. The total supply of Native spearmint oil that the Committee anticipates actually being available to the market over the course of the 2014–2015 marketing year will be increased to 1,458,318 pounds. Actual sales of Native spearmint oil for the 2013–2014 marketing year totaled 1,341,555 pounds.

The Committee estimates that this action will result in 117,318 pounds of salable Native spearmint oil being carried into the 2015–2016 marketing year. In addition, the Committee expects that 297,371 pounds of Native spearmint oil will be held in reserve pool stocks by producers after this increase. These inventory levels are low in comparison to historical levels, but are well within the range that the Committee believes to be appropriate moving forward. In addition, the Committee believes that the current Native spearmint oil market situation will stimulate production of Native spearmint oil in the coming years, further ensuring that the market will be adequately supplied in the future.

As mentioned previously, when the original 2014–2015 marketing policy statement was drafted, handlers estimated the demand for Native spearmint oil for the 2014–2015 marketing year to be 1,300,000 pounds. The Committee's initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2014–2015 marketing year was based on that estimate. The Committee did not anticipate the increase in demand for Native spearmint oil that the market is currently experiencing and did not make allowances for it when the marketing policy was initially adopted. Handlers now estimate that Native spearmint oil demand for the 2014–2015 marketing year to be as much as 1,375,000 pounds. However, at the meeting, the Committee conservatively revised its estimate to 1,341,000 pounds. The Committee now believes that the supply of Native spearmint oil available to the market under the initially established salable quantity and allotment percentage would be insufficient to satisfy the current level of demand for oil at reasonable price levels. The Committee further believes that the increase in the salable quantity and allotment percentage effectuated by this action is vital to ensuring an adequate supply of Native spearmint oil is available to the market moving forward.

As previously stated, it is anticipated that this action will make 148,715 pounds of the Native spearmint oil held in the reserve pool available to the market. However, to achieve that desired net effect under the current supply conditions in the industry, it is necessary for the salable quantity and allotment percentage established under the volume regulation provisions of the order to be set at artificially high levels. The Committee records show that some producers do not hold Native spearmint oil in reserve. Given the process by which volume regulation is effectuated under the order, only those producers with Native spearmint oil in the reserve pool will be able to utilize the additional annual allotment that is issued as a result of this rule. Likewise, producers that do not have Native spearmint oil reserve oil from prior years' production will not have any Native spearmint oil inventory to offer to the market, regardless of how much additional annual allotment is issued to those producers. As such, the Committee expects that approximately 22 percent of the increased salable quantity and allotment percentage for Native spearmint oil will go unused.

As an example, assume Producer A has 2,000 pounds of Native spearmint oil allotment base. In addition, assume that during the 2014–2015 marketing year Producer A produced 920 pounds of Native spearmint oil and currently holds 160 pounds of excess Native spearmint oil in reserve from production in prior years. Given that the initial 2014–2015 marketing year allotment percentage was established at 46 percent, Producer A could market all 920 pounds of the current year production (46 percent allotment percentage × 2,000 pounds of allotment base), leaving him/her with 160 pounds in the reserve pool that was initially not available to market. Without an increase in the allotment percentage, the producer would not have been able to market any of the 160 pounds of reserve oil and the oil would have continued to have been held in the reserve pool for marketing in subsequent years. For Producer A to market all 1,080 pounds of his/her current year Native spearmint oil production and reserve inventory, the allotment percentage needs to be increased by 8 percent to a total of 54 percent (54 percent × 2,000 pounds = 1,080 pounds). An increase in the allotment percentage of anything less than 8 percent would fail to release all of the Native spearmint oil that the producer holds in the reserve pool.

In contrast, assume that another producer, Producer B, likewise has 2,000 pounds of Native spearmint oil allotment base and produced 920 pounds of Native spearmint oil during the 2014–2015 marketing year. However, Producer B has no Native spearmint oil held in reserve. As in the first case, Producer B could market all of his/her current year production under the initial allotment percentage of 46 percent. However, a subsequent increase in the allotment percentage of 8 percent would have no impact on Producer B, as the producer has no reserve pool oil available to deliver to the market. As a result, the 160 pounds of additional annual allotment allocated to Producer B after an 8 percent increase in the allotment percentage would go unfilled.

The Committee acknowledges that the relatively high salable quantity, and the corresponding high allotment percentage, will create a quantity of Native spearmint oil annual allotment for which no Native spearmint oil will actually be available to market. The Committee estimates that an 8 percent increase in the salable quantity is required to make the desired 148,715 pounds of Native spearmint reserve pool oil available to the market. Accordingly, the Committee expects that 41,025 pounds of the recommended 189,740 pound increase in salable quantity will go unfilled. This quantity of underutilized salable quantity has been factored into the Committee's recommendation.

The Committee's stated intent in the use of marketing order volume control regulation is to keep adequate supplies available to meet market needs and to maintain orderly marketing conditions. With that in mind, the Committee developed its recommendation for increasing the Native spearmint oil salable quantity and allotment percentage for the 2014–2015 marketing year based on the information discussed above, as well as the summary data outlined below.

(A) Estimated 2014–2015 Native Allotment Base—2,371,350 pounds. This is the estimate on which the original 2014–2015 salable quantity and allotment percentage was based.

(B) Revised 2014–2015 Native Allotment Base—2,371,410 pounds. This is 60 pounds more than the estimated allotment base of 2,371,350 pounds. The difference is the result of annual adjustments made to the allotment base according to the provisions of the order.

(C) Original 2014–2015 Native Allotment Percentage—46 percent. This was unanimously recommended by the Committee on November 6, 2013.

(D) Original 2014–2015 Native Salable Quantity—1,090,821 pounds. This figure is 46 percent of the original estimated 2014–2015 allotment base of 2,371,350 pounds.

(E) Adjusted 2014–2015 Native Salable Quantity—1,090,849 pounds. This figure reflects the salable quantity actually available at the beginning of the 2014–2015 marketing year. This quantity is derived by applying the 46 percent allotment percentage to the revised allotment base of 2,371,410.

(F) Current Revision to the 2014–2015 Native Salable Quantity and Allotment Percentage:

(1) Increase in Native Allotment Percentage—8 percent. The Committee recommended an 8 percent increase at its November 5, 2014, meeting.

(2) 2014–2015 Native Allotment Percentage—54 percent. This figure is derived by adding the increase of 8 percent to the original 2014–2015 allotment percentage of 46 percent.

(3) Calculated Revised 2014–2015 Native Salable Quantity—1,280,561 pounds. This figure is 54 percent of the revised 2014–2015 allotment base of 2,371,410 pounds.

(4) Computed Increase in the 2014–2015 Native Salable Quantity—189,740 pounds. This figure is 8 percent of the revised 2014–2015 allotment base of 2,371,410 pounds.

(5) Expected Actual Increase in the 2014–2015 Native Spearmint Oil Available to the Market—148,715 pounds. This figure is based on the Committee's estimation of oil actually held in the reserve pool by producers that may enter the market as a result of this rule.

Scotch spearmint oil is also regulated by the order. As mentioned previously, a salable quantity and allotment percentage for Scotch spearmint oil was established in a final rule published in the **Federal Register** on May 8, 2014 (79 FR 26359) and subsequently increased in an interim rule published in the **Federal Register** on October 31, 2014 (79 FR 64657). At the November 5, 2014, meeting, the Committee considered the current production, inventory, and marketing conditions for Scotch spearmint oil. After receiving reports from the Committee staff and comments from the industry, the consensus of the Committee was that the previously increased salable quantity and allotment percentage for Scotch spearmint oil was appropriate for the current market conditions. As such, the Committee took no further action with regards to Scotch spearmint oil for the 2014–2015 marketing year.

This rule relaxes the regulation of Native spearmint oil and will allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this

rule, the Committee's revised marketing policy statement for the 2014–2015 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2014–2015 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for that class of oil. In determining anticipated market needs, the Committee considered changes and trends in historical sales, production, and demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 8 spearmint oil handlers subject to regulation under the order, and approximately 39 producers of Scotch spearmint oil and approximately 91 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on the SBA's definition of small entities, the Committee estimates that only two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 22 of the 39 Scotch spearmint oil producers and 29 of the 91 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, the majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The use of volume control regulation allows the spearmint oil industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Without volume control regulation, the supply and price of spearmint oil would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and could drive end users to source flavoring needs from other markets, potentially causing long-term economic damage to the domestic spearmint oil industry. The marketing order's volume control provisions have been successfully implemented in the domestic spearmint oil industry since 1980 and provide benefits for producers, handlers, manufacturers, and consumers.

This rule increases the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year, which ends on May 31, 2015. The 2014–2015 Native spearmint oil salable quantity was initially established at 1,090,821 pounds and the allotment percentage initially set at 46 percent. This rule increases the Native spearmint oil salable quantity to 1,280,561 pounds and the allotment percentage from 46 percent to 54 percent.

Based on the information and projections available at the November 5, 2014, meeting, the Committee considered a number of alternatives to this increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also considered other potential levels of increase. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information and input from all interested industry participants, and believes that the levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to satisfactorily meet market demand.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 5, 2014, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the salable quantity and allotment percentage for Native spearmint oil for the 2014–2015 marketing year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year, which ends on May 31, 2015; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the 2014–2015 marketing year, thus making the additional oil available as soon as is practicable will be beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.233, revise paragraph (b) to read as follows:

§ 985.233 Salable quantities and allotment percentages—2014–2015 marketing year.

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,280,561 pounds and an allotment percentage of 54 percent.

Dated: January 15, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–01002 Filed 1–21–15; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2013–0271]

RIN 3150–AJ31

List of Approved Spent Fuel Storage Casks: Transnuclear, Inc. Standardized Advanced NUHOMS® Horizontal Modular Storage System; Certificate of Compliance No. 1029, Amendment No. 3

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Transnuclear, Inc. (TN) Standardized Advanced NUHOMS® Horizontal Modular Storage System (NUHOMS® Storage System) listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 3 to Certificate of Compliance (CoC) No. 1029. The NRC published a direct final rule on this amendment in the **Federal Register** on April 15, 2014. The NRC also concurrently published an identical proposed rule on April 15, 2014. The NRC received significant adverse comments on the direct final rule; therefore, the NRC withdrew the direct final rule on June 25, 2014, and is proceeding, in this **Federal Register** notice, to address the comments on the companion proposed rule.

DATES: This final rule is effective on February 23, 2015.

ADDRESSES: Please refer to Docket ID NRC–2013–0271 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–2013–0271. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section of this document.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Gregory R. Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6445, email: *Gregory.Trussell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

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

Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste,'' which added a new subpart K within 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule (68 FR 463; January 6, 2003) that approved the Standardized Advanced NUHOMS® Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214, ''List of approved spent fuel storage casks,'' as CoC No. 1029.

II. Discussion of Changes

On December 15, 2011, Transnuclear, Inc. submitted an application to amend the NUHOMS® Storage System. Amendment No. 3 adds a new transportable dry shielded canister (DSC), the 32PTH2, to the NUHOMS® Storage System; and makes editorial corrections. The NUHOMS® 32PTH2 system is designed to accommodate up to 32 intact (or up to 16 damaged and the balance intact) pressurized water reactor (PWR), Combustion Engineering (CE), 16 × 16 class spent fuel assemblies, with or without control components. The NUHOMS® 32PTH2 system also consists of a modified version of the Standardized NUHOMS® Advanced Horizontal Storage Module (AHSM), designated the AHSM–HS (high burnup and high seismic).

Numerous sections of the Technical Specifications (TSs) were revised to add and update characteristics, specifications, and requirements related to the 32PTH2 DSC and the AHSM–HS storage module. Additional changes were made to definitions and other sections to improve completeness, consistency, and clarity. Revised sections are indicated by side bars in the TSs.

As documented in the Safety Evaluation Report (SER) (ADAMS Accession No. ML14317A616), the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request. There are no significant changes to cask design requirements in the proposed CoC amendment. Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 3 would remain well within the limits of 10 CFR part 20, ''Standards for Protection Against Radiation.'' Therefore, the CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule (55 FR 29181) that amended 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents from those analyzed in that environmental assessment.

This final rule revises the NUHOMS® Storage System listing in 10 CFR 72.214 by adding Amendment No. 3 to CoC No. 1029. The amendment consists of the changes previously described, as set forth in the revised CoC and TSs. The revised TSs are identified in the SER. The amended NUHOMS® Storage System design, when used under the conditions specified in the CoC, the TSs, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this final rule becomes effective, persons who hold a general license under 10 CFR 72.210, ''General license issued,'' may load spent nuclear fuel into NUHOMS® Storage Systems that meet the criteria of Amendment No. 3 to CoC No. 1029 under 10 CFR 72.212, ''Conditions of general license issued under § 72.210.''

III. Public Comment Analysis

The NRC received 17 comments from private citizens, and 1 comment from 2 attorneys representing 20 environmental organizations and individuals. The NRC received two comments from private citizens after the public comment period ended.

The NRC has not made any changes to the Proposed rule as a result of the public comments NRC has received. The following is a summary of the comments and the NRC responses.

Comment:

Several commenters stated that the NRC should not lower safety standards by approving this new canister. No specifics were provided.

Response:

The NRC is not lowering its safety standards. The staff performed an independent safety evaluation of Amendment No. 3 to the Standardized Advanced NUHOMS® System to ensure that it meets the regulations in 10 CFR part 72. The results of the staff's independent safety evaluation are described in the SER (ADAMS Accession No. ML14317A616).

The comment is not substantive enough to aid the NRC in understanding any impact upon the NRC's safety review, the technical specifications, or the NRC's conclusions on this particular amendment. Additionally, the NRC staff concluded that there would be no significant environmental impacts as confirmed in the direct final rule, Section VII, ''Finding of No Significant Environmental Impact: Availability.'' This comment does not challenge that finding because, as the environmental assessment explained, this amendment to the rule will not result in any significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. This amendment continues to ensure that the Commission's regulations regarding dose rates, found in 10 CFR part 20, are maintained.

Comment:

Two commenters demanded that the NRC should ''get rid'' of stored spent fuel. No specifics were provided.

Response:

The NRC staff reviewed the comments, and concluded that they are not significant and adverse as defined in NUREG/BR–0053, Revision 6, ''United States Nuclear Regulatory Commission Regulations Handbook'' (hereinafter ''Regulations Handbook'') (ADAMS Accession No. ML052720461), as they are beyond the scope of this rulemaking. Instead, these comments raise generic concerns regarding the use of any spent fuel storage casks and are not specific to any issue or concern with the amendment to the cask certificate that is the subject of this rulemaking effort.

Comment:

One commenter stated that under no circumstances should nuclear regulations be lowered for the sake of increasing the density of stored high spent fuel and saving money.

Response:

The NRC is not lowering its nuclear regulations. The staff performed an independent safety evaluation of Amendment No. 3 to the Standardized Advanced NUHOMS® System to ensure that it meets the regulations in 10 CFR part 72. The results of the staff's independent safety evaluation are described in the SER (ADAMS Accession No. ML14317A616). The comment is not substantive enough to aid the NRC in understanding any impact upon the NRC's safety review, the technical specifications, or the NRC's conclusions on this particular amendment. Additionally, the NRC staff concluded that there would be no significant environmental impacts as confirmed in the direct final rule, Section VII, ''Finding of No Significant Environmental Impact: Availability.'' This comment does not challenge that finding because, as the environmental assessment explained, this amendment to the rule will not result in any significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. This amendment continues to ensure that the Commission's regulations regarding dose rates, found in 10 CFR part 20, are maintained.

Comment:

One commenter stated the high burn up fuel is an extremely ''hot'' type of spent fuel, would require re-casking, which has never been attempted, and that approval should be given only after re-casking is achieved.

Response:

The NRC staff reviewed this comment and concluded it is not a significant adverse comment as defined in the Regulations Handbook, as it is beyond the scope of this rulemaking. Instead, this comment raises a generic concern regarding the safety of high burnup fuel and its storage in spent fuel storage casks, and is not specific to any issue or concern with the amendment to the cask certificate that is the subject of this rulemaking. Although the ability of the Standardized Advanced NUHOMS® storage system to store high burnup fuel has not been previously authorized (it is now being authorized in the 32PTH2 DSC), the ability of a similar TN system, the Standardized NUHOMS® system (CoC No. 1004), to store high burnup fuel for 20 years was authorized in Amendment No. 6. The final rule approving that amendment was published in the **Federal Register** on December 17, 2003 (68 FR 70121).

Comment:

Several commenters stated that the NRC should not approve storing 32 fuel assemblies in a space originally designed for 24 fuel assemblies, with some of the comments raising concerns about a potential increased risk associated with the increased number of fuel assemblies.

Response:

The 32PTH2 is a new design, specifically intended to store 32 fuel assemblies. It is not a modification to the 24PT1 or 24PT4 for storage of 32 spent fuel assemblies in a 24 assembly cask. Although the ability of the Standardized Advanced NUHOMS® storage system to store 32 PWR assemblies has not been previously authorized (it is now being authorized in the 32PTH2 DSC), the ability of a similar TN system, the Standardized NUHOMS® system (CoC No. 1004), to store 32 PWR assemblies in the 32PT DSC for 20 years was authorized in Amendment No. 5. The final rule approving that amendment was published in the **Federal Register** on January 7, 2004 (69 FR 849). A similar DSC, the 32PTH1, was also approved under CoC No. 1004, and authorized in Amendment No. 10. The final rule approving that amendment was published in the **Federal Register** on June 10, 2009 (74 FR 24769). In addition, the ability of another similar TN system, the NUHOMS® HD Horizontal Modular System is authorized to store 32 PWR assemblies in the 32PTH DSC for 20 years. The final rule approving the initial certificate was published in the **Federal Register** on December 11, 2006 (71 FR 71463). For every system authorized, whether it is for storage of 24 PWR assemblies, 32 PWR assemblies, or 37 PWR assemblies (for example), staff performs a comprehensive review to ensure that the system maintains sub-criticality, provides adequate radiation shielding and confinement, provides adequate heat removal, and can store the spent fuel safely during the approved storage term; in accordance with the requirements of 10 CFR part 72.

Comment:

One commenter noted that the definition of damaged fuel has been changed for the 32PTH2.

Response:

With the addition of the 32PTH2 DSC, a definition for a damaged fuel assembly specific to the 32PTH2 was added. The new definition is the same as the existing definition, for the 24PT1 and the 24PT4, except that it adds a requirement that the damaged fuel assembly must be able to be handled by normal means. According to the TS, all damaged fuel assemblies loaded in 24PT1 or 24PT4 DSCs are required to be encapsulated in failed fuel cans, and are limited to specific loading zones. In contrast, the damaged fuel assemblies loaded in the 32PTH2 must be able to be handled by normal means because they are not required to be encapsulated in failed fuel cans. Instead, the DSC fuel compartments that can store damaged fuel assemblies in the 32PTH2 are provided with top and bottom end caps, and the damaged fuel assemblies are limited to specific fuel compartments. Note that in both cases, fuel assemblies with damage greater than the definition are not authorized for storage.

Comment:

One commenter stated that storage ought to be above ground, so that we all remember to keep replacing the encasements.

Response:

The Advanced Standardized NUHOMS® Dry Storage System is an above ground system. Note also that all approved dry storage systems are required to be monitored, and that any system that is renewed is also subject to aging management programs which monitor and control age related degradation to the structures, systems and components important to safety.

Comment:

Two attorneys stated, on behalf of 20 environmental organizations and individuals, that in publishing this direct final rule, the NRC violated the requirements of the Atomic Energy Act and the Administrative Procedures Act for public participation in the NRC decisions affecting public safety and the environment. They also stated that the direct final rule **Federal Register** notice is grossly misleading, and appears designed to lull the public into a false sense of confidence.

Response:

The NRC has not violated the requirements of the Atomic Energy Act and the Administrative Procedures Act for public participation. As explained in the Regulations Handbook, the direct final rule process may be used where the agency believes a rule is noncontroversial and significant adverse comments will not be received. This process allows the agency to issue the rule without having to go through the review process twice, at the proposed and final rule stages, while at the same time offering the public the opportunity

to challenge the agency's view that the rule is noncontroversial. The NRC published, on the same day as the direct final rule, a **Federal Register** notice for a proposed rule on the CoC amendment in the event the NRC did receive significant adverse comments on the rule. The NRC has, for many years, adhered to this procedure in all its CoC direct final rules, and as demonstrated in this instance, this process does provide the ability of the public to participate in this process.

Comment:

The same commenters also stated that contrary to the NRC assurances that the rule is limited, routine, noncontroversial, and protects the public and the environment from radiological accidents, the rule approves a significant and unprecedented change in the permissible use of 32PTH2 DSC: the transportation of high burnup fuel.

Response:

The rule does not approve the 32PTH2 DSC for transportation of high burnup fuel. The direct final rule is for approval of the 32PTH2 DSC for storage only. While TN's naming convention of including a ''T'' in the DSC type designator indicates its intention that the 32PTH2 could eventually be authorized for transport, it in no way indicates that the 32PTH2 has been approved for transport. In order for the 32PTH2 DSC to be approved for transportation of high burnup fuel, or any other spent fuel, TN would have to submit an application to the NRC under 10 CFR part 71, which would need to be reviewed and approved in a new and entirely separate process from the current subject approval for the storage of spent nuclear fuel. The 32PTH2 DSC has not been reviewed and approved for spent fuel transportation under 10 CFR part 71. Transnuclear, Inc., does have approved transportation certificates that authorize transportation for some of its DSCs (not including the 32PTH2) under this storage CoC (No. 1029) and others, and some of those DSCs are approved for transportation of high burnup fuel (CoCs 71–9255 and 71–9302). However, this is a completely separate review and approval process.

The SER has been revised to explicitly state that the 32PTH2 DSC has not been certified under 10 CFR part 71 for use in transportation.

Comment:

Many of the comments were related to the potential use of the new 32PTH2 DSC at the San Onofre Nuclear Generating Station (SONGS). The commenters were generally opposed to storage of spent nuclear fuel in the 32PTH2 DSC at SONGS, some because of the higher number of fuel assemblies that could be stored in this DSC; SONGS is currently using the 24PT1 and 24PT4 DSCs (already approved under CoC No. 1029), which hold 24 fuel assemblies each. Other commenters in this group prefer that the spent fuel not be stored onsite at all; they recommend instead that the spent fuel be transported off site immediately. One commenter in this group expressed concerns about accident analyses used for review and approval of spent fuel storage systems in relation to conditions at SONGS, and recommended leaving the spent fuel in spent fuel pools, rather than moving it to dry storage. A supplement to this comment also considered storing the spent fuel in the reactor containment building. Several of the commenters also expressed concerns about the wild fires in California in relation to SONGS spent fuel storage, and one commenter requested that the approval of the 32PTH2 DSC for storage be amended to specifically preclude its use at SONGS.

Response:

The NRC staff reviewed the comments in this group, and concluded that they are not significant and adverse comments as defined in the Regulations Handbook, as they are beyond the scope of this rulemaking. Instead, these comments raise a generic concern regarding potential use of the 32PTH2 DSC at a single, particular site SONGS, and do not raise any specific issue or concern with the amendment to the cask certificate that is the subject of this rulemaking. The NRC staff is aware that SONGS has expressed interest in storing spent nuclear fuel in the 32PTH2 DSC, once it is approved. The regulations for the general license in 10 CFR part 72 allow the use of any approved canisters under 10 CFR 72.214 by any general licensee, however, the cask used by the general licensee must conform to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214. Additionally, under 10 CFR 72.212, a general licensee is required to perform evaluations that document that the chosen cask, once loaded, will meet the requirements of the CoC and TS, and that the reactor site parameters (including analyses of earthquake intensity and tornado missiles) are enveloped by the cask design bases as described in the applicant's safety analysis report and the staff's SER. Further, the cask storage areas must be designed to adequately support the static and dynamic loads of the stored casks, considering possible earthquake effects, and the general licensee must protect the stored spent fuel against the design basis threat of radiological sabotage.

IV. Voluntary Consensus Standards

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

V. Agreement State Compatibility

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

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274), requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

VII. Finding of No Significant Environmental Impact: Availability

A. The Action

The action is to amend 10 CFR 72.214 to revise the Transnuclear, Inc. NUHOMS® Storage System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 3 to CoC No. 1029. Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC

has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

B. The Need for the Action

This final rule amends the CoC for the Transnuclear, Inc. NUHOMS® Storage System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 3 adds a new transportable DSC, 32PTH2, to the NUHOMS® Storage System; and makes editorial corrections.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 3 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act.

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

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. There are no significant changes to cask design requirements in the proposed CoC amendment. In addition, because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 3 would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. The staff documented its safety findings in an SER which is available in ADAMS under Accession No. ML14317A616.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 3 and end the final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into NUHOMS® Storage Systems in accordance with the changes described in proposed Amendment No. 3 would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrativeburden upon the NRC and the costs to each licensee. Therefore, the environmental impacts would be the same or less than the action.

E. Alternative Use of Resources

Approval of Amendment No. 3 to CoC No. 1029 would result in no irreversible commitments of resources.

F. Agencies and Persons Contacted

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

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this final rule entitled, ''List of Approved Spent Fuel Storage Casks: Standardized Advanced NUHOMS® Horizontal Modular Storage System, Amendment No. 3,'' will not have a significant effect on quality of the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this final rule.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a current valid Office of Management and Budget (OMB) control number.

IX. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. The NRC issued a final rule (68 FR 463; January 6, 2003) that approved the Standardized Advanced NUHOMS® Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 ''List of approved spent fuel storage casks,'' as CoC No. 1029.

On December 15, 2011 (ADAMS Accession No. ML120040478), Transnuclear, Inc. submitted an application to amend the NUHOMS® Storage System.

The alternative to this action is to withhold approval of Amendment No. 3 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the NUHOMS® Storage Systems under the changes described in Amendment No. 3 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review separate exemption requests, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this final rule is consistent with previous NRC actions. Further, as documented in the SER and

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

X. Regulatory Flexibility Certification

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

XI. Backfitting and Issue Finality

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this final rule. Therefore, a backfit analysis is not required. This final rule revises the CoC No. 1029 for the Transnuclear, Inc. NUHOMS® Storage System, as currently listed in 10 CFR 72.214, ''List of Approved Spent Fuel Storage Casks.'' The revision consists of Amendment No. 3 which adds a new transportable DSC, 32PTH2, to the NUHOMS® Storage System; and makes editorial corrections.

Amendment No. 3 to CoC No. 1029 for the Transnuclear, Inc. NUHOMS® Storage System was initiated by Transnuclear, Inc. and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 3 applies only to new casks fabricated and used under Amendment No. 3. These changes do not affect existing users of the NUHOMS® Storage System, and the current Amendments continue to be effective for existing users. While current CoC users may comply with the new requirements in Amendment No. 3, this would be a voluntary decision on the part of current users. For these reasons, Amendment No. 3 to CoC No. 1029 does not constitute backfitting under 10 CFR 72.62, 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the staff.

XII. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is not a rule as defined in the Congressional Review Act.

XIII. Availability of Documents

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

Document	ADAMS Accession No./**Federal Register** citation
Application from Transnuclear Inc. for the Advanced Standardized NUHOMS® Dry Storage System Amendment No. 3, December 15, 2011.	ML120040478.
Safety Evaluation Report for the Transnuclear Inc. Advanced Standardized NUHOMS® Dry Storage System, Amendment No. 3.	ML14317A616.
The Transnuclear Inc. Advanced Standardized NUHOMS® Dry Storage System CoC No. 1029, Amendment No. 3.	ML13290A176.
The Transnuclear Inc. Advanced Standardized NUHOMS® Dry Storage System Technical Specifications, Amendment No. 3.	ML13290A182.

List of Subjects in 10 CFR Part 72

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

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

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

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

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282, 2021); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141, 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); Government Paperwork Elimination Act sec. 1704, (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 788 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c),(d) (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)). Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)). Subpart K also issued under Nuclear Waste Policy Act sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1029 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1029.

Initial Certificate Effective Date: February 5, 2003.

Amendment Number 1 Effective Date: May 16, 2005.

Amendment Number 2 Effective Date: Amendment not issued by the NRC.

Amendment Number 3 Effective Date: February 23, 2015.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized Advanced NUHOMS® Horizontal

Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1029.

Certificate Expiration Date: February 5, 2023.

Model Number: Standardized Advanced NUHOMS® –24PT1, –24PT4, and –32PTH2.

* * * * *

Dated at Rockville, Maryland, this 8th day of January, 2015.

For the U.S. Nuclear Regulatory Commission.

Mark A. Satorius,

Executive Director for Operations.

[FR Doc. 2015–01031 Filed 1–21–15; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0924; Directorate Identifier 2014–NM–228–AD; Amendment 39–18067; AD 2014–25–51]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 series airplanes. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This AD requires revising the airplane flight manual to advise the flightcrew of emergency procedures for abnormal Alpha Protection (Alpha Prot). This AD was prompted by a report of Angle of Attack (AoA) probes jamming on an in-service Airbus Model A321 airplane. Jamming of the two AoA probes during climb is attributed to water freezing under the AoA vane slinger, and led to activation of the Alpha Prot while the Mach number increased, which resulted in an airplane pitch down per design. We are issuing this AD to ensure that the flightcrew has procedures to counteract the pitch down order due to abnormal activation of the Alpha Prot. An abnormal Alpha Prot, if not corrected, could result in loss of control of the airplane.

DATES: This AD is effective February 6, 2015 to all persons except those persons to whom it was made immediately effective by Emergency AD 2014–25–51, issued on December 10, 2014, which contained the requirements of this amendment.

We must receive comments on this AD by March 9, 2015.

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.

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–2014–0924; 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 (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

On December 10, 2014, we issued Emergency AD 2014–25–51, which requires revising the airplane flight manual to advise the flightcrew of emergency procedures for abnormal Alpha Prot. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued Emergency Airworthiness Directive 2014–0266–E, dated December 9, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on all Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> An occurrence was reported where an Airbus A321 aeroplane encountered a blockage of two Angle of Attack (AoA) probes during climb, leading to activation of the Alpha Protection (Alpha Prot) while the Mach number increased. The flightcrew managed to regain full control and the flight landed uneventfully.
>
> When Alpha Prot is activated due to blocked AoA probes, the flight control laws order a continuous nose down pitch rate that, in a worst case scenario, cannot be stopped with backward sidestick inputs, even in the full backward position. If the Mach number increases during a nose down order, the AoA value of the Alpha Prot will continue to decrease. As a result, the flight control laws will continue to order a nose down pitch rate, even if the speed is above minimum selectable speed, known as VLS.
>
> This condition, if not corrected, could result in loss of control of the aeroplane.
>
> To address this unsafe condition, Airbus * * * [has] developed a specific Aircraft Flight Manual (AFM) procedure, which has been published in AFM Temporary Revision (TR) No. 502.
>
> For the reasons described above, this AD requires amendment of the applicable AFM [to advise the flightcrew of emergency procedures for abnormal Alpha Prot].
>
> This is considered to be an interim action and further [EASA] AD action may follow.

FAA's Determination and AD Requirements

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.

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 an abnormal Alpha Prot, if not corrected, could result in loss of control of the airplane. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2014–0924 and Directorate

Identifier 2014–NM–228–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 953 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
AFM revision	1 work-hour X $85 per hour = $85	$0	$85	$81,005

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–25–51 Airbus: Amendment 39–18067; Docket No. FAA–2014–0924; Directorate Identifier 2014–NM–228–AD.

(a) Effective Date

This AD is effective February 6, 2015 to all persons except those persons to whom it was made immediately effective by Emergency AD 2014–25–51, issued on December 10, 2014, which contained the requirements of this amendment.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

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

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

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

(4) All Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a report of Angle of Attack (AoA) probes jamming on an in-service Airbus Model A321 airplane. Jamming of the two AoA probes during climb is attributed to water freezing under the AoA vane slinger, and led to activation of the Alpha Protection (Alpha Prot) while the Mach number increased, which resulted in an airplane pitch down per design. We are issuing this AD to ensure the flightcrew has procedures to counteract the pitch down order due to abnormal activation of the Alpha Prot. An abnormal Alpha Prot, if not corrected, could result in loss of control of the airplane.

(f) Compliance

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

(g) Revision of Airplane Flight Manual (AFM)

Within 2 days after the effective date of this AD, revise the AFM to incorporate procedures to address undue activation of Alpha Prot by inserting the text specified in figure 1 to paragraph (g) of this AD into the Emergency Procedures section of the applicable AFM, to advise the flightcrew of emergency procedures for abnormal Alpha Prot. This may be accomplished by inserting a copy of this AD into the AFM. When a statement identical to the text specified in figure 1 to paragraph (g) of this AD is included in the general revisions of the AFM, the general revisions may be inserted in the AFM, and the text specified in figure 1 to paragraph (g) of this AD may be removed.

FIGURE 1 TO PARAGRAPH (g) OF THIS AD—AFM PROCEDURE

- **At any time, with a speed above VLS, if the aircraft goes to a continuous nose down pitch rate that cannot be stopped with backward sidestick inputs, immediately:**
  Keep on one ADR.
  Turn off two ADRs.
- **If the Alpha Max strip (red) hides completely the Alpha Prot strip (black and amber) in a stabilized wings-level flight path (without an increase in load factor):**
  Keep on one ADR.
  Turn off two ADRs.
  In case of dispatch with one ADR inoperative, switch only one ADR to OFF.
- **CAUTION** RISK OF ERRONEOUS DISPLAY OF THE VSW STRIP (RED AND BLACK)

Consider using the Flight Path Vector (FPV).
- **If the Alpha Prot strip (black and amber) rapidly moves by more than 30 kt during flight maneuvers (with an increase in load factor), with AP ON and speed brakes retracted:**
  Keep on one ADR.
  Turn off two ADRs.
  In case of dispatch with one ADR inoperative, switch only one ADR to OFF.

CAUTION RISK OF ERRONEOUS DISPLAY OF THE VSW STRIP (RED AND BLACK)

Consider using the Flight Path Vector (FPV).

(h) Special Flight Permits

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

(i) Other FAA Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

(k) Material Incorporated by Reference

None.

Issued in Renton, Washington, on January 7, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–00714 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0927; Directorate Identifier 2014–NM–230–AD; Amendment 39–18068; AD 2014–26–53]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A319–115, A319–133, A320–214, A320–232, and A320–233 airplanes. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This AD requires repetitive detailed visual inspections to detect discrepancies of the wing lower skin surface and inboard main landing gear (MLG) support rib lower flange location fasteners and, depending on findings, accomplishment of applicable corrective action(s). This AD was prompted by reports of failure of certain fasteners located at the wing lower skin surface and inboard MLG support rib lower flange. We are issuing this AD to detect and correct discrepancies of the fasteners at the external surface of the lower wing skin and inboard MLG support rib lower flange, which could result in an airplane not meeting its maximum loads expected in service. This condition could result in structural failure.

DATES: This AD is effective February 6, 2015 to all persons except those persons to whom it was made immediately effective by Emergency AD 2014–26–53, issued on December 16, 2014, which contained the requirements of this amendment.

The Director of the Federal Register approved the incorporation by reference of a certain publication identified in this AD as of February 6, 2015.

We must receive comments on this AD by March 9, 2015.

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 Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

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–2014–0927; 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 (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

On December 16, 2014, we issued Emergency AD 2014–26–53, which requires repetitive detailed visual inspections to detect discrepancies of the wing lower skin surface and inboard MLG support rib lower flange location fasteners and, depending on findings, accomplishment of applicable corrective action(s). Corrective actions include fastener replacement or repair. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued Airworthiness Directive 2014–0270R1, dated December 15, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on certain Airbus Model A319–115, A319–133, A320–214, A320–232, and A320–233 airplanes. The MCAI states:

During production of wings, a number of taperlok fasteners were found failed after installation. The fasteners in question are located at the bottom skin of the Main Landing Gear (MLG) reinforcing plate, wing skin and Gear Support Rib 5 lower flange.

This condition, if not detected and corrected could reduce the design margin of the structure [and could result in structural failure].

Based on the results of the preliminary investigation, this affects only certain A319 and A320 aeroplane Models delivered since January 2014. A321 aeroplanes are not affected, as the wing assembly is done using parallel fasteners. A318 aeroplanes are not affected, since none have been delivered since January 2014.

Prompted by these findings, EASA issued Emergency AD 2014–0270–E [dated December 11, 2014] to require repetitive inspections of the bottom skin taperlok fasteners at the MLG Rib 5 footprint location and, depending on findings, accomplishment of applicable corrective action(s).

Since that AD was issued, operator comments have indicated the need for clarification, as well as correction.

For the reason described above, this [EASA] AD is revised to add Notes for information and to correct paragraphs (1) and (2) of the AD.

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

Related Service Information

Airbus has issued Airbus Alert Operators Transmission (AOT) A57N006–14, Revision 00, dated December 4, 2014. The service information describes procedures for inspections of the bottom skin fasteners at the MLG rib 5 footprint location, and replacement of affected fasteners. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. You can find this information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0927.

FAA's Determination and AD Requirements

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

Differences Between This AD and the MCAI or Service Information

EASA Airworthiness Directive 2014–0270–E, dated December 11, 2014, specifies to do repetitive detailed visual inspections of the outboard MLG support rib lower flange fasteners and nuts. However, these inspections are not required by this AD. Since the specified compliance time is four months, we are considering further rulemaking to require those inspections.

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 discrepancies of the fasteners at the external surface of the lower wing skin and inboard MLG support rib lower flange could result in an airplane not meeting its maximum loads expected in-service. This condition could result in structural failure. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2014–0927 and Directorate Identifier 2014–NM–230–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 80 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 [per inspection cycle].	$0	$85 [per inspection cycle].	$6,800 [per inspection cycle].

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	3 work-hours × $85 per hour = $255 [per fastener replacement].	$400 [per fastener]	$655 [per fastener replacement].

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–26–53 Airbus: Amendment 39–18068; Docket No. FAA–2014–0927; Directorate Identifier 2014–NM–230–AD.

(a) Effective Date

This AD is effective February 6, 2015 to all persons except those persons to whom it was made immediately effective by Emergency AD 2014–26–53, issued on December 16, 2014, which contained the requirements of this amendment.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A319–115, A319–133, A320–214, A320–232, and A320–233 airplanes, certificated in any category, manufacturer serial numbers (MSN) 5817, 5826, 5837, 5848, 5855, 5864, 5875, 5886, 5896, and 5910, and MSNs 5918 and subsequent.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of failure of certain fasteners located at the wing lower skin surface and inboard main landing gear (MLG) support rib lower flange. We are issuing this AD to detect and correct discrepancies of the fasteners at the external surface of the lower wing skin and inboard MLG support rib lower flange, which could result in an airplane not meeting its maximum loads expected in-service. This condition could result in structural failure.

(f) Compliance

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

(g) Repetitive Inspections

Within 8 days after the effective date of this AD, or within 8 days since the date of issuance of the original certificate of airworthiness or the original export certificate of airworthiness, or before further flight for any airplane that is not in operation, whichever occurs later: Do the inspections required by paragraphs (g)(1) and (g)(2) of this AD, in accordance with Airbus Alert Operators Transmission (AOT) A57N006–14, Revision 00, dated December 4, 2014. Repeat the inspections thereafter at intervals not to exceed 8 days.

(1) Do a detailed visual inspection of the external surface of the left-hand and right-hand wing lower skin surface to detect missing or broken or migrated fasteners.

(2) Do a detailed visual inspection of the inboard MLG support rib lower flange to detect missing or broken nuts or fastener tails.

(h) Corrective Actions for the Inspections Required by Paragraph (g)(1) of This AD

(1) If, during any inspection required by paragraph (g)(1) of this AD, only one discrepancy (any missing or broken or migrated fastener) is found on the left- or right-side: Before further flight, do corrective actions in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Replacement of fasteners

on an airplane does not constitute terminating action for any inspection required by paragraph (g) of this AD.

(2) If, during any inspection required by paragraph (g)(1) of this AD, more than one discrepancy (any missing or broken or migrated fastener) is found on the left- or right-side: Before further flight, replace all affected fasteners on the affected side(s), in accordance with Airbus AOT A57N006–14, Revision 00, dated December 4, 2014. One fastener per side may be missing or broken or migrated provided the applicable actions required by paragraph (h)(1) of this AD are done. Replacement of fasteners on an airplane does not constitute terminating action for any inspection required by paragraph (g) of this AD.

(i) Corrective Actions for the Inspections Required by Paragraph (g)(2) of This AD

(1) If, during any inspection required by paragraph (g)(2) of this AD, only one discrepancy (any missing or broken nut or fastener tail) is found on the left- or right-side: Before further flight, do corrective actions in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Replacement of fasteners on an airplane does not constitute terminating action for any inspection required by paragraph (g) of this AD.

(2) If, during any inspection required by paragraph (g)(2) of this AD, more than one discrepancy (any missing or broken nut or fastener tail) is found on the left- or right-side: Before further flight, replace all affected fasteners on the affected side(s), in accordance with Airbus AOT A57N006–14, Revision 00, dated December 4, 2014. One fastener per side may be missing or broken or migrated provided the applicable actions required by paragraph (i)(1) of this AD are done. Replacement of fasteners on an airplane does not constitute terminating action for any inspection required by paragraph (g) of this AD.

(j) Special Flight Permits

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

(k) Other FAA Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Manager, International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

For further information about this AD, contact: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

(m) Material Incorporated by Reference

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

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

(i) Airbus Alert Operators Transmission A57N006–14, Revision 00, dated December 4, 2014.

(ii) Reserved.

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

(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 January 7, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–00716 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0580; Directorate Identifier 2014–NM–081–AD; Amendment 39–18062; AD 2015–01–01]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2011–09–11, for certain The Boeing Company Model 777–200 and –300 series airplanes. AD 2011–09–11 required repetitive inspections for hydraulic fluid contamination of the interior of the strut disconnect assembly; repetitive inspections for discrepancies of the interior of the strut disconnect assembly, if necessary; repetitive inspections of the exterior of the strut disconnect assembly for cracks, if necessary; corrective action if necessary; and an optional terminating action for the inspections. This new AD adds, for certain airplanes, an inspection of the side and top cover plates to determine if all cover plate attach fasteners have been installed, and installing any missing fasteners including doing an inspection for damage, and repair if necessary. This AD was prompted by reports of side and top cover plates installed with missing fastener bolts, which results in an unsealed opening on the system disconnect assembly. We are issuing this AD to detect and correct hydraulic fluid contamination, which can cause cracking of titanium parts in the system disconnect assembly; and also to detect and correct missing fasteners, which results in unsealed openings on the system disconnect assembly. Both unsafe conditions can compromise the engine firewall and result in fire hazards for both the engine compartment and the strut.

DATES: This AD is effective February 26, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 26, 2015.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of June 6, 2011 (76 FR 24354, May 2, 2011).

ADDRESSES: For service information identified in this AD, contact Boeing

Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*by searching for and locating Docket No. FAA–2014–0580; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011–09–11, Amendment 39–16673 (76 FR 24354, May 2, 2011). AD 2011–09–11 applied to The Boeing Company Model 777–200 and – 300 series airplanes equipped with Pratt and Whitney engines. The NPRM published in the **Federal Register** on August 26, 2014 (79 FR 50877).

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. United Airlines and Boeing supported the NPRM (79 FR 50877, August 26, 2014).

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 50877, August 26, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 50877, August 26, 2014).

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
Inspections [retained actions from AD 2011-09-11, Amendment 39-16673 (76 FR 24354, May 2, 2011)].	18 work-hours × $85 per hour = $1,530	$0	$1,530	$82,620
Inspection of cover plate fasteners [new action].	8 work-hours × $85 per hour = $680	0	680	36,720

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement [retained actions from AD 2011-09–11, Amendment 39–16673 (76 FR 24354, May 2, 2011)].	35 work-hours × $85 per hour = $2,975	$420,440	$423,415
Inspection of electrical components and installation of new fasteners [new actions].	14 work-hours × $85 per hour = $1,190	458	1,648

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

Authority for this Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–09–11, Amendment 39–16673 (76 FR 24354, May 2, 2011), and adding the following new AD:

2015–01–01 The Boeing Company: Amendment 39–18062; Docket No. FAA–2014–0580; Directorate Identifier 2014–NM–081–AD.

(a) Effective Date

This AD is effective February 26, 2015.

(b) Affected ADs

This AD replaces AD 2011–09–11, Amendment 39–16673 (76 FR 24354, May 2, 2011).

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category; equipped with Pratt and Whitney engines; as identified in Boeing Service Bulletin 777–54A0024, Revision 2, dated January 23, 2014.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of side and top cover plates installed with missing fastener bolts, which results in an unsealed opening on the system disconnect assembly. We are issuing this AD to detect and correct hydraulic fluid contamination, which can cause cracking of titanium parts in the system disconnect assembly; and also to detect and correct missing fasteners, which results in unsealed openings on the system disconnect assembly. Both unsafe conditions can compromise the engine firewall and result in fire hazards for both the engine compartment and the strut.

(f) Compliance

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

(g) Retained Inspections and Corrective Actions With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2011–09–11, Amendment 39–16673 (76 FR 24354, May 2, 2011), with revised service information. Within 12 months after June 6, 2011 (the effective date of AD 2011–09–11): Do a general visual inspection for hydraulic fluid contamination of the interior of the strut disconnect assembly, in accordance with Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010; or Revision 2, dated January 23, 2014. As of the effective date of this AD, use only Boeing Service Bulletin 777–54A0024, Revision 2, dated January 23, 2014, for accomplishing the actions in this paragraph.

(1) For airplanes on which no hydraulic fluid contamination is found (Condition 1): Repeat the general visual inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 750 days, whichever occurs first.

(2) For airplanes on which hydraulic fluid contamination is found (Condition 2): Before further flight, do a detailed inspection for discrepancies (*e.g.,* hydraulic fluid coking, heat discoloration, cracks, and etching or pitting) of the interior of the strut disconnect assembly, in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010; or Revision 2, dated January 23, 2014. As of the effective date of this AD, use only Boeing Service Bulletin 777–54A0024, Revision 2, dated January 23, 2014, for accomplishing the actions in this paragraph.

(i) For airplanes on which no discrepancy is found during the inspection required by paragraph (g)(2) of this AD (Condition 2A): Repeat the detailed inspection required by paragraph (g)(2) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 750 days, whichever occurs first.

(ii) For airplanes on which hydraulic fluid coking or heat discoloration is found but no cracking, etching, or pitting is found during the inspection required by paragraph (g)(2) of this AD (Condition 2B): Do the actions required by paragraph (g)(2)(ii)(A) and (g)(2)(ii)(B) of this AD.

(A) Within 300 flight cycles after doing the inspection required by paragraph (g)(2) of this AD: Do a detailed inspection of the exterior of the strut disconnect assembly for cracks, in accordance with Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010; or Revision 2, dated January 23, 2014; and repeat the detailed inspection thereafter at intervals not to exceed 300 flight cycles. As of the effective date of this AD, use only Boeing Service Bulletin 777–54A0024, Revision 2, dated January 23, 2014, for accomplishing the actions in this paragraph.

(B) Within 6,000 flight cycles or 750 days after hydraulic fluid coking and/or heat discoloration was found during the inspection required by paragraph (g)(2) of this AD, whichever occurs first: Replace the titanium system disconnect assembly with an Inconel system, in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010; or Revision 2, dated January 23, 2014. As of the effective date of this AD, use only Boeing Service Bulletin 777–54A0024, Revision 2, dated January 23, 2014, for accomplishing the actions in this paragraph.

(h) Retained Corrective Action With Revised Service Information

This paragraph restates the requirements of paragraph (h) of AD 2011–09–11, Amendment 39–16673 (76 FR 24354, May 2, 2011), with revised service information. For airplanes on which any crack, etching, or pitting is found during any inspection required by paragraph (g)(2) or (g)(2)(ii)(A) of this AD (Condition 3): Before further flight, replace the titanium system disconnect assembly with an Inconel system, in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010; or Revision 2, dated January 23, 2014. As of the effective date of this AD, use only Boeing Service Bulletin 777–54A0024, Revision 2, dated January 23, 2014, for accomplishing the actions in this paragraph.

(i) Retained Optional Terminating Action With Revised Service Information

This paragraph restates the requirements of paragraph (i) of AD 2011–09–11, Amendment 39–16673 (76 FR 24354, May 2, 2011), with revised service information. Replacing the titanium system disconnect assembly with an Inconel system disconnect assembly in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010; or Revision 2, dated January 23, 2014; terminates the actions required by paragraphs (g) and (h) of this AD. As of the effective date of this AD, use only Boeing Service Bulletin 777–54A0024,

Revision 2, dated January 23, 2014, for accomplishing the actions in this paragraph.

(j) New Inspection and Corrective Action

For airplanes on which the system disconnect assembly has been replaced in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, dated April 1, 2010; or Revision 1, dated November 4, 2010: Within 1,125 days after the effective date of this AD, do a detailed inspection of the cover plate fasteners to determine if all cover plate attach fasteners are installed, in accordance with Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 2, dated January 23, 2014. If any fastener is missing, before further flight, install fasteners (including doing a detailed inspection for damage of the electrical components and repairing any damaged components), in accordance with Part 6 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 2, dated January 23, 2014.

(k) Credit for Previous Actions

This paragraph restates the credit provided by paragraph (j) of AD 2011–09–11, Amendment 39–16673 (76 FR 24354, May 2, 2011). This paragraph provides credit for the corresponding actions required by paragraphs (g), (h), and (i) of this AD, if those actions were performed before June 6, 2011 (the effective date of AD 2011–09–11) using Boeing Service Bulletin 777–54A0024, dated April 1, 2010, which is not incorporated by reference in this AD.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

(m) Related Information

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

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(5) and (n)(6) of this AD.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on February 26, 2015.

(i) Boeing Service Bulletin 777–54A0024, Revision 2, dated January 23, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on June 6, 2011 (76 FR 24354, May 2, 2011).

(i) Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010.

(ii) Reserved.

(5) 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.*

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

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

Issued in Renton, Washington, on December 22, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–00009 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0925; Directorate Identifier 2014–NM–229–AD; Amendment 39–18066; AD 2014–25–52]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A330–200 Freighter, –200, and –300 series airplanes and Model A340–200, –300, –500, and –600 series airplanes. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This AD requires revising the airplane flight manual to advise the flightcrew of emergency procedures for abnormal Alpha Protection (Alpha Prot). This AD was prompted by a report of Angle of Attack (AoA) probes jamming on an in-service Airbus Model A321 airplane. We are issuing this AD to ensure that the flightcrew has procedures to counteract the pitch down order due to abnormal activation of the Alpha Prot. An abnormal Alpha Prot, if not corrected, could result in loss of control of the airplane.

DATES: This AD is effective February 6, 2015 to all persons except those persons to whom it was made immediately effective by Emergency AD 2014–25–52, issued on December 10, 2014, which contained the requirements of this amendment.

We must receive comments on this AD by March 9, 2015.

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.

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–2014–0925; 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 (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116,

Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On December 10, 2014, we issued Emergency AD 2014–25–52, which requires revising the airplane flight manual to advise the flightcrew of emergency procedures for abnormal Alpha Prot. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued Emergency Airworthiness Directive 2014–0267–E, dated December 9, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on all Airbus Model A330–200 Freighter, –200, and –300 series airplanes and Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

An occurrence was reported where an Airbus A321 aeroplane encountered a blockage of two Angle of Attack (AoA) probes during climb, leading to activation of the Alpha Protection (Alpha Prot) while the Mach number increased. The flightcrew managed to regain full control and the flight landed uneventfully.

When Alpha Prot is activated due to blocked AoA probes, the flight control laws order a continuous nose down pitch rate that, in a worst case scenario, cannot be stopped with backward sidestick inputs, even in the full backward position. If the Mach number increases during a nose down order, the AoA value of the Alpha Prot will continue to decrease. As a result, the flight control laws will continue to order a nose down pitch rate, even if the speed is above minimum selectable speed, known as VLS.

This condition, if not corrected, could result in loss of control of the aeroplane.

As the same systems are installed on A330 and A340 airplanes, to address this unsafe condition, Airbus * * * [has] developed a specific Aircraft Flight Manual (AFM) procedure, which has been published in AFM Temporary Revision (TR) No. 528 for A330 aeroplanes and AFM TR No. 529 for A340 aeroplanes, as applicable to aeroplane type and model.

For the reasons described above, this AD requires amendment of the applicable AFM [to advise the flightcrew of emergency procedures for abnormal Alpha Prot].

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

FAA's Determination and AD Requirements

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.

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 an abnormal Alpha Prot, if not corrected, could result in loss of control of the airplane. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2014–0925 and Directorate Identifier 2014–NM–229–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 91 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
AFM revision	1 work-hour × $85 per hour = $85	$0	$85	$7,735

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–25–52 Airbus: Amendment 39–18066; Docket No. FAA–2014–0925; Directorate Identifier 2014–NM–229–AD.

(a) Effective Date

This AD is effective February 6, 2015 to all persons except those persons to whom it was made immediately effective by Emergency AD 2014–25–52, issued on December 10, 2014, which contained the requirements of this amendment.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(6) of this AD.

(1) All Model A330–223F and –243F airplanes.

(2) All Model A330–201, –202, –203, –223, and –243 airplanes.

(3) All Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) All Model A340–211, –212, and –213 airplanes.

(5) All Model A340–311, –312, and –313 airplanes.

(6) All Model A340–541 and A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a report of Angle of Attack (AoA) probes jamming on an in-service Airbus Model A321 airplane. We are issuing this AD to ensure the flightcrew has procedures to counteract the pitch down order due to abnormal activation of the Alpha Prot. An abnormal Alpha Prot, if not corrected, could result in loss of control of the airplane.

(f) Compliance

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

(g) Revision of Airplane Flight Manual (AFM)

Within 2 days after the effective date of this AD, revise the AFM to incorporate procedures to address undue activation of Alpha Prot by inserting the text specified in figure 1 to paragraph (g) of this AD into the Emergency Procedures section of the applicable AFM, to advise the flightcrew of emergency procedures for abnormal Alpha Prot. This may be accomplished by inserting a copy of this AD into the AFM. When a statement identical to the text specified in figure 1 to paragraph (g) of this AD is included in the general revisions of the AFM, the general revisions may be inserted in the AFM, and the text specified in figure 1 to paragraph (g) of this AD may be removed.

FIGURE 1 TO PARAGRAPH (g) OF THIS AD—AFM PROCEDURE

- **If the Alpha Prot strip (black and amber) completely and permanently hides the VLS strip (amber) in a stabilized wings-level flight path (without an increase in the load factor):**
  Keep on one ADR.
  Turn off two ADRs.
  In case of dispatch with one ADR inoperative, switch only one ADR to OFF.
  CAUTION RISK OF ERRONEOUS DISPLAY OF THE VSW STRIP (RED AND BLACK) AND RISK OF UNDUE STALL WARNING
  Do not increase speed.
  Consider using the Flight Path Vector (FPV).
  Recover affected DU by using associated DMC switching.
  When at or above safety altitude, level off.
- **At any time, with a speed above VLS, if the aircraft goes to a continuous nose down pitch rate that cannot be stopped with backward sidestick inputs, immediately:**
  Keep on one ADR.
  Turn off two ADRs.

(h) Special Flight Permits

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

(i) Other FAA Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

(k) Material Incorporated by Reference

None.

Issued in Renton, Washington, on January 7, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–00713 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0108; Directorate Identifier 2013–CE–052–AD; Amendment 39–18063; AD 2015–01–02]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Mitsubishi Heavy Industries, Ltd. Models MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–36A, and MU–2B–60 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 stress corrosion cracking in the flanges of the airframe at stations 4610 and 5605. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective February 26, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 26, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0108; 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 Mitsubishi Heavy Industries America, Inc., c/o Turbine Aircraft Services, Inc., 4550 Jimmy Doolittle Drive, Addison, Texas 75001; telephone: (972) 248–3108, ext. 209; fax: (972) 248–3321; Internet: *http://mu-2aircraft.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.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Cook, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5475; fax: (817) 222–5960; email: *Kenneth.A.Cook@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 certain Mitsubishi Heavy Industries, Ltd. (MHI) Models MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–36A, and MU–2B–60 airplanes. The NPRM was published in the **Federal Register** on February 26, 2014 (79 FR 10710). 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 Japan Civil Aviation Bureau (JCAB), which is the aviation authority for Japan, has issued AD No. TCD–8231–2013, dated August 6, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for certain MHI Models MU–2B–30, MU–2B–35, and MU–2B–36 airplanes. You may examine the MCAI on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0108-0002.*

The JCAB has informed us that as part of the MHI continuing aging aircraft program, Models MU–2B–30, MU–2B–35, and MU–2B–36 airplanes were subjected to detailed teardown inspections. During the inspections, structural cracks in the flanges of some long body airplane frames were found at frame station (STA) 4610 and STA 5605. It has been determined that the structural cracks resulted from stress corrosion.

Japan is the State of Design for (MHI Models MU–2B–30, MU–2B–35, and MU–2B–36, which the MCAI applies to, and the United States is the State of Design for MHI Models MU–2B–36A and MU–2B–60 airplanes. Since the Models MU–2B–36A and MU–2B–60 airplanes are of similar type design, the same structural cracks could exist.

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 To Extend Comment Period

Mike Ciholas and seven others stated that they need more time for discussions at seminars and to obtain more information from MHI and Turbine Aircraft Services.

The commenters requested the comment period be extended to allow for more time to gather and analyze data.

We do not agree with the commenters. We have considered the request and have determined sufficient evidence and data exist, specifically information recently from MHI on the inspections of 18 of the 119 airplanes in the U.S. fleet that indicate that 8 of them were cracked. Out of these eight, four have been removed from service. Based on the data presented in the NPRM and this more detailed information provided by MHI, the location of cracks, and the cause of cracking (stress corrosion), we have concluded that the inspections are necessary to address the unsafe condition.

We have not changed the final rule AD action based on this comment.

Request To Withdraw Proposed AD

Mike Ciholas and eight others stated that the unsafe condition addressed in the proposed AD be handled as part of routine inspections. The commenters stated that there has never been any incident, accident, injury, or fatality attributed to this issue despite the millions of flight hours the MU–2B airplane has accumulated, including those hours that some airplanes have flown with a crack present. There has never been any damage to any airplane from this issue. None of the subject parts have failed to perform in service, cracked or otherwise.

Mark James of Intercontinental Jet Service Corp. and two others stated that there have been no failures in the airframes.

The commenters requested that the proposed AD be withdrawn.

We do not agree with the commenters. While there have been no failures to date, the stress corrosion cracking exhibited is in primary load structure. Upon crack initiation, the frames will have diminished load carrying capabilities, which will propagate over time, potentially leading to failure. Although previous inspection requirements specify visual inspection of all frames, no instruction was provided for accessing the difficult to reach areas where the subject cracks have been found. In addition, we are issuing this AD to address the unsafe condition and prevent such failures of this airplane.

We have not changed the final rule AD action based on this comment.

Request To Delay Issuing the Final Rule AD Action

David Klain and six others stated that they wanted the FAA to hold the

proposed AD in abeyance and request additional data from the manufacturer, service centers, and the owner/operator community. At the very least, all inspections completed to date should be considered and an evaluation made as to what specifically is causing these cracks, other than the simple fact these are MU–2 long body airplanes. Additional data can be collected from ongoing inspections conducted in accordance with the maintenance manual as well. Once that data is collected, an informed decision based on facts instead of speculation can be made.

The commenters requested that we delay issuing the final rule AD action.

We do not agree with the commenters. We have considered the request to delay issuing the final rule AD action and have determined that sufficient evidence and data exist, specifically information recently from MHI on the inspections of 18 of the 119 airplanes in the U.S. fleet that indicate that 8 of them were cracked. Out of these eight, four have been removed from service. Based on the data presented in the NPRM and this more detailed information provided by MHI, the location of cracks, and the cause of cracking (stress corrosion), we have concluded that the inspections are necessary to address the unsafe condition. Further delay of the final rule AD action would allow a known unsafe condition to exist without AD action to address it.

We have not changed the final rule AD action based on this comment.

Request To Verify Cost of Compliance

David Klain and three others stated that the Mitsubishi Service Centers have indicated that the time and cost estimates detailed in the proposed AD are not accurate and do not reflect the actual higher costs and time necessary to complete the inspection based on the inspections completed to date.

The commenters requested a change to the Cost of Compliance section.

We do not agree with the commenters. The cost provided by the original equipment manufacturer (OEM) is a rough order of magnitude estimate based on available information and standardized cost evaluation methods.

We have not changed the final rule AD action based on this comment.

Request To Withdraw Proposed AD

David Klain and three others stated that the proposed AD is based on non-representative airframes. The proposed AD was derived from a service bulletin that originated from inspections of a limited, non-representative sample of airframes that have been removed from service and represent the worst possible scenario with regards to airframe stress (freighters).

The commenters stated that since Special Airworthiness Information Bulletin (SAIB) No. CE–03–26, dated February 28, 2003 (which can be found at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSAIB.nsf/(LookupSAIBs)/CE-03-26?OpenDocument*), three additional airplanes with a total airframe time and operational use (non-freighter) that is more representative of the fleet have been inspected at several service centers and not a single plane exhibited the cracks in question. The commenters stated, based on these findings, there is a situation where a very small sample size may give some indication there is a correlation between total time and/or airplane utilization (freighters with heavy takeoff/landing weights and many cycles) and the cracks in question, but further empirical data is likely necessary to draw any firm conclusions.

The commenters also stated that the costly inspection goes against the FAA's mandate to encourage and promote aviation by potentially mandating a costly inspection that would result in the decommissioning of perfectly safe and flyable airplanes for no reason other than the high cost of an inspection mandated by the FAA without any engineering data to support such inspections.

We infer that the commenters believe that the final rule AD action is unnecessary and want the proposed AD withdrawn.

We do not agree with the commenters. More detailed information from MHI on the inspections of 18 of the 119 airplanes in the U.S. fleet indicate that 8 of them were cracked of which 5 were used as freighters. Out of these eight, four have been removed from service. Based on the data presented in the NPRM and this more detailed information provided by MHI, the location of cracks, and the cause of cracking (stress corrosion), we have concluded that the inspections are necessary to address the unsafe condition.

The OEM has also provided the time and cost information presented in this final rule AD action.

We have not changed the final rule AD action based on this comment.

Request To Include a Less Expensive Repair Option

Richard Wheldon and one other commenter stated that there is a less expensive repair available to the owners/operators of the affected airplanes.

The commenters stated that the repairs specified in the Mitsubishi Heavy Industries, Ltd. (MHI Ltd.) MU–2 Service Bulletins No. 231, dated July 2, 1997, and No. 073/53–002B, dated April 27, 1999, involve doublers and are much less intrusive and less labor intensive. The repairs in MHI Ltd. MU–2 Service Bulletins No. 242, dated July 10, 2013, and No. 104/53–003, dated July 22, 2013, involve large splices and/or frame segment replacements, which are very costly. It is not explained why the less expensive methods were not proposed. In discussions with experienced sheet metal mechanics and structures engineers, they expressed that other repair schemes are possible that adequately address any safety concerns and are much less costly.

Many of the cracks found at the lower sections of the bottom frame segments might be repairable using doublers rather than replacing the entire lower frame segments, which is the only solution allowed in the proposed AD. Obviously, the replacement of an entire lower frame segment is a huge, potentially unnecessary undertaking involving considerable assembly and disassembly. Any conventional solution short of frame segment replacement should be investigated.

The commenters also stated that an operator is not allowed to repair the side frame segments per MHI Ltd. MU–2 Service Bulletins No. 231, dated July 2, 1997, and No. 073/53–002B, dated April 27, 1999, and still be in compliance with the proposed AD. The only solution to a side frame crack allowed per MHI Ltd. MU–2 Service Bulletins No. 242, dated July 10, 2013, and No. 104/53–003, dated July 22, 2013, is the much more expensive replacing of the side frame segment.

The commenters requested compliance based on MHI Ltd. MU–2 Service Bulletins No. 231, dated July 2, 1997, and No. 073/53–002B, dated April 27, 1999, at a minimum, be permitted in the final rule AD action.

We do not agree with the commenters. MHI Ltd. MU–2 Service Bulletins No. 231, dated July 2, 1997, and No. 073/53–002B, dated April 27, 1999, require inspecting for cracks that are specifically located around rivet holes. The service bulletins specified in this AD require inspecting for cracks in a different area, specifically throughout the frame flanges.

If lower cost repair methods exist that meet the intent of the proposed AD, you may propose an alternative method of compliance or a change in the compliance time that provides an acceptable level of safety using the procedures found in 14 CFR 39.19.

We have not changed the final rule AD action based on this comment.

Request To Consider Other Causes of the Cracks

David Klain and one other commenter stated that the proposed AD does not accurately consider what the causal factors are that may have caused the cracks in question (airframe age, cycles, total time, utilization as freighters, etc.) due to lack of adequate representative data.

The commenters requested the FAA to further investigate the cause of the cracks.

We do not agree with the commenters. We have evaluated the data provided and have determined that the cause of cracking is stress corrosion. We have determined that is sufficient evidence and data of an unsafe condition and we should proceed with issuing the final rule AD action.

We have not changed the final rule AD action based on this comment.

Request To Utilize Special Airworthiness Information Bulletin (SAIB) No. CE–03–26, Dated February 28, 2003

Mark James of Intercontinental Jet Service Corp. stated that the inspections introduced and recommended in SAIB No. CE–03–26, dated February 28, 2003, which can be found at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSAIB.nsf/(LookupSAIBs)/CE-03-26?OpenDocument*, should be sufficient to cover inspections required from this AD because the stresses are the same.

The commenter stated that the inspection criteria in the proposed AD require inspection of a different location of these same frames and the fact is that the frame materials and stresses are the same.

We infer that the commenter believes the inspections introduced and recommended in SAIB No. CE–03–26, dated February 28, 2003, are sufficient in addressing the unsafe condition identified in this AD wants the proposed AD withdrawn.

We do not agree with the commenter. It is stated in the proposed AD that stress corrosion cracking may be located throughout the area of the frame flanges. The inspections recommended in SAIB No. CE–03–26 are more limited and only inspect for stress corrosion cracking at screw holes in the flange.

We have not changed the final rule AD action based on this comment.

Request To Modify the Applicability Section

An anonymous commenter stated that the statistical analysis and evaluation performed in support of the proposed AD is flawed. The commenter also stated that given the inconsistent data from a sample size that is not representative of the fleet, there appears to be no scientific or engineering basis for issuing the final rule AD action and mandating it for the entire fleet

The commenter stated that Mark James of Intercontinental Jet Service Corp. also stated that the conclusions made by the FAA were not based on an adequate representation of the fleet and that thus far the only cracks found have been on two higher time airframes and not on the many airplanes that have less than one-third of the flight time and cycles

The commenter requested the applicability of the final rule AD action be changed to apply only to high time, high-cycle airplanes.

We do not agree with the commenters. More detailed information from MHI on the inspections of 18 of the 119 airplanes in the U.S. fleet indicate that 8 of them were cracked. Out of the 18 airplanes, 5 of them are used as freighters and all 5 of these were among the 8 found cracked. Four of the eight airplanes found cracked have been removed from service. Based on the data presented in the NPRM and this more detailed information provided by MHI, the location of cracks, and the cause of cracking (stress corrosion), we have concluded that the inspections are necessary to address the unsafe condition.

We have not changed the final rule AD action based on this comment.

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 10710, February 26, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 10710, February 26, 2014).

Relevant Service Information

Mitsubishi Heavy Industries, Ltd. has issued Service Bulletin No. 242, dated July 10, 2013, and Service Bulletin No. 104/53–003, dated July 22, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. The service bulletin describes procedures to inspect and repair/replace the side and lower frame at stations 4610 and 5605. You can find this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0108.

Costs of Compliance

We estimate that this AD will affect 119 products of U.S. registry. We also estimate that it will take about 100 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,011,500, or $8,500 per product.

In addition, we estimate that any necessary follow-on actions will take up to 428 work-hours and require parts costing up to $14,400, for a cost up to $50,780 per product. We have no way of determining the number of products that may need such repair based on the results of the inspection. The extent of damage will vary on each airplane.

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–2014–0108; 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:

2015–01–02 Mitsubishi Heavy Industries, Ltd.: Amendment 39–18063; Docket No. FAA–2014–0108; Directorate Identifier 2013–CE–052–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 26, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Mitsubishi Heavy Industries, Ltd. Models MU–2B–30, MU–2B–35, and MU–2B–36 airplanes, serial numbers 502 through 651, 653 through 660, and 662 through 696, and Models MU–2B–36A and MU–2B–60 airplanes, serial numbers 661SA, 697SA through 799SA, and 1501SA through 1569SA, 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 stress corrosion cracking in the flanges of the airframes at stations 4610 and 5605. We are issuing this AD to detect and correct structural cracks in the airframe flanges, which could reduce the structural integrity of the airplane.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) through (f)(3) of this AD.

(1) Within the next 1,000 hours time-in-service (TIS) after February 26, 2015 (the effective date of this AD) or within the next 3 years after February 26, 2015 (the effective date of this AD), whichever occurs first, inspect the side and lower frames at frame station (STA) 4610 and STA 5605 for cracks and corrosion. Do the inspection following paragraphs 3.0 through 3.3 of Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 242, dated July 10, 2013, or Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 104/53–003, dated July 22, 2013, as applicable.

(2) If any crack is found during the inspection required in paragraph (f)(1) of this AD, before further flight, do the actions in paragraphs (f)(2)(i) or (f)(2)(ii) of this AD:

(i) Repair the frame following paragraphs 4.0 and 5.0 of Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 242, dated July 10, 2013, or Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 104/53–003, dated July 22, 2013, as applicable; or

(ii) Replace the frame following paragraphs 4.0, 6.0, and 7.0 of Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 242, dated July 10, 2013, or Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 104/53–003, dated July 22, 2013, as applicable.

(3) If any corrosion is found during the inspection required in paragraph (f)(1) of this AD, before further flight, repair the damage following the instructions in paragraph 3.2 of Mitsubishi Heavy Industries, Ltd. Service Bulletin No. 242, dated July 10, 2013, or Mitsubishi Heavy Industries, Ltd. Service Bulletin No. 104/53–003, dated July 22, 2013, as applicable.

(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: Kenneth A. Cook, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5475; fax: (817) 222–5960; email: *Kenneth.A.Cook@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) Special Flight Permit

We are allowing special flight permits with the following limitations:

(1) Essential crew only;

(2) Minimum weight;

(3) Limit ''G'' loading to minimum; and

(4) Most direct flight to repair center.

(i) Related Information

Refer to MCAI Japan Civil Aviation Bureau (JCAB) AD No. TCD–8231–2013, dated August 6, 2013, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov/#!document Detail;D=FAA-2014-0108-0002.*

(j) Material Incorporated by Reference

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

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

(i) Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 242, dated July 10, 2013.

(ii) Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 104/53–003, dated July 22, 2013.

(3) For Mitsubishi Heavy Industries, Ltd. service information identified in this AD, contact Mitsubishi Heavy Industries America, Inc. c/o Turbine Aircraft Services, Inc., 4550 Jimmy Doolittle Drive, Addison, Texas 75001; telephone: (972) 248–3108, ext.

209; fax: (972) 248–3321; Internet: *http://mu-2aircraft.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 December 30, 2014.

Robert Busto,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–00007 Filed 1–21–15; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP Docket No. 1148–F]

RIN 1120–AB48

Communications Management Units

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) finalizes regulations that establish and describe Communications Management Units (CMUs) by regulation. The CMUs regulations serve to detail the specific restrictions that may be imposed in the CMUs in a way that current regulations authorize but do not detail. CMUs are designed to provide an inmate housing unit environment that enables staff monitoring of all communications between inmates in a Communications Management Unit (CMU) and persons in the community. The ability to monitor such communication is necessary to ensure the safety, security, and orderly operation of correctional facilities, and protection of the public. These regulations represent a ''floor'' beneath which communications cannot be further restricted. The Bureau currently operates CMUs in two of its facilities. This rule clarifies existing Bureau practices with respect to CMUs.

DATES: This rule is effective on February 23, 2015.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: This final rule codifies and describes the Bureau's procedures for designating inmates to, and limiting communication within, its CMUs. Currently, the Bureau operates two CMUs, separately located at the Federal Correctional Complex (FCC), Terre Haute, Indiana (established in December 2006), and the United States Penitentiary (USP), Marion, Illinois (established in March 2008). A proposed rule was published on April 6, 2010 (75 FR 17324). We received 733 comments during the 2010 comment period. We later reopened the comment period on March 10, 2014, for 15 days (79 FR 13263). We received an additional 443 comments during the 2014 comment period. Similar issues were raised by most of the commenters. We respond below to the issues raised.

Designation to a CMU Is Not Discriminatory or Retaliatory

Several commenters felt that there exists in CMUs an ''overrepresentation of Muslim and political prisoners, showing that CMUs are not designed for legitimate purposes, but rather to discriminate and remove and isolate politically active members of society.''

The Bureau does not use religion or political affiliation as a criterion for designation to CMUs. 28 CFR 551.90 states the Bureau's non-discrimination policy: ''Bureau staff shall not discriminate against inmates on the basis of race, religion, national origin, sex, disability, or political belief. This includes the making of administrative decisions and providing access to work, housing and programs.'' Further, § 540.201, which describes the designation criteria, must be read in tandem with § 540.202, particularly subparagraph (b), which states that after the Bureau becomes aware of one or more of the criteria described in § 540.201, the Bureau's Assistant Director for the Correctional Programs Division must conduct a review of the evidence found and make a finding that designation to the CMU is necessary to ensure the safety, security, and orderly operation of correctional facilities or protection of the public. An inmate cannot, therefore, be designated to a CMU based upon religious or political affiliation, both because neither are part of the stated criteria, and because it is also necessary to have credible evidence of a threat to the safety, security, and good order of the institution or protection of the public to support designation to a CMU.

Instead, an important category of inmates that might be designated to a CMU is inmates whose current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism. Past behaviors of terrorist inmates provide sufficient grounds to suggest a substantial risk that they may inspire or incite terrorist-related activity, especially if ideas for or plans to incite terrorist-related activity are communicated to groups willing to engage in or to provide equipment or logistics to facilitate terrorist-related activity. The potential ramifications of this activity outweigh the inmate's interest in unlimited communication with persons in the community.

Communication related to terrorist-related activity can occur in codes that are difficult to detect and extremely time-consuming to interpret. Inmates involved in such communication, and other persons involved or linked to terrorist-related activities, take on an exalted status with other like-minded individuals. Their communications acquire a special level of inspirational significance for those who are already predisposed to these views, causing a substantial risk that such recipients of their communications will be incited to unlawful terrorist-related activity.

The danger of coded messages from prisoners has been recognized by the courts. *See Turner* v. *Safley,* 482 U.S. 78, 93 (1987) (''In any event, prisoners could easily write in jargon or codes to prevent detection of their real messages.''); *United States* v. *Salameh,* 152 F.3d 88, 108 (2nd Cir. 1998) (''Because Ajaj was in jail and his telephone calls were monitored, Ajaj and Yousef spoke in code when discussing the bomb plot.''); *United States* v. *Johnson,* 223 F.3d 665, 673 (7th Cir. 2000) (''And we know that anyone who has access to a telephone or is permitted to receive visitors may be able to transmit a lethal message in code.''); *United States* v. *Hammoud,* 381 F.3d 316, 334 (4th Cir. 2004) (''A conversation that seems innocuous on one day may later turn out to be of great significance, particularly if the individuals are talking in code.''); *United States* v. *Moncivais,* 401 F.3d 751, 757 (6th Cir. 2005) (noting that seemingly nonsensical conversations could be in code and interpreted as indicative of drug dealing activity). Also, an Al Qaeda training manual contains the following advice regarding communications from prison: ''Take advantage of visits to communicate with brothers outside prison and exchange information that may be helpful to them in their work outside prison. The importance of mastering the art of hiding messages is self-evident here.''

There have been cases of imprisoned terrorists communicating with their followers regarding future terrorist activity. For example, after El Sayyid Nosair assassinated Rabbi Kahane, he was placed in Rikers Island, where ''he began to receive a steady stream of visitors, most regularly his cousin El-Gabrowny, and also Abouhalima, Salameh, and Ayyad. During these visits, as well as subsequent visits once Nosair was at Attica, Nosair suggested numerous terrorist operations, including the murders of the judge who sentenced him and of Dov Hikind, a New York City Assemblyman, and chided his visitors for doing nothing to further the jihad against the oppressors. Nosair also tape recorded messages while in custody . . .'' *United States* v. *Rahman,* 189 F.3d 88, 105–06 (2d Cir. 1999). Imprisoned, Sheikh Abdel Rahman had urged his followers to wage jihad to obtain his release. Violent attacks and murders followed. *United States* v. *Sattar,* 314 F.Supp.2d 279, 288–89 (S.D.N.Y. 2004).

To minimize the risk of terrorist-related communication and other similar dangerous communication to or from inmates in Bureau custody, this regulation clarifies the Bureau's current authority to limit and monitor the communication of inmates in CMUs to immediate family members, U.S. Courts, federal judges, U.S. Attorney's Offices, Members of U.S. Congress, the Bureau, other federal law enforcement entities, and the inmate's attorney. The Bureau allows communication with these individuals to help inmates maintain family ties, and protect inmates' access to courts and other government officials. This permits inmates to raise issues related to their incarceration or their conditions of confinement, while minimizing potential internal or external threats.

The presence of Muslim inmates in CMUs does not indicate discrimination, especially given the alternative explanations for designation of inmates to the CMU in § 540.201. In *Ashcroft* v. *Iqbal,* 129 S.Ct. 1937 (2009), the plaintiffs alleged that former FBI Director Mueller and Attorney General Ashcroft engaged in ''invidious discrimination'' against Muslims because the FBI ''arrested and detained thousands of Arab Muslim men'' following the 9/11 attacks. *Iqbal,* 129 S.Ct. at 1951. ''Taken as true, the Court found these allegations are consistent'' with Plaintiffs' claim that the men were detained ''because of their race, religion, or national origin. But given more likely explanations, they do not plausibly establish this purpose.'' *Id.* In particular, the Court found that the ''obvious alternative explanation'' for the arrests was that they were a response to legitimate security concerns following the 9/11 attacks. *Id.* As the Court concluded, in the face of this explanation, ''the purposeful, invidious discrimination respondent asks us to infer . . . is not a plausible conclusion.'' *Id.* at 1951–1952.

The Bureau, acting on a case-by-case basis, may designate an inmate to a CMU for heightened monitoring for any of the reasons articulated in § 540.201. This valid legitimate penological purpose negates a claim of a Bureau-wide conspiracy to discriminate against Muslims.

Assignment to a CMU With Notice Upon Arrival Does Not Violate the Due Process Clause

Several commenters, either inmates in CMUs or friends or relatives of inmates in CMUs, stated that the inmates were placed there without prior notice, and that such placement is in violation of the Due Process Clause of the Fifth Amendment of the United States Constitution.

Written notice. As indicated in the proposed rule, upon arrival at the designated CMU, inmates receive written notice from the Warden of the facility in which the CMU exists of the inmate's placement. The written notice explains that:

(1) Designation to a CMU allows greater Bureau staff management of communication with persons in the community through complete monitoring of telephone use, written correspondence, and visiting. The volume, frequency, and methods of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart;

(2) General conditions of confinement in the CMU may also be limited as necessary to provide greater management of communications;

(3) Designation to the CMU is not punitive and, by itself, has no effect on the length of the inmate's incarceration. Inmates in CMUs continue to earn sentence credit in accordance with the law and Bureau policy;

(4) Designation to the CMU follows the Assistant Director's decision that such placement is necessary for the safe, secure, and orderly operation of Bureau institutions, or protection of the public. The inmate will be provided an explanation of the decision in sufficient detail, unless the Assistant Director determines that providing specific information would jeopardize the safety, security, and orderly operation of correctional facilities, and/or protection of the public;

(5) Continued designation to the CMU will be reviewed regularly by the inmate's Unit Team under circumstances providing the inmate notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates; and

(6) The inmate may challenge the CMU designation decision, and any aspect of confinement therein, through the Bureau's administrative remedy program.

Through the written notice, inmates are informed that designation to the CMU follows the Assistant Director's decision that such placement is necessary for the safe, secure, and orderly operation of Bureau institutions, or protection of the public. The inmate is provided an explanation of the decision in sufficient detail, unless providing specific information would jeopardize the safety, security, or orderly operation of the facility, or protection of the public.

Continued placement in CMUs may not be necessary and will be reviewed regularly by the inmate's Unit Team, as described above. Conditions may change and allow inmates to be transferred out of the CMUs. For instance, an inmate's behavior and conduct may change. Another example of an altered circumstance is that the heightened security risk or threat to the safety, security and good order of the institution or protection of the public may have changed in some way. For instance, if an inmate communicates about the possibility of a disruption at a particular public event, and the event timeframe passes, the security threat may be diminished.

The requirements of due process. The due process clause protects persons against deprivations of ''life, liberty or property without due process of law.'' U.S. Const. Amend. V. A constitutionally-protected liberty interest can arise under the Constitution itself or be created by the State.

If a court were to conclude that inmates had a constitutionally-protected liberty interest in avoiding transfer to a CMU, the process that would have to be afforded an inmate would depend on the particular situation's demands. *Morrissey* v. *Brewer,* 408 U.S. 471, 481 (1972) (stating that the requirements are ''flexible''). Determining what procedural due process demands in a given situation requires balancing of three factors. *Mathews* v. *Eldridge,* 424 U.S. 319 (1976). They are: (1) The private interest affected; (2) the risk of erroneous deprivation of a liberty

interest as a result of procedures used, and the probable value, if any, of any alternative safeguards; and (3) the government's interest. *Id.* at 335.

No private liberty interest is affected. An inmate's liberty interest in avoiding conditions of confinement can arise from the Constitution itself. *Vitek* v. *Jones,* 445 U.S. 480, 493–94 (1980) (finding liberty interest in avoiding psychiatric treatment against an inmate's will). However, the Constitution does not give rise to a liberty interest in avoiding a transfer to an institution that is ''much more disagreeable than another.'' *Meachum* v. *Fano,* 427 U.S. 215, 225 (1976); *see also Wilkinson* v. *Austin,* 545 U.S. 209, 221–22 (2005). This includes institutions with ''more severe rules'' as long as the inmate is still within the normal limits or range of custody authorized by the conviction. *Id.* ''Transfers between institutions. . . are made for a variety of reasons and often involve no more than informed predictions as to what would best serve institutional security or the safety and welfare of the inmate.'' *Meachum,* 427 U.S. at 225.

Since the Constitution does not give rise to a liberty interest when the issue is avoiding a transfer to an institution that is less favorable or more restrictive than another, inmates do not have a liberty interest that should be protected from transfer to a CMU.

In *Wilkinson* v. *Austin,* the Supreme Court held that a liberty interest arises when an inmate is transferred to a maximum security prison where, among other restrictions, ''almost all human contact is prohibited, even to the point that conversation is not permitted from cell to cell.'' *545 U.S. 209,* 223–24 (2005); *id.* at 224 (noting that the inmates were placed in the facility for indefinite duration and were disqualified for parole consideration during their placement). Because the conditions imposed ''an atypical and significant hardship,'' the Court found a state-created liberty interest in that case. *Id.* at 223.

However, unlike the situation in *Wilkinson,* there is no state-created liberty interest based upon the facts of confinement in a CMU. Inmates are subjected to an ''atypical and significant hardship'' if the hardships are more egregious than the ''ordinary incidents of prison life.'' *Sandin* v. *Conner,* 515 U.S. 472, 484 (1995). The restrictions imposed on inmates in CMUs are not atypical of the ordinary incidents of prison life. Restrictions on communication are common and are within the discretion of the prison authorities to regulate. *See Overton* v. *Bazzetta,* 539 U.S. 126, 132 (2003). Current regulations that apply to general population inmates allow the warden of a particular facility to impose heightened restrictions on inmates' communications with the public. (28 CFR 540.15; § 540.43; § 540.100.)

The conditions at a CMU are not like those at issue in *Wilkinson;* indeed, they are not significantly different from the ordinary incidents of prison life. Inmates in the CMU operate as a general population unit, where they participate in all educational, recreational, religious, unit management and work programming within their unit.

The communications restrictions possible in the CMU do not rise to the level that implicates violation of a liberty interest. To effectively and efficiently allow monitoring and review of the general correspondence communications of inmates in CMUs, those communications may be limited in frequency and volume as follows:

- Written correspondence may be limited to six (expanded from the proposed rule limitation to three) pieces of paper, double-sided, once per week to and from a single recipient (in addition, electronic messaging may be limited to two messages, expanded from the proposed rule limitation of one, per calendar week, to and from a single recipient at the discretion of the Warden);
- Telephone communication may be limited to three completed calls (expanded from the proposed rule limitation to one call) per calendar month for up to 15 minutes; and
- Visiting may be limited to four one-hour visits (expanded from the proposed rule limitation of one one-hour visit) each calendar month.

Unless the quantity to be processed becomes unreasonable or the inmate abuses or violates these regulations, there is no frequency or volume limitation on written correspondence with the following entities: U.S. courts, Federal judges, U.S. Attorney's Offices, Members of U.S. Congress, the Bureau of Prisons, other federal law enforcement entities, or, as stated earlier, the inmate's attorney (privileged, unmonitored communications only). Correspondence with these entities is not limited under these regulations in furtherance of inmates' access to courts and their ability to defend in litigation.

Even assuming that inmates have a liberty interest in this context, inmates have been afforded sufficient process and will continue to be afforded due process by these regulations, under the *Mathews* standard. Inmates are afforded post-placement due process in the form of written notice under § 540.202(c) upon arrival, which includes information on how to appeal the designation decision.

There is little risk of erroneous deprivation of a liberty interest. The second factor addresses the possibility that an inmate could be erroneously assigned to the wrong unit. Inmates placed in the CMU are given notice of their transfers under the regulations (§ 540.202(c)) and their opportunity to appeal. The notice delineates the specific reasons for their designation within this program unless the Assistant Director determines that providing the information would jeopardize the safety, security, and orderly operation of correctional facilities, and/or protection of the public. If information in the notice is inaccurate, inmates may appeal regarding the inaccuracy of the information contained in the notice, the CMU designation decision, and any other aspect of confinement therein, through the Bureau's administrative remedy program. *See* 28 CFR 542.10–542.19 and § 540.202(c)(6). The procedures thus offer an inmate notice and an opportunity to appeal the decision. See *Wilkinson,* 545 U.S. at 226 (''Our procedural due process cases have consistently observed that [notice of the factual basis leading to consideration for placement and a fair opportunity for rebuttal] are among the most important procedural mechanisms for purposes of avoiding erroneous deprivations.'') This procedure allows for the review of an inmate's claim that he has been erroneously placed in the CMU.

Further, continued designation to the CMU is regularly reviewed by the inmate's Unit Team under circumstances providing the inmate notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates. *See id.* at 227 (review 30 days after assignment to facility ''further reduces the risk of erroneous placement''). These procedures, therefore, afford sufficient protection from the risk of erroneous deprivation of any liberty interest.

The government's interest is significant. The final *Mathews* factor is the governmental interest in placing inmates in a CMU; this interest is a ''dominant consideration.'' *Wilkinson* at 227. The interest of protecting the security of the facility is a legitimate penological interest that has been consistently acknowledged by the Supreme Court. *Sandin* v. *Conner,* 515 U.S. 472, 484 (1995); *Block* v. *Rutherford,* 468 U.S. 576, 586 (1984). Particularly, with regard to the CMUs, the government's interest in protecting

the security of the facility and the public is furthered by allowing the government to concentrate monitoring resources, thereby increasing the probability of detecting and deterring dangerous communications and reducing potential security issues.

By limiting the frequency and volume of the communication to and from inmates identified under this regulation, the Bureau reduces the amount of communication requiring monitoring and review. Reducing the volume of communications helps ensure the Bureau's ability to provide heightened scrutiny in reviewing communications, thereby increasing both internal security within correctional facilities, and the security of members of the public.

As we explained in the proposed rule, the Bureau has determined that in the context of inmates in CMUs, the restrictions authorized by the CMUs regulations are the most appropriate means of accomplishing the Bureau's legitimate goal and compelling interest to ensure the safety, security, and orderly operation of Bureau facilities, and protection of the public. We stated the following in the preamble to the proposed rule:

''The CMU concept allows the Bureau to monitor inmates for whom such monitoring and communication limits are necessary, whether due to a terrorist link or otherwise, such as inmates who have previously committed an infraction related to mail tampering from within an institution, or inmates who may be attempting to communicate with past or potential victims. The ability to monitor such communication is necessary to ensure the safety, security, and orderly operation of correctional facilities, and protect the public. The volume, frequency, and methods of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart.''

Restricting Inmates' Telephone and Visiting Privileges Does Not Violate the Due Process Clause

Several commenters stated that CMU restrictions on visiting and telephone calls violate the Due Process Clause and the rights of inmates in CMUs.

Substantive Due Process. In analyzing whether the communication restrictions violate substantive due process, the proper inquiry is whether the prison regulation or policy ''is reasonably related to legitimate penological interests.'' *Turner* v. *Safley,* 482 U.S. 78, 89 (1987); *Overton* v. *Bazzetta,* 539 U.S. 126, 132 (2003). Several factors are relevant to the reasonableness inquiry; *Turner* identified four factors, the first of which has been described as the most important: There must be a ''valid, rational connection'' between the regulation and the objective set forth to justify it. *Turner,* 482 U.S. at 89; *Beard v Banks,* 548 U.S. 521, 532 (2006) (describing the particular importance of this factor, explaining that in a given case, the second, third, and fourth Turner factors may ''add little, one way or another, to the first factor's basic logical rationale.'').

Here, analysis of this factor demonstrates that the regulation is reasonably related to legitimate interests. The regulation is designed to ensure the safety, security, and good order of Bureau institutions and protection of the public. Security of the facility has been cited as a valid primary interest in not permitting contact visitation for pretrial detainees. *Sandin* v. *Conner,* 515 U.S. 472, 484 (1995); *Block* v. *Rutherford,* 468 U.S. 576, 586 (1984). The regulation furthers this legitimate penological interest by effectively monitoring the communications of high-risk inmates. The regulation and the penological interest are, therefore, rationally related.

Procedural Due Process. The limitations on telephone use and visitation do not violate the procedural due process rights of inmates in CMUs because they do not implicate a protected liberty interest. These restrictions are ordinary incidents of prison life. Such restrictions do not rise to the level which the Supreme Court has determined is outside the normal boundaries of confinement needed to trigger a liberty interest under the Due Process Clause. *See Vitek* v. *Jones,* 445 U.S. 480, 493–94 (1980) (transfer to mental hospital); *Washington* v. *Harper,* 494 U.S. 210, 221–22 (1990) (involuntary administration of psychotropic drugs); *Wilkinson* v. *Austin,* 545 U.S. 209 at 224 (2005) (indefinite transfer to solitary confinement). Courts have recognized that similar limitations do not threaten a protected liberty interest. *See Searcy* v. *United States,* 668 F.Supp.2d 113, 122 (D.D.C. 2009) (internal quotation marks omitted) (''An inmate has no right to unlimited telephone use.'''); *Perez* v. *Federal Bureau of Prisons,* 229 Fed. Appx. 55, 58 (3d Cir. 2007) (''[L]imits on telephone usage are ordinary incidents of prison confinement,'' and their restriction ''do[es] not implicate a liberty interest protected by the Due Process Clause.'').

There is also no liberty interest protected by the Due Process Clause that is implicated by the rules governing the scheduling of visits or phone calls in the CMU. In fact, not only are the CMU restrictions well below the level necessary to trigger a liberty interest, but they also are within the scope of restrictions authorized by the Bureau's current regulations. 28 CFR 540.100 and 540.101(d) indicate that inmate telephone use may be limited as necessary to protect institutional security and the safety of the public. Further, 28 CFR 540.51(h)(2) indicates that restrictions on contact visiting, for example, are permitted if necessary for security reasons. Also, the restrictions imposed upon attorney visiting are within the current visiting parameters: As stated in § 540.205(b), ''Regulations and policies previously established under 28 CFR part 543 are applicable.''

However, in response to public comment, the final regulations provide new limitations which would be more consistent with the Bureau's resources for monitoring communications. Again, the limitations in the regulation serve as the minimum requirement. Further access may be granted as resources allow, in the discretion of Bureau staff, on a case-by-case basis. The CMUs regulations serve to detail the specific restrictions which may be imposed in the CMU in a way that current regulations authorize but do not detail.

Restrictions on Unmonitored Communication With Members of the Media Are Not Unconstitutional

The regulations allow communication with news media (via telephone or writing) ''only at the discretion of the warden.'' Several commenters argued that this language authorized a ''complete ban on communication with news media, a result that is unconstitutional under existing case law.''

First, we note that the regulations in § 540.203 do not restrict with whom a CMU inmate may correspond. The only restriction in the regulation related to correspondence is as follows: The regulations state that ''[s]pecial mail, as defined in Part 540, is limited to privileged communication with the inmate's attorney.'' § 540.203(b). This means that any correspondence with representatives of the news media will be subject to the level of inspection given to other general mail correspondence. There will be no unmonitored communication with news media representatives.

Second, it is true that inmates in CMUs may not have unmonitored telephone communication with news media representatives. The regulation states that ''[u]nmonitored telephone communication is limited to privileged communication with the inmate's

attorney. Unmonitored privileged telephone communication with the inmate's attorney is permitted as necessary in furtherance of litigation, after establishing that communication with the verified attorney by confidential correspondence or visiting, or monitored telephone use, is not adequate due to an urgent or impending deadline.'' § 540.204(b).

Contrary to the commenters' assertions, prison officials are not required to permit and accommodate confidential, unmonitored communication between inmates and news media representatives. Previous case law has not afforded news media any greater right of access to inmates than that of the general public. *See, e.g., Houchins* v. *KQED,* 438 U.S. 1, 16 (1978) (''Neither the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control. . . . [T]he media have no special right of access to the Alameda County Jail different from or greater than that accorded the public generally.''); *Saxbe* v. *Washington Post Co.,* 417 U.S. 843 (1974) (upholding regulation prohibiting face-to-face interviews with certain inmates); *Pell* v. *Procunier,* 417 U.S. 817 (1974) (regulation imposing conditions for press interviews of inmates did not unconstitutionally interfere with rights of inmates or the media) ; *Johnson* v. *Stephan,* 6 F.3d 691 (10th Cir. 1993). Rather, as made clear in these cases, news media representatives are entitled to no greater prisoner access than the general public. Inmate communications with news media representatives are governed by regulations in 28 CFR part 540, subpart E.

The Regulation Contains No ''Absolute Ban'' on Communication With Clergy, Consular Officials, or Non-Immediate Family Members

Some commenters stated that the proposed regulation's limitations on communication with clergy and other religious communications violate the Religious Freedom Restoration Act, 42 U.S.C. 2000bb (2006) (hereinafter ''RFRA''); others suggested that restrictions on visitation violated inmates' due process rights. These and other commenters also stated that the regulations impose an ''absolute ban'' on communications with clergy and non-immediate family members. One commenter also stated that these regulations violate Article 36 of the Vienna Convention on Consular Relations (1969), which gave ''consular officers'' the ''right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention . . .'' The same commenter likewise stated that the regulations impose a ''total ban'' on communication with ''most family members,'' citing 28 CFR 540.44(a), which defines immediate family members as being ''mother, father, step-parents, foster parents, brothers and sisters, spouse, and children.''

There is no such ''absolute ban''. inmates in CMUs are not prohibited outright by these regulations from communicating with clergy, consular officials, or non-immediate family members. These regulations represent a ''floor'' beneath which communications cannot be further restricted. Communication restrictions are tailored to the security needs presented by each CMU inmate, on a case-by-case basis. The regulations contain no ban on written correspondence with these groups, nor any outright ban on telephone calls or visits with these groups, only stating that ''monitored telephone communication *may* be limited to immediate family members only'' (§ 540.204(a)), and that ''regular visiting *may* be limited to immediate family members'' (§ 540.205(a)) (emphasis added), not that it will, in fact, be so limited in every case.

Any such restrictions imposed on an inmate's access to clergy do not violate RFRA. RFRA ''provides that government may substantially burden a person's exercise of religion only if it demonstrates that the burden is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that interest.'' 42 U.S.C. 2000bb–1 (2006). The interest of protecting the security of the facility is a legitimate penological interest that has been consistently upheld by the Supreme Court. *Sandin* v. *Conner,* 515 U.S. 472, 484 (1995); *Block* v. *Rutherford,* 468 U.S. 576, 586 (1984). The Senate Report on RFRA also recognized security of the institution as an interest of the ''highest order.'' S. Rep. 103–111, S. Rep. No. 111, 103rd Cong., 1st Sess. 1993, 1993 U.S.C.C.A.N. 1892, 1899, 1993 WL 286695, 10 (Leg. Hist.) The Bureau has a compelling interest to ensure the safety, security, and orderly operation of Bureau facilities, and protection of the public.

Also, inmates in CMUs are provided the services of Bureau chaplains upon request, per 28 CFR 548.12, for religious care and counseling, thus providing inmates in CMUs an opportunity to engage in communications with clergy. As discussed below, inmates in CMUs are permitted to engage in religious practices and services. Any limitation on the access to clergy is, therefore, not unduly restrictive and satisfies RFRA.

In comments on the restrictions on visiting, some commenters suggested that the restrictions violated the inmates' due process rights, citing *Overton* v. *Bazzetta,* 539 U.S. 126 (2003). In that case, the Supreme Court concluded that there was no violation even though the inmates in that case were denied visiting in certain circumstances because the restrictions were related to penological interests and alternatives were available. *Id.* at 135–36 (noting that telephone and letter communication were available alternatives). Although telephone and visiting contact *may* be limited to immediate family members in these regulations, written correspondence is not limited in this way. Therefore, even if an inmate were to have such restrictions on telephone and visiting contact with the above-mentioned groups, that inmate may correspond in writing with them, within the limits of current regulations, as an alternative method of communication.

No-Contact Visitation in the CMU Is Constitutional Under the First Amendment

Several commenters stated that the CMU's no-contact visitation policy has significantly impacted the ability of inmates in CMUs to maintain close and personal relationships with family members, which results in emotional hardships and psychological issues for both the inmate and the visitor(s). These commenters believe that the no-contact visitation policy violates the inmates' right to free association contained in the First Amendment.

First Amendment rights. Generally, claims of violation of First Amendment rights must be analyzed in light of the policies and goals of the prison. *Pell* v. *Procunier,* 417 U.S. 817, 822 (1974) (''[C]hallenges to prison restrictions that are asserted to inhibit First Amendment interests must be analyzed in terms of the legitimate policies and goals of the corrections system, to whose custody and care the prisoner has been committed in accordance with due process of law.''). A prison regulation or policy that ''impinges on an inmates' constitutional rights. . . is valid if it is reasonably related to a legitimate penological interests.'' *Turner* v. *Safley,* 482 U.S. 78, 89 (1987); *Overton* v. *Bazzetta,* 539 U.S. 126, 132 (2003).

As described above, several factors are relevant to the reasonableness inquiry:

First, there must be a ''valid, rational connection'' between the regulation and the objective set forth to justify it. *Turner,* 482 U.S. at 89. A second factor to consider is whether the inmate has an alternative means of exercising the restricted right. *Id.* at 90. A third factor to consider is the impact of accommodating the asserted right on prison staff, other inmates, and prison resources. *Id.* Last, courts should consider whether the restriction is an ''exaggerated response'' that ignores alternatives that accommodate the inmate's constitutional rights at a de minimis cost to legitimate penological interests. *Id.* at 90–91. The Supreme Court has recognized the particular importance of the first of these factors, explaining that in a given case, the second, third, and fourth *Turner* factors may ''add little, one way or another, to the first factor's basic logical rationale.'' *Beard* v. *Banks,* 548 U.S. 521, 532 (2006).

There Is a Rational Connection Between the Regulation and Its Objective

The purpose of the limitation on contact visits is to effectively monitor the communications of high-risk inmates in order to ensure the safety, security, and good order of Bureau institutions and protection of the public. Security of a facility has been recognized as a valid interest in not permitting contact visitation for pretrial detainees. *Block* v. *Rutherford,* 468 U.S. 576, 586 (1984) (''[T]here is no dispute that internal security of detention facilities is a legitimate governmental interest . . . That there is a valid, rational connection between a ban on contact visits and internal security of a detention facility is too obvious to warrant extended discussion.''). Deference is given to the judgment of prison authorities in devising the policies and practices that further legitimate penological interests. *Id.* at 589.

In *Block* v. *Rutherford,* the Supreme Court addressed a due process challenge to a ban on contact visits between pretrial detainees and their family members and friends. 468 U.S. 576, 578 (1984). Because the case arose in the context of a challenge brought by pretrial detainees, who may not be ''punished prior to an adjudication of guilt in accordance with due process of law,'' the Court asked whether the restriction on contact visits was punitive. *Id.* at 583–84 (internal quotation marks omitted). In making this determination, the Court considered whether the restriction was ''reasonably related to a legitimate governmental objective,'' because if so, ''it does not, without more, amount to punishment.'' *Id.* (internal quotation marks omitted).

The Court found the ban on contact visits helped to prevent the introduction of contraband and reduced the possibility of violent confrontations during visits, and, as a result, promoted the legitimate governmental objective of maintaining the internal security of the prison. *Id.* at 586. Once the Court decided that the restriction on contact visits did not qualify as punishment, its analysis ended, as there was no suggestion that the Constitution might independently provide a right to contact visits. Rather, the Court held ''the Constitution does not require that detainees be allowed contact visits when responsible, experienced administrators have determined, in their sound discretion, that such visits will jeopardize the security of the facility.'' *Id.* at 589.

In *Overton* v. *Bazzetta,* 539 U.S. 126 (2003), the Supreme Court rejected a claim that restrictions on visitation violated the right to association of prisoners and their families under the Due Process Clause and First Amendment. The inmates who challenged the restrictions were all subject to no-contact visitation. *Id.* at 130. The prisoners were required to ''communicate with their visitors through a glass panel,'' and had no opportunity for any physical contact. *Id.* The Third Circuit has explained that ''nothing in *Overton* suggests that non-contact visitation is, by itself, constitutionally suspect; to the contrary, the Court upheld additional restrictions affecting those subject to non-contact visitation.'' *Henry* v. *Dep't of Corrections,* 131 Fed. Appx. 847, 850 (3rd Cir. 2005). The *Overton* decision is also consistent with the Supreme Court's previous holding in *Block* v. *Rutherford* that upheld a blanket ban on contact visits for pretrial detainees. 468 U.S. 576, 578, 586 (1984).

By limiting the contact visits of inmates housed in the CMU, the Bureau seeks to balance First Amendment rights with its correctional mission and the special mission of the CMU. The Bureau has made a judgment that communications between the inmates housed in the CMUs and their visitors must be strictly monitored because the inmates meet one or more of the designation criteria listed in § 540.201. The reasoning for the restrictions is rationally related to the legitimate governmental interest in preserving security, as communications could be easily passed without strict monitoring through a no-contact visit.

There Are Alternative Means of Exercising the Restricted Right

Addressing the second *Turner* factor, we note that the alternatives to contact visitation are other forms of First Amendment expression. The *Turner* Court looked at whether the inmates were deprived of ''all means of expression.'' *Turner,* at 92. Inmates in the CMU, however, are granted no-contact visitation privileges for at least 4 one-hour visits each month (expanded from the proposed rule limitation of one one-hour visit). Further, inmates are permitted to maintain relationships through mediums other than visiting, such as through monitored correspondence, including carefully monitored email (which we have increased from one per calendar week in the proposed rule to two per calendar week), and telephone calls (which we have increased from one per month to three per month). These alternatives are sufficient forms of communication that meet the *Turner* test.

There Is a High-Risk Impact of Accommodating the Asserted Right on Prison Staff, Other Inmates, and Prison Resources

The third *Turner* factor directs us to examine the impact of permitting the exercise of the asserted right and analyzing its impact. Permitting contact visiting would create a security threat to the staff and the public as a whole. The inmates housed in CMUs are segregated from the rest of the general population and are housed there for a specific reason. The CMUs are general population units designed to closely monitor inmates for whom such monitoring and communication limits have been determined necessary. Such inmates include those for whom communication limits are necessary due to a terrorist link, and also for those who are engaged in activities that threaten the security of the institution or endanger the public. Contact visiting would provide inmates who are at risk for communication threats with opportunities for passing along unauthorized communications.

Alternatives Were Considered

Finally, the fourth *Turner* factor requires consideration of whether alternatives have been considered. Some commenters suggested alternatives to no-contact visiting. The suggested alternatives do not adequately serve the legitimate penological purpose of ensuring the safety of the institution and the public. Some commenters suggested contact visitation in the attorney-client room so that the visit could be live

monitored and recorded at a small cost to the prison. This is not an adequate alternative to the no-contact visitation. No-contact visitation is crucial to carefully monitor the transfer of information between the inmates and their visitors. The visitor and the inmate communicate through a telephone apparatus which is connected to the Bureau-wide inmate telephone system. This system, which records the communications and maintains the recordings, is used in all Bureau facilities and maintains records of all inmate telephone calls. This system is a reliable and powerful tool in the detection and prevention of criminal activities and disciplinary infractions. Monitoring via this system also permits correctional officials to immediately terminate communication taking place on the phone, whereas it is harder to immediately stop a prohibited communication during a contact visit.

Also, the inmate telephone system consists of digital recordings which accurately store the conversations. These digital recordings are also easily maintained, retrieved, and used for law enforcement purposes and the detection of disciplinary infractions. Attorney-client visits, however, are *not* audio-monitored and attorneys and their clients do not communicate through the use of a telephone. An alternative means to record the communications between inmates and their visitors would not be as reliable as the inmate telephone system already in place. In addition, no-contact visitation eliminates the danger of introduction of contraband, including drugs and weapons, into the institution.

The CMU restrictions satisfy the *Turner* test. The CMU regulation is rationally related to the governmental interest of preserving the orderly running of the institution and protection of the public by allowing the Bureau to monitor inmate communications with members of the public, while providing inmates with the means to maintain their ties to the community.

A Prohibition on Contact Visitation Does Not Violate the Eighth Amendment

Some commenters stated that no-contact visiting constitutes ''cruel and unusual punishment'' in violation of the Eighth Amendment of the U.S. Constitution. U.S. Const. amend. VIII.

A punishment violates the Eighth Amendment when it is incompatible with ''the evolving standards of decency that mark the progress of a maturing society.'' *Trop* v. *Dulles,* 356 U.S. 86, 101 (1958). For instance, the Eighth Amendment is violated if there is ''deliberate indifference to serious medical needs of prisoners,'' *Estelle* v. *Gamble,* 429 U.S. 97, 104 (1976); when the conditions are ''grossly disproportionate to the severity of the crime warranting imprisonment,'' *Rhodes* v. *Chapman,* 452 U.S. 337, 347 (1981); or when inmates are deprived of basic human needs. *Hutto* v. *Finney,* 437 U.S. 678 (1978). As the Supreme Court has explained,

> Conditions other than those in *Gamble* and *Hutto,* alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities. Such conditions could be cruel and unusual under the contemporary standard of decency . . . But conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.

Rhodes, at 347.

The conditions of confinement present in the CMUs are not grossly disproportionate to the crimes committed by the inmates assigned to it. In fact, the inmates were placed in the CMU specifically because their offense of conviction, offense conduct, disciplinary record or other verified information raised serious concerns about their communications with members of the public and close monitoring of those communications was needed in order to preserve the security of the Bureau institutions and protect the public. As we stated in the proposed rule, under the regulation, inmates may be designated to a CMU if:

- The inmate's current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism;
- The inmate's current offense(s) of conviction, offense conduct, or activity while incarcerated, indicates a substantial likelihood to encourage, coordinate, facilitate, or otherwise act in furtherance of, illegal activity through communication with persons in the community;
- The inmate has attempted, or indicates a substantial likelihood, to contact victims of the inmate's current offense(s) of conviction;
- The inmate committed a prohibited activity related to misuse/abuse of approved communication methods while incarcerated; or
- There is any other evidence of a potential threat to the safe, secure, and orderly operation of prison facilities, or protection of the public, as a result of the inmate's communication with persons in the community.

Ultimately, the inmates are not being deprived of basic human needs by not permitting them to have physical contact with family or community members. The inmates are permitted to have visitors, although it is through no-contact visits, write letters, and make telephone calls to their family members, albeit under closer monitoring. Inmates are not completely deprived of all contact with family or community members.

The no-contact visitation policy is a reasonable communication restriction that is within the discretion of prison authorities to implement. It does not approach the level of a cruel and unusual condition of confinement proscribed by the Eighth Amendment.

Conditions of CMU Confinement Are Not ''Atypical and Significant''

Several commenters stated that conditions of confinement in the CMU were ''atypical and significant,'' thereby creating a liberty interest protected by the Due Process Clause.

As discussed above, even where the Due Process Clause does not itself create a liberty interest, the government may create one where a prison restriction imposes an ''atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.'' *Sandin,* 515 U.S. at 484. In *Sandin,* the Court found that the disciplinary transfer of an inmate for 30 days to solitary confinement ''did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest.'' 515 U.S. at 486–87; *id.* at 494 (Breyer, J., dissenting) (describing conditions of confinement.) This is because the punishment ''mirrored those conditions imposed upon inmates in administrative segregation and protective custody.'' *Id.* at 486.

Based on *Sandin,* the D.C. Circuit has sought to define the ''ordinary incidents of prison life'' for purposes of creating a baseline that can be used to determine whether a particular restriction is atypical and significant. In *Hatch* v. *District of Columbia,* the D.C. Circuit rejected treating the conditions of prison life in the general population as the appropriate baseline. 184 F.3d 846, 856–58 (D.C. Cir. 1999). Instead, *Hatch* explains that the conditions that are imposed in administrative segregation should be used in determining what constitutes the ''ordinary incidents of prison life.'' *Id.* at 855–85.

Accordingly, the determination of what is atypical and significant should be made in comparison with the ''most restrictive confinement conditions that prison officials, exercising their

administrative authority to ensure institutional safety and good order, routinely impose on inmates serving similar sentences.'' *Id.* at 856. In making this determination, the nature of the restriction and its duration should both be considered. *Id.* at 858.

Under *Sandin* and *Hatch,* the loss of contact visits and reduced time for visits and telephone calls do not constitute an ''atypical and significant'' deprivation. While the Bureau's visiting regulations only require four hours of visitation per month (28 CFR 540.43), inmates in CMUs have been allowed as much as eight hours of visits per month—above the CMU proposed rule's one-hour ''floor'' (which the final rule changes to conform to the current visiting regulation limit of four one-hour visits per month). And consistent with the Warden's authority to ''restrict inmate visiting when necessary to ensure the security and good order of the institution,'' 28 CFR 540.40, Bureau regulations expressly contemplate the possibility that inmates will lose contact visitation privileges based on security concerns. *Id.* § 540.51(h)(2) (noting that ''[s]taff shall permit limited physical contact . . . unless there is clear and convincing evidence that such contact would jeopardize the safety or security of the institution). As described above, the Bureau has made a determination that threats to the security of its facilities and/or the public justify the imposition of no-contact visits.

Inmate telephone use ''is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public,'' and requires only that an inmate who is not on discipline receive one three minute telephone call each month. *Id.* § 540.100(a)–(b); § 540.101(d); *id.* § 540.100(a) (stating that ''[t]elephone privileges are a supplemental means'' of communicating with persons in the community). In contrast, some inmates in CMUs have received more telephone minutes than is required under the agency's regulations. Also, the final rule expands the telephone limitations from one call per month to three calls per month.

In short, the CMU's communication restrictions do not constitute the kind of ''extraordinary treatment'' required to find a government-created liberty interest. *Smith* v. *U.S.,* 277 F.Supp.2d at 113 (no ''atypical and significant'' deprivation due to prison transfer because prisoner was not subject to any extraordinary treatment, but instead transfer was an issue within the ''day-to-day management of prisons.'') (quoting *Franklin* v. *District of Columbia,* 163 F.3d 625, 634–35 (D.C. Cir. 1998)).

Religious Activities for Inmates in CMUs Are Permitted in the Same Manner as Religious Activities for Inmates Who Are Not in CMUs

Some commenters stated that inmates in CMUs are prohibited from certain religious activities, such as congregational prayers, designated chapel space, limited recognition of voluntary religious fasting, and religious studies.

Inmates in CMUs are permitted to pursue religious activities, including prayers, fasting, and studies, to the extent that it does not threaten the safety, security, or good order of the facility or protection of the public. Policies regarding religious practices are the same in the CMUs as for all other Bureau facilities, as outlined in 28 CFR 548.10–20 and the Bureau's policy on religious beliefs and practices.

Inmates in CMUs are permitted to hold several types of prayer in a similar manner as general population inmates. Congregate prayers are allowed in the CMU. Group prayers led by inmates are subject to constant staff supervision. Those who engage in additional prayers, such as individual prayers for Muslims (the five daily prayers) are permitted to do so in their own cells or in a previously designated area while at work or education or may pray independently at their work station. These inmates are provided an area out of the way, so as to not interfere with other operations or be disturbed themselves.

Also, policy recognizes certain fasts as part of the religious practice and others as personal choice. There is a distinction to be made between fasts which are part of religious practice and those that are personal choice. Fasts which are part of religious practice are recognized as a routine practice in the religion; whereas fasts undertaken by personal choice, or to meet personal religious goals, are sporadic or non-routine fasts that are not recognized as routine practice as part of the religion. Inmates are permitted to fast as they see fit to meet their personal religious goals.

A concern among the commenters was that inmates were not allowed to retain food in their cells from scheduled meals in order to eat the food later after their personal fasts. Bureau national policy on food service prohibits inmates, whether in CMUs or in general population, from removing food from the dining hall, except maybe one piece of whole fruit, due to health concerns and to avoid the spoiling of food items. Inmates have been informed if they choose to engage in a personal fast, then they choose to skip the scheduled meal(s) and cannot retain food in their cells from the dining hall. However, inmates in the CMU who raise this issue have been informed that they may purchase food items at the institution commissary for retention and later consumption in their cells.

The Authority of the Assistant Director, Correctional Programs Division, To Approve CMU Designations May Not Be Delegated

Some commenters were concerned that the authority to approve CMU placement might be delegated below the level of Assistant Director.

The Bureau's Assistant Director, Correctional Programs Division, has authority to approve CMU designations. The Assistant Director's decision must be based on a review of the evidence, and a conclusion that the inmate's designation to a CMU is necessary to ensure the safety, security, and orderly operation of correctional facilities, or protection of the public. There is no provision in the regulation that allows for delegation of the Assistant Director's authority.

Additional Issues Raised During the 2014 Comment Period

The following additional miscellaneous issues were raised during the 2014 comment period.

One commenter requested that we ''[e]dit the language of 540.200(b) to include 'Vocational Technical Training, Unicor (FPI),' after 'unit management,' and before 'and work programming,' in order to incorporate these programs with programs already offered to CMU inmates.'' Section 540.200(b) of the proposed rule states that a CMU ''is a general population housing unit where inmates ordinarily reside, eat, and participate in all educational, recreational, religious, visiting, unit management, and work programming, within the confines of the CMU.'' Vocational technical training is included in this phrase, as part of ''all'' educational and work programming activities. Because it is already included in the general list, we will not include this specific reference.

The same commenter requested that we ''[r]eplace the language of 540.203(a) with 'General Correspondence. General written correspondence as defined by part 540, may be limited to three pieces of handwritten correspondence (8.5 X 11 inches or smaller), double-sided, once per calendar week to and from any party on the inmate's approved contact list and an unlimited amount of typed or computer generated correspondence

mailed to or from any party on the inmate's approved contact list.' The Bureau of Prisons has the ability to scan all written correspondence.'' Our proposed rule stated that general written correspondence ''may be limited to three pieces of paper (not larger than 8.5 x 11 inches), double-sided writing permitted, once per calendar week, to and from a single recipient at the discretion of the Warden, except as stated in (c) below. This correspondence is subject to staff inspection for contraband and for content.'' In response to comments received requesting expansion of the three-page limitation, we double the limitation in the final rule to six pieces of paper.

Subsection (c) of this regulation refers to the absence of a volume limitation on mail to and from certain listed correspondents. The commenter would substantively alter this provision to remove ''at the discretion of the Warden'' in favor of ''any party on the inmate's approved contact list.'' We do not make this change because the Warden may choose to temporarily suspend communications with someone that may be on the inmate's approved contact list for a certain period of time due to a time-sensitive threat, so it is more accurate to say that it is in the Warden's discretion. The commenter would also alter this provision to add inmate electronic correspondence. While we currently allow inmates in CMUs access to electronic correspondence in the same manner permitted for general population inmates, electronic correspondence is not specifically mentioned by regulation because it is currently included under the authority of ''general mail'' correspondence. We therefore do not make this edit to the regulations.

One inmate stated that ''the designation criteria described in section 540.201, sections (a) and (b) permit the BOP to confine and [sic] inmate to a CMU merely on the basis of his offense of conviction. This is unwise policy because, as in my case, an inmate's offense alone provides a very limited glimpse of that individual and what level of security measures he may require.'' The inmate also stated that the criteria listed in the proposed rule are unlawful ''because 18 U.S.C. Sec. 3621(b) requires the BOP to consider five factors when designating a prisoner's place of confinement; these include the offense of conviction, but also, *inter alia,* the history and characteristics of the prisoner and the sentencing court's recommendation.'' We do not designate an inmate to the CMU solely on the basis of the criteria described in § 540.201. Rather, if a factor listed in § 540.201 is found to be present, the Bureau's Assistant Director, Correctional Programs Division, is required to conduct a review of the evidence, and make a conclusion that the inmate's designation to a CMU is necessary to ensure the safety, security, and orderly operation of correctional facilities, or protection of the public. This procedure is described in § 540.202(b). The use of the criteria listed in § 540.201 does not preclude consideration of the five factors in 18 U.S.C. Sec. 3621(b), rather, it supplements or details that consideration process. The Assistant Director must consider the inmate's circumstances as a whole, not rely solely on the presence of one criteria listed in § 540.201.

The same commenter stated that ''[t]he responsibility for designation of inmates for SAMs or SAMs-like restrictions should remain with the Attorney General or FBI and not with the BOP.'' As we stated in the 2010 proposed rule, this regulation will be applied differently from regulations in 28 CFR part 501, which authorize the Attorney General to impose special administrative measures (SAMs). Under the CMUs regulations, the Bureau would impose communication limits based on evidence from the FBI or another federal law enforcement agency, or if Bureau information indicates a similar need to impose communication restrictions but does not constitute evidence which rises to the same degree of potential risk to national security or acts of violence or terrorism which would warrant the Attorney General's intervention through a SAM. Further, while SAMs potentially restrict communication entirely, CMUs regulations delineate a floor of limited communication beneath which the Bureau cannot restrict unless precipitated by the inmate's violation of imposed limitations, and then only as a disciplinary sanction following due process procedures in 28 CFR part 541.

Several commenters requested that we exempt inmates with ties to animal rights causes from CMU consideration. We will not favor a group of inmates based upon political affiliation or membership in a group, just as we do not discriminate based upon such factors. We will not make these edits.

One commenter stated that the CMU restrictions violate Article 3 of the Geneva Convention. This article applies ''in the case of armed conflict not of an international character'', which is not applicable in the situation of inmates in CMUs, and refers to ''violence to life and person, in particular, murder of all kinds, cruel treatment and torture'', which, also, is inapplicable in this situation. If the commenter's concern is that CMU restrictions are cruel treatment or torture, our analysis of the Eighth Amendment of the U.S. Constitution earlier in this document applies.

One commenter suggested that ''a review panel of 9 to 13 members whose majority are U.S. citizens not affiliated with the prison or any federal, state, or county agency (including law enforcement agencies) should be put in place to approve or disapprove of the initial assignment of a prisoner to a CMU and of the continuation of a prisoner's assignment to a CMU after each 28 days spent in a CMU.'' This suggestion is impracticable because the Bureau does not use, nor is it statutorily authorized to use, citizen groups for federal inmate designation. Two commenters suggested that ''CMUs should be required to keep a secure log of all CMU-assignment and CMU-release decisions and the rationale for each decision regarding prisoner assignment or release from a CMU.'' The Bureau currently maintains such assignment, release and rationale information securely, although not in in the ''log'' form that the commenter suggests. The commenters also suggest that such information about inmates in CMUs ''should be made available upon request to family members of the prisoner or to attorneys working on behalf of the prisoner.'' The commenters would also request that, ''[e]ach month a statistical summary of the number of prisoners in CMUs or the number of prisoners moved to or released from a CMU should be made available publicly on an Internet site.'' Information regarding inmates is protected by the Freedom of Information Act and Privacy Act, and is accessible through procedures authorized by those statutes under 28 CFR part 513, regarding access to records.

Finally, a large number of commenters mistakenly believed that the proposed rule would permit ''experimentation'' on inmates in CMUs. This is simply untrue. As stated in § 540.200(c), ''[t]he purpose of CMUs is to provide an inmate housing unit environment that enables staff to more effectively monitor communication between inmates in CMUs and persons in the community.'' Neither the proposed rule nor the preamble to the proposed rule mention experimentation on inmates, nor does the Bureau intend to conduct experiments on inmates in CMUs.

For the aforementioned reasons, the Bureau finalizes the regulations

proposed on April 6, 2010 (75 FR 17324), with minor changes.

Executive Order 13563 and Executive Order 12866

This regulation falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

The Bureau of Prisons has assessed the costs and benefits of this regulation as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. There will be no new costs associated with this regulation. CMUs are set up in currently existing facilities, utilizing currently existing staff and resources, and no new staff and resources are required to implement these regulations. In fact, placing inmates who require communication restrictions together in a CMU decreases costs related to translation, technology use, and use of other such monitoring resources that had previously been spread throughout the Bureau in order to enable communication restrictions on inmates in general population facilities. CMUs enable the Bureau to pool such resources and concentrate them in the CMU locations. This regulation benefits public safety by minimizing the risk of dangerous communication to or from inmates in Bureau custody. This regulation clarifies the Bureau's current authority to limit and monitor the communication of inmates in CMUs, but maintains the ability of these inmates to maintain family ties and access to courts and other government officials. This permits inmates to raise issues related to their incarceration or their conditions of confinement, while minimizing potential internal or external threats.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders and detainees committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 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 companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 540

Prisoners.

Charles E. Samuels, Jr.,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 540 as follows.

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

■ 1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301; 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Add a new subpart J, to read as follows:

Subpart J—Communications Management Housing Units

Sec.

540.200 Purpose and scope.
540.201 Designation criteria.
540.202 Designation procedures.
540.203 Written correspondence limitations.
540.204 Telephone communication limitations.
540.205 Visiting limitations.

Subpart J—Communications Management Housing Units

§ 540.200 Purpose and scope.

(a) *Purpose of this subpart.* This subpart defines the Federal Bureau of Prisons' (Bureau) authority to operate, and designate inmates to, Communications Management Housing Units (CMUs) within Bureau facilities.

(b) *CMU.* A CMU is a general population housing unit where inmates ordinarily reside, eat, and participate in all educational, recreational, religious, visiting, unit management, and work programming, within the confines of the CMU. Additionally, CMUs may contain a range of cells dedicated to segregated housing of inmates in administrative detention or disciplinary segregation status.

(c) *Purpose of CMUs.* The purpose of CMUs is to provide an inmate housing unit environment that enables staff to more effectively monitor communication between inmates in CMUs and persons in the community. The ability to monitor such communication is necessary to ensure the safety, security, and orderly operation of correctional facilities, and protection of the public. The volume, frequency, and methods, of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart.

(d) *Application.* Any inmate (as defined in 28 CFR 500.1(c)) meeting criteria prescribed by this subpart may be designated to a CMU.

(e) *Relationship to other regulations.* The regulations in this subpart supersede and control to the extent they conflict with, are inconsistent with, or impose greater limitations than the regulations in this part, or any other regulations in this chapter, except 28 CFR part 501.

§ 540.201 Designation criteria.

Inmates may be designated to a CMU if evidence of the following criteria exists:

(a) The inmate's current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism;

(b) The inmate's current offense(s) of conviction, offense conduct, or activity

while incarcerated, indicates a substantial likelihood that the inmate will encourage, coordinate, facilitate, or otherwise act in furtherance of illegal activity through communication with persons in the community;

(c) The inmate has attempted, or indicates a substantial likelihood that the inmate will contact victims of the inmate's current offense(s) of conviction;

(d) The inmate committed prohibited activity related to misuse or abuse of approved communication methods while incarcerated; or

(e) There is any other substantiated/credible evidence of a potential threat to the safe, secure, and orderly operation of prison facilities, or protection of the public, as a result of the inmate's communication with persons in the community.

§ 540.202 Designation procedures.

Inmates may be designated to CMUs only according to the following procedures:

(a) *Initial consideration.* Initial consideration of inmates for CMU designation begins when the Bureau becomes aware of information relevant to the criteria described in § 540.201.

(b) *Assistant Director authority.* The Bureau's Assistant Director, Correctional Programs Division, has authority to approve CMU designations. The Assistant Director's decision must be based on a review of the evidence, and a conclusion that the inmate's designation to a CMU is necessary to ensure the safety, security, and orderly operation of correctional facilities, or protection of the public.

(c) *Written notice.* Upon arrival at the designated CMU, inmates will receive written notice from the facility's Warden explaining that:

(1) Designation to a CMU allows greater Bureau staff management of communication with persons in the community through complete monitoring of telephone use, written correspondence, and visiting. The volume, frequency, and methods of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart;

(2) General conditions of confinement in the CMU may also be limited as necessary to provide greater management of communications;

(3) Designation to the CMU is not punitive and, by itself, has no effect on the length of the inmate's incarceration. Inmates in CMUs continue to earn sentence credit in accordance with the law and Bureau policy;

(4) Designation to the CMU follows the Assistant Director's decision that such placement is necessary for the safe, secure, and orderly operation of Bureau institutions, or protection of the public. The inmate will be provided an explanation of the decision in sufficient detail, unless the Assistant Director determines that providing specific information would jeopardize the safety, security, and orderly operation of correctional facilities, or protection of the public;

(5) Continued designation to the CMU will be reviewed regularly by the inmate's Unit Team under circumstances providing the inmate notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates;

(6) The inmate may challenge the CMU designation decision, and any aspect of confinement therein, through the Bureau's administrative remedy program.

§ 540.203 Written correspondence limitations.

(a) *General correspondence.* General written correspondence as defined by this part, may be limited to six pieces of paper (not larger than 8.5 x 11 inches), double-sided writing permitted, once per calendar week, to and from a single recipient at the discretion of the Warden, except as stated in (c) below. This correspondence is subject to staff inspection for contraband and for content.

(b) *Special mail.* (1) Special mail, as defined in this part, is limited to privileged communication with the inmate's attorney.

(2) All such correspondence is subject to staff inspection in the inmate's presence for contraband and to ensure its qualification as privileged communication with the inmate's attorney. Inmates may not seal such outgoing mail before giving it to staff for processing. After inspection for contraband, the inmate must then seal the approved outgoing mail material in the presence of staff and immediately give the sealed material to the observing staff for further processing.

(c) *Frequency and volume limitations.* Unless the quantity to be processed becomes unreasonable or the inmate abuses or violates these regulations, there is no frequency or volume limitation on written correspondence with the following entities:

(1) U.S. courts;

(2) Federal judges;

(3) U.S. Attorney's Offices;

(4) Members of U.S. Congress;

(5) The Bureau of Prisons;

(6) Other federal law enforcement entities; or

(7) The inmate's attorney (privileged communications only).

(d) Electronic messaging may be limited to two messages, per calendar week, to and from a single recipient at the discretion of the Warden.

§ 540.204 Telephone communication limitations.

(a) *Monitored telephone communication* may be limited to immediate family members only. The frequency and duration of telephone communication may also be limited to three connected calls per calendar month, lasting no longer than 15 minutes. The Warden may require such communication to be in English, or translated by an approved interpreter.

(b) *Unmonitored telephone communication* is limited to privileged communication with the inmate's attorney. Unmonitored privileged telephone communication with the inmate's attorney is permitted as necessary in furtherance of active litigation, after establishing that communication with the verified attorney by confidential correspondence or visiting, or monitored telephone use, is not adequate due to an urgent or impending deadline.

§ 540.205 Visiting limitations.

(a) *Regular visiting* may be limited to immediate family members. The frequency and duration of regular visiting may also be limited to four one-hour visits each calendar month. The number of visitors permitted during any visit is within the Warden's discretion. Such visits must occur through no-contact visiting facilities.

(1) Regular visits may be simultaneously monitored and recorded, both visually and auditorily, either in person or electronically.

(2) The Warden may require such visits to be conducted in English, or simultaneously translated by an approved interpreter.

(b) *Attorney visiting* is limited to attorney-client privileged communication as provided in this part. These visits may be visually, but not auditorily, monitored. Regulations and policies previously established under 28 CFR part 543 are applicable.

(c) For convicted inmates (as defined in 28 CFR part 551), regulations and policies previously established under 28 CFR part 543 are applicable.

[FR Doc. 2015–01024 Filed 1–21–15; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2013–0018]

RIN 1625–AA01

Anchorage Regulations; Port of New York

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published a final rule in the **Federal Register** on January 15, 2015, to establish and modify anchorage grounds within the Port of New York. One of the amendatory instructions for an existing regulation, which was intended to revise only paragraph (f)(2), mistakenly indicated that all of paragraph (f) was being revised. This rule corrects that error.

DATES: This rule is effective February 17, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Sector New York, Waterways Management Division, U.S. Coast Guard; telephone 718–354–4195, Email *Jeff.M.Yunker@uscg.mil* or Chief Craig Lapiejko, Coast Guard First District Waterways Management Branch, telephone 617–223–8385, Email *Craig.D.Lapiejko@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Viewing Documents Associated With This Rule

To view the final rule published on January 15, 2015 (80 FR 2011), or other documents in the docket for this rulemaking, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

Background

On January 15, 2015, the Coast Guard published a final rule (80 FR 2011) to establish and modify anchorage grounds within the Port of New York. The rule becomes effective February 17, 2015. There was an error in an amendatory instruction in that rule and as reflected in 33 CFR 1.05–1(h), the Chief, Office of Regulations and Administrative Law (CG–0943), has authority to issue corrections to rules.

Need for Correction

In attempting to revise paragraph (f)(2) of 33 CFR 110.155, we mistakenly referred to paragraph (f) in amendatory instruction 2 on page 80 FR 2013 of that rule. This rule fixes that error by correcting the amendatory instruction.

Correction

In rule FR Doc. 2015–00465, published on January 15, 2015, (80 FR 2011), make the following correction:

On page 2013, in the second column, on line 9, correct the paragraph reference ''(f)'' to read ''(f)(2)''.

Dated: January 15, 2015.

Katia Cervoni,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2015–00922 Filed 1–21–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–1066]

Drawbridge Operating Regulations; Atchafalaya River, Morgan City, Louisiana

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; modification of effective date.

SUMMARY: The Coast Guard is modifying the effective date of a published temporary deviation from the operating schedule that governs the Morgan City (Berwick Bay) Railroad Bridge across the Atchafalaya River, mile 17.5 (Gulf Intracoastal Waterway (Morgan City-Port Allen Alternate Route) mile 0.3) in Morgan City, St. Mary Parish, Louisiana. The modification of the date is necessary to further minimize the effects on navigation caused by additional repairs required for the bridge. The deviation is necessary to complete the previously approved repairs and to allow additional repairs to the fender system. This deviation allows for the bridge to remain closed to navigation for four consecutive hours in the morning and three hours in the afternoon with an opening in the middle to pass vessels for five weekdays over a two-week period.

DATES: The deviation published in the **Federal Register** on January 16, 2015 (80 FR 2302), is effective from 7 a.m. to 11 a.m. and then again from 1 p.m. through 4 p.m. on February 4 through 6, 2015, and then again February 9 and 10, 2015.

ADDRESSES: The docket for this deviation, [USCG–2014–1066] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Geri Robinson, Bridge Administration Branch, Coast Guard, telephone (504) 671–2128, email *geri.a.robinson@uscg.mil.* If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202–366–9826

SUPPLEMENTARY INFORMATION: On January 16, 2014, the Coast Guard's notice of temporary deviation from regulations under the same docket number, USCG–2014–1066 was published in the **Federal Register** (80 FR 2302). That document resulted from the BNSF Railway Company's request for a temporary deviation, occurring from January 26, 2015 to January 31, 2015, from the normal operation of the drawbridge to perform the installation of new generators and remove the old festoon cable. Subsequent to the approval of that request, BNSF Railway Corporation requested a second temporary deviation for dates in early February to complete additional repairs to the fender system of the bridge. Coordination between all interested parties determined that all work could be accomplished during one scheduled closure occurring in early February, 2015. This new scheduling avoids two separate deviations causing a longer term impact on navigation. Therefore, through this document, the Coast Guard modifies the dates of the previously approved temporary deviation. The modification allows the drawbridge of the Morgan City (Berwick Bay) Railroad Bridge across the Atchafalaya River, mile 17.5 (Gulf Intracoastal Waterway (Morgan City-Port Allen Alternate Route) mile 0.3), to remain closed to navigation for four consecutive hours in the morning and three hours in the afternoon, with an opening from 11 a.m. to 1 p.m. to allow vessels to pass. The deviation is effective from 7 a.m. to 11 a.m. and then again from 1 p.m. through

4 p.m. daily, resulting in the bridge being closed to navigation on the following days: Wednesday, February 4, 2015, to Friday, February 6, 2015, and Monday, February 9, 2015, to Tuesday, February 10, 2015.

Notices of the deviation schedule will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System. A Broadcast Notice to Mariners will be used to update mariners of any changes to the planned schedule for this deviation.

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

Dated: January 15, 2015.

David M. Frank,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2015–00924 Filed 1–21–15; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14–156, RM–11725, DA 15–9]

Radio Broadcasting Services; Silverton, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Chris Samples Broadcasting, Inc., licensee of Station KXDJ(FM), Channel 252C2, Spearman, Texas, the Audio Division amends the FM Table of Allotments, by substituting Channel 221A for vacant Channel 252A at Silverton, Texas to accommodate the Application that requests to upgrade the facilities of Station KXDJ(FM) from Channel 252C2 to Channel 252C1 at Spearman, Texas. The channel substitution at Silverton, Texas would be in the public interest because it would accommodate the Application and eliminate the Station KICA–FM 73.215 short-spacing. A staff engineering analysis indicates that Channel 221A can be allotted to Silverton, Texas consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction located 7.8 kilometers (4.9 miles) east of Silverton. The reference coordinates are 34–28–15 NL and 101–13–09 WL.

DATES: Effective February 23, 2015.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 14–156, adopted January 8, 2015, and released January 9, 2015. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 252A at Silverton; and by adding Channel 221A at Silverton.

[FR Doc. 2015–01023 Filed 1–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–147; DA 12–513]

Radio Broadcasting Services; Alamo, GA; Alton, MO; Boscobel, WI; Buffalo, OK; Cove, AR; Clayton, LA; Daisy, AR; Ennis, MT; Erick, OK; Grayville, IL; Harrison, MI; Haworth, OK; Leedey, OK; Owen, WI; Reydon, OK; Taloga, OK; Thomas, OK; Tigerton, WI; Weinert, TX; and Wright City, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, on its own motion, deletes eighteen vacant allotments in various communities in Arkansas, Georgia, Illinois, Louisiana, Missouri, Montana, Oklahoma, Texas, and Wisconsin. These vacant allotments have been auctioned through our competitive bidding process, and are considered unsold permits that were included in Auction 91. We are deleting these vacant allotments from the FM Table, because there were no *bona fide* expressions of interest filed to retain these eighteen vacant allotments. Deletion of these allotments may create other opportunities in nearby communities for new FM allotments or upgrades of existing stations. We conclude that the deletion of these vacant allotments could promote a more effective and efficient use of the FM broadcast spectrum. The Commission's policy is not to delete a FM allotment where a *bona fide* expression of interest exists, absent a compelling reason to do so. Accordingly, we will not delete Channel 280A at Harrison, Michigan and Channel 295A at Tigerton, Wisconsin because *bona fide* expressions of interest were filed to retain these vacant channels for a future auction.

DATES: Effective January 22, 2015.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 11–147, adopted March 30, 2012, and released April 2, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. The complete text of this document may also be purchased from the Commission's

duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Amend § 73.202(b) Table of FM Allotments as follows:

■ a. Remove Cove, under Arkansas, Channel 232A and Daisy, Channel 293C3.

■ b. Remove Alamo, under Georgia, Channel 287C3.

■ c. Remove Grayville, under Illinois, Channel 229A.

■ d. Remove Clayton, under Louisiana, Channel 266A.

■ e. Remove Alton, under Missouri, Channel 290A.

■ f. Remove Buffalo, under Oklahoma, Channel 224C2; Erick, Channel 259C2; Haworth, Channel 294A; Leedey, Channel 297A; Reydon, Channel 264C2; Taloga, Channel 226A; Thomas, Channel 288A; and Wright City, Channel 226A.

■ g. Remove Weinert, under Texas, Channel 266C3.

■ h. Remove Boscobel, under Wisconsin, Channel 244C3; and Owen, Channel 242C3.

[FR Doc. 2015–01017 Filed 1–21–15; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 80, No. 14
Thursday, January 22, 2015

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.

OFFICE OF SPECIAL COUNSEL

5 CFR Part 1800

Revision of Regulations To Allow Federal Contractors, Subcontractors, and Grantees To File Whistleblower Disclosures With the U.S. Office of Special Counsel

AGENCY: U.S. Office of Special Counsel.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Office of Special Counsel (OSC) proposes revising its regulations to accept covered disclosures of wrongdoing from employees working under a contract or grant with the Federal government.

DATES: Written or electronic comments must be received on or before March 23, 2015.

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

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Email: *lterry@osc.gov.* Include ''NPRM'' in the subject line of the message.
- Fax: (202) 254–3711.
- Mail: Office of General Counsel, 1730 M Street NW., Suite 218, Washington, DC 20036.
- Hand Delivery/Courier: Office of General Counsel, 1730 M Street NW., Suite 218, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Lisa V. Terry, General Counsel, U.S. Office of Special Counsel, by telephone at (202) 254–3600, by facsimile at (202) 254–3711, or by email at *lterry@osc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Special Counsel (OSC) proposes to revise its regulations to expand who may file a whistleblower disclosure with OSC. This revision will allow employees of Federal contractors, subcontractors, and grantees to disclose wrongdoing within the Federal government if they work at or on behalf of a U.S. government component for which OSC has jurisdiction to accept disclosures.

Congress implemented the Civil Service Reform Act of 1978 (CSRA), Public Law 95–454, 92 Stat. 1111, and the Whistleblower Protection Act (WPA), Public Law 101–12, 103 Stat. 17, codified at 5 U.S.C. 1201, *et seq.,* in order to encourage Federal employees to report government fraud, waste, and abuse and to provide protections for Federal employees who blow the whistle on government wrongdoing. Title 5, Section 1213 of the U.S. Code provides that Federal employees, former employees, or applicants for Federal employment may disclose to OSC information that they reasonably believe shows a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

Hence, since 1979, Congress has deputized Federal employees, as insiders, to safely disclose wrongdoing they witness or experience in the workplace. The Federal workforce has changed significantly since the passage of the CSRA, notably in the government's increased reliance on contractors. In the modern workforce, employees of contractors, subcontractors, and grantees (collectively ''contractors'') often work alongside Federal employees, having similar if not identical duties. Thus contractors are similarly situated to observe or experience the same type of wrongdoing as are Federal employees. According contractors a safe channel to report wrongdoing within the government advances Congress's purpose in enacting the CSRA and WPA. Moreover, Congress recently extended protection against retaliation to government contractors who make whistleblower disclosures, thereby signaling its encouragement of such disclosures. OSC deems such protection against retaliation a precondition to asking insiders to risk their careers to report wrongdoing.

The National Defense Authorization Act of 2013 (NDAA), passed by Congress and signed into law by the President, established a ''pilot program'' to enhance contractor protection from reprisal for a disclosure of information that the contractor reasonably believes is evidence of gross mismanagement of a Federal contract or grant; a gross waste of Federal funds; an abuse of authority relating to a Federal contract or grant; a substantial and specific danger to public health or safety; or a violation of law, rule or regulation related to a Federal contract or grant. *See* Public Law 113–1421, 41 U.S.C. 4712. The NDAA closely tracks the language of the WPA concerning the type of information that may be disclosed and covers disclosures made to, among others, an ''authorized official of the Department of Justice or other law enforcement agency.'' 41 U.S.C. 4712(a)(2)(E). As a law enforcement agency, and pursuant to its authority under 5 U.S.C. 1213, OSC may receive disclosures from employees of contractors who are covered by the NDAA. The disclosure must concern wrongdoing in the government as described in the NDAA.

Under the proposed rule, OSC may receive disclosures from current and former contractors who allege retaliation for making a protected disclosure under 41 U.S.C. 4712, if they work or worked on behalf of a U.S. government agency in which Federal employees are themselves eligible to file disclosures. The proposed rule will therefore limit OSC's review of disclosures by Federal contractors to those who are both covered by the NDAA and working at agencies over which OSC already has jurisdiction pursuant to 5 U.S.C. 1213. For example, OSC lacks jurisdiction over employees of the U.S. Postal Service and, therefore, will not have jurisdiction over disclosures made by contractors working for the U.S. Postal Service. See OSC's Web site at *www.osc.gov* for a complete listing of agencies over which OSC does not have jurisdiction.

As with disclosures made by Federal employees pursuant to 5 U.S.C. 1213, any disclosure made by a contractor that involves foreign intelligence or counterintelligence information that is specifically prohibited by law or by Executive Order will be transmitted to the National Security Advisor, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the U.S. Senate. 5 U.S.C. 1213(j). The transmission will terminate OSC's involvement with the disclosure.

Once a disclosure is received from an eligible contractor, OSC will evaluate the information and make a determination as to whether there is a ''substantial likelihood'' that it discloses

wrongdoing pursuant to the provisions of section 1213. A contractor working at a Federal facility, alongside Federal employees and under the line supervision of a Federal employee, is virtually in an identical posture to a Federal employee. As such, his/her disclosure will likely carry a comparable degree of reliability as that of a Federal employee. On the other hand, if a contractor's situation differs greatly from that of a Federal employee, it is less likely that OSC will be able to find that the contractor has credible information about government wrongdoing needed to make a substantial likelihood finding. For example, an off-site contractor, or one not working under Federal line supervision, is much less likely to directly encounter government wrongdoing and, therefore, may not have sufficiently reliable information. For that reason, to meet the ''substantial likelihood'' threshold, he or she may be required to produce compelling documentary information establishing government wrongdoing.

If OSC determines that a disclosure meets the ''substantial likelihood'' threshold, the Special Counsel will refer the matter to the relevant agency head, who will be required to conduct an investigation into the disclosure. The identity of a contractor who makes a disclosure to OSC will not be revealed without his or her consent, unless the Special Counsel determines that there is an imminent danger to public health or safety, or an imminent violation of criminal law. OSC does not consider anonymous disclosures. Any disclosure submitted anonymously will be referred to the Office of Inspector General at the appropriate agency.

Contractors who wish to report government wrongdoing to OSC under this rule will be encouraged to use OSC Form 12, which is available at OSC's Web site, *www.osc.gov.* Contractors who wish to report a prohibited personnel practice, including retaliation for whistleblowing, will be required do so through the NDAA's pilot program delineated at 41 U.S.C. 4712. This rule will remain in effect as long as the provisions of the NDAA's ''pilot program'' are in force.

Procedural Determinations

Administrative Procedure Act (APA): This action is taken under the Special Counsel's authority at 5 U.S.C. 1212(e) to publish regulations in the **Federal Register**. Interested persons are invited to submit written comments on this proposed amendatory rulemaking. The comments will be carefully considered and any appropriate changes will be made before a final rule is adopted and published in the **Federal Register**.

Executive Order 12866 (Regulatory Planning and Review): OSC does not anticipate that that this proposed rule will have significant economic impact, raise novel issues, and/or have any other significant impacts. Thus, this proposed rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require the Office of Management and Budget to conduct an assessment of potential costs and benefits under 6(a)(3) of the order.

Congressional Review Act (CRA): OSC has determined that this proposed rule is not a major rule under the Congressional Review Act as it is unlikely to result in an annual effect on the economy of $100 million or more; or to result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions; or to have a significant adverse effect on competition, employment, investment, productivity, or innovation or on the ability of U.S.-based enterprises to compete in domestic and export markets.

Regulatory Flexibility Act (RFA): The Special Counsel certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it primarily affects wrongdoing in the Federal government.

Unfunded Mandates Reform Act (UMRA): This proposed revision does not impose any Federal mandates on State, local, or tribal governments, or on the private sector within the meaning of the UMRA.

National Environmental Policy Act (NEPA): This proposed rule will have no physical impact upon the environment and, therefore, will not require any further review under NEPA.

Paperwork Reduction Act (PRA): This proposed rule does not impose any new recordkeeping, reporting, or other information collection requirements on the public.

Executive Order 13132 (Federalism): This proposed revision does not have new Federalism implications under Executive Order 13132.

Executive Order 12988 (Civil Justice Reform): This proposed rule meets applicable standards of 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 5 CFR Part 1800

Administrative practice and procedure, Government employees, Investigations, Law enforcement, Whistleblowing.

For the reasons stated in the preamble, OSC proposes to amend 5 CFR part 1800 as follows:

PART 1800—FILING OF COMPLAINTS AND ALLEGATIONS

■ 1. The authority citation for 5 CFR part1800 continues to read as follows:

Authority: 5 U.S.C. 1212(e).

■ 2. Section 1800.2 is revised to read as follows:

§ 1800.2 Filing disclosures of information.

(a) *General.* OSC is authorized by law (at 5 U.S.C. 1213) to provide an independent and secure channel for use by current or former Federal employees and applicants for Federal employment in disclosing information that they reasonably believe shows wrongdoing by a Federal agency. Additionally, OSC may receive disclosures of wrongdoing from current and former Federal contractors, subcontractors, and grantees (collectively, ''contractors'') that are cognizable under 41 U.S.C. 4712. Upon receipt of a disclosure, whether from a current or former Federal employee or applicant or from a contractor or former contractor, OSC must determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. If OSC does make a substantial likelihood determination, it shall refer the information to the agency head involved for investigation and a written report on the findings to the Special Counsel, pursuant to 5 U.S.C. 1213(c). The law does not authorize OSC to investigate the subject of a disclosure.

(b) *Procedures for filing disclosures.* Current or former employees, applicants for Federal employment, and current and former contractors, subcontractors, and grantees whose disclosures are cognizable under 41 U.S.C. 4712 may file a disclosure of the type of information described in paragraph (a) of this section with OSC. Such disclosures must be filed in writing (including electronically—see paragraph (b)(3)(iii) of this section).

(1) Filers are encouraged to use Form OSC–12 (''Disclosure of Information'') to file a disclosure of the type of information described in paragraph (a) of this section with OSC. This form provides more information about OSC jurisdiction, and procedures for processing whistleblower disclosures. Form OSC–12 is available:

(i) By writing to OSC, at: Office of Special Counsel, Disclosure Unit, 1730

M Street, NW., Suite 218, Washington, DC 20036–4505;

(ii) By calling OSC, at: (800) 572–2249 (toll-free), or (202) 254–3600 (in the Washington, DC area); or

(iii) Online, at: *http://www.osc.gov* (to print out and complete on paper, or to complete online).

(2) Filers may use another written format to submit a disclosure to OSC, but the submission should include:

(i) The name, mailing address, and telephone number(s) of the person(s) making the disclosure(s), and a time when OSC can contact that person about his or her disclosure;

(ii) The department or agency, location and organizational unit complained of; and

(iii) A statement as to whether the filer consents to disclosure of his or her identity by OSC to the agency involved in connection with any OSC referral to that agency.

(3) A disclosure can be filed in writing with OSC by any of the following methods:

(i) By mail, to: Office of Special Counsel, Disclosure Unit, 1730 M Street NW., Suite 218, Washington, DC 20036–4505;

(ii) By fax, to: (202) 254–3711; or

(iii) Electronically, at: *http://www.osc.gov.*

Dated: January 14, 2015.

Mark P. Cohen,

Principal Deputy Special Counsel.

[FR Doc. 2015–00753 Filed 1–21–15; 8:45 am]

BILLING CODE 7405–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2015–0002; Notice No. 146]

RIN 1513–AC12

Proposed Establishment of the Squaw Valley–Miramonte Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 44,690-acre ''Squaw Valley–Miramonte'' viticultural area in Fresno County, California. The proposed viticultural area does not overlap any established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by March 23, 2015.

ADDRESSES: Please send your comments on this notice to one of the following addresses:

- *Internet: http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2015–0002 at ''Regulations.gov,'' the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing or view or obtain copies of the petition and supporting materials.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes the standards for petitions requesting the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the region within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed viticultural AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Squaw Valley–Miramonte Petition

TTB received a petition from Christine Flannigan, owner of the Sierra Peaks Winery and Purgatory Vineyards, on behalf of herself and other members of the Squaw Valley Grape Growers Group, proposing the establishment of the ''Squaw Valley–Miramonte'' AVA. The proposed Squaw Valley–Miramonte AVA is located in Fresno County, California, approximately 40 miles east of the city of Fresno. The proposed AVA is a largely rural region in the foothills of the Sierra Nevada Mountains and includes the communities of Squaw Valley, Dunlap, and Miramonte. The proposed AVA does not overlap any established AVAs.

The proposed Squaw Valley–Miramonte AVA contains approximately 44,690 acres and has 3 bonded wineries and 5 commercially producing vineyards, covering a total of 7.5 acres, distributed across the proposed AVA. The petition states that vineyards within the proposed AVA are small due to the region's steep and rugged terrain, which requires most vineyard work to be done by hand rather than by machine. According to the petition, the distinguishing features of the proposed AVA include its climate, topography, and soils. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this document are from the petition for the proposed Squaw Valley–Miramonte AVA and its supporting exhibits.

Name Evidence

The proposed Squaw Valley–Miramonte AVA derives its name from the communities of Squaw Valley and Miramonte. Squaw Valley is the largest community within the proposed AVA and is located in the western portion of the proposed AVA. The community of Squaw Valley appears on the Tucker Mountain USGS quadrangle map, as does a large valley labeled ''Squaw Valley.'' Additionally, the same map shows the Squaw Valley Cemetery and the Squaw Valley School. The petition also included evidence that the name ''Squaw Valley'' is associated with businesses in the proposed AVA, including Squaw Valley Realty, Squaw Valley Trading Center, Squaw Valley Motel, and Squaw Valley Herb Gardens.

In order to avoid confusion with other locations in the United States that are known as Squaw Valley, including the famous Squaw Valley ski resort in Placer County, California, the petitioner added ''Miramonte'' to the proposed AVA name. As shown on the Miramonte quadrangle map, Miramonte is a small community in the easternmost portion of the proposed AVA. The Miramonte Conservation Camp, a State of California facility, is also shown on the Miramonte quadrangle map. The community of Miramonte is served by the Miramonte Post Office. TTB notes that several established AVAs have combined the names of geographic features or communities located within the particular AVA in order to provide a geographically distinct name for the AVA, including Pine Mountain–Cloverdale Peak (27 CFR 9.220) and Fort Ross-Seaview (27 CFR 9.221).

Boundary Evidence

The proposed Squaw Valley–Miramonte AVA is a region of steep, rocky slopes in the western foothills of the Sierra Nevada Mountains. To the north and east of the proposed AVA is the Sequoia National Forest. The San Joaquin Valley, which includes the cities of Fresno and Orange Cove, is to the south, west, and northwest of the proposed AVA. Elevations within the proposed AVA range from approximately 1,600 feet along its proposed western and southern borders to approximately 3,500 feet along its proposed eastern border.

The proposed northern boundary follows the northern boundaries of several sections on the Luckett Mountain USGS quadrangle map. Although the features of the region immediately outside the proposed northern boundary are identical to those within the proposed AVA, the proposed northern boundary marks the northern extent of current viticulture in the region. Approximately 5 miles north of the proposed northern boundary is the Sequoia National Forest, which was excluded from the proposed AVA primarily because its public lands are unavailable for commercial viticulture. The eastern portion of the proposed boundary also follows the boundary of the Sequoia National Forest. The southern portion of the proposed boundary follows the Fresno-Tulare County line and several section lines on the Tucker Mountain and Orange Cove North USGS quadrangle maps. To the immediate south of the proposed boundary, the elevations are lower and broad valleys are more numerous than within the proposed AVA. The San Joaquin Valley is just farther south of that area. The western portion of the proposed boundary follows straight lines drawn between mountain peaks and separates the higher elevations of the proposed AVA from both the lower mountain slopes to the immediate west of the proposed boundary and from the San Joaquin Valley, farther to the west.

Distinguishing Features

The distinguishing features of the proposed Squaw Valley–Miramonte AVA include its climate, topography, and soils.

Climate

The petition provided information on the temperature and precipitation within the proposed AVA and the surrounding regions.

Temperature: According to the petition, the climate of the proposed Squaw Valley–Miramonte AVA is subhumid mesothermal (high humidity and precipitation amounts, with winter temperatures too warm to sustain snow cover). Daytime temperatures within the proposed AVA are generally cooler than in the neighboring San Joaquin Valley to the south, west, and northwest. However, nighttime temperatures are usually warmer within the proposed AVA than within the San Joaquin Valley because cool air drains off the slopes of the proposed AVA at night and settles in the valley. As a result of the warm nighttime temperatures, the difference between the average daily high and low temperatures within the proposed AVA is small, particularly during the growing season. The difference between the average daily high and daily low temperatures is known as the diurnal temperature range (DTR). The following two tables summarize the average monthly high and low temperatures in degrees Fahrenheit for the proposed AVA and the surrounding regions, as well as the average monthly DTR.

TABLE 1—AVERAGE DAILY HIGH AND LOW TEMPERATURES

Month	Purgatory Vineyards [1] (within proposed AVA)		Orange Cove [2] (southwest)		Piedra [3] (northwest)		Pinehurst [4] (east)	
	Average high	Average low	Average high	Average low	Average high	Average low	Average high	Average low
Jan	57	44	57	36	55	37	57	38

TABLE 1—AVERAGE DAILY HIGH AND LOW TEMPERATURES—Continued

Month	Purgatory Vineyards [1] (within proposed AVA)		Orange Cove [2] (southwest)		Piedra [3] (northwest)		Pinehurst [4] (east)	
	Average high	Average low	Average high	Average low	Average high	Average low	Average high	Average low
Feb	52	41	61	37	63	40	51	35
Mar	55	43	65	40	68	43	55	36
Apr	62	48	70	43	76	46	59	36
May	70	55	79	46	85	52	68	44
June	78	63	89	55	93	58	80	54
July	86	72	95	61	99	62	89	62
Aug	89	75	95	60	98	61	90	63
Sept	85	71	92	58	92	57	87	65
Oct	71	58	78	50	81	49	72	52
Nov	60	47	64	39	66	41	60	40
Dec	52	41	58	36	56	36	53	36

TABLE 2—AVERAGE MONTHLY DIURNAL TEMPERATURE RANGE (DTR)

Month	Purgatory Vineyards (within proposed AVA)	Orange Cove (southwest)	Piedra (northwest)	Pinehurst (east)
January	13	21	18	19
February	11	24	23	16
March	12	25	25	19
April	14	27	30	23
May	15	33	33	24
June	15	34	35	26
July	14	34	37	27
August	14	35	37	27
September	14	34	35	22
October	13	28	32	20
November	13	25	25	20
December	11	22	20	17

The data in the tables shows that the average monthly high temperatures in the proposed Squaw Valley–Miramonte AVA are generally cooler and the average monthly low temperatures are warmer than the temperatures in the regions to the northwest and southwest. As a result, the average monthly DTR within the proposed AVA is smaller than the average monthly DTR within the San Joaquin Valley. Average monthly high temperatures to the east of the proposed AVA are similar to the temperatures of the proposed AVA, but the average monthly lows in that eastern region are generally cooler, resulting in greater average monthly DTRs than are found within the proposed AVA.

According to the petition, cool daytime temperatures and warm nighttime temperatures during the growing season produce higher levels of sugar and anthocyanins (pigments responsible for the color of grape skins) at harvest. Additionally, grapes grown in moderate climates such as the proposed Squaw Valley–Miramonte AVA have higher levels of malic acid (an organic compound that contributes to the flavor of grapes) than grapes grown in warmer regions, such as the nearby San Joaquin Valley. Finally, the cooler temperatures of the proposed AVA result in later harvest dates than occur in the warmer San Joaquin Valley.

Precipitation: The petition included data on annual precipitation amounts within the proposed Squaw Valley–Miramonte AVA and the surrounding regions. The precipitation data set forth in the following table were collected from the same sources and during the same time periods as the temperature data in Tables 1 and 2.

TABLE 3—AVERAGE ANNUAL PRECIPITATION AMOUNTS

Location (direction from proposed AVA)	Precipitation (in inches)
Purgatory Vineyards (within)	40.85
Orange Cove (southwest)	15.48
Piedra (northwest)	12.27
Pinehurst (east)	51.42

The data in the table shows that the proposed Squaw Valley–Miramonte AVA receives more rainfall annually than the regions to the northwest and southwest, within the San Joaquin Valley, and less rainfall than the region to the east in the higher elevations of the Sierra Nevada Mountains and the Sequoia National Forest. The high rainfall amounts within the proposed AVA increase the risk of erosion on the steep hillsides. In order to minimize erosion, vineyard owners plant cover crops between vineyard rows and mow between the rows, instead of using a disk harrow to till the soil. Vineyards located in areas with high rainfall amounts are usually more susceptible to

[1] Data obtained from private weather station for 2011–2012.

[2] Data obtained from California Irrigation Management Information System Station #142 from 2010–2012 (*http://www.cimis.water.ca.gov*).

[3] Data obtained from Intellicast weather Web site historical averages for Piedra, CA (*http://www.intellicast.com/Local/History.aspx?location=USCA0861*). The Web site does not list the years from which the data was gathered.

[4] Data obtained from Western Regional Climate Center Web site for 2010–2012 (*http://www.raws.dri.edu/cgi-bin/rawMAIN.pl?caCPIH*).

root diseases, fruit rot, and powdery mildew than vineyards in drier areas. However, the steep slope angles and thin soil within the proposed AVA promote rapid drainage, which reduces the risk of root disease. Additionally, the risk of fruit rot and mildew within the proposed AVA is mitigated because the leaf canopies are dried by breezes that rise from the San Joaquin Valley during the day and flow down from the higher elevations and through the proposed AVA at night.

Topography

The proposed Squaw Valley–Miramonte AVA is located in the foothills of the Sierra Nevada Mountains. The terrain is characterized by steep and rugged hillsides covered with boulders and oak woodlands, although a few valleys exist within the proposed AVA. Slope angles within the proposed AVA range from 5 percent to over 75 percent, and elevations range from approximately 1,600 feet to approximately 3,500 feet. The following table shows the elevations and average slope angles of the vineyards within the proposed AVA.

TABLE 4—PROPOSED AVA VINEYARD ELEVATIONS AND SLOPE ANGLES

Vineyard	Elevation (in feet)	Slope angles (percent)
Riffelhoff	3,000	15–35
Purgatory	3,200	25–35
White Ginger	2,000	15
Adrian Joseph	1,800–2,000	20–40
Buttercup	1,800	15

Immediately outside of the northern boundary of the proposed Squaw Valley–Miramonte AVA, the terrain is similar to that found within the proposed AVA. However, this region was not included in the proposed AVA due to a lack of viticulture. The Sequoia National Forest, located approximately 5 miles north of the proposed AVA, was excluded from the proposed AVA not only because of its higher elevations but also because its status as a national forest makes the region unavailable for commercial viticulture. The Sequoia National Forest also borders the proposed AVA to the east, as does a small mountainous region that is not within the national forest that was excluded from the proposed AVA because its higher, steeper elevations are unsuitable for viticulture. To the south and west of the proposed AVA, the elevations become lower and the slope angles become shallower as the foothills give way to the broad, flat terrain of the San Joaquin Valley.

The topography of the proposed AVA has an effect on viticulture. The ruggedness of the terrain limits the amount of flat, open spaces, so the vineyards are planted on the mountain slopes. The steepness of the slopes allows for only very limited use of mechanized spray and harvest equipment, so much of the vineyard work is done by hand. Due to the difficulty of working the vineyards by hand, individual vineyards within the proposed AVA are small. By contrast, vineyards within the San Joaquin Valley are generally much larger because the broad, open valley provides ample space for vineyards, and machinery can be used more safely and easily on the flat terrain. The steep slopes of the proposed AVA increase the risk of erosion, which is controlled by planting cover crops and mowing between the vineyard rows instead of disking. However, the steep hillsides also promote increased airflow and drainage, which lessen the risk of mildew and rot. Finally, the high elevations of the proposed AVA allow the vineyards to receive more sunlight than vineyards at lower elevations within the San Joaquin Valley because fog is generally not present at elevations above 1,600 feet.

Soils

The majority of the soils within the proposed Squaw Valley–Miramonte AVA are derived from granitic material, mainly quartz diorite. The three most common soil series are the Vista, Sierra, and Auberry series. All three soil series are described as having good drainage, which reduces the risk of root disease. The soils within the proposed AVA have pH levels ranging from a slightly acidic 5.6 to a neutral 7.3, levels which are adequate for viticulture and do not promote overly vigorous vine or canopy growth. The soils within the proposed AVA are severely deficient in nitrogen, a nutrient necessary for vine growth, and therefore require supplementation. Additionally, soils in some of the vineyards within the proposed AVA have an excess of potassium, which interferes with the vines' ability to uptake magnesium. As a result, magnesium must be added to the soil in these vineyards.

To the north of the proposed Squaw Valley–Miramonte AVA, the soils are primarily of the Coarsegold and Trabuco series. Coarsegold series soils are derived from weathered schist, while Trabuco series soils are derived from igneous rock. The most common soil series east of the proposed AVA are the Holland series, derived from weathered granitic rock, and the Aiken series, derived from volcanic rocks. The soils in the area directly east of the proposed AVA are more acidic than the soils within the proposed AVA due to deep mats of decomposing needle litter from conifer trees. South of the proposed AVA, rock outcropping complexes such as the Auberry Rock Outcrop and the Blasingame Rock Outcrop are common. Farther south, within the San Joaquin Valley, alluvial soils such as San Joaquin loam and San Joaquin sandy loam become common. To the west of the proposed AVA, the most common soil series are the Hanford and Greenfield series. The soils west of the proposed AVA are less acidic, have finer textures, and are comprised primarily of alluvium.

Summary of Distinguishing Features

In summary, the climate, topography, and soils of the proposed Squaw Valley–Miramonte AVA distinguish it from the surrounding regions. The region to the north has higher, steeper elevations than the proposed AVA. The region to the east has higher, steeper elevations, as well as higher precipitation amounts and higher soil acidity levels than the proposed AVA. Portions of the regions to the north and east of the proposed were also excluded because they are part of the Sequoia National Forest and therefore are unavailable for commercial viticulture. To the south, west, and northwest of the proposed AVA lies the San Joaquin Valley, which has low elevations, flat terrain, and soils comprised primarily of alluvium. Additionally, within the San Joaquin Valley, average monthly high temperatures are warmer and annual precipitation amounts are lower than

within the proposed Squaw Valley–Miramonte AVA.

TTB Determination

TTB concludes that the petition to establish the approximately 44,690-acre Squaw Valley–Miramonte AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name, then the label is not in compliance, and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39 of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, ''Squaw Valley–Miramonte,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). TTB does not believe that the term ''Squaw Valley,'' standing alone, has viticultural significance, as this name is associated with multiple locations outside the proposed AVA. Although the USGS Geographic Names Information System (GNIS) lists 6 uses of the name ''Squaw Valley'' within the proposed AVA, it also lists an additional 33 uses in 7 States, including locations in Placer, Lake, Shasta, Plumas, and Lassen Counties in California. Additionally, TTB does not believe that the term ''Miramonte,'' standing alone, has viticultural significance, as this name is also associated with multiple locations outside the proposed AVA. The GNIS lists 6 uses of the term ''Miramonte'' within the proposed AVA, but also lists an additional 17 uses within California and Colorado. Therefore, if TTB establishes this proposed AVA, only the full name ''Squaw Valley–Miramonte'' will be recognized as a term of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name ''Squaw Valley–Miramonte'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule. The approval of the proposed Squaw Valley–Miramonte AVA would not affect any existing AVA.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed Squaw Valley–Miramonte AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, soils, climate, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Squaw Valley–Miramonte AVA on wine labels that include the term ''Squaw Valley–Miramonte,'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed AVA name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the AVA.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2015–0002 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 146 on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on the ''Help'' tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 146 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2015–

0002 on the Federal e-rulemaking portal, Regulations.gov, at *http://www.regulations.gov.* A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 146. You may also reach the relevant docket through the Regulations.gov search page at *http://www.regulations.gov.* For information on how to use Regulations.gov, click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or other similarly-sized documents that may be included as part of the AVA petition. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9 of the Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9._____ to read as follows:

§ 9._____ Squaw Valley–Miramonte.

(a) *Name.* The name of the viticultural area described in this section is ''Squaw Valley–Miramonte''. For purposes of part 4 of this chapter, ''Squaw Valley–Miramonte'' is a term of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Squaw Valley–Miramonte viticultural area are titled:

(1) Orange Cove North, Calif., 1966;

(2) Pine Flat Dam, Calif., 1965; photoinspected 1978;

(3) Luckett Mtn., Calif., provisional edition 1987;

(4) Verplank Ridge, Calif., provisional edition 1987;

(5) Miramonte, Calif., 1966; and

(6) Tucker Mtn., Calif., 1966.

(c) *Boundary.* The Squaw Valley–Miramonte viticultural area is located in Fresno County, California. The boundary of the Squaw Valley–Miramonte viticultural area is as described below:

(1) The beginning point is located on the Orange Cove North map, at the southwest corner of section 21, T14S/R25E. From the beginning point, proceed north-northwesterly in a straight line to the marked 3,355-foot elevation point on Bear Mountain, section 5, T14S/R25E; then

(2) Proceed northeast in a straight line, crossing onto the Pine Flat Dam map and over the marked 3,354-foot elevation point on Bear Mountain, section 32, T13S/R25E, and then continuing northeasterly in a straight line and crossing onto the Luckett Mountain map, proceed to the marked 3,489-foot summit of Dalton Mountain, section 22, T13S/R25E; then

(3) Proceed easterly in a straight line to the Sequoia National Forest boundary line at the northwest corner of section 28, T13S/R26E; then

(4) Proceed east along the Sequoia National Forest boundary line, crossing onto the Verplank Ridge map, and continue south, then east, then south along the national forest boundary line, crossing onto the Miramonte map, and then continue south, then east along the national forest boundary line to the northeast corner of section 5, T14S/R27E; then

(5) Proceed south along the eastern boundary lines of sections 5, 8, and 17, T14S/R27E, to the southeast corner of section 17; then

(6) Proceed east along the northern boundary line of section 21, T14S/R27E, to the northeast corner of that section; then

(7) Proceed south along the eastern boundary lines of sections 21, 28, and 33, T14S/R27E, to the Fresno–Tulare County boundary line at the southeast corner of section 33; then

(8) Proceed west along the Fresno–Tulare County boundary line, crossing onto the Tucker Mountain map, to the southwest corner of section 34, T14S/R26E; then

(9) Proceed north along the western boundary lines of sections 34, 27, 22, and 15, T14S/R26E, to the northwest corner of section15; then

(10) Proceed west along the southern boundary lines of sections 9, 8, and 7, T14S/R26E, and sections 12 and 11, T14S/R25E, to the southwest corner of section 11; then

(11) Proceed south along the eastern boundary lines of sections 15 and 22, T14S/R25E, to the southeast corner of section 22; then

(12) Proceed west along the southern boundary line of section 22, T14S/R25E, and, crossing onto the Orange Cove North map, continue west along the southern boundary line of section 21, T14S/R25E, returning to the beginning point.

Signed: January 15, 2015.

Mary G. Ryan,

Acting Administrator.

[FR Doc. 2015–01015 Filed 1–21–15; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SATS No. CO–040–FOR, Docket ID: OSM–2011–0002; S1D1SSS08011000SX066A00067F144S180110; S2D2SSS08011000SX066A00033F14XS501520]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening of public comment period on proposed amendment.

SUMMARY: We are announcing the receipt of revisions pertaining to a previously proposed amendment to the Colorado regulatory program (hereinafter, the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Colorado proposes additions of rules and revisions to Rules of the Colorado Mined Land Reclamation Board for Coal Mining, 2 CCR 407–2, concerning the protection and replacement of the hydrologic balance, subsidence, valid existing rights determinations, roads, requirements associated with annual reclamation reports, prime farmland determinations, various definitions, permit revisions, performance bonds, backfill placement methods and requirements, backfilling and grading, and revegetation. Colorado intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Colorado program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: The comment period for the proposed rule published on December 6, 2011 (76 FR 76109), is re-opened. We will accept written comments on this amendment until 4:00 p.m., mountain standard time (m.s.t.) February 23, 2015. If requested, we will hold a public hearing on the amendment on February 17, 2015. We will accept requests to speak until 4:00 p.m., m.s.t., on February 6, 2015.

ADDRESSES: You may submit comments, identified by ''CO–040–FOR'' or Docket ID number OSM–2011–0002, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID OSM–2011–0002. If you would like to submit comments via the Federal eRulemaking portal, go to *www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Director, Casper Area Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *www.regulations.gov,* you may review copies of the Colorado program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSMRE's Casper Area Office.

Jeffrey Fleischman, Director, Casper Area Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018, (307) 261–6547, Email: *jfleischman@osmre.gov*.

David Berry, Director, Office of Mined Land Reclamation, Colorado Division of Reclamation, Mining, and Safety, Department of Natural Resources, 1313 Sherman Street, Suite 215, Denver, CO 80203, Email: *David.Berry@state.co.us*.

FOR FURTHER INFORMATION CONTACT: Alan Boehms, Telephone: (303) 293–5012. Email: *aboehms@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Colorado Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Colorado program on December 15, 1980. You can find background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program in the December 15, 1980, **Federal Register** (45 FR 82173). You can also find later actions concerning Colorado's program and program amendments at 30 CFR 906.10, 906.15, 906.16, and 906.30.

II. Description of the Proposed Amendment

By letter dated April 8, 2011, Colorado sent us a proposed amendment to its approved regulatory program (Administrative Record Docket ID No. OSM–2011–0002) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the amendment to address all required rule changes OSMRE identified by letters to Colorado dated April 4, 2008, and October 2, 2009, under 30 CFR 732.17(c). These included changes to Colorado's rules for valid existing rights and ownership and control. The amendment also includes changes made at Colorado's own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, Colorado proposes substantive revisions to the Colorado Code of Regulations at 2 CCR 407–2 Rules 1.07 (Procedures for Valid Existing Rights Determinations), 2.01 (General Requirements for Permits), 2.02 (General Requirements for Coal Exploration), 2.03 (Application for Permit for Surface Coal Mining and Reclamation Operations: Minimum Requirements for Legal, Financial, Compliance, and Related Information), 2.04 (Application for Permit for Surface Coal Mining and Reclamation Operations: Minimum Requirements for Information on Environmental Resources), 2.05 (Application for Permit for Surface Coal Mining and Reclamation Operations: Minimum Requirements for Operation and Reclamation Plans), 2.07 (Public Participation and Approval of Permit Applications), 2.08 (Permit Review, Revisions and Renewals and Transfer, Sale and Assignment), 2.11 (Challenging Ownership or Control Listings and Findings), 4.03 (Roads), 4.05 (Hydrologic Balance), 4.06 (Topsoil), 4.07 (Sealing of Drilled Holes and Underground Openings), 4.08 (Use of Explosives), 4.14 (Backfilling and Grading), 4.15 (Revegetation), 4.16 (Postmining Land Use), 4.20

(Subsidence Control), 4.25 (Operations on Prime Farmland), 5.03 (Enforcement), and 5.06 (Alternative Enforcement). Additionally, Colorado proposes revisions to and additions of definitions supporting these proposed rule changes.

As a result of comments received for the **Federal Register** Proposed Rule notice published December 6, 2011, which announced receipt of the amendment and solicited comments (76 FR 76109), we identified concerns with regard to Colorado's Statement of Basis, Purpose, and Specific Statutory Authority (SBPSA) document that is incorporated with 2 CCR 407–2 by reference. We notified Colorado of our concerns by letter dated September 19, 2011 (Administrative Record No. OSM–2011–0002–0008). Colorado responded in a letter dated September 22, 2011, by submitting a revised amendment proposal (Administrative Record No. OSM–2011–0002–0009). During our review of that revised amendment, OSMRE found additional deficiencies and notified Colorado of these deficiencies in a concern letter dated May 20, 2013 (Administrative Record No. OSM–2011–0002–0012). In response to our concerns, Colorado resubmitted the amendment formally on October 1, 2014 (Administrative Record Numbers OSM–2011–0002–0013 (Cover Letter), OSM–2011–0002–0014 (Proposed Revisions), and OSM–2011–0002–0015 (SOBAP)). Colorado proposes additional language to clarify proposed Rules that were initially deemed unapprovable by OSMRE.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Colorado program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t. on February 6, 2015. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 4, 2014.

Ervin J. Barchenger,

Acting Regional Director, Western Region.

[FR Doc. 2015–00932 Filed 1–21–15; 8:45 am]

BILLING CODE 4310–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 12

[PS Docket No. 14–193; PS Docket No. 13–75; FCC 14–186]

911 Governance and Accountability; Improving 911 Reliability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Federal Communications Commission (Commission) affirms core principles guiding its approach to 911 governance and proposes mechanisms to ensure, in cooperation with state and local partners, that the nation's 911 governance structure keeps pace with evolving technology so that all entities providing 911 service capabilities remain accountable for reliable 911 call completion and accurate situational awareness. This document proposes

steps to address vulnerabilities in 911 reliability that have been revealed by a series of recent ''sunny day'' 911 outages, including the April 2014 multi-state outage that was the subject of a recent report by the Public Safety and Homeland Security Bureau (Bureau). Specifically, this document proposes to amend the Commission's 911 reliability certification rules to cover additional entities and network reliability practices; require public notification for major changes in multi-state 911 networks and services, and Commission approval for discontinuance of existing 911 services; require entities seeking to provide new 911 capabilities to certify as to their technical and operational capability to provide reliable service; and designate certain 911 service providers to take lead responsibility for situational awareness and coordination with other service providers in the event of a 911 outage.

DATES: Submit comments on or before March 9, 2015 and reply comments by April 7, 2015. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before March 23, 2015.

ADDRESSES: You may submit comments, identified by docket numbers PS 14–193 and PS 13–75, by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167. Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in section 0.459 of the Commission's rules. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary's Office following the procedures set forth in 47 CFR 0.459. Redacted versions of confidential submissions may be filed via ECFS. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Eric P. Schmidt, Attorney Advisor, Public Safety and Homeland Security Bureau, (202) 418–1214 or *eric.schmidt@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Benish Shah at (202) 418–7866 or send an email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Policy Statement and Notice of Proposed Rulemaking* (*NPRM*) in PS Docket No. 14–193 and PS Docket No. 13–75, released on November 21, 2014. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or online at *http://www.fcc.gov/document/911-governance-and-accountability-policy-statement-and-nprm.*

Synopsis of Policy Statement and Notice of Proposed Rulemaking

I. Introduction

One of the fundamental purposes for which Congress created the Federal Communications Commission is to ''promot[e] safety of life and property through the use of wire and radio communications.'' Nowhere does the Commission give higher expression to this overarching obligation than in its efforts to ensure that the American people have access to reliable and resilient 911 communications service. To be sure, this is not the Commission's responsibility alone. State regulators and local emergency response agencies play critical roles in ensuring that 911 is available when needed and that every 911 call will be answered, and it is undoubtedly in the public interest that the Commission should work in close partnership with these stakeholders to carry out its responsibility. Nevertheless, we know that the technologies and commercial relationships that form the foundation of the 911 system are transitioning and, as a result, becoming increasingly interstate in nature. The Commission is uniquely positioned to ensure 911 reliability on a national scale and across different communications platforms and technologies, to promote the deployment of new and innovative 911 technologies by an increasingly diverse array of stakeholders, and to ensure that the benefits of advanced 911 service extend to all Americans.

The importance of ensuring nationwide 911 reliability as technologies transition has been underscored by several recent disruptions of 911 service that have affected the public in multiple states or across the entire nation. For example, in April 2014, a software coding error at a Colorado-based 911 provider's call routing facility led to a loss of 911 service to a population of more than 11 million in seven states—California, Florida, Minnesota, North Carolina, Pennsylvania, South Carolina, and Washington—for up to six hours. In addition, the state of Hawaii has experienced multiple disruptions in 911 service since January 2014, and the entire state of Vermont lost 911 service for 40 minutes in August 2014. A growing number of disruptions to 911 service are caused by software malfunctions, database failures, and errors in conversion from legacy to IP-based network protocols. These failures may occur in portions of the network that are not directly analogous to the legacy architecture. Moreover, these new modes of failure have the potential to affect many states at once, or even all of a service provider's customers nationwide.

While innovative technologies have the potential to improve many aspects of 911 service and enhance the ability of first responders to do their jobs more effectively, these recent outages have revealed that technology changes may also introduce new vulnerabilities. While the Commission has previously undertaken to monitor the transition to Next Generation 911 (NG911) technologies to determine whether our rules should be revised or expanded to cover new best practices or additional entities, recent events have demonstrated that the pace of change already requires prompt action to review these vulnerabilities. Failure to take appropriate action risks undermining the reliability and resiliency of current 911 services and endangering the transition to NG911 technologies that offer even greater public safety benefits. The American public must have confidence that 911 will work every time help is needed. Any failure to meet this expectation puts individual lives at stake and erodes

vital public trust in our nation's emergency services.

In this *Policy Statement and Notice of Proposed Rulemaking,* we affirm the core principles that have guided and will continue to guide the Commission's approach to ensuring reliable and resilient 911 service and its continuing partnership with state and local authorities. We propose specific rules designed to address failures leading to recent multi-state 911 outages, based on the October 2014 report of the Public Safety and Homeland Security Bureau. Finally, we propose additional mechanisms designed to ensure that our 911 governance structure keeps pace with evolving technologies and new reliability challenges so that all 911 service providers remain fully accountable to the public they serve.

II. Policy Statement

It is the policy of the Commission to encourage and support efforts by states and localities to deploy comprehensive end-to-end emergency communications infrastructure and programs, including seamless, ubiquitous, reliable 911 service. As IP-based 911 service providers transition to architectures that extend beyond the boundaries of any state and implement network changes that may affect quality of service on a regional or national scale, consistent and collaborative governance is not just good governance, but essential to maintaining the vital public benefits of 911. Together with our state and local partners, the Commission has the public safety imperative to oversee each of the increasingly complex component pieces of the nation's 911 infrastructure, and to ensure that service providers within our respective jurisdictions are held fully accountable for providing reliable 911 service to all Americans. Where there are multi-state aspects of the 911 architecture or technology trends that may increase the risk of failure or cause confusion to PSAPs and end-users, the Commission must, and will, take a leadership role in resolving such risks and confusion.

While we seek comment on specific proposals designed to address the challenges of the transition to NG911, we believe it would be useful at the outset to articulate the general goals that serve as a framework for these proposals. We start from the proposition that all entities providing 911 communications services, both incumbents and new entrants, occupy a unique position of public trust. Increased innovation and enhanced competition in the 911 ecosystem bring tremendous potential to enhance the functionality and utility of 911, but these transitions must be managed in a manner that maximizes the availability, reliability, and resiliency of the 911 network, and ensures the accountability of all participants in the 911 communications ecosystem. Therefore, we believe that every entity with a role in 911 call completion should be guided by two principles: First, any new elements of 911 architecture or service should have the necessary redundancy and reliability safeguards, along with the appropriate governance mechanisms, to maximize reliability and protect public safety. Second, significant changes in 911 service should be coordinated in a transparent manner with the Commission and with state and local authorities. To the extent that technology transitions and changes in the market for 911 services create real or perceived gaps in the delivery of reliable and resilient 911 service, the Commission will act, in cooperation with state and local partners, to close those gaps and set clear expectations regarding each service.

III. Notice of Proposed Rulemaking

In this Notice of Proposed Rulemaking, we first seek comment on specific proposals to advance the principles described above by ensuring that the Commission's 911 rules keep pace with changing technology. We then seek comment on whether it may be appropriate to take further steps, in coordination with state and local authorities, to promote a national governance structure that proactively increases end-to-end accountability and produces measurable results. By initiating this rulemaking, we do not intend to impose ''one-size-fits-all'' mandates on the nation's 911 infrastructure when different states and communities need flexibility to respond to each situation in the way that best suits their particular circumstances. Rather, we seek to ensure that the Commission remains equipped, consistent with its statutory mandates and existing legal authority, with the proper regulatory tools to enforce continued and clear lines of accountability for reliable 911 call completion, including as the nation transitions to an IP-based NG911 architecture.

We also emphasize that the purpose of this rulemaking is not to supplant state action. To the contrary, consistent with our statutory mandate under the 911 Act, our goal is to ''encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure,'' and to ''consult and cooperate with State and local officials'' when developing national policies with respect to 911 governance, implementation, and reliability. We recognize that many decisions regarding 911 deployment, operations, and cost recovery are best made at the state and local level, and continued oversight by states and localities is vital to ensuring that 911 service remains effective and reliable in every community across the country. Our action today is intended to ensure that state and local partners continue to be empowered to fulfill this important oversight responsibility within their jurisdictions, and we seek comment on a variety of ways that the Commission can assist in local, state, and regional efforts to maintain and improve 911 service quality. Thus, we do not intend to interfere with the right of state and local 911 authorities to contract for the services they desire or to determine the best path for deployment of NG911 technologies within their jurisdictions. We also note that, in appropriate circumstances, federal rules may ease burdens on state and local jurisdictions by obviating the need for them to promulgate their own potentially disparate requirements.

A. Revisions to 47 CFR 12.4

The Commission adopted § 12.4 based on indications that during the 2012 derecho storm ILECs providing 911 service in affected areas failed to follow established network reliability best practices in three specific areas, which resulted in widespread and prolonged 911 outages. To address these deficiencies and ensure improved reliability in the future, the rule contains two components: (1) A substantive requirement that ''covered 911 service providers shall take reasonable measures to provide reliable 911 service with respect to circuit diversity, central-office backup power, and diverse network monitoring'' and (2) a reporting requirement that such providers certify annually whether they have implemented specified best practices or reasonable alternative measures in each of those substantive areas. The rule defines ''covered 911 service providers'' as those that provide specified 911 capabilities, or the functional equivalent, ''directly to a PSAP''—typically meaning those entities that provide 911 services pursuant to a contractual agreement with a PSAP or emergency authority.

In light of the multistate 911 outages discussed above and the lessons they provide about 911 network architectures already in use in many parts of the nation, we propose to expand the scope of entities covered by § 12.4 (*i.e.,* the definition of ''covered 911 service

provider'') to include all entities that provide 911, E911, or NG911 capabilities, such as call routing, automatic location information (ALI), automatic number identification (ANI), location information servers (LIS), text-to-911, or the functional equivalent of those capabilities, regardless of whether they provide such capabilities under a direct contractual relationship with a PSAP or emergency authority. This definition would include all entities that provide 911-specific network infrastructure, but only to the extent that they provide specified 911 capabilities. For example, a wireless carrier would be required to certify with respect to any mobile positioning centers (MPCs), gateway mobile location centers (GMLCs) or other databases that it uses to process and route 911 calls, but not with respect to individual cell sites and its call origination network generally. If a wireless carrier outsources 911 call processing capabilities to a subcontractor, we propose that both the carrier and the subcontractor would be required to certify their respective reasonable measures to maintain reliable 911 service because both entities would provide 911 capabilities specified in the proposed rule. We seek comment on this analysis. This amendment would address 911 network architectures where multiple service providers or sub-contractors provide call routing and ALI/ANI capabilities and ensure that each link in that chain is treated equally under § 12.4. We propose that adding these entities would not change the duties of those who already qualify as covered 911 service providers, except with respect to the new certification elements proposed below, or the duties of their agents under existing principles of legal liability. However, we seek comment on the existing duties of the agents and sub-contractors of covered 911 service providers, and on the feasibility of extending certification requirements to such entities.

To ensure that § 12.4 keeps pace with evolving network architectures and reliability risks, we also propose to amend § 12.4(b) to provide that ''all covered 911 service providers shall take reasonable measures to provide reliable 911 service.'' This obligation would include—but not be limited to—the existing areas of circuit diversity, central-office backup power, and diverse network monitoring. While the current § 12.4 only addresses reliability with respect to these three specific areas, we believe it would demonstrate better governance for this rule to require covered entities to take reasonable measures generally to ensure the reliability of 911 service, with specific behavior identified within this rule as necessary to add more detail.

We seek comment on additional network reliability practices that should be incorporated into § 12.4 and its associated certification requirements. Based on the Bureau's findings with respect to the April 2014 multistate 911 outage and other large-scale disruptions in 911 service described above, we anticipate that one area of particular importance will be the reliability and testing of software and databases used to process 911 calls, including planned maintenance and software upgrades. We also believe that the certification should indicate whether a service provider's IP-based 911 architecture is geographically distributed, load-balanced, and capable of automatic reroutes to backup equipment in the event of a hardware, network, software or database failure. Finally, we believe the network monitoring component of the existing rule should cover not just the physical diversity of monitoring facilities, but also the proper prioritization of critical network alarms. What other measures should be implemented by covered 911 service providers to mitigate the risk of failure and geographic scope of impacts on 911 service? For example, should the certification address factors such as cybersecurity and supply chain risk management?

We also believe that § 12.4 should reflect and require certification with respect to the duty to take reasonable measures to share information and situational awareness, as appropriate under the circumstances, during disruptions in 911 service. We seek comment on the scope of information and communications that should be reasonably expected from various entities in the 911 ecosystem, including those with direct contractual relationships with PSAPs and those that provide service on a vendor or sub-contractor basis. At a minimum, we believe the certification should indicate whether a covered 911 service provider has a process in place to notify PSAPs of an outage within the timeframes specified in part 4 of the Commission's rules. While this proposal would not change such providers' substantive obligations under part 4, it would provide assurance that they have taken proactive steps to successfully perform their duties under the rules if the need arises. Service providers may also be able to detect outages in real time through call counts, ALI queries, and other methods of analyzing network traffic. To what extent should the certification reflect reasonable measures to detect and disseminate such real-time outage information?

We seek comment on these proposals and on potential alternative approaches. Are there other topics or practices should be incorporated into ''reasonable measures'' and annual certification requirements? Should any components of the certification require testing or analysis by an independent third party, or is the certifying entity's own attestation sufficient? Should the Commission establish standards, best practices, or other mechanisms to promote the reliability of IP-based 911 network elements and processes not currently covered by § 12.4? Should such standards be voluntary (*i.e.,* best practices) or mandatory? Should providers be required to report or certify the extent of their compliance with such standards, or should they be required to meet certain standards or performance requirements? Are there instances in an NG911 environment where consensus-based best practices have not yet been established and should be referred to an advisory committee such as the Commission's Communications Security, Reliability, and Interoperability Council (CSRIC) for further development? Should we include any limitations on our incorporation of such existing or future standards or practices in our rules? If we include a more general requirement of reliability, should we include additional guidance as to the standards by which the Commission will measure implementation?

B. Ensuring Transparency and Accountability in Connection With Major Changes to Existing 911 Service

The functionality of the nation's 911 networks increasingly depends on complex relationships between service providers and PSAPs, and often among multiple service providers, sub-contractors, and other affiliated entities themselves. While states and localities are well-positioned under our cooperative governance framework to oversee many aspects of these relationships based on the needs of the PSAPs and residents within their borders, critical 911 network infrastructure is increasingly shared among many jurisdictions and beyond the oversight of individual emergency authorities, and more complex in its design and operation. Accordingly, the end-to-end reliability of a 911 network depends on the sum of its parts and how they function together. We must ensure that this transition process is open and transparent.

1. Major Changes in 911 Service

Transparency is essential as the technologies and entities delivering 911 service capabilities evolve over time. In accordance with section 251 of the Communications Act, the Commission's rules require ILECs to provide public notice regarding any network change that will (1) Affect a competing service provider's performance or ability to provide service, (2) affect the ILEC's interoperability with other service providers, or (3) affect the manner in which customer premises equipment is attached to the interstate network, as well as public notice of network changes that ''[w]ill result in the retirement of copper loops or copper subloops, and the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops.'' While the Commission adopted these requirements primarily to ''promote[ ] open and vigorous competition'' among local exchange carriers, as contemplated by the Telecommunications Act of 1996, network change notifications have also yielded information on certain changes in 911 network architecture that affect interconnection with an ILEC. However, an increasing number of covered 911 service providers are not ILECs and are not required to file notifications when changes to their networks may affect 911 connectivity.

We therefore propose to require notification to the Commission and the public of major changes in any covered 911 service provider's network architecture or scope of 911 services that are not otherwise covered by existing network change notification requirements. Although parties to individual contracts for 911 services may be aware of major changes in network architecture or in the entities responsible for various 911 functionalities, the public also has a vested interest in understanding changes that may affect its access to 911. Transparency will also promote cooperation and information-sharing among the increasingly diverse range of entities across the 911 ecosystem. We therefore believe that public disclosure of major changes in 911 service is a key step toward increasing accountability when such changes are not initiated at the request of a PSAP or emergency authority or implemented on an emergency basis to mitigate or recover from the effects of an outage.

We seek comment on this proposal. Which 911 service providers should be subject to notification requirements? Should OSPs, ILECs, SSPs, and their sub-contractors each be responsible for reporting major changes in their respective facilities and networks? Or should ILECs and/or SSPs providing 911 services directly to PSAPs be responsible for notification of major changes by their subcontractors and other affiliated entities? We recognize that in many instances changes in 911 network architecture and the entities providing service occur at the request of PSAPs and state or local emergency authorities that desire new or different 911 capabilities. Should such changes be subject to notification requirements, and if so, who should provide the notification? Who should receive the notification? Should the Commission collect and publish such notifications, as it does with wireline network change notifications required under section 251 of the Act and associated Commission rules? How could public safety professional organizations such as NENA and APCO facilitate the distribution of such information to affected PSAPs? To allow sufficient time for public inspection without unnecessarily delaying beneficial network changes, we propose to require notification at least 60 days before major changes in 911 service take effect. We seek comment, however, on whether a shorter—or longer—time period would strike a more appropriate balance.

We also seek comment on what changes should be considered ''major'' for notification purposes. In general, we propose that changes with impact on 911 service in more than a single state should be among the changes considered major. We seek comment on this proposal. Would such an approach lead industry to adopt incremental, state-by-state changes that may not be as efficient? Should we establish thresholds based on factors such as the geography or population affected by a change in the provision of 911 service, regardless of whether their effect is limited to a single state or extends to multiple states? Beyond geographic or population criteria, are there other criteria that for changes in 911 service or network architecture that should trigger a notification requirement? Would it be helpful for an advisory committee such as CSRIC to develop recommendations regarding the types of 911 network changes that should require public notification? Do any existing CSRIC best practices or recommendations provide guidance?

2. Discontinuance or Impairment of Existing 911 Services Essential To Call Completion

In addition to proposing public notification of major changes in 911 networks as described above, we believe that additional safeguards are needed where such changes involve discontinuance, reduction or impairment of existing 911 services that are essential to call completion. As with network change notifications, the Commission already has rules requiring common carriers and interconnected VoIP providers to obtain authorization to ''discontinue, reduce, or impair service to a community, or part of a community.'' Similarly, we believe that incumbent 911 service providers that have historically taken responsibility for reliable 911 call completion have undertaken a public trust that cannot simply be relinquished at will. While incumbents are entitled to make decisions about their businesses and pursue new and different lines of service, they are not entitled to do so in a manner that endangers the public or leaves stakeholders uninformed with respect to the functioning of the combined network.

We therefore propose that covered 911 service providers that seek to discontinue, reduce, or impair existing 911 service in a way that does not trigger already existing authorization requirements should be required to obtain Commission approval. We seek comment on this proposal, and on ways the Commission might address the details of implementation. Are these changes in 911 service of such critical importance that Commission approval should be required before such changes proceed? What processes do states and localities currently have in place to evaluate requests to discontinue, reduce or impair existing 911 service, and how can the Commission support and encourage such processes? Would reliance on states and localities to oversee discontinuance, reduction, or impairment of existing 911 services better serve the policy goals of transparency and accountability?

What actions by an incumbent provider short of a complete discontinuance of 911 service would constitute a reduction or impairment of service for purposes of this requirement? What criteria should the Commission use to evaluate a service provider's request to discontinue, reduce or impair existing 911 service? Which changes in the scope of 911 services offered by an incumbent would be most likely to affect reliable 911 call completion? Should the Commission adopt other requirements specific to incumbent providers seeking to exit lines of 911 service or to outsource elements of that service to third parties? Do CSRIC best practices provide guidance on these questions, and should CSRIC be charged with developing additional best practices or

recommendations with respect to the discontinuance, reduction, or impairment of existing 911 services?

To be clear, nothing in this NPRM would relieve any carrier or interconnected VoIP provider of the requirement to seek permission to discontinue, reduce, or impair service to the extent required by section 214(a) of the Act and/or the Commission's implementing rules. We do not, however, intend to create duplicative obligations for entities that are already subject to section 214(a) and associated authorization requirements. The process proposed here would apply only when entities seeking to discontinue, reduce, or impair existing 911 service are not already required to obtain approval under other existing Commission rules.

We also do not propose to require public notification or Commission approval under these rules where the discontinuance or reduction of 911 service has been requested or initiated by the PSAP or the responsible state or local emergency authority. We presume that PSAPs and emergency authorities that initiate such changes have the ability to take appropriate steps to safeguard 911 reliability in the affected facilities without Commission intervention.

C. Ensuring Reliability and Accountability of New IP-Based 911 Capabilities and Services

Increased innovation and enhanced competition in the NG911 ecosystem hold the potential to enhance the functionality and utility of 911 while providing PSAPs and emergency authorities with greater choice over which services and products they purchase. At the same time, the increasing diversity of entities offering or planning to offer NG911 services increases the challenge of ensuring that all providers of such services will be capable of meeting appropriate standards of reliability and accountability. It is important that we set clear and consistent expectations with respect to the level of performance that providers of these services will be expected to achieve. Clarifying these obligations is essential to remove uncertainties and barriers to NG911 investment by state, local, and tribal authorities and to maintain public confidence in 911 as the transition to NG911 progresses.

Historically, states have overseen the entry of entities providing 911 service through such mechanisms as tariff conditions or issuance of certificates of public convenience and necessity. However, as we have noted above, covered 911 service providers increasingly are building and operating regional and nationwide IP-based 911 networks that both extend across state boundaries and serve PSAPs in multiple states, using less well established technologies. Thus, while states continue to have authority to regulate provision of 911 service within their jurisdictions, these multi-state networks transcend the regulatory authority of any individual state. Moreover, many states have elected not to exercise jurisdiction over IP-based communications, a determination that may operate to restrict their ability to ensure the reliability of 911 service that depends on IP-based technology. We therefore believe that a federal-level process is needed to ensure that there are no regulatory gaps in oversight of providers of new 911 services. This process is not intended to supplant state action; to the contrary, it would complement existing state oversight and could be used to empower state-level action.

We propose to require covered 911 service providers that seek to offer new services that affect 911 call completion to certify to the Commission that they have the technical and operational capability to provide reliable 911 service. In addition, to the extent that the new services rely on IP-based networks, associated infrastructure such as servers and data centers, and/or associated software applications, we propose that covered 911 service providers certify that they have conducted a reliability and security risk analysis of the network components, infrastructure, and/or software that they will use to support 911 call completion. This proposal would not require Commission approval of new entrants or delay the introduction of innovative new 911 technologies. It would, however, require entities that seek to provide new critical links in 911 call completion to publicly acknowledge their responsibilities and certify their preparedness to implement relevant best practices and comply with existing Commission rules applicable to the 911 capabilities they provide. This requirement would extend only to IP-based services that are necessary for successful transmission of voice calls and other data to PSAPs. For example, a smart phone ''app'' that provides the ability to originate calls or text messages to 911 would be subject to certification requirements, while an app that merely enhances or adds value to a smart phone's existing 911 dialing capabilities would not.

To what extent do state laws, regulations, or common law tort liability already provide adequate assurances of such qualifications, and is there a need for uniform standards in this regard? Are there quality-of-service requirements under state law that would cover 911-related services, and if so, what entities do they cover? Is there immunity under state law against liability for the provision of 911 related services, or communications services by common carriers or others? If so, how does such immunity affect incentives among covered service providers and others to ensure that 911 service is reliable? Do the answers to these questions depend upon whether a service is IP-based? How can the Commission facilitate efforts by states and localities to oversee the effective and reliable deployment of new 911 capabilities?

If we adopt a certification requirement, which entities should be subject to it, and how should we define the scope of new services that would trigger the need for certification? What information should applicants provide to support their certifications? Should applicants be required to analyze network monitoring capabilities, support for situational awareness, and the ability to share outage information with other stakeholders? Should the certification address issues regarding geographic diversity and redundancy in the network, probabilities of equipment failing due to hardware, network, software and procedural failures, as well as the ability to switch to backup systems? To what extent should the risk analysis include cybersecurity and supply-chain risk assessments? Is it sufficient for service providers to conduct their own analysis or should we require analysis and certification by an independent third party? Would it be helpful for an advisory committee such as CSRIC to develop best practices and recommendations that would serve as a basis for a certification of compliance with best practices for new 911 capabilities and services? For example, should CSRIC be charged with recommending guidelines for the reliability and security risk analysis proposed above? Are there other parts of the communication industry or other industries that have similar certification processes? For example, could the PCI Data Security Standard (PCI DSS) self-certification for entities receiving credit card data provide guidance?

As noted above, we do not envision that the federal certification process proposed here would preempt existing state processes for certification of 911 service providers. We believe, however, that states should have the option of adopting the federal certification framework as the basis for state-level

governance. We further propose to allow states to enforce federal certification requirements at the state level. We seek comment on this approach. Is there any potential conflict between federal certification for covered 911 service providers and similar state-level processes, and if so, how could such conflicts be minimized? What processes do states and localities currently use to oversee the entry of new 911 service providers, or entities that provide components of 911 service? Do these forms of oversight apply to all entities currently offering one or more components of 911 service, or only to incumbents or some other class of entities? To the extent that states use tariff conditions to regulate the provision of 911 service, what conditions are typically required of new entrants? In states where 911 is not a tariffed service, how do regulators and PSAPs ensure that all entities offering 911 service are both technically capable and committed to public safety?

We also do not propose that federal certification would extend to the provision of new call processing services or CPE capabilities that are provisioned by PSAPs themselves under the oversight of state and local governments. Nevertheless, we seek comment on how the Commission can work with state and local partners to ensure that the reliability of PSAP call processing is also maximized. Are there best practices or other measures that PSAPs can take to improve the diversity and robustness of their inbound communications links and the reliability of their CPE? What role should the Commission play with respect to the multi-state deployment and maintenance of new CPE technologies? We note that the Commission recently created a task force on PSAP optimization, which we anticipate will also provide insight regarding PSAP infrastructure, network architecture, and procedures, including call processing.

D. Situational Awareness and Coordination Responsibility During 911 Outages

As demonstrated by recent outage trends, the increasing complexity of IP-based 911 network architecture, combined with the increased diversity of entities supporting 911 capabilities, creates potential obstacles to establishing prompt situational awareness and initiating recovery from major 911 outages. While current Commission rules address outage reporting to the Commission and to affected PSAPs, the experiences during large-scale 911 outages described above also indicate a need for better coordination and information-sharing among communications providers themselves and any subcontractors or vendors that provide components of the nation's 911 networks. In such outages, restoration of 911 service is likely to be significantly delayed when it is unclear which part of the 911 system has failed and which provider is responsible for repairs. A lack of coordination can also lead to the unacceptable result of multiple entities being involved in an outage but no single entity being able to provide timely and comprehensive information about the outage to the PSAPs and public that they serve.

To address these concerns, we believe that more needs to be done to address gaps in situational awareness and coordination when large-scale 911 outages affect multiple jurisdictions and service providers. First, effective information sharing is key when diagnosing and repairing problems that may span multiple providers' networks or originate with one provider but affect many others. Second, in the increasingly diverse NG911 ecosystem, it will be more and more difficult for PSAPs and 911 service providers to coordinate an effective and timely response to outages without a central clearinghouse for obtaining and disseminating critical information. Accordingly, we propose to clarify responsibility for situational awareness and coordination among 911 service providers, sub-contractors, and other affiliated entries during disruptions in 911 service. While it may not be technically or economically feasible for a single entity to monitor, control, or repair every segment of a 911 network from caller to PSAP, it would be helpful for one covered 911 service provider in each jurisdiction to perform a triage function to mitigate the duration and impact of outages.

To establish a clearinghouse mechanism for critical information during major 911 outages and other significant degradations in service, we propose to establish a class of covered 911 service providers that would assume primary responsibility for situational awareness and information sharing. These entities—which we propose to call ''911 Network Operations Center (NOC) providers''—would be responsible for monitoring their networks to detect disruptions or degradations in 911 service, and for affirmatively communicating relevant information, as appropriate, to other stakeholders, including OSPs, SSPs, vendors, PSAPs, state emergency management offices, and the Commission's Operations Center. As a corollary to this proposal, 911 NOC providers would be empowered to obtain relevant information concerning outages from other covered 911 service providers, who in turn would be required to provide information in response to the 911 NOC provider's requests. 911 NOC providers would then coordinate with other stakeholders to collect and distribute information regarding the impact of outages on all affected portions of the network from call origination to completion.

We propose that the role of 911 NOC provider for each jurisdiction should be assigned to the entity responsible for transport of 911 traffic to the PSAP or PSAPs serving that jurisdiction. In many cases, we expect that this role would be assumed by the incumbent LEC, because, as noted above, ILECs have historically provided transport of 911 traffic to PSAPs and have thereby occupied the best position to maintain comprehensive situational awareness, even as SSPs and vendors have come to provide component pieces of those networks. Nevertheless, as 911 networks evolve, other entities may take on the 911 transport responsibilities that ILECs have historically provided. For example, in an NG911 environment, the 911 transport function may be performed by an ESINet provider that receives 911 traffic from originating service providers and directs the traffic to PSAPs served by the ESINet. In such cases, we envision that the ESINet provider would assume the 911 NOC provider role. We seek comment on this approach. Should ILECs, ESINet providers, and other entities responsible for 911 transport be the 911 NOC providers bearing primary responsibility for maintaining situational awareness, sharing information, and coordinating outage recovery among other affected providers? Are there situations where more than one entity can reasonably be described as being responsible for aspects of transport of 911 traffic to the PSAP or PSAPs serving a jurisdiction? In such situations, which entity would be best suited to fill the 911 NOC provider role?

Under this framework, we anticipate the need for only one 911 NOC provider in each jurisdiction; indeed, the 911 NOC provider's role as a clearinghouse for situational awareness will be most effective with a single point of contact for relevant information. We also emphasize that the proposed responsibilities of 911 NOC providers during an outage would be limited in scope. For instance, 911 NOC providers would not be expected to have omniscient situational awareness of the status of 911 network components

outside their control except to the extent they are empowered to obtain such information from other parties or through their own network monitoring processes. Instead, 911 NOC providers would serve as a hub for the collection, aggregation, and communication of available information among covered 911 service providers and other affected stakeholders to mitigate the impact of outages and support rapid restoration of service. In addition, while 911 NOC providers would be tasked with obtaining and disseminating outage information, they would not be legally responsible for adverse consequences resulting from outages attributable to failures of network components outside their control, or for remediating or repairing such failures.

We do not intend these proposals to supersede or replace existing outage reporting requirements under part 4 of the Commission's rules. Thus, we begin with the assumption that all parties covered by existing part 4 requirements would continue to be required to report outages to the Commission that meet the part 4 outage thresholds, and requirements for certain service providers to notify PSAPs and other ''911 Special Facilities'' of outages affecting 911 service would continue to apply independently of any action taken in this proceeding. We note, however, that the Commission has historically relied on mandatory outage reporting to gather statistical information on trends in communications reliability to assess the effectiveness of best practices and provide policy guidance on efforts to increase network reliability. While closely related, the need to share information and situational awareness among service providers affected by an outage may pose different challenges requiring different oversight mechanisms. We therefore seek comment on the alternative proposal of whether certain obligations currently in part 4 would be better assigned to 911 NOC providers under the framework proposed above. For example, should current responsibilities to notify PSAPs of outages affecting 911 service be incorporated into the information-sharing responsibilities of the 911 NOC provider, rather than the outage-reporting responsibilities of multiple service providers under current § 4.9? Should the Commission consider any other changes to part 4 in light of the responsibilities of 911 NOC providers proposed here?

We also seek comment on processes and mechanisms that 911 NOC providers and other covered 911 service providers could use to carry out their situational awareness and coordination responsibilities proposed here. As described above with respect to reliability certification requirements, service providers may be able to detect outages in real time by tracking the number of 911 calls that enter and exit their networks, an increase in call failure rates, positioning failure rates, or the number of calls that result in an ALI or LIS query from the destination PSAP. Service providers should have alarms configured to bring such discrepancies to the attention of appropriate personnel. To what extent should 911 NOC providers and other covered 911 service providers be expected to share information in real time about call counts and alarms using standardized network management interfaces or other mechanisms? Should CSRIC be charged with developing recommendations on these topics?

How can the Commission facilitate the real-time exchange of information by leveraging technologies such as machine-readable data? Should the Commission require 911 NOC providers or other covered 911 service providers to transmit high-level data on the status of their networks to a centralized ''dashboard'' allowing users to quickly identify disruptions in any portion of their 911 networks? Who should be given access to such data, and how can the Commission ensure that privacy and confidentiality are protected? Alternatively, should 911 NOC providers be required to maintain a Web page that provides key information on the status of their 911 networks? What information should be included, and should such Web pages be available to the public, or only to PSAPs and other covered 911 service providers?

How can the Commission support and empower 911 NOC providers and other covered 911 service providers to share information under the framework proposed above? One model for improved situational awareness that has been developed in the communications sector is the Information Sharing and Analysis Center (ISAC), a public-private partnership overseen by the U.S. Department of Homeland Security National Coordinating Center for Communications (NCC). Could a similar model be applied to the 911 ecosystem? Which entities should be eligible to participate, and should certain entities, such as NOC providers, be required to participate? Should the Commission facilitate improved communication by maintaining a centralized database of contact information for PSAPs and state emergency offices, which would allow 911 NOC providers and other covered 911 service providers to compile and update distribution lists for outage notification and recovery? Should the Commission serve as a hub for compilation and distribution of any other information? What role could advisory committees such as CSRIC play?

We also seek comment on issues that could affect the nature and scope of a NOC provider's responsibility for information gathering and dissemination. For example, should the scope of information that the NOC provider is responsible for gathering and disseminating vary depending on where in the call completion process a 911 outage has occurred? If so, what should the 911 NOC provider's responsibility be? To what extent should 911 NOC providers be responsible for addressing cybersecurity risks in 911 networks and sharing information with other stakeholders in the event of a cyber attack? What information should other covered 911 service providers that experience the effects of an outage be expected to communicate back to the 911 NOC provider?

Where a PSAP is served by more than one covered 911 service provider (*e.g.,* where a PSAP has a direct contractual relationship with an ILEC that sub-contracts with an SSP or other affiliated entity for 911 capabilities), should the parties be required to designate specific support roles? Beyond the proposal that primary 911 NOC support is best provided by the 911 transport provider, should the Commission require covered 911 service providers to designate a hierarchy of responsibility for such support or encourage PSAPs and providers to negotiate their own agreements? Or should such determinations be made at the state or local level through tariff conditions or requests for proposals for 911 service? What information should covered 911 service providers that are not NOC providers be expected to share with each other?

Are there legal or regulatory barriers that currently prevent or discourage 911 service providers, as well as their sub-contractors and other affiliated entities, from sharing information during a 911 outage? What are the specific laws, regulations, or contractual provisions that would preclude such information-sharing, and how can the Commission address those barriers in order to improve efficient, privacy-protective information sharing and situational awareness? Are there issues of legal liability for disclosing customer information that should be addressed as part of the Commission's efforts in this regard? Should the Commission extend liability protections already afforded to

certain entities to additional participants in the 911 ecosystem?

E. Legal Authority

The Communications Act of 1934 established the FCC, in part, ''for the purpose of promoting safety of life and property through the use of wire and radio communication.'' Beyond that general mandate, Congress has repeatedly and specifically endorsed a role for the Commission in the nationwide implementation of advanced 911 capabilities. The Wireless Communications and Public Safety Act of 1999 (911 Act) directed the Commission to ''designate 911 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance.'' It also directed the Commission to ''encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless telecommunications networks and enhanced wireless 911 service.'' The New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act) further affirmed the Commission's authority to require interconnected VoIP providers to offer 911 service. The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) also advanced the Commission's implementation of technologies such as text-to-911 by granting authority to promulgate ''regulations, technical standards, protocols, and procedures . . . necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible.'' Together, and in light of the series of 911 outages described above extending across multiple jurisdictions, we believe these provisions authorize—and indeed require—the Commission to take a leadership role, in cooperative partnership with states and localities, in promoting the continued availability and reliability of 911 services nationwide.

To the extent that 911 service providers are common carriers, the Commission also has based 911 reliability requirements on section 201(b) of the Communications Act, which requires the ''practices'' of common carriers to be ''just and reasonable,'' and on section 214(d), which provides that a common carrier must ''provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier.'' Where 911 service requirements affect wireless carriers, the Commission also has relied on its Title III authority to ''[p]rescribe the nature of the service to be rendered,'' and more generally, ''to manage spectrum . . . in the public interest.''

With respect to proposals to promote transparency and public notification for changes in 911 service, we note that section 218 of the Act authorizes the Commission to ''inquire into the management of the business of all carriers,'' and to obtain from such carriers and from persons directly or indirectly under their control ''full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.'' Section 251(c)(5) of the Act also requires each incumbent local exchange carrier to ''provide reasonable public notice of changes in the information necessary for the transmission and routing of services,'' or ''other changes that would affect the interoperability of [its] facilities and networks.'' Furthermore, Section 4(o) of the Act states that ''[f]or the purpose of obtaining maximum effectiveness from the use of radio and wire communications in connection with safety of life and property,'' the Commission ''shall investigate and study all phases of the problem and the best methods of obtaining the cooperation and coordination of these systems.'' The Commission also has authority, under the New and Emerging Technologies 911 Improvement Act of 2008, to ''compile . . . information concerning 9–1–1 and enhanced 9–1–1 elements, for the purpose of assisting IP-enabled voice service providers in complying with this section.'' Thus, as part of a cooperative governance structure for 911, the Commission is authorized to gather and disseminate information from carriers and other regulatees for the purpose of ensuring effective public safety communications. We seek comment on the application of these provisions to proposals in this NPRM.

As the Commission concluded in the *911 Reliability Order,* ''[i]n light of these express statutory responsibilities, regulation of additional capabilities related to reliable 911 service, both today and in an NG911 environment, would be well within Commission's . . . statutory authority.'' That order also committed to review the rules established therein, ''in light of our understanding about how NG911 networks may differ from legacy 911 service,'' and based on such factors as ''outage reporting trends'' and ''adoption of NG911 capabilities on a nationwide basis.'' Accordingly, we believe that the Commission would have ample legal authority to adopt any or all of the proposals discussed above, consistent with our longstanding policy of cooperation with state and local authorities. We seek comment on this analysis. In particular, we seek comment from state and local regulators and emergency authorities regarding the appropriate balance of federal, state, and local authority in each of the proposals described above.

To the extent that any of the proposals herein affect entities that are not subject to specific statutory authority, we also believe that their adoption would be that ''reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.'' Whether or not the increasingly diverse range of entities providing 911 services are common carriers or Commission licensees, they nevertheless have undertaken to provide a critical public safety communications service that is within our general jurisdiction to ''promot[e] safety of life and property through the use of wire and radio communication.'' In light of the record of recent events leading to significant multistate 911 outages, we believe such proposals would be reasonably ancillary to our fulfillment of the specific statutory mandates to ensure reliable and resilient 911 service across different technologies, as discussed above. We seek comment on this analysis and any other sources of legal authority for the proposals in this *Notice.*

V. Procedural Matters

A. Ex Parte Presentations

The proceedings initiated by this *Notice of Proposed Rulemaking* shall be treated as ''permit-but-disclose'' proceedings in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the

presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Comment Filing Procedures

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments in response to this *Notice of Proposed Rulemaking* on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

C. Accessible Formats

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

D. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 604, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *Notice of Proposed Rulemaking* as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA.

E. Paperwork Reduction Act

This *Notice of Proposed Rulemaking* contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

VI. Ordering Clauses

Accordingly, *it is ordered,* pursuant to sections 151, 154(i), 154(j), 154(o), 155(c), 201(b), 214(d), 218, 219, 251(e), 301, 303(b), 303(g), 303(j), 303(r), 332, 403, 615, 615a, 615c, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 155(c), 201(b), 214(d), 218, 219, 251(e), 301, 303(b), 303(g), 303(j), 303(r), 332, 403, 615, 615a, 615c, 621(b)(3), and 621(d), that this *Policy Statement and Notice of Proposed Rulemaking* in PS Docket Nos. 14–193 and 13–75 *is adopted.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Policy Statement and Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact of the proposals described in the attached *Policy Statement and Notice of Proposed Rulemaking* (*NPRM*) on small entities. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *Notice.* The Commission will send a copy of the *Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

The *NPRM* seeks comment on governance mechanisms to promote reliable 911 call completion nationwide and improve situational awareness and information sharing among 911 service providers. Specifically, it proposes to: (1) Amend the Commission's 911 reliability certification rules to cover additional entities and network reliability practices that are vital to call completion; (2) require public notification for major changes in multi-state 911 networks and services, and Commission approval for discontinuance of existing 911 services; (3) require entities seeking to provide new 911 capabilities to certify as to their technical and operational capability to provide reliable service; and (4) designate certain 911 service providers to be primarily responsible for situational awareness and coordination with other service providers in the event of a 911 outage.

The *NPRM* also affirms core principles guiding the Commission's approach to 911 governance and proposes mechanisms for the Commission, in cooperation with state and local partners, to ensure that the nation's 911 governance structure keeps pace with evolving technology so that all entities providing 911 service capabilities remain accountable for reliable 911 call completion and accurate situational awareness. As discussed in the *NPRM,* recent outage trends have revealed new reliability challenges due to geographic consolidation of network infrastructure and an increasing reliance on software-based network components to process and route 911 calls on a regional or national scale. Furthermore, an increasing number of 911 service providers subcontract with third party vendors for call-routing and other technical capabilities that are essential to call completion. As a result, 911 call centers potentially face real-time communication problems in trying to mitigate 911 service problems with 911 service providers and subcontractors. The Commission has a responsibility to promote reliable emergency communications and prevent avoidable failures.

The *NPRM* builds upon the *911 Reliability Order* adopted by the Commission in 2013 following the 2012 derecho storm, and sets forth principals to guide the Commission's 911 governance efforts in light of technology transitions and changing outage trends. In particular, the Policy Statement affirms the Commission's policy of working with state and local partners to ensure reliable 911 call completion as technology transitions consolidate network infrastructure and change the way 911 services are delivered to PSAPs in multiple states. Further, the Commission stresses that service provider changes to 911 services must be transparent and coordinated with the Commission and the appropriate state and local authorities.

B. Legal Basis

The legal basis for any action that may be taken pursuant to this *Notice of Proposed Rulemaking* is contained in sections 1, 4(i), 4(j), 4(o), 5(c), 201(b), 214(d), 218, 219, 251(e), 301, 303(g), 303(j), 303(r), 332, 403, 615, 615a, 615c, 621(b)(3), and 621(d) of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 154(j), 154(o), 155(c), 201(b), 214(d), 218, 219, 251(e), 301, 303(b), 303(g), 303(j), 303(r), 332, 403, 615, 615a, 615c, 621(b)(3), and 621(d).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

1. Small Businesses, Small Organizations, and Small Governmental Jurisdictions

Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

The *NPRM* seeks comment on the class of entities to which the proposals would apply. In the Derecho Report and the 911 Reliability Order the Commission defined ''covered 911 service providers,'' as those that provide specified 911 capabilities, or the functional equivalent, ''directly to a PSAP.'' The *NPRM* asks whether the Commission should expand the ''covered 911 service providers'' definition to also include all entities that provide 911, E911, or NG911 capabilities, such as call routing, automatic location information (ALI), automatic number identification (ANI), location information servers (LIS), text-to-911, or the functional equivalent of those capabilities, regardless of whether they provide such capabilities under a direct contractual relationship with a PSAP or emergency authority. Depending on how 911 calls are routed and processed in different network architectures, the proposed definition could apply to originating service providers (OSPs) such as wireless carriers and interconnected VoIP providers, incumbent local exchange carriers (ILECs), 911 system service providers (SSPs) that provide 911 services such as call routing and location information to PSAPs, and vendors and subcontractors of such entities to the extent that they provide covered 911 capabilities.

The *NPRM* seeks comment on which 911 service providers should be subject to additional 911 network change notification requirements, including publicly reporting major changes in their respective facilities and networks that affect PSAPs in multiple states. To the extent that changes in 911 service amount to a discontinuance, reduction, or impairment of existing services, the *NPRM* proposes to require Commission approval to the extent that authorization is not already required under section 214 of the Communications Act. The *NPRM* also seeks comment on whether to require 911 entities that propose to offer new services that affect 911 call completion to certify with the Commission baseline assurances of their technical and operational qualifications to provide reliable 911 service, as well as comment on which 911 entities should be subject to this certification.

To facilitate situational awareness and coordination, the *NPRM* seeks comment on the establishment of a class ''911 Network Operations Center (911 NOC) providers,'' which would assume primary responsibility for situational awareness and information sharing during disruptions in 911 service. The *NPRM* proposes that the 911 NOC provide role for each jurisdiction should be assigned to the entity responsible for transport of 911 traffic to the PSAP or PSAPs serving that jurisdiction—typically the local ILEC in legacy network architectures. However, as we transition into IP-based NG911 networks, other entities such as SSPs and emergency services Internet Protocol network (ESINet) providers may receive 911 traffic from an OSP and then direct traffic to the PSAP. The *NPRM* seeks comment on whether ILECs, ESINet providers or other 911

call transport entities should be the 911 NOC providers under this proposal.

2. Communications Service Entities

Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the *NPRM.* Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.

Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules proposed in the *NPRM.*

Wireless Telecommunications Carriers (except satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by rules proposed in the *NPRM.*

Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

All Other Telecommunications Providers. To the extent that entities such as SSPs and interconnected VoIP providers are subject to proposals in the *NPRM* but are not ''Wired Telecommunication Carriers,'' ''Wireless Telecommunication Carriers,'' or ''Cellular and Other Wireless Telecommunications'' under the categories listed above, the closest U.S. Census category appears to be ''All Other Telecommunications.'' All Other Telecommunications is defined as follows: ''This U.S. industry comprises establishments primarily engaged in providing specialized telecommunications services, such as . . . Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections.'' In analyzing whether a substantial number of small entities would be affected by the requirements proposed in the *NPRM,* the Commission notes that the SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with gross annual receipts of $30 million or less. For this category, census data for 2007 show that there were 2,639 establishments that operated for the entire year. Of those establishments, a total of 1,912 had gross annual receipts between $100,000 and $1 million; 487 had gross annual receipts between $1 million and $25 million; and 240 had gross annual receipts over $25 million. Thus, a majority of All Other Telecommunications firms potentially affected by the proposals in the *NPRM* can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

As noted above, the *NPRM* proposes to (1) amend the Commission's 911 reliability certification rules to cover additional entities and network reliability practices that are vital to call completion; (2) require public notification for major changes in multi-state 911 networks and services, and Commission approval for discontinuance of existing 911 services; (3) require entities seeking to provide

new 911 capabilities to certify as to their technical and operational capability to provide reliable service; and (4) designate certain 911 service providers to be primarily responsible for situational awareness and coordination with other service providers in the event of a 911 outage.

The *NPRM* proposes that a covered 911 service provider take reasonable measures to provide reliable service and complete an annual certification indicating whether it has implemented specified best practices or reasonable alternative measures. Covered 911 service providers' ''reasonable measures'' obligation would include —but would not be limited to—existing areas of circuit diversity, central-office backup power, and diverse network monitoring. Further, covered 911 service providers' certifications to the Commission would indicate whether IP-based 911 architecture is geographically distributed, load-balanced, and capable of automatic reroutes to backup equipment in the event of a hardware, network, software or database failure. The networking monitoring section of the certification would also include current requirements for physical diversity of monitoring facilities, but also the proper prioritization of critical network alarms. Further, the *NPRM* proposes that 911 entities have a duty to take reasonable measures to communicate with other 911 entities during disruptions in 911 service. Providers would be required to certify whether they have an outage notification process is in place to notify PSAPs of disruptions in 911 service within time frames specified in part 4 of the Commission rules.

These proposals build upon the existing 911 reliability certification process for covered 911 service providers that the Commission established in 2013. Under this process, a corporate officer with supervisory and budgetary authority over network operations in all relevant service areas must file an annual attestation with the Commission describing the entity's implementation of specified best practices, or if it is not feasible to implement those best practices, a description of reasonable alternative measures designed to mitigate the risk of failure. The option of certifying alternative measures is designed to provide flexibility to small entities operating in diverse service areas, which may have unique ways of addressing network reliability challenges. Because many covered 911 service providers have indicated they already conduct activities that form the basis for this certification in the normal course of business, the Commission expects the additional burden of filing certifications to be minimal. Certifications will be submitted through a simple online form, which is designed to allow small entities to input certification information and upload an attestation from a corporate officer without the need for any specialized personnel. In some cases, however, covered 911 service providers may choose to hire consultants or engineers to conduct technical aspects of the certification, or an attorney to review certification information for compliance with applicable rules. However, the Commission expects that most covered 911 service providers, including small entities, will be able to complete and submit the annual certification using only in-house personnel.

The *NPRM* proposes to require notification to the Commission and the public of major changes in any 911 service provider's network architecture or scope of 911 services that are not otherwise covered by existing network change notification requirements. The *NPRM* seeks comment on the specific changes that would be subject to notification requirements but proposes generally that changes affecting 911 service to PSAPs in multiple states would be considered ''major'' and subject to public notification. The proposed notifications would be filed with the Commission in a process similar to the existing network change notifications required from incumbent LECs under section 251 of the Communications Act. These are typically relatively short filings describing the nature of the planned changes and location(s) affected. Some companies may wish to have an attorney review such notifications for compliance purposes, but the proposal does not require such a review.

For incumbent 911 service providers that seek to discontinue, reduce or impair existing 911 service in a way that does not trigger already existing authorization requirements under section 214 of the Communications Act, the *NPRM* proposes to require prior Commission approval. The *NPRM* seeks comment on which actions by an incumbent 911 service provider would be considered a discontinuance, reduction or impairment of service. However, this proposal would not include changes requested by a PSAP or the responsible state or local emergency authority that might otherwise constitute a discontinuance, reduction or impairment of service. Commission approval under this proposal would require the applicant to file a request to discontinue, reduce, or impair 911 services stating the nature of the changes, the location(s) affected, and the anticipated date of the changes. If the Commission does not act on such a request within 60 days, the request will be deemed approved. As noted above, certain applicants may wish to hire engineers, consultants, or attorneys to review applications for discontinuance or technical portions thereof, but there is no such requirement in the proposed rule.

The *NPRM* also proposes to require covered 911 service providers that seek to offer new services that affect 911 call completion to certify to the Commission that they have the technical and operational capability to provide reliable 911 service. To the extent that the new services rely on IP-based networks, associated infrastructure such as servers and data centers, and/or associated software applications, the *NPRM* proposes that covered 911 service providers certify that they have conducted a reliability and security risk analysis of the network components, infrastructure, and/or software that they will use to support 911 call completion. This proposal would not require Commission approval of new entrants or delay the introduction of new 911 technologies. It would, however, require entities that seek to provide new critical links in 911 call completion to publicly acknowledge their responsibilities and certify their preparedness to implement relevant best practices and comply with existing Commission rules applicable to the 911 capabilities they provide. The Commission does not anticipate the need for any specialized personnel to provide such a certification.

To improve situational awareness during 911 outages, the *NPRM* proposes to establish a class of ''911 Network Operations Center (911 NOC) providers,'' which would assume primary responsibility for monitoring their networks to detect disruptions or degradations in 911 service, and for affirmatively communicating relevant information, as appropriate, to other affected 911 entities, including OSPs, SSPs, vendors, PSAPs, state emergency management offices, and the Commission's Operations Center. The role of the 911 NOC provider would be assigned to the entity responsible for transport of 911 traffic to the PSAP(s) in each jurisdiction. 911 NOC providers would receive information from, and coordinate with other covered 911 service providers to collect and distribute information regarding the impact of outages on all affected portions of the network from call origination to completion. The *NPRM* seeks comment on other responsibilities

of the 911 NOC provider, as well as the responsibilities of other covered 911 service providers to share information with the 911 NOC provider. The Commission anticipates that most or all of these information-sharing activities would be performed by in-house personnel who already are employed to monitor and maintain covered 911 service providers' networks. In any event, the *NPRM* proposes that 911 NOC providers would not be legally responsible for outages attributable to failures of network components outside their control, or for remediating or repairing such failures.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.''

The *NPRM* seeks to update and enhance the Commission's current 911 reliability certification rules, which complement its general approach of encouraging communications providers to voluntarily implement best practices and measuring compliance through certification requirements and outage reporting. Thus, small entities with limited resources would continue to enjoy many of the benefits of the current regime, including a general focus on network performance and reliability rather than specific design requirements. The option to certify reasonable alternative measures in lieu of specified certification requirements also provides flexibility to small entities, and the online system for submission of certification information is designed for ease of use by all communications providers without the need for specialized personnel. Public notifications and certifications proposed in the *NPRM* would follow similar submission processes and would not mandate any specific standards for 911 network architecture. The Commission has traditionally considered this approach a more flexible and less costly alternative to more comprehensive regulation, and the *NPRM* would preserve those advantages in large part.

Furthermore, the proposals in the *NPRM* apply primarily to service providers that offer 911 services on a multi-state scale to PSAPs in multiple jurisdictions. For example, IP-based 911 call routing capabilities are typically concentrated in a small number of servers and databases that may serve PSAPs across the country. Our proposals with respect to public notification and Commission approval of major changes in 911 service or discontinuance of 911 service also would apply only to providers serving PSAPs in multiple states. Thus, while there is no explicit exemption proposed for small entities, many of the rules by their nature will tend to apply only to larger communications providers that operate major, multi-state 911 networks.

To the extent that the *NPRM* would impose new obligations on small entities, we seek comment on alternatives including (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. Which of the proposed approaches do small entities find particularly difficult or costly to comply with, and how could those difficulties be addressed through modifications or exemptions? What would be the effect on public safety of exemptions from 911 service requirements, regardless of cost?

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

List of Subjects in 47 CFR Part 12

Resiliency, redundancy and reliability of communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 12 as follows:

PART 12—RESILIENCY, REDUNDANCY, AND RELIABILITY OF COMMUNICATIONS

■ 1. Revise the authority for part 12 to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 154(o), 155(c), 201(b), 214(d), 218, 219, 251(e), 301, 303(b), 303(g), 303(j), 303(r), 332, 403, 615, 615a, 615c, 621(b)(3), and 621(d).

■ 2. In § 12.4 revise paragraph (a)(4); add paragraphs (a)(12) through (14); revise paragraphs (b) and (c)(3); and add paragraphs (c)(4) and (5) to read as follows:

§ 12.4 Reliability of covered 911 service providers

(a) * * *

(4) *Covered 911 service provider.*

(i) Any entity that:

(A) Provides call routing, automatic location information (ALI), automatic number identification (ANI), location information services (LIS), text-to-911, or any other capability required for delivery of 911, E911, or NG911, or the functional equivalent of any of those capabilities, to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority as such entities are defined in § 64.3000(b) of this chapter, whether directly or indirectly as a contractor or agent to any other entity; and/or

(B) Operates a central office that directly serves a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority as such entities are defined in § 64.3000(b) of this chapter. For purposes of this section, a central office directly serves a PSAP, statewide default answering point, or appropriate local emergency authority if it hosts a selective router or the functional equivalent, hosts an ALI/ANI database or the functional equivalent, or is the last service-provider facility through which a 911 trunk or administrative line passes before connecting to a PSAP, statewide default answering point, or appropriate local emergency authority.

(ii) The term ''covered 911 service provider'' shall not include:

(A) PSAPs or governmental authorities to the extent that they provide 911, E911, or NG911 capabilities; or

(B) Communications providers that solely originate voice calls or text messages to 911 but do not provide any of the capabilities or services described in paragraph (a)(4)(i) of this section.

* * * * *

(12) *Geographically distributed.* For purposes of this section, 911 network

architecture is geographically distributed if all calls on the 911 network can be routed through more than one database or call processing facility in more than one geographic location.

(13) *Load balanced.* For purposes of this section, 911 network architecture is load balanced if call volume is dynamically distributed among multiple active databases or call processing facilities rather than concentrated in one active location.

(14) *Situational awareness.* For purposes of this section, situational awareness means the ability to detect disruptions or degradations in 911 service, to assess the scope and impact of such disruptions or degradations in 911 service, and to share information as appropriate to mitigate and resolve such impacts.

(b) *Provision of reliable 911 service.* All covered 911 service providers shall take reasonable measures to provide reliable 911 service. Performance of the elements of the Certification set forth in paragraphs (c)(1)(i), (c)(2)(i), (c)(3)(i), (c)(4)(i), and (c)(5)(i) of this section shall be deemed to satisfy the requirements of this paragraph (b). If a covered 911 service provider cannot certify that it has performed a given element, the Commission may determine that such provider nevertheless satisfies the requirements of this paragraph (b) based upon a showing in accordance with paragraph (c) of this section that it is taking alternative measures with respect to that element that are reasonably sufficient to mitigate the risk of failure, or that one or more certification elements are not applicable to its network.

(c) * * *

(3) *Network monitoring.*

(i) A covered 911 service provider shall certify whether it has, within the past year:

(A) Conducted Diversity Audits of the Aggregation Points that it uses to gather network monitoring data in each 911 Service Area;

(B) Conducted Diversity Audits of Monitoring Links between Aggregation Points and NOCs for each 911 Service Area in which it operates;

(C) Implemented Physically Diverse Aggregation Points for network monitoring data in each 911 Service Area and Physically Diverse Monitoring Links from such aggregation points to at least one NOC; and

(D) Established appropriate alarms for network failures that would be reasonably likely to result in a disruption of 911 service within a 911 Service Area, and procedures designed to ensure that such alarms quickly bring such network failures to the attention of appropriate personnel.

(ii) If a covered 911 service provider has not implemented all of the elements in paragraph (c)(3)(i) of this section, it must certify with respect to each such 911 Service Area:

(A) Whether it has taken alternative measures to mitigate the relevant risk, or is taking steps to remediate any vulnerabilities that it has identified with respect thereto, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this subsection are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(4) *Database and software configuration and testing.*

(i) A covered 911 service provider shall certify whether it has, within the past year:

(A) Implemented reasonable measures to ensure that any Internet Protocol (IP)-based architecture used to provide 911, E911, or NG911 capabilities defined in paragraph (a)(4)(i) of this section is geographically distributed, load balanced, and capable of automatic reroutes in the event of a software or database failure.

(B) Implemented reasonable measures to ensure that any software or database used by the covered 911 service provider to provide 911, E911, or NG911 capabilities such as call routing, automatic location information (ALI), automatic number identification (ANI), location information services (LIS), text-to-911, or the functional equivalent of those capabilities, is designed, configured, and tested to ensure reliable operation.

(C) Implemented reasonable measures to maintain continuity of 911 service during planned maintenance and/or updates to any software or database used to provide 911, E911, or NG911 capabilities.

(ii) If a covered 911 service provider has not implemented all of the elements in paragraph (c)(4)(i) of this section, it must certify:

(A) Whether it has taken alternative measures to mitigate the risk of a hardware, network, software, database, or other failure or is taking steps to remediate any issues that it has identified with respect thereto, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this subsection are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(5) *Situational awareness and information sharing.*

(i) A covered 911 service provider shall certify whether it has, within the past year:

(A) Implemented reasonable measures to maintain real-time situational awareness regarding the operational status of 911, E911, or NG911 service throughout any portion(s) of the 911 network that it owns, leases, or otherwise operates or controls or as to which it otherwise provides any of the capabilities or services described in paragraph (a)(4)(i)(A) of this section.

(B) Implemented reasonable measures to share appropriate information with PSAPs and other covered 911 service providers in the event of a disruption of 911, E911, or NG911 service, including, at a minimum, the information required under part 4 of the Commission's rules and under § 12.7 .

(ii) If a covered 911 service provider has not implemented all of the elements in paragraph (c)(5)(i) of this section, it must certify:

(A) Whether it has taken alternative measures to mitigate the risk of inadequate situational awareness and information sharing or is taking steps to remediate any issues that it has identified, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this subsection are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

* * * * *

■ 3. Add § 12.5 to read as follows:

§ 12.5 Transparency and accountability in connection with major changes in 911 service.

(a) *Major Changes in 911 network architecture and services.* A covered 911 service provider, as defined in § 12.4(a)(4), seeking to make major changes in its 911 network architecture and services shall file a public

notification under this section, except as provided under paragraphs (a)(3) through (5) of this section.

(1) For purposes of this section, the following actions by a covered 911 service provider constitute major changes in 911 network architecture and services:

(i) A change in 911 network architecture that affects the primary geographic routing or logical processing of voice calls, automatic location information (ALI), automatic number identification (ANI), location information services (LIS), text-to-911, or functionally equivalent capabilities, to public safety answering points (PSAPs), statewide default answering points, or appropriate local emergency authorities in more than one state;

(ii) A change in 911 network architecture that affects the availability of backup routing or processing capabilities for voice calls, ALI, ANI, LIS, text-to-911, or functionally equivalent capabilities, to PSAPs, statewide default answering points, or appropriate local emergency authorities in more than one state; or

(iii) A change in the allocation of primary responsibility with respect to provision of any of the capabilities or services described in § 12.4(a)(4)(i) affecting more than one state, including but not limited to a covered 911 service provider's allocation of such responsibilities to a sub-contractor or other third party.

(2) Notifications under this section shall be filed with the Commission at least 60 days before the changes described therein take effect.

(i) Notifications shall state publicly the nature of the proposed changes, the geographic area(s) or jurisdiction(s) affected, the anticipated date of the changes, and any other relevant information.

(ii) To the extent that notifications contain information that would cause competitive harm or a threat to public safety or national security if disclosed, a covered 911 service provider may request confidential treatment of such information under § 0.459 of this chapter.

(3) *Changes initiated by a PSAP or emergency authority.* Changes in 911 network architecture or service initiated by a public safety answering point (PSAP) or state or local emergency authority shall not require a notification to be filed under this section.

(4) *Changes subject to public notice under Section 251.* Changes in 911 network architecture or service that require public notice of network changes under § 51.325 of this chapter shall not require a separate notification under this section.

(5) *Emergency changes.* Changes in 911 architecture or services reasonably necessary to mitigate the impacts of a disruption or degradation in 911 service, including temporary re-routes to backup equipment or secondary PSAPs, shall not require a notification to be filed under this section.

(b) *Discontinuance, reduction, or impairment of existing 911 services.* A covered 911 service provider, as defined in § 12.4(a)(4), seeking to discontinue, reduce, or impair existing 911 services shall file a public notification with the Commission and receive approval from the Commission before undertaking such actions, except as provided in paragraphs (b)(3) and (4) of this section.

(1) For purposes of this section, the following actions by a covered 911 service provider constitute a discontinuance, reduction, or impairment of existing 911 services:

(i) Exit from a line of 911 services previously provided to PSAPs, statewide default answering points, or appropriate local emergency authorities in more than one state;

(ii) Termination or reduction in technical support or maintenance for 911 network components or customer premises equipment (CPE) to PSAPs, statewide default answering points, or appropriate local emergency authorities in more than one state; or

(iii) Reduction or impairment of quality-of-service levels for 911 services to PSAPs, statewide default answering points, or appropriate local emergency authorities in more than one state.

(2) Applications for discontinuance, reduction, or impairment of existing 911 services under this section shall be filed with the Commission at least 60 days before the changes described therein are requested to take effect. The Commission shall respond within 60 days by approving the request, approving the request subject to conditions, or denying the request. If the Commission takes no action within 60 days, the request shall be deemed approved.

(i) Applications shall state publicly the nature of the proposed discontinuance, reduction, or impairment, the geographic area(s) or jurisdiction(s) affected, the anticipated date of the changes, and any other relevant information.

(ii) To the extent that applications contain information that would cause competitive harm or a threat to public safety or national security if disclosed, a covered 911 service provider may request confidential treatment of such information under § 0.459 of this chapter.

(3) Changes initiated by a PSAP or emergency authority. Changes in 911 network architecture or service initiated by a PSAP or state or local emergency authority, including changes that would otherwise constitute a discontinuance, reduction, or impairment of existing 911 services under paragraph (b) of this section, shall not require Commission approval under this section.

(4) Changes subject to Section 214 authorization. Changes in 911 network architecture or service that require Commission authorization under Section 214 of the Communications Act and associated Commission rules shall not require separate Commission approval under this section.

■ 4. Add § 12.6 to read as follows:

§ 12.6 Reliability and accountability of new IP-based 911 capabilities and services.

(a) *Certification of capability to provide reliable 911 service.* Entities that propose to provide one or more of the capabilities of a covered 911 service provider, as defined in § 12.4(a)(4), but do not provide such capabilities prior to November 21, 2014, shall certify to the Commission that they:

(1) Possess the technical and operational capability to provide reliable 911 service;

(2) Have conducted a reliability and security risk analysis of any network components, infrastructure and/or databases and software used to support 911 call completion, including automatic location information (ALI), automatic number identification (ANI), location information services (LIS), text-to-911, or the functional equivalent of those capabilities; and

(3) Understand and agree to abide by the Commission's annual reliability certification requirements under this part 12, any applicable outage reporting or PSAP outage notification requirements under § 4.9 of this chapter, and any other Commission rules applicable to the new 911 capabilities that it offers.

(b) [Reserved]

■ 5. Add § 12.7 to read as follows:

§ 12.7 Situational awareness and coordination responsibility during disruptions in 911 service.

(a) *Designation of 911 Network Operations Center (NOC) Provider.* The covered 911 service provider responsible for transport of 911 calls and associated information to the public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority in each jurisdiction, pursuant to a

contractual relationship with that PSAP, statewide default answering point, or appropriate local emergency authority, shall be the 911 NOC Provider in that jurisdiction.

(b) *Responsibilities of 911 NOC Provider.* The 911 NOC Provider in each jurisdiction shall monitor the availability of 911 services and coordinate situational awareness and information sharing during disruptions in 911 service. For purposes of this section, disruptions in 911 service include events resulting in a complete loss of 911 service, as well as events that substantially impair service quality or public access to 911 without a complete loss of service, including disruption of automatic location information (ALI), automatic number identification (ANI), location information services (LIS), or any other services that locate callers geographically.

(1) In the event of such a disruption in 911 service, the 911 NOC Provider shall request information from any other affected covered 911 service provider(s) regarding their situational awareness of the cause and scope of the outage from the origination to the completion of 911 communications, including voice calls, ALI, ANI, LIS, and text-to-911. The 911 NOC Provider shall then communicate to any other affected covered 911 service providers, PSAPs, state emergency management offices, and to the Commission's Operations Center, all information reasonably available to mitigate the effects of the disruption and to restore service.

(2) All other covered 911 service providers shall communicate to the 911 NOC Provider all reasonably available information regarding the cause and scope of a disruption in 911 service that occurs on or affects portions of the 911 network that they own, lease, or otherwise operate or control and shall respond promptly to any request for such information by the 911 NOC Provider.

[FR Doc. 2015–00940 Filed 1–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14–236; RM–11739; DA 15–10]

Radio Broadcasting Services; Bogata, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Charles Crawford, proposing to amend the FM Table of Allotments, of the Commission's rules, by allotting Channel 247A at Bogata, Texas, as a first local service. A staff engineering analysis indicates that Channel 247A can be allotted to Bogata, Texas consistent with the minimum distance separation requirements of the Commission's rules with a site restriction located 12.9 kilometers (8 miles) northwest of Bogata. The reference coordinates are 33–33–21 NL and 95–18–28 WL.

DATES: Comments must be filed on or before March 2, 2015, and reply comments on or before March 17, 2015.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 2215 Cedar Springs Rd., #1605, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 14–236, adopted January 8, 2015, and released January 9, 2015. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Bogata, Channel 247A.

[FR Doc. 2015–01021 Filed 1–21–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140501394–5011–01]

RIN 0648–BE20

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 32

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 32 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). If implemented, this rule would remove blueline tilefish from the deep-water complex; establish blueline tilefish commercial and

recreational sector annual catch limits (ACLs) and accountability measures (AMs); revise the deep-water complex ACLs and AMs; establish a blueline tilefish commercial trip limit; and revise the blueline tilefish recreational bag limit. The purpose of this rule is to specify ACLs and AMs for blueline tilefish to end overfishing of the stock and maintain catch levels consistent with achieving optimum yield (OY) for the blueline tilefish resource.

DATES: Written comments must be received on or before February 23, 2015.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2014–0145'' 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-2014-0145,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 32, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2014/am32/index.html.*

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, telephone: 727–824–5305, or email: *rick.devictor@noaa.gov.*

SUPPLEMENTARY INFORMATION: The blueline tilefish is in the snapper-grouper fishery of the South Atlantic, and the fishery is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

A benchmark assessment for the blueline tilefish stock in the South Atlantic was conducted through the Southeast, Data, Assessment, and Review (SEDAR) process in 2013 (SEDAR 32). At its October 2013 meeting, the Council's Scientific and Statistical Committee (SSC) determined the 2013 stock assessment was based on the best scientific information available and considered the assessment to be appropriate for management decisions. The assessment determined that the blueline tilefish stock is undergoing overfishing in the South Atlantic. As required by the Magnuson-Stevens Act, the Council must therefore implement measures to end overfishing within 2 years of notification of an overfishing status. NMFS notified the Council of the blueline tilefish stock status on December 6, 2013.

The Magnuson-Stevens Act requires that ACLs and AMs be implemented to prevent overfishing and achieve the OY from a fishery. An ACL is the level of annual catch of a stock that, if exceeded, triggers AMs. AMs are management controls to prevent ACLs from being exceeded and to correct any overages of ACLs if they occur. Two examples of AMs include an in-season closure if landings reach or are projected to reach the ACL, and a post-season overage adjustment which would reduce the ACL if an overage occurred during the previous fishing year.

NMFS published an emergency rule on April 17, 2014 (79 FR 21636), that implemented temporary measures to reduce overfishing of blueline tilefish while Amendment 32 was being developed. Those measures were extended through a temporary rule on October 14, 2014 (79 FR 61262, October 10, 2014), and are effective through April 18, 2015, while Amendment 32 and the associated rulemaking are under review. The temporary measures of the emergency action include the following: Removal of blueline tilefish from the deep-water complex, specification of sector ACLs and AMs for blueline tilefish, and revision to the deep-water complex ACL to reflect the removal of blueline tilefish from the complex.

Management Measures Contained in This Proposed Rule

Removal of Blueline Tilefish From the Deep-Water Complex

This proposed rule would remove blueline tilefish from the deep-water complex. In 2012, the Comprehensive ACL Amendment established a deep-water complex that contained the following eight species: blueline tilefish, yellowedge grouper, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper (77 FR 15916, March 16, 2012). The Comprehensive ACL Amendment also specified ACLs and AMs for the complex where the complex's ACLs were based upon an acceptable biological catch (ABC) recommendation provided by the Council's SSC. In the absence of stock assessments, the ABCs for these and other unassessed species in the Comprehensive ACL Amendment were based on median or average catch. The Council placed most unassessed snapper-grouper species into complexes because many unassessed snapper-grouper species are data-limited stocks that are known to have issues with species identification and/or extreme fluctuations in relative landings through time due to rarity, or lack of targeted fishing effort.

As a result of blueline tilefish being assessed through SEDAR 32 and the Council's SSC providing an assessment-based ABC recommendation for blueline tilefish, the Council decided to remove blueline tilefish from the deep-water complex and establish individual ACLs and AMs for the blueline tilefish stock. The Council has determined that sufficient information is now available for blueline tilefish and the rationale for grouping the species with other data-limited species in the deep-water complex no longer applies.

Blueline Tilefish Commercial and Recreational ACLs and AMs

This proposed rule would implement individual blueline tilefish commercial and recreational sector ACLs (based on the revised ABC for blueline tilefish specified in Amendment 32) to end overfishing of the stock. In Amendment 32, the Council defines the blueline tilefish stock ACL equal to 98 percent of the ABC. Due to improved data reporting, the Council has consistently chosen to set ACL equal to ABC for snapper-grouper species. However, for blueline tilefish in Amendment 32, the Council decided to set the stock ACL at 98 percent of the proposed ABC to account for landings that occur north of the Council's area of jurisdiction. Approximately 2 percent of the total

blueline tilefish harvested were landed north of the North Carolina/Virginia border. Therefore, this rule would establish blueline tilefish stock ACLs (combined commercial and recreational ACLs, equivalent to a total ACL), of 35,632 lb (16,162 kg) for 2015, 53,457 lb (24,248 kg) for 2016, 71,469 lb (32,418 kg) for 2017, and 87,974 lb (39,904 kg) for 2018, and subsequent fishing years. All ACL weights are expressed in round weight. Additionally, this rule would establish sector-specific ACLs for the blueline tilefish commercial and recreational sectors based upon the Council's previously established blueline tilefish allocations of 50.07 percent and 49.93 percent for the commercial and recreational sectors, respectively. The commercial ACLs would be 17,841 lb (8,093 kg) for 2015, 26,766 lb (12,141 kg) for 2016, 35,785 lb (16,232 kg) for 2017, and 44,048 lb (19,980 kg) for 2018, and subsequent fishing years. The recreational ACLs would be 17,791 lb (8,070 kg) for 2015, 26,691 lb (12,107 kg) for 2016, 35,685 lb (16,186 kg) for 2017, and 43,925 lb (19,924 kg) for 2018, and subsequent fishing years.

This rule would implement commercial and recreational in-season AMs for blueline tilefish. If commercial or recreational landings for blueline tilefish reach or are projected to reach the applicable ACL, then the commercial or recreational sector, as applicable, would be closed for the remainder of the fishing year. The recreational sector would not have an in-season closure if the Regional Administrator (RA) determines, using the best scientific information available, that a closure would be unnecessary.

Additionally, if the total ACLs are exceeded in a fishing year, then during the following fishing year the commercial and recreational sectors will not have an increase in their respective sector ACLs.

This rule would also implement post-season ACL overage adjustments (paybacks) for blueline tilefish. For the commercial sector, if commercial landings exceed the commercial ACL, and the combined commercial and recreational ACL (stock ACL) is exceeded, and blueline tilefish are overfished, then during the following fishing year the commercial ACL would be reduced for that following year by the amount of the commercial ACL overage in the prior fishing year. For the recreational sector, if recreational landings for blueline tilefish exceed the applicable recreational ACL, and the combined commercial and recreational ACL (stock ACL) is exceeded, and blueline tilefish are overfished, then the recreational fishing season in the following fishing year would be reduced to ensure recreational landings do not exceed the recreational ACL the following fishing year. Additionally, the recreational ACL would be reduced by the amount of the recreational ACL overage from the prior fishing year. However, the recreational fishing season and recreational ACL would not be reduced if the RA determines, using the best scientific information available that no reduction is necessary.

Additional Blueline Tilefish Management Measures

This rule would implement a commercial trip limit and revise the recreational bag limit for blueline tilefish. This rule would establish a commercial trip limit of 100 lb (45 kg), gutted weight; 112 lb (51 kg), round weight. The trip limit is expected to slow the rate of harvest, potentially lengthening the commercial season during a fishing year, and reduce the risk of the commercial ACL from being exceeded.

For the recreational bag limit, blueline tilefish are currently part of the aggregate grouper and tilefish bag limit of 3 fish per person per day. This proposed rule would revise the blueline tilefish bag limit within the aggregate to set a specific blueline tilefish bag limit of one per vessel per day for the months of May through August. There would be no retention of blueline tilefish by the recreational sector from January through April and from September through December each year. A bag limit of one blueline tilefish per vessel per day and an 8-month annual closure was determined to best meet address ending overfishing, reducing recreational harvest, and potentially reducing blueline tilefish discards if blueline tilefish are targeted less during the open season because of the lower bag limit. The Council determined that the shortened summer seasonal opening could provide increased stability for planning purposes to recreational fishermen as it could minimize the risk of an in-season closure and the recreational ACL being exceeded, which may require post-season AMs in the following fishing year. In addition, the Council determined that an opening during the summer months could increase safety at sea by allowing fishing to occur in the generally calmer summer weather compared to a January 1 season opening during the winter. The vessel limit and fishing season dates for the blueline tilefish recreational sector would match what is being proposed by the Council for snowy grouper through Regulatory Amendment 20 to the FMP. The Council determined that similar recreational management measures and fishing seasons would be beneficial to the fish stocks as both species are caught at the same depths and have similar high release mortality rates.

Deep-Water Complex Commercial and Recreational ACLs and AMs

This proposed rule would revise the ACLs and AMs for the deep-water complex (composed of yellowedge grouper, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper). The ACLs are being revised for two reasons. First, as Amendment 32 proposes to remove blueline tilefish from the deep-water complex, this proposed rule would remove the current blueline tilefish portion from the complex total ACL. The permanent blueline tilefish portion of the complex ACL is 631,341 lb (286,371 kg), round weight, and the total deep-water complex ACL is 711,025 lb (322,516 kg), round weight. The emergency rule set both a new, separate blueline tilefish ACL of 224,100 lb (101,650 kg), round weight and a revised deep-water complex ACL without blueline tilefish of 79,684 lb (36,144 kg), round weight. Second, through Amendment 29 to the FMP, which is currently in rulemaking, the Council is proposing a revision to the ABC control rule for data-poor species based on recommendations from the SSC. If Amendment 29 is approved and implemented, the portion of the deep-water complex ABC for silk snapper and yellowedge grouper would change. The Council submitted Amendment 29 to the Secretary of Commerce on October 14, 2014, the notice of availability for the amendment was published in the **Federal Register** on November 24, 2014 (79 FR 69819), and the proposed rule published in the **Federal Register** on December 8, 2014 (79 FR 72567).

Therefore, this proposed rule would change the deep-water complex total ACL (both sectors without blueline tilefish but with the increased catch levels for silk snapper and yellowedge grouper resulting from Amendment 29), to 170,278 lb (77,237 kg), round weight. Additionally, this proposed rule would establish sector specific ACLs for the deep-water complex based on the allocations for species in the deep-water complex that were established in the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012). The commercial ACL for the complex would be 131,634 lb (59,708 kg), round weight and the recreational ACL for the complex would be 38,644 lb (17,529 kg), round weight.

This proposed rule would revise the AMs for the deep-water complex. This proposed rule would retain the current commercial in-season AM, revise the commercial post-season AM, and implement revised recreational AMs for the deep-water complex. If commercial or recreational landings for the deep-water complex reach or are projected to reach their applicable ACL, then the commercial or recreational sector, as applicable, would be closed for the remainder of the fishing year. The recreational sector would not have an in-season closure if the RA determined, using the best scientific information available, that a closure was unnecessary. The Council decided that the in-season AM for both sectors is necessary to reduce the risk that landings exceed the ACL.

This proposed rule would also modify the post-season ACL overage adjustments for the deep-water complex. Currently, if deep-water complex commercial landings exceed the ACL and at least one species in the complex is overfished, the commercial ACL is reduced in the following year by the overage amount. This proposed rule would modify the commercial post-season AMs as follows: If commercial landings exceed the commercial ACL, and the combined commercial and recreational ACL (total ACL) is exceeded, and at least one species in the deep-water complex is overfished, then during the following fishing year the complex commercial ACL would be reduced for that following year by the amount of the complex's commercial ACL overage in the prior fishing year.

Currently, if recreational landings for the deep-water complex exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the length of the following recreational fishing season will be reduced by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. This proposed rule would modify the recreational post-season AMs as follows: For the recreational sector, if recreational landings for the deep-water complex exceed the applicable recreational ACL, and the combined commercial and recreational ACL is exceeded, and at least one species in the complex is overfished, then length of the recreational fishing season in the following fishing year would be reduced to ensure recreational landings do not exceed the recreational ACL the following fishing year. Additionally, the recreational ACL would be reduced by the amount of the recreational ACL overage from the prior fishing year. However, the recreational fishing season and recreational ACL would not be reduced if the RA determined, using the best scientific information available, that no reduction is necessary.

Additional Measures Contained in Amendment 32

Amendment 32 also contains actions that would not be specified in the regulations. Amendment 32 revises the definitions of management thresholds for South Atlantic blueline tilefish, including maximum sustainable yield (MSY), OY, and ABC, and establishes recreational annual catch targets (ACTs) for blueline tilefish and revises the ACTs for the deep-water complex.

Definitions of MSY and OY were established for blueline tilefish in Amendment 11 to the FMP (64 FR 59126, November 2, 1999). Amendment 32 would revise these definitions based upon the most recent scientific information contained in SEDAR 32. Amendment 32 would specify the MSY value for blueline tilefish and set the OY equal to the ACL. Amendment 32 would also establish recreational ACTs for blueline tilefish and revise the ACTs for the deep-water complex. The deep-water complex ACTs are being revised to reflect the removal of blueline tilefish from the complex and the change in the deep-water complex ABC as described above. These ACTs are management reference points to track performance of the management measures but do not trigger AMs.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 32, the FMP, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

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

NMFS prepared a supplemental IRFA for this rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained in the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the supplemental IRFA follows.

Every commercial fishing vessel in the South Atlantic snapper-grouper fishery must have either a valid Federal South Atlantic unlimited snapper-grouper permit or a trip-limited permit. Both permits are limited access permits, and a vessel with a trip-limited permit is limited to no more than 225 lb (102.1 kg) round weight (whole weight), per trip. As of November 5, 2014, there were 539 vessels with a valid unlimited permit and 111 vessels with a valid trip-limited permit. An estimated annual average of 277 vessels landed deep-water complex species from 2008 through 2012. From that, it is estimated that up to 277 commercial fishing vessels and up to 277 commercial fishing businesses would be directly affected by the proposed rule.

According to Small Business Act Size Standards, a business in the finfish fishing industry is small if its annual receipts are less than $20.5 million. Based on estimates of average annual dockside revenue per vessel, it is concluded that a substantial number of the directly affected commercial fishing businesses are small businesses.

The proposed changes to management measures would directly apply to businesses in the finfish fishing industry (NAICS 114111) that harvest blueline tilefish and other species of the deep-water complex of the South Atlantic snapper-grouper fishery. Proposed changes in this rule would also directly apply to anglers; however, anglers, whether aboard for-hire fishing or private and leased vessels, are not considered small entities as that term is defined in 5 U.S.C. 601(6) and so therefore are not further discussed in this summary.

The proposed increase of the commercial ACL for the deep-water complex beyond its temporary value could have a beneficial economic impact by as much as an additional $244,116 to $338,690 (2012 dollars) annually in dockside revenue. The average annual economic benefit per vessel is estimated to be from $1,596 to $2,214 (2012 dollars).

The proposed commercial ACL and AMs for blueline tilefish are expected to reduce average annual commercial landings of blueline tilefish from 2015 through 2019 by as much as 142,300 to 323,426 lb (64,546 to 146,704 kg) round weight, and dockside revenue by as much as $576,330 to $679,195 (2012 dollars). That change represents an approximate 89 percent to 91 percent reduction of average annual dockside revenue from blueline tilefish landings over that time. The average annual loss per vessel is estimated to range from $4,648 to $5,477 (2012 dollars), which

represents approximately 6 percent to 7 percent of average annual receipts of these vessels.

From 2008 through 2012, the average trip landed 525 lb (238.1 kg) gutted weight, of blueline tilefish, and an annual average of 124 commercial vessels had blueline tilefish landings. Without the proposed trip limit, the current average landings of 525 lb (238.1 kg), gutted weight, per trip would reach the proposed commercial ACL of 17,841 lb (8,092.5 kg) round weight, or 15,929 lb (7,225.3 kg), gutted weight, in 2015, by 30 trips and an estimated 94 vessels and up to 94 small businesses would have no blueline tilefish landings in 2015, as a result of AMs being triggered and the commercial season being closed. The proposed 100-lb (45.4-kg), gutted weight, trip limit would increase the number of trips necessary to reach the commercial ACL to 1,593, which would improve the likelihood that all of the estimated 124 vessels and small businesses, especially the smallest of those businesses, would have some blueline tilefish commercial landings during the year.

The 100-lb (45.4-kg) trip limit would reduce average blueline tilefish landings per trip by 425 lb (192.8 kg) gutted weight, and $897 (2012 dollars), which is an 81 percent reduction in landings (by weight and value) per trip with blueline tilefish landings. That reduction of average blueline tilefish landings per trip represents a loss of approximately 28 percent of average dockside revenue per trip.

The average of 525 lb (238.1 kg), gutted weight, per trip is not representative of all vessels in the snapper-grouper fishery. Vessels with a trip-limited permit cannot presently land more than 201 lb (91.2 kg), gutted-weight, of blueline tilefish per trip. The small businesses with trip-limited permits would lose no more than $222 (2012 dollars) in dockside revenue per trip. Hence, the 100 lb (45.4-kg), gutted weight, trip limit would represent at most a 51 percent reduction in landings (by weight and value) per trip for those vessels with a trip-limited permit.

The proposed 100 lb (45.4 kg), gutted weight, trip limit would increase trip-related costs. Specifically, it would prevent larger vessels from experiencing traditional economies of scale. Consequently, it is expected that small businesses with vessels that have unlimited poundage permits would incur larger increases in average unit costs per pound of blueline tilefish landed than those with vessels that have 225 lb (102.1 kg), round weight, trip limit permits.

Commercial ACLs for the deep-water complex less than the proposed 131,634 lb (59,708 kg), round weight, were considered but not adopted by the Council. A lesser commercial ACL would result in either a smaller beneficial economic impact than the preferred alternative or an adverse economic impact.

A lesser commercial ACL for blueline tilefish was considered but not adopted and it, when combined with the in-season AM, would generate larger adverse economic impacts on small businesses. Other considered but not adopted alternatives would establish a higher commercial ACL than the preferred alternative for blueline tilefish, which would have smaller adverse economic impacts in the short run, but potentially larger adverse economic impacts in the long run.

Among the considered but not adopted alternatives were higher commercial trip limits, which would have smaller adverse economic impacts on small businesses per trip. However, the higher trip limits would shorten the length of the open commercial season, reduce the number of small businesses that have landings of blueline tilefish during the year, and increase the likelihood that the smallest of the small businesses would have zero blueline tilefish landings during the year.

List of Subjects in 50 CFR Part 622

Blueline tilefish, deep-water complex, Fisheries, Fishing, South Atlantic, Snapper-Grouper.

Dated: January 14, 2015.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.183, paragraph (b)(7) is added to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(7) *Blueline tilefish recreational sector closure.* The recreational sector for blueline tilefish in or from the South Atlantic EEZ is closed from January 1 through April 30, and September 1 through December 31, each year. During a closure, the bag and possession limit for blueline tilefish in or from the South Atlantic EEZ is zero.

■ 3. In § 622.187, paragraphs (b)(2)(iii) and (iv) are revised and paragraph (v) is added to read as follows:

§ 622.187 Bag and possession limits.

* * * * *

(b) * * *

(2) * * *

(iii) No more than one fish may be a golden tilefish;

(iv) No more than one fish per vessel may be a blueline tilefish; and

(v) No goliath grouper or Nassau grouper may be retained.

* * * * *

■ 4. In § 622.191, paragraph (a)(10) is added to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(10) *Blueline tilefish.* Until the applicable ACL specified in § 622.193(z)(1)(iii) is reached or projected to be reached, 100 lb (45 kg), gutted weight; 112 lb (51 kg), round weight. See § 622.193(z)(1)(i) for the limitations regarding blueline tilefish after the commercial ACL is reached.

* * * * *

■ 5. In § 622.193, the suspension on paragraph (h) is lifted and paragraph (h) is revised, and paragraph (z) is added to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(h) *Deep-water complex (including yellowedge grouper, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper)*—(1) *Commercial sector*—(i) If commercial landings for the deep-water complex, as estimated by the SRD, reach or are projected to reach the commercial ACL of 131,634 lb (59,708 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of deep-water complex species is prohibited and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(ii) If commercial landings exceed the ACL, and the combined commercial and recreational ACL (total ACL) specified in paragraph (h)(3) of this section, is exceeded, and at least one of the species in the deep-water complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACL for that following year by the amount of the commercial ACL overage in the prior fishing year.

(2) *Recreational sector.* (i) If recreational landings for the deep-water complex, as estimated by the SRD, are projected to reach the recreational ACL of 38,644 lb (17,529 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year, unless the RA determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limit is zero.

(ii) If recreational landings for the deep-water complex, exceed the applicable recreational ACL, and the combined commercial and recreational ACL (total ACL) specified in paragraph (h)(3) of this section is exceeded, and at least one of the species in the deep-water complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, to reduce the length of the recreational fishing season in the following fishing year to ensure recreational landings do not exceed the recreational ACL the following fishing year. When NMFS reduces the length of the following recreational fishing season and closes the recreational sector, the following closure provisions apply: The bag and possession limits for the deep-water complex in or from the South Atlantic EEZ is zero. Additionally, the recreational ACL will be reduced by the amount of the recreational ACL overage in the prior fishing year. The fishing season and recreational ACL will not be reduced if the RA determines, using the best scientific information available that no reduction is necessary.

(3) The combined commercial and recreational sector ACL (total ACL) is 170,278 lb (77,237 kg), round weight.

* * * * *

(z) *Blueline tilefish*—(1) *Commercial sector.* (i) If commercial landings for blueline tilefish, as estimated by the SRD, reach or are projected to reach the applicable ACL in paragraph (z)(1)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of blueline tilefish is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(ii) If commercial landings exceed the ACL, and the combined commercial and recreational ACL (total ACL) specified in paragraph (z)(3) of this section is exceeded, and blueline tilefish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACL for that following year by the amount of the commercial ACL overage in the prior fishing year.

(iii) The applicable commercial ACLs, in round weight, are 17,841 lb (8,093 kg) for 2015, 26,766 lb (12,141 kg) for 2016, 35,785 lb (16,232 kg) for 2017, and 44,048 lb (19,980 kg) for 2018 and subsequent fishing years. The commercial ACL will not increase automatically in a subsequent fishing year if landings exceed or are projected to exceed the total ACL in the prior fishing year, as specified in paragraph (z)(3) of this section.

(2) *Recreational sector.* (i) If recreational landings for blueline tilefish, as estimated by the SRD, are projected to reach the applicable ACL in paragraph (z)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year, unless the RA determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limit is zero.

(ii) If recreational landings for blueline tilefish, exceed the applicable recreational ACL, and the combined commercial and recreational ACL (total ACL) specified in paragraph (z)(3) of this section, is exceeded, and blueline tilefish is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, to reduce the length of the recreational fishing season in the following fishing year to ensure recreational landings do not exceed the recreational ACL the following fishing year. When NMFS reduces the length of the following recreational fishing season and closes the recreational sector, the following closure provisions apply: the bag and possession limit for blueline tilefish in or from the South Atlantic EEZ is zero. Additionally, the recreational ACL will be reduced by the amount of the recreational ACL overage in the prior fishing year. The fishing season and recreational ACL will not be reduced if the RA determines, using the best scientific information available that no reduction is necessary.

(iii) The applicable recreational ACLs, in round weight, are 17,791 lb (8,070 kg) for 2015, 26,691 lb (12,107 kg) for 2016, 35,685 lb (16,186 kg) for 2017, and 43,925 lb (19,924 kg) for 2018 and subsequent fishing years. The recreational ACL will not increase automatically in a subsequent fishing year if landings exceed or are projected to exceed the total ACL in the prior fishing year, as specified in paragraph (z)(3) of this section.

(3) Without regard to overfished status, if the combined commercial and recreational ACL (total ACL), as estimated by the SRD, is exceeded in a fishing year, then during the following fishing year, an automatic increase will not be applied to the commercial and recreational ACLs. The RA will evaluate the landings data, using the best scientific information available, to determine whether or not an increase in the commercial and recreational ACLs will be applied. The applicable combined commercial and recreational sector ACLs (total ACLs), in round weight are 35,632 lb (16,162 kg) for 2015, 53,457 lb (24,248 kg) for 2016, 71,469 lb (32,418 kg) for 2017, and 87,974 lb (39,904 kg) for 2018 and subsequent fishing years.

[FR Doc. 2015–00880 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 80, No. 14
Thursday, January 22, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the University of Nebraska-Lincoln of Lincoln, Nebraska, an exclusive license to the smooth bromegrass variety named ''NEWELL''.

DATES: Comments must be received on or before February 23, 2015.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Mojdeh Bahar of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2015–00950 Filed 1–21–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the University of Nebraska-Lincoln of Lincoln, Nebraska, an exclusive license to the switchgrass variety named ''LIBERTY''.

DATES: Comments must be received on or before February 23, 2015.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Mojdeh Bahar of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2015–00951 Filed 1–21–15; 8:45 am]

BILLING CODE 3410–03–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Business Meeting.

DATE AND TIME: Thursday, January 29, 2015; 1:00 p.m. EST.

PLACE: 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC.

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:

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda

II. Program Planning
- Vote on Appointment of Vice Chair for the Commission
- Discussion on FY15 Appropriations Explanatory Statement
- Discussion and Vote on Updating Select Commission Reports
- Discussion and Vote on date for the Police Practices briefing
- Discussion and Vote on revised Educational Equity paper
- Discussion and Vote on Anniversary of 13th Amendment Press Release

III. Management and Operations
- Staff Director's Report

IV. State Advisory Committee (SAC) Appointments
- Florida
- Michigan
- South Carolina
- Texas
- Virginia
- Wisconsin

V. Adjourn Meeting

Dated: January 16, 2015.

Marlene Sallo,

Staff Director.

[FR Doc. 2015–01109 Filed 1–20–15; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; 2016–2018 American Community Survey Methods Panel Testing

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before March 23, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Cheryl Chambers, Rm. 3K067, U.S. Census Bureau, American Community Survey Office, Washington, DC 20233, by FAX to (301) 763–8070 or email at *acso.communications@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Community Survey (ACS) collects detailed socioeconomic data from about 3.5 million addresses in the United States and 36,000 in Puerto Rico each year. The ACS also collects detailed socioeconomic data from about 195,000 residents living in Group Quarter (GQ) facilities. Resulting tabulations from that data collection are provided on a yearly basis. The ACS allows the Census Bureau to provide timely and relevant housing and socioeconomic statistics, even for low levels of geography.

An ongoing data collection effort with an annual sample of this magnitude requires that the ACS continue research, testing and evaluations aimed at improving data quality, achieving survey cost efficiencies, and improving ACS questionnaire content and related data collection materials. The ACS Methods Panel is a research program that is designed to address and respond to survey issues and needs. During the 2016–2018 period, the Methods Panel may include testing methods for increasing survey efficiencies, reducing survey cost, lessening respondent burden, and improving response rates. Testing may also include methods to improve data quality.

At this time, plans are in place to propose several tests: a 2016 ACS Content Test, a 2016 mail messaging test, a 2017 self-response test with the potential to test both mail messaging as well as questionnaire content, a 2018 self-response test building on the previous tests, as well as tests of Internet data collection enhancements in 2017 and 2018. Since the ACS Methods Panel is designed to address emerging issues, we may conduct additional testing as needed. Any additional testing would focus on methods for reducing data collection costs, improving data quality, revising content, or testing new questions that have an urgent need to be included on the ACS.

In response to Federal agencies' requests for new and revised ACS questions, the Census Bureau plans to conduct the 2016 ACS Content Test. In 2014, the Office of Management and Budget Interagency Committee for the ACS identified candidate versions of the requested new and revised questions, to be finalized in 2015. The objective of the 2016 ACS Content Test, for both new and existing questions, is to determine the impact of changing question wording and response categories, and redefining underlying constructs, on the quality of the data collected. The Census Bureau proposes to evaluate changes to the questions by comparing the revised questions to the current ACS questions, or for new questions, to compare the performance of two question versions to each other as well as to other well-known sources of such information.

In response to declining response rates and increasing costs, the Census Bureau plans to study methods to increase self-response, the least expensive mode of data collection, especially Internet response. The tests would include changes to messages included in mail materials to motivate the public to respond to the ACS, increase awareness of the ACS, as well as changes to design elements of the materials, including color and graphics. The tests would be conducted in series, in 2016, 2017, and 2018, building on previous tests' findings. Additionally, the test in 2017, and possibly 2018, may include content changes based on continued review of the ACS content for respondent burden. The Census Bureau will assess the impact on data quality of the changes to the questions.

The ACS began collecting data using the Internet in January 2013. To date, the Web site used to collect the data is designed for a desktop computer screen. The Internet tests being proposed would evaluate Internet data collection via mobile devices, examine ways to reduce Internet break-offs, email testing, as well as other improvements to Internet data collection.

II. Method of Collection

2016 Content Test—The ACS Content Test data collection protocol will be based on the protocol used in the production ACS. That is, we will collect data across four modes (Internet, mail, Computer Assisted Telephone Interviews (CATI), and Computer Assisted Personal Interviews (CAPI). There will also be a Content Follow-up reinterview as part of the content test where we will attempt a follow-up CATI reinterview with all households that responded in the field test and for whom we have a telephone number. This reinterview will focus on the particular questions that we are evaluating in the field test, and will not include every question asked in the original interview.

2016 Mail Messaging Test—We will use the same modes we offer in ACS production in the first month of data collection for the self-response test; that is, Internet and a mail-back paper questionnaire. No CATI or CAPI interviews are necessary for this test. Different strategies to encourage self-response may be used, including changes to the number and timing of the mailings as well as the materials included in each mailing.

2017 Self-Response Test—We will use the same modes we offer in ACS production in the first month of data collection for the self-response test; that is, Internet and a paper questionnaire. For the portions of the test that include content changes, CATI and CAPI interviews are necessary. Different mail materials to encourage self-response may be used, including changes to the number of mailings as well as the materials included in each mailing. For the portions of the test that include content changes, a follow-up CATI reinterview will be conducted with all households that responded in the field test and for whom we have a telephone number. This reinterview will focus on the particular questions that we are evaluating in the field test, and will not include every question asked in the original interview.

Internet Tests in 2017 and 2018—We will use the same modes we offer in ACS production in the first month of data collection for the Internet tests; that is, we will send a mailing asking sampled units to respond online, with a nonresponse follow-up mailing of a paper questionnaire about two and a half weeks later. There are no plans to conduct CATI or CAPI nonresponse follow-up on test cases.

2018 Self-Response Test—We will use Internet and a paper questionnaire for this test and include different mailing strategies. CATI and CAPI interviews, as well as Content Followup, may be necessary for this test if content changes are tested.

III. Data

OMB Control Number: 0607–0936.

Form Number(s): ACS–1, ACS–1(PR)SP, ACS CATI(HU), ACS CAPI(HU) and ACS RI(HU).

Type of Review: Regular submission.

Affected Public: Individuals and households.

Estimated Number of Respondents: We plan to contact the following number of respondents:

2016 Content Test—70,000 sampled addresses during the field test and 40,000 responding addresses during the content follow-up conducted by telephone.

2016 Mail Messaging Test—60,000 sampled addresses.

2017 Self-Response Test—60,000 sampled addresses and 35,000 responding addresses during the content follow-up conducted by telephone.

Internet Tests in 2017 and 2018—108,000 sampled addresses each.

2018 Self-Response Test—60,000 sampled addresses and 35,000 responding addresses during the content follow-up conducted by telephone.

Estimated Time per Response: Estimates are: 2016 Content Test, 40 minutes, Content follow-up, 15 minutes; Mail Messaging Test, 40 minutes; 2017 and 2018 Self-Response Test, 40 minutes, Content follow-up, 15 minutes; Internet Tests, 40 minutes.

Estimated Total Annual Burden Hours: The estimate is an annual average of 112,722 hours.

Estimated Total Annual Cost to Public: Except for their time, there is no cost to respondents.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 15, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–00934 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; 2015 National Survey of Children's Health Pretest

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before March 23, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scott Boggess, U.S. Census Bureau, ADDP, HQ–6H063, 4600 Silver Hill Road, Washington, DC 20233–0001 (301–763–6167 or via the Internet at *Scott.Boggess@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Survey of Children's Health (NSCH) Pretest project plan will consist of several panels to assess data collection mode preferences (Paper-and-Pencil Interviewing (PAPI) and Internet) of respondents, amount of respondent incentives to gain cooperation and participation in the survey, and telephone as a method of nonresponse follow-up.

The design for the pretest survey data collection is assumed to be two-phase: the first phase will screen for households with children and children with special health care needs; followed by the selection of a single child in households with children and phase two will present age-based topical questions. There are three separate age-based topical surveys that a household could be selected for: 0 to 5 year old children, 6 to 11 year old children, or 12 to 17 year old children. Census staff will develop a sampling plan to select a pretest sample of 16,000 households (addresses) from a vendor-provided sampling frame with split panels to test mode of administration (Mail and Web Push + Mail) and use of cash incentives ($5 or $10). The target overall response rate for the pretest is 70 percent for the screener and 80 percent for the topical questionnaire.

The pretest allows for the preparation of a successful first year production survey which enables the MCHB to produce national and state-based estimates on the health and well-being of children, their families, and their communities as well as estimates of the prevalence and impact of children with special health care needs.

II. Method of Collection

Mailout/Mailback Paper-and-Pencil Interviewing (PAPI) Treatment Groups Plans for the Mailout/Mailback pretest treatment groups include a sample of 8,000 households that will be mailed an English and Spanish language self-administered PAPI screening instrument (questionnaire) followed by a separate age-based topical instrument (questionnaire). The households selected for this group will all be sent a $5 cash incentive with the initial request to complete the screener instrument. This group will then be further broken down into two different treatment groups: one group will receive a $5 cash incentive with the topical instrument and the other will receive a $10 cash incentive with the topical instrument. The sample sizes for each of these different cash incentive groups is 4,000 households.

Web Push + Mail Treatment Groups

Plans for the Web Push + Mail pretest treatment group include a sample of 8,000 households that will receive instructions on how to complete an English or Spanish language screening instrument (questionnaire) via the Web. The households selected for the Web Push + Mail pretest treatment group will be taken through the screening instrument to determine if they screen into one of the three topical

instruments. If a household lists at least one child who is 0 to 17 years old in the screener, they will be directed into a topical instrument immediately after the last screener question. The Web Push + Mail group is further broken down into differing incentive groups. Since the respondent is taken through both the screening and topical instruments at one time, either a $5 or $10 cash incentive is mailed along with the initial screening instrument request. Therefore, the Web Push + Mail pretest sample of 8,000 is broken out into two incentive groups of 4,000 households each. Since the Web Push + Mail group does not receive any topical mailing materials, they will not receive any additional incentives.

III. Data

OMB Control Number: 0607–XXXX.

Form Number(s): NSCH–P–S1 (English Screener),

NSCH–P–T1 (English Topical for 0- to 5-year-old children),

NSCH–P–T2 (English Topical for 6- to 11-year-old children),

NSCH–P–T3 (English Topical for 12- to 17-year-old children),

NSCH–PS–S1 (Spanish Screener),

NSCH–PS–T1 (Spanish Topical for 0- to 5-year-old children),

NSCH–PS–T2 (Spanish Topical for 6- to 11-year-old children), and

NSCH–PS–T3 (Spanish Topical for 12- to 17-year-old children).

Type of Review: Regular submission.

Affected Public: Parents, researchers, policymakers, and family advocates.

Estimated Number of Respondents: 11,200 for the Screener and 8,960 for the Topical.

Estimated Time per Response: 4 minutes per screener response and 27–30 minutes per topical response.

Estimated Total Annual Burden Hours: 5,227 hours.

Estimated Total Annual Cost to Public: $2,776,000.00.

Respondent's Obligation: Voluntary.

Legal Authority:

Census Authority: Title 13, U.S.C. Section 8(b)

MCHB Authority: 42 U.S.C., Chapter 7, Title V (Social Security Act)

Confidentiality: Confidential Information Protection and Statistical Efficiency Act (CIPSEA)

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 16, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–01000 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Meeting of Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis, Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, Pub. L. 97–375 and Pub. L. 105–153), we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address ways in which the national economic accounts can be presented more effectively for current economic analysis and recent statistical developments in national accounting.

DATES: Friday, May 8, the meeting will begin at 9:00 a.m. and adjourn at 3:30 p.m.

ADDRESSES: The meeting will take place at the Bureau of Economic Analysis at 1441 L St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–9633.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Gianna Marrone of BEA at (202) 606–9633 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at (202) 606–9633.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government. This will be the Committee's twenty-eighth meeting.

Dated: January 7, 2015.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2015–00900 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

DATES: *Effective* January 22, 2015.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of Dezhou Kaihang Agricultural Science Technology Co., Ltd. (Dezhou Kaihang) regarding the antidumping duty order on certain preserved mushrooms from the People's Republic of China (the PRC). The period of review (POR) is February 1, 2013, through February 28, 2014.[1] We preliminarily find that Dezhou Kaihang made a sale of subject merchandise at less than normal value. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230;

[1] The Department extended the review period for this new shipper review by 28 days until February 28, 2014 to capture the entry associated with the sale made by Dezhou Kaihang during the POR. *See* 19 CFR 351.214(f)(2)(ii); *see also Certain Preserved Mushrooms from the People's Republic of China; Initiation of New Shipper Review; 2013–2014,* 79 FR 17505 (March 28, 2014).

telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Certain Preserved Mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing. The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 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 order is dispositive.[2]

Methodology

The Department is conducting this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214. Export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a nonmarket economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

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 (ACCESS).[3] ACCESS is available to registered users at *https://access.trade.gov* and 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 on the internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of New Shipper Review

The Department preliminarily determines that the following weighted-average dumping margin exists:

Manufacturer/Exporter	Weighted-average dumping margin (percent)
Shandong Fengyu Edible Fungus Co., Ltd./Dezhou Kaihang Agricultural Science Technology Co., Ltd.	168.90

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs by no later than 30 days after the date of publication of these preliminary results of review.[4] Rebuttals to case briefs, limited to the arguments raised in those comments, may be filed by no later than five days after case briefs are due.[5] A table of contents, list of authorities used, and an executive summary of issues should accompany any brief submitted to the Department.[6] The summary should be limited to five pages total, including footnotes.

Any interested party may request a hearing within 30 days of publication of this notice.[7] Hearing 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. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[8]

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time (''ET'') on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[9]

The Department intends to issue the final results of this new shipper review, which will include the results of its analysis of issues raised in any such comments, within 90 days of the issuance of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Upon issuing the final results of this new shipper review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[10] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this new shipper review.

In this new shipper review, we calculated a per unit rate for each importer by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit amount against the entered quantity of the subject merchandise. If the respondent's weighted-average dumping margin is above *de minimis,* we will calculate an importer-specific per-unit duty assessment rate in accordance with 19 CFR 351.212(b)(1), based on the ratio of the total amount of dumping calculated

[2] For a complete description of the scope of the order *see* Decision Memorandum for the Preliminary Results of the New Shipper Review of Dezhou Kaihang in Certain Preserved Mushrooms from the People's Republic of China; 2013/2014, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated January 14, 2015 (Preliminary Decision Memorandum), issued concurrently with and hereby adopted by this notice.

[3] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaacess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references in 19 CFR 351.303 can be found at 79 FR 69046 (November 20, 2014).

[4] *See* 19 CFR 351.309(c).

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.309(c)(2) and (d)(2).

[7] *See* 19 CFR 351.310(c).

[8] *See* 19 CFR 351.310(d).

[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[10] *See* 19 CFR 351.212(b)(1).

for the importer's examined sales to the total quantity entered by that importer. Then, we will instruct CBP to assess antidumping duties on all appropriate entries covered by this new shipper review. 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. Pursuant to a refinement in the Department's practice, for entries that were not reported in the U.S. sales database submitted by Dezhou Kaihang for this new shipper review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate.[11]

The final results of this new shipper 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.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For merchandise produced by Shandong Fengyu Edible Fungus Co., Ltd. and exported by Dezhou Kaihang, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for subject merchandise exported by Dezhou Kaihang but not produced by Shandong Fengyu Edible Fungus Co. Ltd., the cash deposit rate will be the rate for the PRC-wide entity; and (3) for subject merchandise produced by Shandong Fengyu Edible Fungus Co., Ltd. but not exported by Dezhou Kaihang, the cash deposit rate will be the rate applicable to the exporter. These 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)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these preliminary results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: January 14, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
  a. Bona Fide Sale Analysis
  b. Non-Market Economy Country Status
  c. Separate Rates
  d. Separate Rate Recipient
  e. Surrogate Country
V. Fair Value Comparisons
VI. Results of Differential Pricing Analysis
VII. Date of Sale
VIII. U.S. Price
IX. Normal Value
X. Factor Valuations
XI. Currency Conversions
XII. Recommendation

[FR Doc. 2015–01052 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–DS–P

[11] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Ball Bearings and Parts Thereof From Japan: Notice of Court Decision Not in Harmony With the Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review; 2005–2006

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

SUMMARY: On December 24, 2014, the United States Court of International Trade (CIT or Court) issued final judgment in *JTEKT Corp.* v. *United States,* Consol. Court No. 07–377 (*JTEKT Corp.*), affirming the Department of Commerce's (the Department) final results of redetermination pursuant to remand.[1]

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the administrative review of the antidumping duty order on ball bearings and parts thereof from Japan covering the period May 1, 2005 through April 30, 2006, and is amending the final results with respect to Aisin Seiki Co., Ltd.

DATES: *Effective* January 3, 2015.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2007, the Department published *AFBs 17.*[2] Aisin Seiki Co., Ltd. (Aisin) and other parties appealed *AFBs 17* to the CIT and on September 3, 2009, the CIT granted the Department's request for a voluntary remand to examine its calculation of constructed export price (CEP) for certain U.S. sales made by Aisin. After reexamining Aisin's CEP calculation, the Department determined it appropriate to recalculate Aisin's dumping margin.[3] On May 5, 2011, the CIT affirmed, in part, the Department's first remand, which resulted in a weighted-average dumping margin of 1.13 percent for Aisin.[4] The Court remanded issues regarding other respondent companies, relating to the Department's use of zeroing and model match methodology. In *Final Second Remand,* the Department further explained these issues but did not recalculate the dumping margins for any other respondents in the litigation.[5] The Court affirmed the Department's second

[1] *See* Redetermination Pursuant to Court Remand, Consol. Court No. 07–377, available at *http://enforcement.trade.gov/remands/* (*Final Second Remand*).

[2] *Ball Bearings and Parts Thereof From France, Germany, Japan, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part,* 72 FR 58053 (October 12, 2007) (*AFBs 17*).

[3] *See* Redetermination Pursuant to Remand, *JTEKT Corporation, et al.* v. *United States,* Consol. Court No. 07–00377 (CIT September 2, 2009), dated December 4, 2009 (*Final First Remand*).

[4] *See JTEKT Corp.* v. *United States,* 768 F. Supp. 2d 1333 (2011).

[5] *See Final Second Remand.*

remand in its entirety on December 24, 2014, and entered judgment.

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's December 24, 2014, judgment affirming the *Final Second Remand* constitutes a final decision of that court that is not in harmony with *AFBs 17.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision, the Department is amending *AFBs 17* with respect to Aisin's weighted-average dumping margin as redetermined in the *Final First Remand.* The revised weighted-average dumping margin for the period May 1, 2005, to April 30, 2006, for Aisin is 1.13%.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed, or if appealed and upheld by the Federal Circuit, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of the subject merchandise exported by Aisin using the revised assessment rate calculated by the Department in the *Final First Remand* and listed above.

Cash Deposit Requirements

Because we revoked the antidumping duty order on ball bearings and parts thereof from Japan effective September 15, 2011, no cash deposits for estimated antidumping duties on future entries of subject merchandise will be required.[6]

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: January 15, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–01053 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Ball Bearings and Parts Thereof From Japan and the United Kingdom: Final Results of Sunset Reviews and Revocation of Antidumping Duty Orders,* 79 FR 16771 (March 26, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–021, C–274–807]

Melamine From the People's Republic of China and Trinidad and Tobago: Postponement of Preliminary Determinations of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

DATES: *Effective* January 22, 2015.

FOR FURTHER INFORMATION CONTACT: Andrew Medley, 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) 482–4987.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 2014, the Department of Commerce (''Department'') initiated countervailing duty investigations on melamine from the People's Republic of China (''PRC'') and Trinidad and Tobago.[1] The current deadline for the preliminary determinations of these investigations is no later than February 5, 2015.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, section 703(c)(1)(B) of the Act permits the Department to postpone making the preliminary determination until no later than 130 days after the date on which it initiated the investigation if, among other reasons, the petitioner makes a timely request for a postponement, or the Department concludes that the parties concerned are cooperating and determines that the investigation is extraordinarily complicated. On January 9, 2015, in accordance with 19 CFR 351.205(b)(2), Cornerstone Chemical Company (''Petitioner'') made timely requests to postpone the preliminary countervailing duty determinations.[2] Therefore, in accordance with section 703(c)(1)(A) of the Act, the Department is hereby postponing the preliminary countervailing duty determinations by 65 days to no later than April 11, 2015. However, because April 11, 2015, falls on a Saturday, the preliminary determinations are now due no later than April 13, 2015.[3]

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: January 15, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–01050 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Melamine from the People's Republic of China and Trinidad and Tobago: Initiation of Countervailing Duty Investigations,* 79 FR 73030 (December 9, 2014).

[2] *See* Letters from Petitioner titled ''Melamine From The People's Republic Of China: Request For Postponement Of The Preliminary Determination'' and ''Melamine From Trinidad and Tobago: Request For Postponement Of The Preliminary Determination,'' dated January 9, 2015.

[3] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Business Directory Survey

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Opportunity to participate in business directory app.

SUMMARY: The U.S. Departments of State, Commerce, and Energy (the ''Interagency Team'') announce an opportunity for U.S.-based suppliers and providers of clean energy, smart grid, and energy efficiency solutions to participate in the pilot phase of an interactive directory of renewable energy and energy efficiency solutions. The Interagency Team is currently developing an interactive app to serve as a mobile business directory for U.S. clean energy exporters. The app will highlight sustainability improvements at U.S. diplomatic missions and provide potential business partners globally with a searchable interface to find information on potential U.S. technology and service providers. The app will showcase a diverse array of clean energy goods and services, including renewable energy equipment

(solar, wind, geothermal), biofuels, fuel cell power, smart grid technologies, and energy efficiency solutions, as well as U.S.-based services critical to the deployment of clean energy supplies. U.S. clean energy exporters interested in registering to be part of the pilot phase of the interactive directory and providing information on their company's solutions to be included in the app are requested to send an email to *reee@trade.gov* by no later than February 20, 2015.

Who will use the app?

Target users include Foreign Service Officers and Foreign Commercial Service Officers and their energy sector stakeholders in international markets. The app will enable users to easily demonstrate U.S. clean energy and energy efficiency solutions available in foreign markets and provide a tool to facilitate commercial partnerships that drive the deployment of U.S. technologies and services globally. Through the app, a global audience, as well as the American public, will be invited to learn more about environmental diplomacy efforts overseas, and the innovative U.S. companies powering them.

Disclaimer

The information submitted to the directory and displayed on the app is intended to inform users about U.S. clean energy and energy efficiency solutions. All U.S.-based businesses in these industries that meet the criteria requested in the online form will be eligible for the directory and app. The Interagency Team will perform due diligence on submissions to the Directory and expects that submitting parties will perform their own due diligence, investigation, and background research before entering into a commercial relationship with any listed business or business contact facilitated through the product. A listing in the directory does not constitute endorsement of the business or its products, services or technology by the Interagency Team. The Interagency Team assumes no responsibility or liability for the actions users may take based on the information provided and reserves the right not to list any particular business.

ADDRESSES: To provide information for use in the app, send an email to *reee@trade.gov* by no later than February 20, 2015.

FOR FURTHER INFORMATION CONTACT: Helaina Matza, Office of Innovation and Eco-Diplomacy, United States Department of State; 202.647.0716; *sustainability@state.gov;* or Andrew Bennett, Office of Energy and Environmental Industries, United States Department of Commerce; 202–482–5235; *reee@trade.gov.*

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2015–01073 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Genome in a Bottle Consortium—Progress and Planning Workshop

AGENCY: National Institute of Standards & Technology (NIST), Commerce.

ACTION: Notice of public workshop.

SUMMARY: NIST announces the Genome in a Bottle Consortium meeting to be held on Thursday and Friday, January 29 and 30, 2015. The Genome in a Bottle Consortium is developing the reference materials, reference methods, and reference data needed to assess confidence in human whole genome variant calls. A principal motivation for this consortium is to enable performance assessment of sequencing and science-based regulatory oversight of clinical sequencing. The purpose of this meeting is to update participants about progress of the consortium work, continue to get broad input from individual stakeholders to update or refine the consortium work plan, continue to broadly solicit consortium membership from interested stakeholders, and invite members to participate in work plan implementation. Topics of discussion at this meeting will include release of the pilot candidate NIST Reference Material, short and long read data from the next sets of NIST Reference Materials, structural variants, and potential future Reference Materials.

DATES: The Genome in a Bottle Consortium meeting will be held on Thursday, January 29, 2015 from 9:00 a.m. to 5:30 p.m. Pacific Time and Friday, January 30, 2015 from 9:00 a.m. to 12:45 p.m. Pacific Time. Attendees must register by 5:00 p.m. Pacific Time on Thursday, January 22, 2015.

ADDRESSES: The meeting will be held in the Fisher Conference Center inside the Arrillaga Alumni Center at Stanford University, 326 Galvez Street, Stanford, CA 94305–6105. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For further information contact Justin Zook by email at *jzook@nist.gov* or by phone at (301) 975–4133 or Marc Salit by email at *salit@nist.gov* or by phone at (650) 350–2338. To register, go to: *http://app.certain.com/profile/form/index.cfm?PKformID=0x19409085b04*.

SUPPLEMENTARY INFORMATION: Clinical application of ultra high throughput sequencing (UHTS) for hereditary genetic diseases and oncology is rapidly growing. At present, there are no widely accepted genomic standards or quantitative performance metrics for confidence in variant calling. These standards and quantitative performance metrics are needed to achieve the confidence in measurement results expected for sound, reproducible research and regulated applications in the clinic. On April 13, 2012, NIST convened the workshop ''Genome in a Bottle'' to initiate a consortium to develop the reference materials, reference methods, and reference data needed to assess confidence in human whole genome variant calls (*www.genomeinabottle.org*). On August 16–17, 2012, NIST hosted the first large public meeting of the Genome in a Bottle Consortium, with about 100 participants from government, academic, and industry. This meeting was announced in the **Federal Register** (77 FR 43237) on July 24, 2012. A principal motivation for this consortium is to enable science-based regulatory oversight of clinical sequencing.

At the August 2012 meeting, the consortium established work plans for four technical working groups with the following responsibilities:

(1) Reference Material (RM) Selection and Design: Select appropriate sources for whole genome RMs and identify or design synthetic DNA constructs that could be spiked-in to samples for measurement assurance.

(2) Measurements for Reference Material Characterization: Design and carry out experiments to characterize the RMs using multiple sequencing methods, other methods, and validation of selected variants using orthogonal technologies.

(3) Bioinformatics, Data Integration, and Data Representation: Develop methods to analyze and integrate the data for each RM, as well as select appropriate formats to represent the data.

(4) Performance Metrics and Figures of Merit: Develop useful performance metrics and figures of merit that can be obtained through measurement of the RMs.

The products of these technical working groups will be a set of well-characterized whole genome and synthetic DNA RMs along with the methods (documentary standards) and reference data necessary for use of the RMs. These products will be designed to help enable translation of whole genome sequencing to regulated clinical applications. The consortium meets in workshops two times per year, in January at Stanford University in Palo Alto, CA, and in August at the National Institute of Standards and Technology in Gaithersburg, MD. At these workshops, including the last meetings at Stanford in January 2014 and at NIST in August 2014, participants in the consortium have discussed progress developing well-characterized genomes for NIST Reference Materials and planned future experiments and analysis of these genomes (see *https://federalregister.gov/a/2012-18064, https://federalregister.gov/a/2013-18934,* and *https://federalregister.gov/a/2014-18841* for past workshops at NIST). The August 2014 meeting, which included meetings of each of the four working groups, was announced in the **Federal Register** (79 FR 46774) on August 11, 2014, and the meeting is summarized at *https://sites.stanford.edu/abms/content/workshop-summary-and-slides-august-2014.*

There is no cost for participating in the consortium. No proprietary information will be shared as part of the consortium, and all research results will be in the public domain.

All attendees are required to pre-register. Anyone wishing to attend this meeting must pre-register at *http://app.certain.com/profile/form/index.cfm?PKformID=0x19409085b04* by 5:00 p.m. Pacific Time on Thursday, January 22, 2015, in order to attend.

Dated: January 14, 2015.

Richard Cavanagh,

Acting Associate Director of Laboratory Programs.

[FR Doc. 2015–01158 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD670

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; 2015 Research Fishery

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

ACTION: Notice of public meeting.

SUMMARY: On October 31, 2014, NMFS published a notice inviting qualified commercial shark permit holders to submit applications to participate in the 2015 shark research fishery. The shark research fishery allows for the collection of fishery-dependent data for future stock assessments and cooperative research with commercial fishermen to meet the shark research objectives of the Agency. Every year, the permit terms and permitted activities (*e.g.,* number of hooks and retention limits) specifically authorized for selected participants in the shark research fishery are designated depending on the scientific and research needs of the Agency, as well as the number of NMFS-approved observers available. In order to inform selected participants of this year's specific permit requirements and ensure all terms and conditions of the permit are met, NMFS is holding a mandatory permit holder meeting (via conference call) for selected participants. The date and time of that meeting is announced in this notice.

DATES: A conference call will be held on January 29, 2015.

ADDRESSES: A conference call will be conducted. See **SUPPLEMENTARY INFORMATION** for information on how to access the conference call.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Delisse Ortiz at (301) 427–8503.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Highly Migratory species (HMS) Fishery Management Plan (FMP) is implemented by regulations at 50 CFR part 635.

The final rule for Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008, corrected at 73 FR 40658, July 15, 2008) established, among other things, a shark research fishery to maintain time-series data for stock assessments and to meet NMFS' research objectives. The shark research fishery gathers important scientific data and allows selected commercial fishermen the opportunity to earn more revenue from selling the sharks caught, including sandbar sharks. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land/harvest sandbar sharks subject to the sandbar quota available each year. The 2015 sandbar shark quota is 116.6 mt dw per year. The selected shark research fishery participants also have access to the research large coastal shark, small coastal shark, and pelagic shark quotas subject to retention limits and quotas per §§ 635.24 and 635.27, respectively.

On October 31, 2014 (79 FR 64750), NMFS published a notice inviting qualified commercial shark directed and incidental permit holders to submit an application to participate in the 2015 shark research fishery. NMFS received 7 applications, of which 6 applicants were determined to meet all the qualifications. NMFS selected all 6 qualified participants after considering how to meet research objectives in particular regions. NMFS expects to invite qualified commercial shark permit holders to submit an application for the 2016 shark research fishery later in 2015.

As with past years, the 2015 permit terms and permitted activities (*e.g.,* number of hooks and retention limits) specifically authorized for selected participants in the shark research fishery were designated depending on the scientific and research needs of the Agency, as well as the number of NMFS-approved observers available. In order to inform selected participants of this year's specific permit requirements and ensure all terms and conditions of the permit are met, per the requirements of § 635.32 (f)(4), NMFS is holding a mandatory permit holder meeting via conference call.

Conference Call Date, Time, and Dial-In Number

The conference call will be held on January 29, 2015, from 2 to 4 p.m. (EST). Participants and interested parties should call 1–888–810–4795 and use the passcode 8297434. Selected participants who do not attend will not be allowed to participate in the shark research fishery. While the conference call is mandatory for selected participants, other interested parties may call in and listen to the discussion.

Selected participants are encouraged to invite their captain, crew, or anyone else who may assist them in meeting the terms and conditions of the shark research fishery permit.

Dated: January 15, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–00920 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD674

Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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

ACTION: Notice; receipt of application for exempted fishing permit.

SUMMARY: This notice announces receipt of an exempted fishing permit (EFP) application from the Alaska Seafood Cooperative (AKSC). If granted, this permit would allow AKSC to evaluate how often vessels use alternate halibut handling methods designed to reduce halibut mortality, when the alternate methods are available as an option. Operators from AKSC nonpelagic trawl vessels would remove halibut from a codend on the deck, and release those fish back to the water in a timely manner to increase survivability. These halibut would be sampled by trained sea samplers for length and physical condition using standard International Pacific Halibut Commission (IPHC) halibut mortality assessment methodology. This experiment has the potential to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Pacific Halibut Act.

DATES: Comments on this EFP application must be submitted to NMFS by 5 p.m. A.S.T., February 11, 2015. The North Pacific Fishery Management Council (Council) will consider the application at its meeting from February 2, 2015, to February 11, 2015 in Seattle, WA.

ADDRESSES: The Council meeting will be held at the Renaissance Hotel 515 Madison Street, Seattle, WA 98104. The agenda for the Council meeting is available at *http://legistar2.granicus.com/npfmc/meetings/2015/2/918_A_North_Pacific_Council_15-02-02_Meeting_Agenda.pdf.* You may submit comments on this document, identified by NOAA–NMFS–2014–0162, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0162,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Address 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.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. 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) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the EFP application and the basis for a categorical exclusion under the National Environmental Policy Act are available from the Alaska Region, NMFS Web site at *http://alaskafisheries.noaa.gov/.*

The June, 2014 International Halibut Commission (IPHC) Report is available from the North Pacific Fishery Management Council Web site at *http://npfmc.org.*

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907–586–7442.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI) under the Fishery Management Plan for Groundfish of the BSAI Management Area (FMP), which the Council prepared under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the BSAI groundfish fisheries appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary).

Background

Regulations implemented by the IPHC allow Pacific halibut to be commercially harvested by the directed North Pacific longline fishery. Halibut is a prohibited species in the groundfish fishery, requiring immediate return to the sea with a minimum of injury. Halibut caught incidentally by catcher/processors in the nonpelagic trawl groundfish fisheries must be weighed on a NMFS-approved scale, sampled by observers, and returned to the ocean as soon as possible. The Council establishes annual maximum halibut bycatch allowances and seasonal apportionments adjusted by an estimated halibut discard mortality rate (DMR) for groundfish fisheries. The DMRs are based on the best information available, including information contained in the annual Stock Assessment and Fishery Evaluation report, available at, *http://www.alaskafisheries.noaa.gov/.* NMFS approves the halibut DMRs developed and recommended by the IPHC and the Council for the BSAI groundfish fisheries for use in monitoring the halibut bycatch allowances and seasonal apportionments. The IPHC developed these DMRs for the BSAI groundfish fisheries using the 10-year mean DMRs for those fisheries.

Directed fishing in a groundfish fishery closes when it reaches the halibut mortality apportionment for the fishery, even if the target species catch is less than the seasonal or annual quota for the directed fishery. In the case of the Bering Sea flatfish fishery, seasons have been closed before fishery quotas

have been reached to prevent the fishery from reaching the halibut mortality apportionment.

With the implementation of Amendment 80 to the FMP on September 14, 2007 (72 FR 52668), halibut mortality apportionments were established for the Amendment 80 sector and for Amendment 80 cooperatives. Amendment 80 is a catch share program established in 2007 to allocate several BSAI non-pollock trawl groundfish fisheries (including the flatfish fishery) among fishing sectors, and facilitate the formation of harvesting cooperatives in the non-American Fisheries Act (AFA) trawl catcher/processor sector. Though halibut mortality allocations provide Amendment 80 cooperatives more flexibility to use available mortality, halibut mortality continues to constrain fishing in some Amendment 80 fisheries. Therefore, this sector is actively exploring ways to continue to reduce halibut mortality.

Before incidentally-caught halibut are returned to the sea, at-sea observers must estimate halibut and groundfish catch amounts. Regulations in 50 CFR part 679 assure that observer halibut and groundfish estimates are credible and accurate, and that potential bias is minimized. For example, NMFS requires that all catch be made available for sampling by an observer; prohibits tampering with observer samples; prohibits removal of halibut from a cod end, bin, or conveyance system prior to being observed and counted by an at-sea observer; and prohibits fish (including halibut) from remaining on deck unless an observer is present.

In 2009 and 2012, halibut mortality experiments were conducted by members of the Amendment 80 sector under EFP 09–02 (74 FR 12113, March 23, 2009) and EFP 12–01 (76 FR 70972, November 16, 2011). By regulation, all catch including halibut is moved across a flow scale below deck before the halibut is returned to the sea. Halibut mortality increases with increased handling and time out of water. Under EFP 09–02 and 12–01, experimental methods for sorting catch on a vessel's deck allowed halibut to be returned to the sea in less time, with less handling relative to halibut routed below deck and over the flow scale. The halibut mortality during flatfish fishing under EFP 09–02 and EFP 12–01 was estimated to be approximately 17 mt and 10.8 mt, respectively, less than the amounts estimated from the DMR for this fishery. The reduced halibut mortality under EFP 09–02 and EFP 12–01 is attributed to the improved condition of halibut through reduced handling and time out of water.

Reducing halibut mortality is a high-priority management goal for the IPHC, the Council, and NMFS. In June 2014, the Council received a report from the IPHC about the impact of halibut bycatch in the groundfish fisheries on the short- and long-term yields in the directed halibut fishery. The IPHC report (see ADDRESSES) presented scenarios under which increases in halibut bycatch or decreases in the exploitable halibut biomass would result in no directed fishery yield in IPHC Management Area 4CDE per the IPHC's harvest policy. At its June 2014 meeting, the Council passed a motion requesting all groundfish industry sectors to undertake voluntary efforts to reduce halibut mortalities in the BSAI resulting from halibut bycatch, as well as discards in the directed fishery, by 10 percent from the current 5-year average levels, through the 2014–15 fishing seasons. The Council also encouraged NMFS to work closely with the Amendment 80 sector to develop deck sorting procedures and technologies that could reduce halibut mortalities with the eventual goal of implementing a full-scale program.

On January 8, 2015, the Alaska Seafood Cooperative (an Amendment 80 cooperative) submitted an application for an EFP for 2015 to build on the information collected in prior deck sorting EFPs to assist with future full-scale implementation and to reduce halibut mortality in the Amendment 80 sector. The primary objective is to test methods that reduce halibut mortality in the Amendment 80 sector in IPHC Management Area 4CDE in 2015.

Proposed Action

The experimental design for EFP 2012–01 allowed halibut to be removed from the codend on two Amendment 80 sector vessels, and standardized viability estimates were applied to the halibut returned to the sea. EFP fishing on all vessels authorized under EFP 2012–01 was conducted with two lead-level sea samplers and a dedicated EFP project manager. For any fishing trip, EFP fishing could not be conducted as the same time as regular commercial fishing, to minimize confusion about groundfish catch and PSC estimates from observers versus sea samplers. NMFS received an application from the AKSC to conduct a new halibut mortality experiment in 2015. This EFP would expand on results of EFP 2009–02 and EFP 2012–01 to explore the feasibility of deck sorting halibut in additional target fisheries, on more vessels, and during a longer interval of time during the fishing season. EFP results would inform the operational practicality and cost of various fishing and fish handling practices, and their effect on halibut mortality. The EFP would allow researchers onboard catcher/processor vessels to sort halibut removed from a codend on the deck of the vessel. Those sorted halibut could be released back to the water after the halibut are measured for length and tested for physical condition using standard IPHC viability assessment methods.

The objectives for this EFP are to: (1) Assess the reduction in halibut mortality when deck sorting is available as an optional catch handling procedure; (2) evaluate the frequency of tows where deck sorting is used relative to the existing catch handling procedures; (3) evaluate the percentage of a participating vessel's halibut catch that is sorted on deck; and (4) evaluate the utility of deck sorting in the context of the rules and constraints of the EFP.

The applicant proposes to begin EFP fishing at the earliest possible date in 2015, and end on December 31, 2015. The EFP would allow halibut to be sorted, sampled, and released prior to being weighed on a flow scale, to achieve the experimental objectives and reduce halibut mortality. This EFP application requests an amount of halibut for vessels engaged in experimental fishing not to exceed the AKSC's 2015 halibut apportionment of 1,693 metric tons (mt). AKSC would not exceed its annual halibut mortality apportionment.

The applicant would track the amount of halibut mortality for fish sorted on deck to determine halibut mortality amounts from EFP-permitted vessels. These amounts would reflect actual halibut mortality amounts sampled during the experiment, and accrue against the EFP halibut mortality limit, not to exceed 1,693 mt. Before the halibut mortality limit is reached, the EFP permit holder would notify NMFS and end EFP fishing. As required by existing regulations, Amendment 80 fishing will also cease when the annual halibut mortality apportionment is reached.

This proposed action would exempt participating catcher/processors from selected 50 CFR part 679 prohibitions, monitoring and observer requirements. Should the Regional Administrator issue a permit based on this EFP application, the conditions of the permit will be designed to minimize halibut mortality, and any potential for biasing estimates of groundfish and halibut mortality. Vessels participating in EFP

fishing may be exempt from, at minimum, the following regulations:

1. The prohibition against interfering with or biasing the sampling procedure employed by an observer including physical, mechanical, or other sorting or discarding of catch before sampling, at § 679.7(g)(2);

2. the requirements to weigh all catch by an Amendment 80 vessel on a NMFS-approved scale at § 679.28(b);

3. the requirement for all catch by an Amendment 80 vessel to be made available for sampling by an observer at § 679.93(c)(1); and

4. the regulations that prohibit fish from being allowed to remain on deck unless an observer is present at § 679.93(c)(5).

EFP 2015–02 would require sea samplers for monitoring and data collection under the EFP. Sea samplers are NMFS-certified observers that conduct activities under an EFP rather than normal observer activities on an Amendment 80 vessel. In contrast with EFP 2012–01, the applicant proposes to commence EFP fishing with one instead of two sea samplers. This EFP would also allow for EFP fishing and regular commercial fishing to occur during a single fishing trip. To ensure that standards for catch accounting of target species, bycatch of groundfish and PSC are sufficient, the EFP applicant proposes to: (1) Provide advanced notification to NMFS and EFP staff of when deck sorting will commence, (2) provide a pre-cruise briefing with observer program staff, (3) phase-in electronic compliance monitoring on each vessel permitted under this EFP, and (4) record halibut mortality from the EFP in the catcher/processor elogbook.

In 2016, the AKSC would be required to submit to NMFS a report of the EFP results after EFP experimental fishing has ended in 2015. The report would include an estimate of halibut mortality from halibut sampled during the EFP and an estimate of halibut mortality under standard IPHC halibut mortality rates for those target fisheries.

Under the EFP, the AKSC would be limited to the AKSC's Amendment 80 groundfish allocation. The amount of halibut mortality accrued by the AKSC and under the EFP would not exceed the AKSC's 1,693 mt halibut mortality limit. The amount of halibut mortality applied to the EFP activities would be subject to review and approval by NMFS.

This EFP would be valid upon issuance in 2015 until either the end of 2015 or when the halibut mortality apportionment is reached in areas of the BSAI open to directed fishing by the Amendment 80 cooperative. EFP-authorized fishing activities would not be expected to change the nature or duration of the groundfish fishery, gear used, or the amount or species of fish caught by the Amendment 80 cooperative.

The fieldwork that would be conducted under this EFP is not expected to have a significant impact on the human environment as detailed in the categorical exclusion prepared for this action (see **ADDRESSES**).

In accordance with § 679.6, NMFS has determined that the application warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council is scheduled to consider the EFP application during its February 2015 meeting, which will be held at the Renaissance Hotel, Seattle. The EFP application will also be provided to the Scientific and Statistical Committee for review at the February Council meeting. The applicant has been invited to appear in support of the application.

Public Comments

Interested persons may comment on the application at the February 2015 Council meeting during public testimony or until February 11, 2015. Information regarding the meeting is available at the Council's Web site at *http://alaskafisheries.noaa.gov/npfmc/council.htm.* Copies of the application and categorical exclusion are available for review from NMFS (see **ADDRESSES**). Comments also may be submitted directly to NMFS (see **ADDRESSES**) by the end of the comment period (see **DATES**).

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

Dated: January 15, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–00918 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD720

Marine Mammals; File No. 18673

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Leslie Cornick, Ph.D., Alaska Pacific University, 4101 University Drive, Anchorage, AK 99508, has applied in due form for a permit to conduct research on northern fur seals (*Callorhinus ursinus*).

DATES: Written, telefaxed, or email comments must be received on or before February 23, 2015.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 18673 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Rosa L. González or Amy Sloan; phone: (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests authorization for takes of northern fur seals, Eastern Pacific Stock, in the Pribilof Islands from September to November annually over a five-year period. The applicant requests authorization to capture, restrain, sedate, attach external instruments, measure (standard morphometrics and weight), sample (blood, vibrissae, blubber, and muscle), and ultrasound up to 10 lactating adult females and 10 juvenile males per year. All procedures, with the exception of blubber and muscle biopsy would also be performed on up to 10 paired pups per year, without sedation. Identifiable scats would be collected opportunistically from sampled

individuals and from other fur seals for comparative diet analysis. The applicant also requests incidental disturbance of 900 animals and four unintentional mortalities (including humane euthanasia if warranted) per year.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 15, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–00998 Filed 1–21–15; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services from the Procurement List previously furnished by such agencies.

DATES: *Effective:* 2/22/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 10/3/2014 (79 FR 59750–59751); 11/21/2014 (79 FR 69434–69435); 11/28/2014 (79 FR 70856–70857); 12/5/2014 (79 FR 72171), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product Names/NSNs

Kit, Pre-Cut Fabric, ECWCS Gen III Trouser, UCP

NSN: 8415–00–FAB–5250—S–R
NSN: 8415–00–FAB–5295—L–R
NSN: 8415–00–FAB–5296—L–L
NSN: 8415–00–FAB–5293—M–R
NSN: 8415–00–FAB–5297—XL–R
NSN: 8415–00–FAB–5298—XL–L
NSN: 8415–00–FAB–5207—XS–S
NSN: 8415–00–FAB–5226—S–S
NSN: 8415–00–FAB–5251—S–L
NSN: 8415–00–FAB–5294—M–L
NSN: 8415–00–FAB–5299—XL–XL
NSN: 8415–00–FAB–5302—XXL–R
NSN: 8415–00–FAB–5301—XXL–L
NSN: 8415–00–FAB–5303—XXL–XL
NSN: 8415–00–FAB–5249—XS–R

Kit, Pre-Cut Fabric, ECWCS Gen III Trouser, Multi-Cam

NSN: 8415–00–FAB–0899—S–R
NSN: 8415–00–FAB–0897—M–R
NSN: 8415–00–FAB–0895—L–R
NSN: 8415–00–FAB–0894—L–L
NSN: 8415–00–FAB–0903—XL–R
NSN: 8415–00–FAB–0901—XL–L
NSN: 8415–00–FAB–0908—XS–S
NSN: 8415–00–FAB–0907—XS–R
NSN: 8415–00–FAB–0900—S–S
NSN: 8415–00–FAB–0898—S–L
NSN: 8415–00–FAB–0896—M–L
NSN: 8415–00–FAB–0905—XL–XL
NSN: 8415–00–FAB–0914—XXL–R
NSN: 8415–00–FAB–0912—XXL–L
NSN: 8415–00–FAB–0916—XXL–XL

Tape, Seam, Pre-Cut component for ECWCS Gen III Trousers

NSN: 8415–00–TPE–0929—Black

Mandatory For Purchase By: Federal Prison Industries UNICOR, Federal Prison System, Washington, DC
Mandatory Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: Dept of Justice, Federal Prison System, Federal Prison Industries UNICOR, Washington, DC
List Type: C-List

Product Names/NSNs

Presentation Easel, Magnetic Whiteboard/Flipchart, 27″ x 35″, Adjustable Height Tripod Base/NSN: 7520–00–NIB–2202
Presentation Easel, Dbl. Sided Melamine Whiteboard/Flipchart, 27″ x 34″, Blk. U-Shaped Adj. Base/NSN: 7520–00–NIB–2203
Presentation Easel, Dbl. Sided 26″ x 34″ White Board/Flipchart, Black Frame, Adj. U-Shaped Base/NSN: 7520–00–NIB–2204
Presentation Easel, Melamine, 29″ x 40″ White Board/Flipchart, Black 4-Legged Adjustable Frame/NSN: 7520–00–NIB–2253
Presentation Easel w/Pad, Magnetic Whiteboard, 27″ x 39″, Silver U-shaped Frame, Adj. Height & Arms NSN: 7520–00–NIB–2254
Presentation Easel, Melamine Whiteboard/Flipchart, 26″ x 35″, Black Frame, Adjustable Height/NSN: 7520–00–NIB–2256

Mandatory For Purchase By: Total Government Requirement
Mandatory Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: General Services Administration, Arlington, VA
List Type: A-List

Services

Service Type: Grounds Maintenance and Snow Removal Service
Service is Mandatory for: US Army, US Army Research Laboratory, 4402 Susquehanna Avenue, Aberdeen Proving Ground, MD
Mandatory Source of Supply: Melwood Horticultural Training Center, Upper Marlboro, MD
Contracting Activity: Dept of the Army, W2SD ENDIST Philadelphia, Philadelphia, PA
Service Type: Operations and Maintenance Service
Service is Mandatory For: Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX.
Mandatory Source of Supply: PRIDE

Industries, Roseville, VA
Contracting Activity: Department of the Treasury, Bureau of Engraving and Printing, Washington, DC

Deletions

On 12/12/2014 (79 FR 73886), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type: Grounds Maintenance Service
Service is Mandatory For: United States Postal Service: General Mail Facility, San Jose, CA
Contracting Activity: U.S. Postal Service, Washington, DC
Service Type: Janitorial/Custodial Service
Service is Mandatory For: U.S. Army Reserve Center: Rockford, 1130 Arthur Avenue, Rockford, IL
Contracting Activity: Dept of the Army, W6QM MICC–ARCC North, Fort McCoy, WI

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–01011 Filed 1–21–15; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2015–0001]

Petition Requesting Rulemaking on Residential Elevators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (CPSC) has received a petition requesting a safety standard for residential elevators to address an entrapment hazard between the elevator interior and exterior doors. The Commission invites written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by March 23, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2015–0001, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2015–0001, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Rocky Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD, 20814; telephone (301) 504–6833, email: *rhammond@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

On November 1, 2013, The Safety Institute, Carol Pollack-Nelson, and Cash, Krugler & Fredericks, LLC (collectively referred to as petitioners), submitted a petition to the Commission to initiate rulemaking to mandate a safety standard for residential elevators to address an entrapment hazard caused by excess space between the elevator car door/gate (interior door) and hoistway or swing door (exterior door).

Petitioners assert that in many home elevators, and in similar versions found in older apartment and commercial buildings, the clearance between the interior door and exterior door is large enough to allow children as old as 12 years to fit between the doors. According to petitioners, a child can become entrapped in the door path when the elevator is called to another floor, and the hoistway door automatically locks. The child's body is carried along with the elevator car until the hoistway door meets the obstruction of the sill, where the child's body—usually the head—is crushed.

Petitioners request that the CPSC promulgate a mandatory standard that constrains the space between residential elevator hoistway doors and car doors/gates to 4 inches when measured from the inside of the hoistway door to the farthest point on the car door/gate. Petitioners contend that the CPSC's figures show that there were an estimated 1,600 injuries associated with residential elevators and lifts from 2011 through 2012. According to the petitioners, some of those injuries, as well as several deaths, were due to children becoming entrapped in the gap between the residential elevators doors. In addition, the petitioners state that the voluntary standard (ASME Elevator Safety Code) has failed to safeguard children from injuries and deaths from the entrapment hazard because that standard allows a wider gap between the doors for a maximum of 5 inches.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833. The petition is also available at *http://www.regulations.gov* under Docket No.

CPSC–2015–0001, Supporting and Related Materials.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2015–00907 Filed 1–21–15; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Termination of Missile Defense Advisory Committee

AGENCY: DoD.

ACTION: Termination of Federal Advisory Committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is terminating the Missile Defense Advisory Committee, effective January 16, 2015.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee is being terminated under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), 41 CFR 102–3.55, and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), effective January 16, 2015.

Dated: January 16, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–00984 Filed 1–21–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2015–0001]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter the system of records, N01754–4, entitled ''Navy Family Accountability and Assessment System (NFAAS)'' in its inventory of record systems subject to the Privacy Act of 1974, as amended.

This system is used to account for personnel (status and location(s)) following a natural/manmade disaster or when directed by the Secretary of Defense to assess the impact of the disaster on DoD affiliated personnel and their families, by conducting a needs assessment survey; to capture information required to support Navy and DoD affiliated personnel as they return to a stable state following a disaster; and to track Navy affiliated personnel and family members' support requirements and command readiness efforts in areas such as Individual Augmentation Deployments, Exceptional Family Member Program, and mandated training.

DATES: Comments will be accepted on or before February 23, 2015. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, Head, PA/FOIA Office (DNS–36), Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or by phone at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 3, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 15, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01754–4

SYSTEM NAME:

Navy Family Accountability and Assessment System (NFAAS) (August 16, 2007, 72 FR 46045).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''DoD affiliated personnel that includes Military service members (active duty, Guard/Reserve and the Coast guard personnel when operating as a military service with the Navy), civilian employees, family members of the above and contractors working at DoD facilities.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''The military departments may request information to assess the needs of affiliated personnel using a needs assessment survey to help determine any specific emergent needs. Surveys are to include the date of assessment, the type of event and category classification, contacts with the military family, and a Federal Emergency Management Agency (FEMA) Number (if issued).

Individual augmentation deployment records include post deployment health assessments (PDHA) dates, dates of deployment, and contacts with the service member or contractor and family. Exceptional Family Members Program information that include dependent identification and categories. Additional information collected includes the individual's full name, Social Security Number (SSN), DoD ID Number, date of birth, gender, DoD affiliation, branch of service, military status, rank/rate, duty station address, mailing/home address, home/work/cell telephone numbers, home/work email addresses, name of sponsor, sponsor SSN; spouse and child information: name, date of birth, and number of children; medical information: Medical history, illness/diagnosis, and medical treatment; education information: Current grade level, provider/school name, school district, provider/school

address, provider/school office/fax numbers; emergency contact information: Spouses name and mailing/home addresses, children names, date of births, mailing/home addresses, home/cell telephone numbers; parent's names, mailing/home addresses, home/cell telephone numbers; or emergency contacts name and address.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Instruction 3001.02, Personnel Accountability in Conjunction with Natural Disasters or National Emergencies; OPNAVINST 3006.1, Personnel Accountability in Conjunction with Catastrophic Events; SECNAV Instruction 1754.5B Exceptional Family Member Program; and E.O. 9397 (SSN), as amended.''

PURPOSES:

Delete entry and replace with ''To account for personnel (status and whereabouts) following a natural/manmade disaster or when directed by the Secretary of Defense.

To assess the impact of the disaster on DoD affiliated personnel and their families, by conducting a needs assessment survey.

To capture information required to support Navy and DoD affiliated personnel as they return to a stable state following a disaster.

To track Navy affiliated personnel and family members' support requirements and command readiness efforts in areas such as Individual Augmentation Deployments, Exceptional Family Member Program, and mandated training.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the Department of Navy's compilation of system of records notices may apply to this system.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''All records and data collected are maintained in controlled areas accessible only to authorized personnel with a need-to-know. Information maintained on computer requires Common Access Card (CAC) and passwords, which are ''For Official Use Only'' (FOUO) records. Physical access to facilities is controlled by locked terminals and rooms, security guards, identification badges, key cards, and locks.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Commander, Navy Installations Command, 716 Sicard Street SE., Building 111, Washington Navy Yard, DC 20388–0001.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Installations Command, 716 Sicard Street SE., Building 111, Washington Navy Yard, DC 20388–0001.

The request should include the individual's full name, SSN, address, date of birth and must be signed.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system of records should log on to: *https://navyfamily.navy.mil* or address written inquires to the Commander, Navy Installations Command, 716 Sicard Street SE., Building 111, Washington Navy Yard, DC 20388–0001.

The request should include the individual's full name, SSN, address, date of birth and must be signed.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individual; Defense Manpower Data Center (DMDC); Defense Enrollment Eligibility Reporting System (DEERS); Officer Personnel Information System (OPINS); Navy Enlisted System (NES); Inactive Manpower and Personnel Management Information System (IMAPMIS); Defense Civilian Personal Data System (DCPDS); and Need Assessment Survey.''

* * * * *

[FR Doc. 2015–00910 Filed 1–21–15; 8:45 am]

BILLING CODE 5006–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0151]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; High School Longitudinal Study of 2009 (HSLS:09) Second Follow-up Field Test and Main Study Panel Maintenance 2015

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 February 23, 2015.

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–0151 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: High School Longitudinal Study of 2009 (HSLS:09) Second Follow-up Field Test and Main Study Panel Maintenance 2015

OMB Control Number: 1850–0852

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households

Total Estimated Number of Annual Responses: 5,417

Total Estimated Number of Annual Burden Hours: 808

Abstract: The High School Longitudinal Study of 2009 (HSLS:09) is a nationally representative, longitudinal study of more than 20,000 9th graders in 944 schools in 2009 who are being followed through their secondary and postsecondary years. The study focuses on understanding students' trajectories from the beginning of high school into postsecondary education or the workforce and beyond. What students decide to pursue when, why, and how are crucial questions for HSLS:09, especially, but not solely, in regards to science, technology, engineering, and math (STEM) courses, majors, and careers. To date, HSLS:09 measured math achievement gains in the first 3 years of high school and, like past studies, surveyed students, their parents, school administrators, school counselors, and teachers. After the initial 2009 data collection, the main study students were re-surveyed in 2012 when most were high school 11th-graders, and again in 2013 when most had just graduated from high school. The second follow-up data collection will take place in early 2016, and will consist of a survey, postsecondary transcript collection, financial aid records collection, and file matching to extant data sources. The second follow-up focuses on postsecondary attendance patterns, field of study selection processes with particular emphasis on STEM, the postsecondary academic and social experience, education financing, employment history including instances of unemployment and underemployment, job characteristics including income and benefits, job values, family formation, and civic engagement. The HSLS:09 data elements are designed to support research that speaks to the underlying dynamics and education processes that influence student achievement, growth, and personal development over time. This request is to conduct the HSLS:09 Second Follow-up Field Test data collections (April-August 2015) and main study panel maintenance. The field test will inform the survey and data collection procedures for the 2016 main study.

Dated: January 15, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–00917 Filed 1–21–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, February 11, 2015, 6 p.m.

ADDRESSES: Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@emor.doe.gov* or check the Web site at *http://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation
- Additions/Approval of Agenda
- Motions/Approval of January 14, 2015 Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to logistical issues that had to be resolved prior to the meeting date.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

Issued at Washington, DC, on January 16, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–01036 Filed 1–21–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–59–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC Application Pursuant to section 203 of the Federal Power Act to Acquire Assets.
Filed Date: 1/15/15.
Accession Number: 20150115–5090.
Comments Due: 5 p.m. ET 2/5/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1777–006; ER10–2983–005; ER10–2980–005; ER15–718–001.
Applicants: Sundevil Power Holdings, LLC, Castleton Energy Services, LLC, Castleton Power, LLC, West Valley Power, LLC.
Description: Notification of Change in Status of the Wayzata Entities.
Filed Date: 1/14/15.
Accession Number: 20150114–5295.
Comments Due: 5 p.m. ET 2/4/15.

Docket Numbers: ER11–2774–001.
Applicants: Virginia Electric and Power Company.
Description: Response to November 12, 2014 letter requesting additional information of Dominion Resources Services, Inc. on behalf of its marketing affiliates.
Filed Date: 1/14/15.
Accession Number: 20150114–5290.
Comments Due: 5 p.m. ET 2/4/15.

Docket Numbers: ER15–142–001.
Applicants: Midcontinent Independent System Operator, Inc., Van Ness Feldman LLP.
Description: Compliance filing per 35: 2015–01–15_MMU Compliance Filing to be effective N/A.
Filed Date: 1/15/15.
Accession Number: 20150115–5109.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–192–000.
Applicants: Arizona Public Service Company.
Description: Report Filing: Motion to Hold Proceeding in Abeyance—Service Agreemet Nos. 338 and 339 to be effective N/A.
Filed Date: 1/15/15.
Accession Number: 20150115–5248.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–237–001.
Applicants: Public Service Company of Colorado.
Description: Tariff Amendment per 35.17(b): 2015–1–15_Joint Dispatch Amendment Filing to be effective 1/1/2015.
Filed Date: 1/15/15.
Accession Number: 20150115–5131.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–348–001.
Applicants: Black Hills/Colorado Electric Utility Company, LP.
Description: Tariff Amendment per 35.17(b): Joint Dispatch Amendment Filing—Response to Staff Letter to be effective 1/1/2015.
Filed Date: 1/15/15.
Accession Number: 20150115–5268.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–649–001.
Applicants: The Connecticut Light and Power Company.
Description: Tariff Amendment per 35.17(b): Amendment to Revised MBR Tariff NUSCO Electric Rate Schedule, FERC No. 7 to be effective 2/16/2015.
Filed Date: 1/15/15.
Accession Number: 20150115–5172.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–651–001.
Applicants: Public Service Company of New Hampshire.
Description: Tariff Amendment per 35.17(b): Amendment to Revised MBR Tariff NUSCO Electric Rate Schedule, FERC No. 7 to be effective 2/16/2015.
Filed Date: 1/15/15.
Accession Number: 20150115–5217.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–652–001.
Applicants: Western Massachusetts Electric Company.
Description: Tariff Amendment per 35.17(b): Amendment to Revised MBR Tariff NUSCO Electric Rate Schedule, FERC No. 7 to be effective 2/16/2015.
Filed Date: 1/15/15.
Accession Number: 20150115–5227.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–851–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 4067; Queue No. Z2–088 to be effective 12/15/2014.
Filed Date: 1/14/15.
Accession Number: 20150114–5228.
Comments Due: 5 p.m. ET 2/4/15.

Docket Numbers: ER15–852–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Revisions to RPM and Related Rules in the Tariff and RAA (Stop-Gap) to be effective 4/1/2015.
Filed Date: 1/14/15.
Accession Number: 20150114–5265.
Comments Due: 5 p.m. ET 2/4/15.

Docket Numbers: ER15–853–000.
Applicants: Pacific Gas and Electric Company.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Western WDT Allottees Filing to be effective 1/1/2015.
Filed Date: 1/15/15.
Accession Number: 20150115–5000.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–854–000.
Applicants: Pacific Gas and Electric Company.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Western IA Allottees Filing to be effective 1/1/2015.
Filed Date: 1/15/15.
Accession Number: 20150115–5001.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–855–000.
Applicants: Washington Gas Energy Services, Inc.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Normal filing to be effective 1/15/2015.
Filed Date: 1/15/15.
Accession Number: 20150115–5218.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–856–000.
Applicants: PJM Interconnection, L.L.C., Virginia Electric and Power Company.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Dominion submits revisions to OATT Attachment H–16A to be effective 3/16/201.
Filed Date: 1/15/15.
Accession Number: 20150115–5234.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–857–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement Nos. 4068, 4069; Queue Nos. Z2–043, Z2–044 to be effective 12/16/2014.
Filed Date: 1/15/15.
Accession Number: 20150115–5247.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–858–000.
Applicants: Granite Ridge Energy, LLC.
Description: Compliance filing per 35: Proposed Revisions to MBR Tariff to be effective 1/16/2015.
Filed Date: 1/15/15.
Accession Number: 20150115–5249.
Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–859–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Revisions to

Attachment H and AI to be effective 3/17/2015.

Filed Date: 1/15/15.

Accession Number: 20150115–5256.

Comments Due: 5 p.m. ET 2/5/15.

Docket Numbers: ER15–860–000.

Applicants: Mojave Solar Inc.

Description: Compliance filing per 35: Notice of Succession Revisions to MBR Tariff to be effective 1/15/2015.

Filed Date: 1/15/15.

Accession Number: 20150115–5257.

Comments Due: 5 p.m. ET 2/5/15.

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: January 15, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–01006 Filed 1–21–15; 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: EC15–58–000.

Applicants: ALLETE Clean Energy, Inc., Chanarambie Power Partners LLC.

Description: Joint Application Under section 203 of the Federal Power Act And Request for Waivers, Confidential Treatment, and Expedited Consideration of ALLETE Clean Energy, Inc. and Chanarambie Power Partners, LLC.

Filed Date: 1/14/15.

Accession Number: 20150114–5008.

Comments Due: 5 p.m. ET 2/4/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–2707–003.

Applicants: Mammoth Plains Wind Project, LLC.

Description: Notice of Non-Material Change in Status of Mammoth Plains Wind Project, LLC.

Filed Date: 1/13/15.

Accession Number: 20150113–5182.

Comments Due: 5 p.m. ET 2/3/15.

Docket Numbers: ER14–2708–004; ER14–2709–003; ER15–30–001; ER14–2710–003; ER15–58–001.

Applicants: Seiling Wind, LLC, Seiling Wind II, LLC, Seiling Wind Interconnection Services, LLC, Palo Duro Wind Energy, LLC., Palo Duro Wind Interconnection Services, LLC.

Description: Notice of Non-Material Change in Status of Seiling Wind, LLC, *et. al.*

Filed Date: 1/13/15.

Accession Number: 20150113–5195.

Comments Due: 5 p.m. ET 2/3/15.

Docket Numbers: ER14–2820–003; ER14–2821–003.

Applicants: Spring Canyon Energy II LLC, Spring Canyon Energy III LLC.

Description: Notification of Change in Facts of Spring Canyon Energy II LLC, *et. al.*

Filed Date: 1/14/15.

Accession Number: 20150114–5085.

Comments Due: 5 p.m. ET 2/4/15.

Docket Numbers: ER15–117–001.

Applicants: ISO New England Inc.

Description: Compliance filing per 35: 30-Day Compliance Filing on ER15–117–000 and EL14–99 to be effective 10/17/2014.

Filed Date: 1/14/15.

Accession Number: 20150114–5077.

Comments Due: 5 p.m. ET 2/4/15.

Docket Numbers: ER15–846–000.

Applicants: Southern California Edison Company.

Description: Tariff Withdrawal per 35.15: Notice of Cancellation of LGIA with Granite Wind, LLC to be effective 3/16/2015.

Filed Date: 1/14/15.

Accession Number: 20150114–5001.

Comments Due: 5 p.m. ET 2/4/15.

Docket Numbers: ER15–847–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing per 35: 2015–01–14_CMMPA Attachment O per Settlement to be effective 1/1/2014.

Filed Date: 1/14/15.

Accession Number: 20150114–5162.

Comments Due: 5 p.m. ET 2/4/15.

Docket Numbers: ER15–848–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): 2014–01–14_SA 2703 Ameren-ComEd Construction Agreement to be effective 1/6/2015.

Filed Date: 1/14/15.

Accession Number: 20150114–5166.

Comments Due: 5 p.m. ET 2/4/15.

Docket Numbers: ER15–849–000.

Applicants: ITC Midwest LLC.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Filing of a Joint Use Pole Agreement to be effective 3/16/2015.

Filed Date: 1/14/15.

Accession Number: 20150114–5215.

Comments Due: 5 p.m. ET 2/4/15.

Docket Numbers: ER15–850–000.

Applicants: California Independent System Operator Corporation.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): 2015–01–14_EIM_Administrative Charge to be effective 1/15/2015.

Filed Date: 1/14/15.

Accession Number: 20150114–5227.

Comments Due: 5 p.m. ET 2/4/15.

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: January 14, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–01005 Filed 1–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the New York Independent System Operator, Inc.

The New York Independent System Operator, Inc. Operating Committee Meeting

January 15, 2015, 10:00 a.m.–12:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=oc.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket Nos. ER13–102, ER13–1942, ER13–1946, New York Independent System Operator, Inc. and New York Transmission Owners

Docket No. ER13–1926, PJM Transmission Owners

Docket No. ER13–1947, PJM Interconnection, L.L.C. and New York Independent System Operator, Inc.

Docket No. ER13–1957, ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.

Docket No. ER13–1960, ISO New England Inc. and the Participating Transmission Owners Administrative Committee, Supported by the New England Power Pool Participants Committee

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: January 14, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–00954 Filed 1–21–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9921–87–Region 3]

Notice of Administrative Settlement Agreement Pursuant to Section 122(H) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comments.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed administrative settlement agreement for recovery of response costs (''Proposed Agreement'') associated with the New Jersey Fireworks Superfund Site, Elkton, Cecil County, Maryland was executed by the Environmental Protection Agency (EPA) and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under Section 107(a) of CERCLA, against Jane Fabrizi (''Settling Party''). The Proposed Agreement would require Settling Party to reimburse EPA $55,445.75 for response costs incurred by EPA for the Site.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before February 23, 2015.

ADDRESSES: The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Agreement may be obtained from Andrew S. Goldman (3RC41), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''New Jersey Fireworks Superfund Site, Proposed Settlement Agreement'' and ''EPA Docket No. CERCLA–CERC–03–2015–0043CR,'' and should be forwarded to Andrew S. Goldman at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew S. Goldman (3RC41), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2487; *Goldman.andrew@epa.gov.*

Dated: December 23, 2014.

Cecil Rodrigues,

Director, Hazardous Site Cleanup Division, U.S. Environmental Protection Agency Region III.

[FR Doc. 2015–01041 Filed 1–21–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0400]

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 March 23, 2015. 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0400.

Title: Part 61, Tariff Review Plan (TRP).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,840 respondents; 8,554 responses.

Estimated Time per Response: 0.5 hours to 53 hours.

Frequency of Response: On occasion, annual, biennial, and one time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 201, 202, 203, and 251(b)(5) of the Communications Act of 1934, as amended.

Total Annual Burden: 121,656 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact.

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On November 18, 2011, the Commission released the USF/ICC Transformation Order, FCC 11–61 and the Second Order on Reconsideration, FCC 12–47, released on April 25, 2012, required incumbent and competitive local exchange carriers to submit supporting documentation as part of their Tariff Review Plans (TRPs).

Certain local exchange carriers are required to submit a biennial or annual TRP in partial fulfillment of cost support material required by 47 CFR part 61. Sections 201, 202, and 203 of the Communications Act of 1934, as amended, require common carriers to establish joint and reasonable charges, practices, and regulations for their interstate telecommunications services provided. For services that are still covered under Section 203, tariff schedules containing charges, rates, rules, and regulations must be filed with the Commission. If the FCC takes no action within the notice period, then the filing becomes effective. The Commission is granted broad authority to require the submission of data showing the value of property used to provide the services, some of which are automatically required by its rules and some of which can be required through individual requests. All filings that become effective are considered legal but only those filed pursuant to Section 204(a)(3) of the Act are deemed lawful.

For services that are detariffed, no tariffs are filed at the FCC and determination of reasonableness and any unreasonable discrimination is generally addressed through the complaint process. Incumbent local exchange carriers (ILECs) can make a voluntary filing at any time, but are required to update rates annually or biennially. *See* 47 CFR Section 69.3.

Among other reforms, the Commission developed the TRP to minimize reporting burdens on reporting ILECs. TRPs set forth the summary material ILECs file to support revisions to the rates in their interstate access service tariffs. For those services still requiring cost support, TRPs assist the Commission in determining whether ILEC access charges are just and reasonable as required under the Communications Act of 1934, as amended.

The Commission also minimized reporting burdens by developing incentive-based regulation (price caps), which simplifies the process of determining the reasonableness of rates and rate structures for ILECs subject to price caps. Supporting material requirements for price cap ILECs having 50,000 or fewer access lines do not have to file any supporting material unless requested to do so. Price cap carriers can elect to be subject to Title I versus Title II of the Act for certain forms of internet access in order to offer their internet service on a detariffed basis pursuant to private contracts. Rate-of-return ILECs can choose to charge from tariffed to detariffed for the same internet services, but are subject to Title II regulation. Through forbearance, the Commission has allowed those LECs whose petition has been granted to choose mandatory detariffing of certain broadband and packet services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–00942 Filed 1–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request (3064–0109, –0162 and –0165)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the FDIC is soliciting comment on renewal of the information collections 3064–0109, –0162 & –0162, described below.

DATES: Comments must be submitted on or before March 23, 2015.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room MB–3074, or John Popeo, Counsel, (202.898.6923), MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, or John Popeo, at the FDIC address or telephone number above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently-Approved Collections of Information

1. *Title:* Notice of Branch Closure.

OMB Number: 3064–0109.

Frequency of Response: On occasion.

Affected Public: State nonmember banks and state savings associations.

Estimated Number of Respondents: 509.

Estimated Time per Response: 2.6 hours.

Total Annual Burden: 1319 hours.

General Description of Collection: Section 42 of the Federal Deposit Insurance Act mandates that an institution proposing to close a branch give its primary regulator no less than 90 days written notice. Notices of closure are submitted on occasion as needed. Also, each insured depository

institution must adopt branch closing policies. The adoption of policies is a one-time activity, repeated only if the institution finds need to revise its policy.

2. *Title:* Large-Bank Deposit Insurance Programs

OMB Number: 3064–0162.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions having at least $2 billion in domestic deposits and either at least: (i) 250,000 deposit accounts; or (ii) $20 million in total assets.

Estimated Number of Respondents: 159.

Estimated Time per Response: 157–255.5 hours.

Total Annual Burden: 25,000–40,624.5 hours.

General Description of Collection: Insured depository institutions having at least $2 billion in domestic deposits and either: (1) More than 250,000 deposit accounts; or (2) total assets over $20 billion, regardless of the number of deposit accounts are required to adopt mechanisms that, in the event of the institution's failure: (1) Provide the FDIC with standard deposit account and customer information; and (2) allow the FDIC to place and release holds on liability accounts, including deposits.

3. *Title:* Basel II Interagency Supervisory Guidance for the Supervisory Review Process (Pillar 2).

OMB Number: 3064–0165.

Frequency of Response: Event-generated.

Affected Public: Insured state nonmember banks and certain subsidiaries of these entities.

Estimated Number of Respondents: 19.

Estimated Time per Response: 420 hours.

Total Annual Burden: 7,980 hours.

General Description of Collection: The agencies issued a supervisory guidance document for implementing the supervisory review process (Pillar 2). The guidance was issued on July 31, 2008 (73 FR 44620). Sections 37, 41, 43, and 46 of the guidance impose information collection requirements. Section 37 states that banks should state clearly the definition of capital used in any aspect of its internal capital adequacy assessment process (ICAAP) and document any changes in the internal definition of capital. Section 41 requires banks to maintain thorough documentation of ICAAP. Section 43 specifies that boards of directors must approve the bank's ICAAP, review it on a regular basis, and approve any changes. Boards of directors also are required under section 46 to periodically review the assessment of overall capital adequacy and to analyze how measures of internal capital adequacy compare with other capital measures (such as regulatory or accounting).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 16th day of January, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–00983 Filed 1–21–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Revision of Information Collection; National Survey of Unbanked and Underbanked Households; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden and as required by the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to comment on the survey collection instrument for its fourth National Survey of Unbanked and Underbanked Households (Household Survey), currently approved under OMB Control No. 3064–0167, scheduled to be conducted in partnership with the U.S. Census Bureau as a supplement to its June 2015 Current Population Survey (CPS). The survey seeks to estimate the proportions of unbanked and underbanked households in the U.S. and to identify the factors that inhibit the participation of these households in the mainstream banking system, and opportunities to expand the use of banking services among underserved consumers. The results of these ongoing surveys will help policymakers and bankers understand the issues and challenges underserved households perceive when deciding how and where to conduct financial transactions.

DATES: Comments must be submitted on or before March 23, 2015.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to ''National Survey of Unbanked and Underbanked Households'':

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary Kuiper Counsel, (202–898–3877), MB–3074, or John Popeo, Counsel, (202.898.6923), MB–3007, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Interested members of the public may obtain a copy of the survey and related instructions by clicking on the link for the *National Survey of Unbanked and Underbanked Households* on the following Web page: *http://www.fdic.gov/regulations/laws/federal/.* Interested members of the public may also obtain additional information about the collection, including a paper copy of the proposed collection and related instructions, without charge, by contacting Gary Kuiper or John Popeo, at the address or telephone number identified above.

SUPPLEMENTARY INFORMATION:

The FDIC is considering possible revisions to the following collection of information:

Title: National Survey of Unbanked and Underbanked Households.

OMB Number: 3064–0167.

Frequency of Response: Once.

Affected Public: U.S. Households.

Estimated Number of Respondents: 50,000.

Average Time per Response: 15 minutes (0.25 hours) per respondent.

Estimated Total Annual Burden: 0.25 hours × 50,000 respondents = 12,500 hours.

General Description of Collection

The FDIC recognizes that public confidence in the banking system is strengthened when banks effectively

serve the broadest possible set of consumers. As a result, the agency is committed to increasing the participation of unbanked and underbanked households in the financial mainstream by ensuring that all Americans have access to safe, secure, and affordable banking services. The National Survey of Unbanked and Underbanked Households is one contribution to this end.

The National Survey of Unbanked and Underbanked Households is also a key component of the FDIC's efforts to comply with a Congressional mandate contained in section 7 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Reform Act) (Pub. L. 109–173), which calls for the FDIC to conduct ongoing surveys ''on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the 'unbanked') into the conventional finance system.'' Section 7 further instructs the FDIC to consider several factors in its conduct of the surveys, including: (1) ''What cultural, language and identification issues as well as transaction costs appear to most prevent 'unbanked' individuals from establishing conventional accounts''; and (2) ''what is a fair estimate of the size and worth of the ''unbanked'' market in the United States.'' The National Survey of Unbanked and Underbanked Households is designed to address these factors and provide a factual basis on the proportions of unbanked households. Such a factual basis is necessary to adequately assess banks' efforts to serve these households as required by the statutory mandate.

To obtain this information, the FDIC partnered with the U.S. Census Bureau, which administered the Household Survey supplement (''FDIC Supplement'') to households that participated in the January 2009, June 2011, and June 2013 CPS. The results of these surveys were released to the public in December 2009, September 2012, and October 2014, respectively.

The FDIC supplement has yielded nationally-representative data, not otherwise available, on the size and characteristics of the population that is unbanked or underbanked, the use by this population of alternative financial services, and the reasons why some households do not make greater use of mainstream banking services. The National Survey of Unbanked and Underbanked Households is the only population-representative survey conducted at the national level that provides state-level estimates of the size and characteristics of unbanked and underbanked households for all 50 states and the District of Columbia. An executive summary of the results of the first three Household Surveys, the full reports, and the survey instruments can be accessed through the following link: *http://www.economicinclusion.gov/surveys/.*

Consistent with the statutory mandate to conduct the surveys on an ongoing basis, the FDIC already has in place arrangements for conducting the fourth Household Survey as a supplement to the June 2015 CPS. However, prior to finalizing the next survey instrument, the FDIC seeks to solicit public comment on whether changes to the existing instrument are desirable and, if so, to what extent. It should be noted that, as a supplement of the CPS survey, the Household Survey needs to adhere to specific parameters that include limits in the length and sensitivity of the questions that can be asked of CPS respondents. Specifically, there is a strict limitation on the number of questions permitted and the average time required to complete the survey (15 minutes on average).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The FDIC will consider all comments to determine the extent to which the information collection should be modified prior to submission to OMB for review and approval. After the comment period closes, comments will be summarized and/or included in the FDIC's request to OMB for approval of the collection. All comments will become a matter of public record.

Dated at Washington, DC, this 16th day of January, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–00982 Filed 1–21–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012064–005.

Title: Hapag-Lloyd/NYK Mexico-Dominican Republic Slot Charter Agreement.

Parties: Hapag-Lloyd AG and Nippon Yusen Kaisha.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW; Suite 1100; Washington, DC 20006.

Synopsis: The amendment deletes the U.S. East Coast from the geographic scope and deletes Hapag-Lloyd's GCS service from the agreement.

Agreement No.: 012233–002.

Title: CSCL/UASC/YMUK/CMA CGM/PIL Vessel Sharing and Slot Exchange Agreement—Asia and US/Canada West Coast Services.

Parties: China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (acting as a single party); United Arab Shipping Company (S.A.G.); Yang Ming (UK) LTD.; CMA CGM S.A.; and Pacific International Lines (Pte) Ltd.

Filing Party: Patricia M. O'Neill; Blank & Rome LLP; 600 New Hampshire Ave NW., Washington DC, 20037.

Synopsis: The amendment adds two additional slot exchange arrangements in the agreement trade between China Shipping and Yang Ming, and between CMA and Yang Ming.

Agreement No.: 012314.

Title: COSCON/CSCL Slot Charter Agreement.

Parties: COSCO Container Lines Company, Limited; China Shipping Container Lines Co., Ltd and China Shipping Container Lines (Hong Kong) Co., Ltd. (acting as a single party).

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004.

Synopsis: The agreement authorizes China Shipping to charter space to COSCON in the trade from France, Italy, Morocco, and Spain, on the one hand, to the U.S. East Coast, on the other hand.

By Order of the Federal Maritime Commission.

Dated: January 16, 2015.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2015–01033 Filed 1–21–15; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of December 16–17, 2014

In accordance with Section 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on December 16–17, 2014.[1]

Consistent with its statutory mandate, the Federal Open Market Committee seeks monetary and financial conditions that will foster maximum employment and price stability. In particular, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to 1/4 percent. The Committee directs the Desk to undertake open market operations as necessary to maintain such conditions. The Committee directs the Desk to maintain its policy of rolling over maturing Treasury securities into new issues and its policy of reinvesting principal payments on all agency debt and agency mortgage-backed securities in agency mortgage-backed securities. The Committee also directs the Desk to engage in dollar roll and coupon swap transactions as necessary to facilitate settlement of the Federal Reserve's agency mortgage-backed securities transactions. The System Open Market Account manager and the secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, January 9, 2015.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2015–01008 Filed 1–21–15; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on December 16–17, 2014, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the Westinghouse Electric Corp. in Bloomfield, New Jersey, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, HHS.

ACTION: Notice.

SUMMARY: NIOSH gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the Westinghouse Electric Corp. in Bloomfield, New Jersey, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Westinghouse Electric Corp.

Location: Bloomfield, New Jersey.

Job Titles and/or Job Duties: All employees who worked in any plant production area.

Period of Employment: January 1, 1950 through March 1, 2011.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2015–01056 Filed 1–21–15; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the Department of Health and Human Services (HHS) poverty guidelines to account for last calendar year's increase in prices as measured by the Consumer Price Index.

DATES: *Effective Date:* January 22, 2015, unless an office administering a program using the guidelines specifies a different effective date for that particular program.

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about how the guidelines are used or how income is defined in a particular program, contact the Federal, state, or local office that is responsible for that program. For information about poverty figures for immigration forms, the Hill-Burton Uncompensated Services Program, and the number of people in poverty, use the specific telephone numbers and addresses given below.

For general questions about the poverty guidelines themselves, contact Kendall Swenson, Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201, telephone: (202) 690–7507, or visit *http://aspe.hhs.gov/poverty/.*

For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as USCIS Form I–864, Affidavit of Support, contact U.S. Citizenship and Immigration Services at 1–800–375–5283.

For information about the Hill-Burton Uncompensated Services Program (free or reduced-fee health care services at certain hospitals and other facilities for persons meeting eligibility criteria involving the poverty guidelines), contact the Health Resources and Services Administration Information Center at 1–800–275–4772. To receive a Hill-Burton information package, call 1–800–638–0742 (for callers outside Maryland) or 1–800–492–0359 (for callers in Maryland). You also may visit *http://www.hrsa.gov/gethealthcare/affordable/hillburton/.*

For information about the number of people in poverty, visit the Poverty section of the Census Bureau's Web site at *http://www.census.gov/hhes/www/poverty/poverty.html* or contact the Census Bureau's Customer Service Center at 1–800–923–8282 (toll-free) or visit *https://ask.census.gov* for further information.

SUPPLEMENTARY INFORMATION:

Background

Section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (42 U.S.C. 9902(2)) requires the Secretary of

the Department of Health and Human Services to update the poverty guidelines at least annually, adjusting them on the basis of the Consumer Price Index for All Urban Consumers (CPI–U). The poverty guidelines are used as an eligibility criterion by the Community Services Block Grant program and a number of other Federal programs. The *poverty guidelines* issued here are a simplified version of the *poverty thresholds* that the Census Bureau uses to prepare its estimates of the number of individuals and families in poverty.

As required by law, this update is accomplished by increasing the latest published Census Bureau poverty thresholds by the relevant percentage change in the Consumer Price Index for All Urban Consumers (CPI–U). The guidelines in this 2015 notice reflect the 1.6 percent price increase between calendar years 2013 and 2014. After this inflation adjustment, the guidelines are rounded and adjusted to standardize the differences between family sizes. The same calculation procedure was used this year as in previous years. (Note that these 2015 guidelines are roughly equal to the poverty thresholds for calendar year 2014 which the Census Bureau expects to publish in final form in September 2015.)

The poverty guidelines continue to be derived from the Census Bureau's current official poverty thresholds; they are not derived from the Census Bureau's new Supplemental Poverty Measure (SPM).

The following guideline figures represent annual income.

2015 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Persons in family/household	Poverty guideline
1	$11,770
2	15,930
3	20,090
4	24,250
5	28,410
6	32,570
7	36,730
8	40,890

For families/households with more than 8 persons, add $4,160 for each additional person.

2015 POVERTY GUIDELINES FOR ALASKA

Persons in family/household	Poverty guideline
1	$14,720
2	19,920
3	25,120
4	30,320
5	35,520
6	40,720
7	45,920
8	51,120

For families/households with more than 8 persons, add $5,200 for each additional person.

2015 POVERTY GUIDELINES FOR HAWAII

Persons in family/household	Poverty guideline
1	$13,550
2	18,330
3	23,110
4	27,890
5	32,670
6	37,450
7	42,230
8	47,010

For families/households with more than 8 persons, add $4,780 for each additional person.

Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. (Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii.) The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office that administers the program is generally responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure.

Due to confusing legislative language dating back to 1972, the poverty guidelines sometimes have been mistakenly referred to as the ''OMB'' (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services. The poverty guidelines may be formally referenced as ''the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).''

Some federal programs use a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines), as noted in relevant authorizing legislation or program regulations. Non-Federal organizations that use the poverty guidelines under their own authority in non-Federally-funded activities also may choose to use a percentage multiple of the guidelines.

The poverty guidelines do not make a distinction between farm and non-farm families, or between aged and non-aged units. (Only the Census Bureau poverty thresholds have separate figures for aged and non-aged one-person and two-person units.)

Note that this notice does not provide definitions of such terms as ''income'' or ''family,'' because there is considerable variation in defining these terms among the different programs that use the guidelines. These variations are traceable to the different laws and regulations that govern the various programs. This means that questions such as ''Is income counted before or after taxes?'', ''Should a particular type of income be counted?'', and ''Should a particular person be counted as a member of the family/household?'' are actually questions about how a specific program applies the poverty guidelines. All such questions about how a specific program applies the guidelines should be directed to the entity that administers or funds the program, since that entity has the responsibility for defining such terms as ''income'' or ''family,'' to the extent that these terms are not already defined for the program in legislation or regulations.

Dated: January 16, 2015.

Sylvia M. Burwell,

Secretary of Health and Human Services.

[FR Doc. 2015–01120 Filed 1–21–15; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–15–15KX]

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 and maximize the utility of government information, 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

Assessing Community-Based Organizations' Partnerships with Schools for the Prevention of HIV/STDs—New—Division of Adolescent and School Health (DASH), National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

HIV infections remain high among young men who have sex with men (YMSM). The estimated number of new HIV infections increased between 2008 and 2010 both overall and among MSM ages 13 to 24. Furthermore, sexual risk behaviors associated with HIV, other sexually transmitted disease (STD), and pregnancy often emerge in adolescence. For example, 2011 Youth Risk Behavior Surveillance System (YRBSS) data revealed 47.4% of U.S. high school students reported having had sex, and among those who had sex in the previous three months, 39.8% reported having not used a condom during last sexual intercourse. In addition, 2001–2009 YRBSS data revealed high school students identifying as gay, lesbian, and bisexual and those reporting sexual contact with both males and females were more likely to engage in sexual risk-taking behaviors than heterosexual students.

Given the disproportionate risk for HIV among YMSM ages 13–24, it is important to find ways to reach the younger youth (*i.e.,* ages 13–19) in this range to decrease sexual risk behaviors and increase health-promoting behaviors such as routine HIV testing. Schools provide one opportunity for this. Because schools enroll more than 22 million teens (ages 14–19) and often have existing health and social services infrastructure, schools and their staff members are well-positioned to connect youth to a wide range of needed services, including housing assistance, support groups, and sexual health services such as HIV testing. As a result, CDC's DASH has focused a number of HIV and STD prevention efforts on strategies that can be implemented in or centered on schools.

However, conducting HIV and STD prevention work (particularly work that is designed to specifically meet the needs of YMSM), can be challenging. School is not always a welcoming environment for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth. Harassment, bullying, and verbal and physical assault are often reported, and such unsupportive environments and victimization among LGBT youth are associated with a variety of negative outcomes, including truancy, substance use, poor mental health, HIV and STD risk, and even suicide. Schools build partnerships with community-based organizations to increase access to needed services of LGBTQ youth.

The CDC requests a 3-year OMB approval to conduct a new information collection entitled, ''Assessing Community-Based Organizations' Partnerships with Schools for the Prevention of HIV/STDs.'' The information collection will allow CDC to conduct assessment of selected staff from community-based organizations (CBOs) and health and/or wellness centers (HWCs), including school-based health centers, at participating schools or to which YMSM from participating schools are referred. This is part of the HIV and STD prevention efforts that are taking place in conjunction with local education agencies (LEAs) funded by the CDC, Division of Adolescent and School Health (DASH) under strategy 4 (School-Centered HIV/STD Prevention for Young Men Who Have Sex with Men) of PS13–1308: *Promoting Adolescent Health through School-Based HIV/STD Prevention and School-Based Surveillance.* This information collection will provide data and reports for the three funded LEAs, and will allow each LEA to identify areas of the partnerships with CBOs and HWCs that are working well and other areas that will need additional improvement. In addition, the findings will allow the CDC to determine the potential impact of currently recommended strategies and make changes to those recommendations if necessary.

This information collection system involves administration of a web-based questionnaire to no more than 60 total staff members who work for up to 60 CBOs and HWCs that are participating in the HIV/STD prevention project with the three LEAs (Broward County Public Schools in Broward County, Florida; Los Angeles Unified School District in Los Angeles, California; and San Francisco Unified School District in San Francisco, California) funded by CDC cooperative agreement PS13–1308. These LEAs represent all funded LEAs under Strategy 4 of PS13–1308. The questionnaire will include questions on the following topics: services offered by the organization and the organization's relationships with the school district and participating schools in the LEA.

The Web-based instrument will be administered in the 2015 and again in 2016 and 2018. These data collection points coincide with the initiation of project activities, the mid-way point, and endpoint of the PS13–1308 cooperative agreement. Although some respondents may participate in the data collection in multiple years, this is not a longitudinal design and individual staff member responses will not be tracked across the years. No personally identifiable information will be collected and data will only be reported in the aggregate to protect the CBOs and HWCs being represented.

All respondents will receive informed consent forms prior to participation in the information collection. The consent form explains the study and also explains that participants may choose not to complete the Web-based questionnaire with no penalty and no impact on their job or relationship with

the LEA. Participation is completely voluntary.

For the Web-based questionnaire, the estimated burden per response is about 60 minutes (1 hour). This estimate of burden is an average and takes into account that the length of the questionnaire for each respondent will vary slightly due to the skip patterns that may occur with certain responses, variations in the reading speed of respondents, and variations in the time required to collect the information needed to complete the questionnaire.

The estimated annualized burden of this data collection is 60 hours for respondents.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZE BURDEN TO RESPONDENTS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
CBO staff	CBO Assessment Questionnaire	30	1	1	30
HWC staff	HWC Assessment Questionnaire	30	1	1	30
Total					60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–01009 Filed 1–21–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–15–0929]

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 and maximize the utility of government information, 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 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

World Trade Center Health Program Petition for the Addition of a New WTC-Related Health Condition for Coverage under the World Trade Center (WTC) Health Program (OMB No. 0920–0929, expires 4/30/2015)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347), amended the Public Health Service Act (PHS Act) to add Title XXXIII establishing the WTC Health Program within the Department of Health and Human Services (HHS).

The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001 or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors). PHS Act § 3312(a)(3) identifies a list of health conditions for which individuals who are enrolled in the WTC Health Program may be monitored or treated. PHS Act § 3312(a)(6)(B) specifies that interested parties may petition the Administrator of the WTC Health Program to request that a new health condition be added to the List of WTC-Related Health Conditions in 42 CFR 88.1.

To aid the petitioner, the WTC Health Program provides a petition form to be completed and then sent to the Administrator for review. However, the petitioner is not required to use the form, and may submit a petition in a different format, provided it contains all of the data elements requested on the form. Data elements include the interested party's name, contact information, signature, and a statement about the medical basis for the relationship/association between the 9/11 exposure and the proposed health condition, which the Administrator of the WTC Health Program will use to determine whether to propose a rule to add the condition, to not to add the condition, or to seek a recommendation

from the Scientific/Technical Advisory Committee (STAC).

The petition form is amended slightly to reflect a WTC Health Program policy change. The current form asks respondents to offer reference to ''a peer-reviewed, published, epidemiologic study.'' The revised form will ask respondents to reference ''peer-reviewed, published, epidemiologic and/or direct observational studies.''

The submission of a petition is purely voluntary, and is not required or otherwise compelled by NIOSH or the WTC Health Program. NIOSH expects to receive no more than 20 submissions annually.

Petitioners include prospective and enrolled WTC responders, screening-eligible survivors, certified-eligible survivors, or members of groups who advocate on behalf of responders or survivors, such as physicians. We estimate that an individual spends an average of 40 hours gathering information to substantiate a request to add a health condition and assembling the petition.

There is no cost to respondents other than their time. The total estimated annualized burden hours are 800.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden hours
Responder/Survivor/Advocate (physician).	Petition for the addition of health conditions.	20	1	40	800
Total					800

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. 2015–01010 Filed 1–21–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; GEMSSTAR.

Date: February 23, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Isis S. Mikhail, MD, MPH, DRPH, National Institute On Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *MIKHAILI@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 15, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00928 Filed 1–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2014–0078]

President's National Security Telecommunications Advisory Committee

AGENCY: National Protection and Programs Directorate, Department of Homeland Security (DHS).

ACTION: Committee Management Notice of an Open Federal Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet via teleconference on Thursday, February 5, 2015. The meeting will be open to the public.

DATES: The NSTAC will meet on Thursday, February 5, 2015, from 2:00 p.m. to 3:00 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge or for information on services for individuals with disabilities or to request special assistance to attend, please contact Ms. Sandy Benevides via email at *Sandra.Benevides@hq.dhs.gov* or telephone at (703) 235–5408 by 5:00 p.m. on Friday, January 30, 2015. To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Supplementary Information'' section below. Associated briefing materials that will be discussed at the meeting will be available at *www.dhs.gov/nstac* for review as of January 23, 2015. Comments may be submitted at any time and must be identified by docket number DHS–2014–0078. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting written comments.
- *Email: NSTAC@hq.dhs.gov.* Include the docket number in the subject line of the email message.
- *Fax:* 703–235–5962, Attn: Sandy Benevides.
- *Mail:* Designated Federal Officer, Stakeholder Engagement and Critical Infrastructure Resilience Division, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0604, Arlington, VA 20598–0604.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, go to

www.regulations.gov and enter docket number DHS–2014–0078.

A public comment period will be held during the conference call on Thursday, February 5, 2015, from 2:50 p.m. to 3:00 p.m. Speakers who wish to participate in the public comment period must register in advance by no later than Monday, February 2, 2015, at 5:00 p.m. by emailing Sandy Benevides at *Sandra.Benevides@hq.dhs.gov.* Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Jackson, NSTAC Designated Federal Officer, Department of Homeland Security, telephone (703) 235–5321.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix. The NSTAC advises the President on matters related to national security and emergency preparedness telecommunications policy.

AGENDA: The NSTAC members will be presented with their next tasking. The members will be tasked with a study regarding big data analytics. The members will engage in a discussion of current events related to national cyber issues. Additionally the members, in coordination with senior leaders from the White House and DHS, will discuss future potential study topics to include the national security and emergency preparedness implications of the Dark Web.

Dated: January 14, 2015.

Helen Jackson,

Designated Federal Officer for the NSTAC.

[FR Doc. 2015–00938 Filed 1–21–15; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0081]

Privacy Act of 1974; Department of Homeland Security/Federal Emergency Management Agency-011 Training and Exercise Program Records System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/Federal Emergency Management Agency-011 Training and Exercise Program Records System of Records.'' This system of records allows the Department of Homeland Security/Federal Emergency Management Agency to collect and maintain records on its training and exercise programs. This system of records includes personally identifiable information of current and former Federal Emergency Management Agency employees and contractors, current and former members of the first responder and emergency management communities, and other individuals who have applied or registered to participate in training and exercise programs or who have assisted with Federal Emergency Management Agency's training and exercise programs. As a result of a biennial review of this system, DHS updated the (1) security classification, (2) system location, (3) purpose, and (4) routine uses of information. The Final Rule to exempt this system of records from certain provisions of the Privacy Act has not been changed and remains in effect. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before February 23, 2015. This updated system will be effective February 23, 2015.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0081 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Eric M. Leckey, (202) 212–5100, Privacy Officer, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC 20478. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) proposes to update and reissue a current DHS system of records titled, ''DHS/FEMA–011 Training and Exercise Program Records System of Records.''

In support of its mission, FEMA's Office of Protection and National Preparedness (PNP), the National Processing Service Centers (NPSC), the United States Fire Administration (USFA), the Federal Insurance Mitigation Administration (FIMA), and the Mission Support program offices sponsor a wide range of training and exercise programs for FEMA's employees and contractors as well as its partners in the first responder, emergency management, and flood insurance communities. FEMA provides training to first responder and emergency management personnel from federal, state, local, tribal, territorial, foreign, or international government agencies such as fire, medical, emergency management, and law enforcement professionals. FEMA also provides training to nongovernmental and volunteer disaster relief organizations, as well as certain private sector professionals such as flood insurance representatives. These programs train participants on situational awareness and emergency management skills necessary to effectively prevent, respond to, recover from, and mitigate all hazards.

FEMA established this system of records in order to collect and maintain personally identifiable information (PII) on individuals who apply or register for FEMA training and exercise programs and information about the organizations employing or sponsoring these individuals. FEMA uses this information to facilitate an individual's participation and determine eligibility for training, housing, and stipend reimbursement programs. FEMA also uses this information to compile statistical information, administer, and measure effectiveness of FEMA training and exercise programs. FEMA uses the

Social Security number (SSN) to ensure accuracy of academic records, reimburse funds to registered students, and to distinguish the identity of individuals with identical names and birth dates. The type and amount of PII FEMA collects varies depending on the programs. FEMA collects this information through paper forms and electronically through information technology (IT) systems.

As a result of a biennial review of this system, FEMA updated the following categories within this system of records. First, the security classification was updated to include classified information. Second, FEMA updated the system location to include records that may be located in IT systems. Third, FEMA amended the purpose to include expense reimbursements to program participants. Finally, FEMA updated routine use (C) to specify that FEMA may share information with the General Services Administration (GSA); modified routine uses (D) and (E) for clarity; and added routine use (P) to allow information to be shared with other federal agencies when DHS/FEMA has an agreement to use another federal agency's IT system for purposes consistent with the original collection of the information as detailed in this system of records notice.

The purpose of this system is to facilitate registration for, participation in, and completion and documentation of training and exercise programs sponsored by FEMA in support of its mission.

FEMA collects, uses, maintains, retrieves, and disseminates the records within this system under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121; the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. 2201; 44 U.S.C. 3101; 6 U.S.C. 748; Homeland Security Presidential Directives, and several Executive Orders, as described in the authorities section of this notice. This updated system of records strengthens privacy protections and provides greater transparency regarding FEMA's training and exercise records by encompassing the full range of the Agency's training and exercise programs into a single system of records. FEMA limits access to the information in this system by verifying the status and ''need to know'' of individuals registering for and participating in the Agency's training and exercise programs to further safeguard individuals' privacy.

The updated routine uses are compatible with the purpose for original collection of the information; FEMA shares exercise information with a federal agency when FEMA needs to use the recipient agency's IT system is for registration and participation in FEMA's training and exercise programs.

FEMA also collects, uses, maintains, retrieves, and disseminates information about individuals who register or apply for training and exercise programs, including DHS employees and contractors, other federal government employees, and volunteers or members of the first responder or emergency management communities. FEMA conducts and hosts training and exercise programs to foster the development of mission critical skills among these communities through participation in programs. FEMA shares exercise and training information with federal, state, local, tribal, territorial, foreign, or international government agencies, nongovernmental/volunteer organizations, and private sector organizations when necessary to facilitate the development of training and exercise programs, coordinate, facilitate, and track participation in training and exercise programs, and for statistical purposes. FEMA also shares academic records such as transcripts with educational institutions; however, FEMA's information sharing with education institutions for transcript purposes only takes place if it is requested by the student.

FEMA updated the security classification to include classified information. FEMA's exercises may involve classified locations or information to fully test the nation's disaster preparedness and response capability. Additionally, FEMA may use other federal agency's IT systems for exercises that may be categorized unclassified and classified.

Consistent with DHS's information-sharing mission, information stored in the DHS/FEMA–011 Training and Exercise Program Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

Additionally, the Final Rule to exempt this system of records from certain provisions of the Privacy Act remains unchanged and in effect. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/FEMA–011 Training and Exercise Program Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA)–011

SYSTEM NAME:

DHS/FEMA–011 Training and Exercise Program Records.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION:

Records are maintained at the FEMA Headquarters in Washington, DC and field offices. Additionally, records are maintained in various FEMA training and exercise information technology (IT) systems such as the National Emergency Training Center (NETC) Admissions System, the Center for Domestic Preparedness (CDP) Learning Management System, the Independent Study Database System (ISDBS), the FEMA Employee Knowledge Center (FEKC), and the Radiological Emergency Preparedness Program Online Operation Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has applied for, participated in, been named as a reference for, or assisted with a training or exercise program recommended, sponsored, or operated by FEMA. This

includes current and former employees of DHS, any other federal government employee or contractor, volunteers, other federal, state, local, tribal, territorial, foreign, or international government agencies, and non-profit/non-governmental personnel. The categories of individuals also include individuals from the private sector and other participants in FEMA training and exercise programs such as instructors, developers, observers, and interpreters.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Individual's name (First, Middle, Last, Suffix);
- Date of birth;
- Social Security number (SSN);
- Alternate unique number assigned in lieu of an SSN (if the individual does not have a SSN or doesn't know his or her SSN);
- Sex;
- Race and ethnicity (for statistical purposes only);
- U.S. Citizenship;
- City and country of birth (collected for non-U.S. citizens);
- Information related to disabilities requiring special assistance;
- Phone numbers;
- Email addresses;
- Addresses;
- Military Rank/Prefix;
- Unique user ID (for IT system registration);
- Individual's password (for IT system access; only accessible by the individual; disclosed as part of the authentication process);
- Individual's security questions and answers (for IT system access);
- Individual's employer or organization being represented;
- Individual's employment status;
- Individual's position title;
- Individual's professional certifications;
- Category of position;
- Years of experience;
- Type of experience;
- Primary responsibility;
- Reason for applying/registering for training/exercise;
- Reference point of contact name;
- Reference point of contact phone number;
- Reference point of contact addresses;
- Relationship of individual to the reference point of contact;
- Organization type/Jurisdiction (*e.g.,* federal, state, local, tribal, territorial, foreign, or international government agencies);
- Organization identification number (non-proprietary);
- Number of staff in the organization;
- Size of population served by the organization;
- Nomination forms;
- Registration/Application forms;
- Training/Exercise rosters and sign-in sheets;
- Training instructor and exercise role lists;
- Training/exercise schedules, including location and venue, type, target capabilities, and mission;
- Financial information, such as bank routing and account number;
- Payment records, including financial, travel, and related expenditures;
- Examination and testing materials;
- Grades and student evaluations;
- Course and instructor critiques; and
- Reports pertaining to and resulting from training and exercises.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 5196; Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. 2201; 44 U.S.C. 3101–3106; 6 U.S.C. 748; Homeland Security Presidential Directive 8; Homeland Security Presidential Directive 5; the Reorganization Plan No. 3 of 1978, 5 U.S.C. 301; 31 U.S.C. 3716; 31 U.S.C. 321, Executive Order No. 13111; Executive Order No. 12148; Executive Order No. 12127; 15 U.S.C. 2206; Chief Financial Officer Bulletin, Financial and Acquisition Management Division, Number 117, June 23, 2003, Subject: Invitational Travel; Executive Order No. 9397 *amended by* Executive Order No. 13478; and 31 U.S.C. 7701 (1996) Authorize the Collection of the Social Security number.

PURPOSE(S):

The purpose of this system is to facilitate registration, participation, completion, and documentation of FEMA's training and exercise programs, including participant housing and stipend reimbursement programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the United States Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his or her official capacity;
3. Any employee or former employee of DHS in his or her individual capacity when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, local, tribal, territorial, foreign, or international government agency, law enforcement agency, or other appropriate authority charged with investigating or prosecuting a violation

or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To federal, state, local, tribal, territorial, foreign, or international government agency or entity for the purpose of consulting with that agency or entity (a) to assist in making a determination regarding access to or amendment of information, or (b) for the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

I. To federal, state, local, tribal, territorial, foreign, or international government agency, if necessary to obtain information relevant to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit.

J. To federal, state, local, tribal, territorial, foreign, or international government agency, in response to its request, in connection with the hiring of a prospective employee or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, the issuance of a license, grant, or other benefit by the requesting agency, or for general inquiries by a state agency or state entity in connection with monitoring status and activities of its employees, to the extent that the information is relevant and necessary to the requesting agency's role and authority on such decisions and matters.

K. To physician(s) in order to provide information about a student or participant in need of medical care and are unable to provide the information him- or herself.

L. To members of the National Fire Academy (NFA) and Emergency Management Institute (EMI) Boards of Visitors federal advisory committees for the purpose of evaluating NFA's and EMI's programmatic statistics.

M. To sponsoring federal, state, local, tribal, territorial, foreign, or international government agencies to update/evaluate statistics on participation in FEMA-sponsored educational programs.

N. To the Department of Treasury for the processing and issuance of stipend payments to reimburse training, exercise, or conference related expenses.

O. To federal, state, local, tribal, territorial, foreign, or international government agencies educational institutions for the maintenance/updating of student academic records (such as transcripts).

P. To other federal agencies that support FEMA's training and exercise efforts through use of IT system(s).

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

FEMA stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

RETRIEVABILITY:

Records may be retrieved by an individual's name, SSN, or unique user ID.

SAFEGUARDS:

FEMA safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. FEMA imposes strict controls to minimize the risk of compromising the information it stores. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

FEMA's training and exercise records retention is generally covered under General Records Schedule (GRS) 1A–29a, 1–29a(2), and 1–29b; NARA Authority N1–311–08–2 1a, and NARA Authority N1–311–88–2 2. Under GRS 1, records are maintained for up to five years after the cutoff date and then destroyed. Under NARA Authority N1–311–08–2 1a, records retired to the Federal Records Center (FRC) five years after the cutoff and destroyed after forty years. Under NARA Authority N1–311–88–2 2, records are maintained for six years and three months after the cutoff and then destroyed.

SYSTEM MANAGER AND ADDRESS:

Privacy Officer, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC 20478.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a testing and evaluation system. However, DHS/FEMA will consider individual requests to determine whether or not information may be released. Individuals seeking notification of or access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the FEMA FOIA Officer whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;

• Identify which component(s) of the Department you believe may have the information about you;

• Specify when you believe the records would have been created;

• Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained on paper and through IT systems directly from all individuals who have registered for, applied for, participated in, or assisted with FEMA's training or exercise programs including FEMA employees and contractors, volunteers, other federal employees and other participants such as instructors, course developers, observers, and interpreters.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(6) has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).

Dated: December 30, 2014.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2015–00941 Filed 1–21–15; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0025]

Agency Information Collection Activities: Waiver of Rights, Privileges, Exemptions and Immunities, Forms I–508 and I–508F; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

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 November 6, 2014, at 79 FR 65979, allowing for a 60-day public comment period. USCIS received a comment 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 February 23, 2015. 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 1615–0025.

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.*

FOR FURTHER INFORMATION CONTACT: 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, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

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:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Waiver of Rights, Privileges, Exemptions and Immunities.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–508 and Form I–508F. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form is used by the USCIS to determine eligibility of an applicant to retain the status of an alien lawfully admitted to the United States for permanent residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

• Form I–508: 1,728 responses at .33 hours (20 minutes) per response, and

• Form I–508F: 200 responses at .33 hours (20 minutes) per response.

(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 636.24 hours.

Dated: January 13, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–00979 Filed 1–21–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0106]

Agency Information Collection Activities: Petition for Qualifying Family Member of a U–1 Nonimmigrant, Form I–929; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

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 October 9, 2014, at 79 FR 61089, allowing for a 60-day public comment period. USCIS did receive 1 comment 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 February 23, 2015. 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 1615–0106.

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.*

FOR FURTHER INFORMATION CONTACT: 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, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

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:* Petition for Qualifying Family Member of a U–1 Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–929; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Section 245(m) of the Immigration and Nationality Act (Act) allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of status or seek immigrant visas, the U–1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I–929. Form I–929 is necessary for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

(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 I–929 is 2,000 and the estimated hour burden per response is 1 hour.

(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 2,000 hours.

Dated: January 13, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–00977 Filed 1–21–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0122]

Agency Information Collection Activities: USCIS Identity and Credentialing Access Management (ICAM) and USCIS Electronic Immigration System (USCIS ELIS), No Form; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

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 October 20, 2014 at 79 FR 62649, allowing for a 60-day public comment period. USCIS did not receive any 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 February 23,

2015. 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 1615–0122.

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.*

FOR FURTHER INFORMATION CONTACT: 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, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

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:* USCIS Identity and Credentialing Access Management (ICAM) and USCIS Electronic Immigration System (USCIS ELIS).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Form; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS ICAM will allow the public to create an account with USCIS and then return as a registered user to complete forms or to interact in other ways that become available to the user. The USCIS ELIS is a system that the user can enter either through the USCIS ICAM account, or for a select limited number of forms, create an account directly in USCIS ELIS and then complete an electronic version of certain USCIS forms.

(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 1,220,504 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 203,824 hours.

Dated: January 13, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–00978 Filed 1–21–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5843–N–01]

Implementation of the Privacy Act of 1974, as Amended; New System of Records, the Rental Assistance Demonstration (RAD) Program Evaluation Data Files

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: New System of Records.

SUMMARY: The Department's Office of Policy Development and Research (PD&R) is proposing to create a new system of records, the ''RAD Program Evaluation Data Files.'' The Department's Office of PD&R is responsible for maintaining current information on housing needs, market conditions and existing programs, as well as conducting research on priority housing and community development issues. The principal purpose of the evaluation of the RAD Program is to allow the Department to assess and report to Congress on the performance of this program, which converts public housing units to new forms of ownership, focusing on: (1) Preserving the affordable housing availability of former public housing units; (2) the amount of private capital leveraged as a result of RAD conversions; and (3) the effect that RAD conversions have on unit residents. The new SORN allows the Department to track RAD program participants for the purpose of studying the impact of the RAD program on residents of impacted public housing properties. In order to study the residents as they move from the public housing development, it is necessary to collect their contact information at this point in the program implementation. In addition, the records collected through this evaluation represent HUD's effort to be responsive to its Congressional mandate to document and report the impact of the program. A more detailed description of the new system is contained in this notice.

DATES: *Effective Date:* The notice will be effective February 23, 2015, unless comments are received that would result in a contrary determination.

Comments Due Date: February 23, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communication should refer to

the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073. [The above telephone number is not a toll free number.] A telecommunications device for hearing-and speech-impaired persons (TTY) is available by calling the Federal Information Relay Service's toll-free telephone number (800) 877–8339.

SUPPLEMENTARY INFORMATION: This system of records is operated by HUD's Office of PD&R and includes personally identifiable information (PII) pertaining to participants of HUD's RAD Program from which information is retrieved by a name or unique identifier. The new system of records encompasses programs and services of the Department's data collection and management practices. Publication of this notice allows the Department to satisfy its reporting requirement and keep an up-to-date accounting of its system of records publications. The new system of records will incorporate Federal privacy requirements and HUD policy requirements. The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency system of records from unauthorized disclosure, by ensuring that information is current and collected only for its intended use, and by providing adequate safeguards to prevent misuse of such information. Additionally, this notice demonstrates the Department's focus on industry best practices in protecting the personal privacy of the individuals covered by this system of records notice.

This notice states the name and location of the record system, the authority for and manner of its operations, the categories of individuals that it covers, the type of records that it contains, the sources of the information for the records, the routine uses made of the records and the type of exemptions in place for the records. In addition, this notice includes the business addresses of the HUD officials who will inform interested persons of the procedures whereby they may gain access to and/or request amendments to records pertaining to them.

This publication does meet the SORN threshold requirements pursuant to the Privacy Act and OMB Circular A–130, and a report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Government Reform as instructed by Paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: January 12, 2015.

Rafael C. Diaz,

Chief Information Officer.

SYSTEM OF RECORDS NO.: PD&R/RRE.01

SYSTEM NAME:

Rental Assistance Demonstration (RAD) Program Evaluation Data Files.

SYSTEM LOCATION:

The Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20140; The Urban Institute, 2100 M Street NW., Washington, DC 20037; The SSRS, 53 West Baltimore Pike Media, PA 19063.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by the system will include Rental Assistance Demonstration (RAD) Program participants who have agreed to be part of the RAD outcome study.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system will include the participants name, home address, telephone number, and personal email address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for the collection of records, and the maintenance of this system is authorized by Sections 501–502 of the Housing and Urban Development Act of 1970 (Pub. L. 91–609), 12 U.S.C. 1701z–1, 1701z–2.

PURPOSE(S):

The data collected through this effort will be used to study the impact of the RAD program on residents of impacted public housing properties. RAD is an initiative of the Department of Housing and Urban Development (HUD) and many stakeholders that seek to preserve public and other HUD-assisted housing, by providing owners and Public Housing Authorities (PHAs) with access to additional funding to make needed physical improvements to such properties. In a tightened budget environment, PHAs and private owners have to make tough choices between repairing roofs and replacing plumbing—or worse, demolishing units altogether—because ''of a chronic lack of adequate funding''. The public housing inventory currently has a capital needs backlog of $25.6 billion, and the nation continues to lose 10,000 to 15,000 units of affordable housing every year. RAD allows PHAs and private owners to convert public housing and other HUD-assisted properties to long-term project-based Section 8 rental assistance. It also enables them to access private debt and equity to address immediate and long-term capital needs of the projects. Most needed repairs made as part of RAD are likely to be small and residents will be able to stay in their homes during construction. However, some apartments and buildings will require more extensive rehab. In these cases, residents may be temporarily relocated. All tenants who are relocated will have the right to return to their development once construction is completed. Generally, temporary relocation should not last longer than 12 months. In a few cases, a property may be too old or deteriorated, and past the point where it can be effectively rehabilitated, requiring that it be demolished and replaced. In these instances, residents will be provided temporary relocation and will have the right to return to the replacement housing that is constructed. The authorizing statute for the demonstration program requires that HUD assess the extent to which the program meets the goals of preserving and improving former public housing units, and to assess the amount of private capital leveraged as a result of such conversions. The authorizing statute also requires HUD to assess the effect of conversion on residents. In order to track residents as they move from the public housing development, it is necessary to collect their contact information at this point in the program implementation. PII will be collected from a sample of 400 residents of public housing developments participating in HUD's RAD program who have agreed to be part of an outcomes study, which will allow HUD to understand the impact of this program on the residents of public housing developments that are implementing RAD. In addition, the records collected through this evaluation represent HUD's effort to be responsive to its Congressional mandate to document and report the impact of the RAD program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

In addition to those disclosures generally permitted under 5 U.S.C. Section 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside HUD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To Econometrica and Urban Institute staff to track study participants and locate participants for a future follow-up interview. Staff may also use the data files to match with other datasets for tracking purposes, such as change of address and credit bureau databases.

2. To appropriate agencies, entities, and persons to the extent that such disclosures are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I [1]—HUD's Library of Routine Uses published in the **Federal Register** (July 17, 2012, at 77 FR 41996); and

3. To appropriate agencies, entities, and persons when: (a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; (b) HUD has determined that as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

All data collected will be input and stored in a secure database. Hard-copy materials containing respondent identifying information will be locked up when not in use. PII will be accessible to the research team only at the Urban Institute and SSRS system locations. Transfer of PII between HUD and HUD's contractors through secure file transfer protocol or transportable media encryption or a similar standard. All hard-copy materials, including completed forms and electronic records on transportable media, will be kept in locked cabinets when not in use. In addition, data on transportable media will be encrypted. Records with PII will not be printed.

RETRIEVABILITY:

The contact database will include personal identifiers that can be used to locate records to update residents' whereabouts following enrollment into the outcomes study. Records within the contact database can be retrieved by name, home address, telephone number, and personal email address.

RETENTION AND DISPOSAL:

The retention and disposal procedures will be in keeping with HUD's records management policies as described in 44 U.S.C. 3101 and 3303. Records will be maintained for a period not to exceed five years. All PII associated with the project will be destroyed by Econometrica, Inc. and their subcontractors or otherwise rendered irrecoverable per NIST SP 800–88 ''Guidelines for Media Sanitization'' (September 2006) at the end of the contract. At the end of the contract, paper-based records that do not need to be retained will be shredded and the remainder of the files will be shredded after the three-year retention period required in the contract.

SYSTEM MANAGER(S) AND ADDRESS:

Carol Star, Director, Division of Program Evaluation, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone Number (202) 402–6139.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For information, assistance, or inquiries about the existence of records, contact the Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073. Verification of your identity must include original signature and be notarized. Written request must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR part 16. Additional assistance may be obtained by contacting: U.S. Department of Housing and Urban Development, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073 or the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410.

RECORD SOURCE CATEGORIES:

Initial contact information will be extracted from the HUD's Inventory Management System, also known as Public and Indian Housing Information Center (PIC). Any necessary updates to this contact information will be provided directly from HUD's Rental Assistance Demonstration participants who have agreed to be part of the outcomes study. The records stored in the contact database will include information that can be used to locate residents' whereabouts following enrollment into the outcomes study. This data will be supplied exclusively by the individuals themselves.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2015–01029 Filed 1–21–15; 8:45 am]

BILLING CODE 4210–67–P

[1] *http://portal.hud.gov/hudportal/documents/huddoc?id=append1.pdf.*

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2015–N110; FXIA16710900000–156–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before February 23, 2015.

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: State of Hawaii DLNR/DOFAW, Honolulu, HI; PRT–47832B

The applicant requests a permit to import 800 live whole plants and 133 phytatrays of gametophytes of Diellia (*Diellia erecta*), 951 live whole plants and 121 phytatrays of gametophytes of Diellia plants (*Diellia mannii*), and 1030 live whole plants and 117 phytatrays of gametophytes of Diellia plants (*Diellia pallida*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Disney's Animal Kingdom, Bay Lake, FL; PRT–42545B

The applicant requests a permit to import one captive-born Mandrill (*Mandrillus sphinx*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Friends of the Zoo, Inc., Kansas City Zoo, Kansas City, MO; PRT–36026B

The applicant requests a permit to import one female captive born white-cheeked gibbon (*Nomascus leucogenys*) from the Perth Zoo, South Perth, Australia, for the purpose of enhancement of the species through captive propagation and conservation education.

Applicant: Charles Mercer, dba NBJ Zoological Park, Spring Branch, TX; PRT–751619

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for species listed below to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species
Arabian oryx (*Oryx leucoryx*)
Scimitar-horned (*Oryx dammah*)
Dama gazelle (*Nanger dama*)
Ring-tailed lemur (*Lemur catta*)
Brown lemur (*Lemur fulvus fulvus*)
Diana monkey (*Cercopithecus diana*)
Lar Gibbon (*Hylobates lar*)

Applicant: Wild Wilderness Drive-Through Safari, Gentry, AR; PRT–28258A

The applicant request the renewal of a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species
Ring-tailed lemur (*Lemur catta*)
Black and white ruffed lemur (*Varecia variegata*)
Brown lemur (*Eulemur fulvus*)
Cottontop tamarin (*Saguinus oedipus*)
Mandrill (*Mandrillus sphinx*)
Leopard (*Panthera pardus*)
Onager or kulan (*Equus hemionus*)
Przewalski's horse (*Equus przewalskii*)
Arabian oryx (*Oryx leucoryx*)
Red lechwe (*Kobus leche*)
Golden parakeet (*Guaruba guarouba*)
Radiated tortoise (*Astrochelys radiata*)
Galapagos tortoise (*Chelonoidis nigra*)

Applicant: National Aviary in Pittsburgh, Pittsburgh, PA; PRT–703721

The applicant request the renewal of a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species
Golden parakeet (*Guaruba guarouba*)
Rothschild's starling (*Leucopsar rothschildi*)
White-naped crane (*Grus vipio*)
Japanese crane (*Grus japonensis*)
Andean condor (*Vultur gryphus*)
Pink pigeon (*Columba mayeri*)
Hooded parrot (*Psephotus dissimilis*)
Red siskin (*Carduelis cucullata*)

Applicant: Jordan Mercer, Micanopy, FL; PRT–18705B

The applicant requests an amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to add Galapagos tortoise (*Chelonoidis nigra*) to their registration to enhance the species' propagation or survival. This notification covers activities to be

conducted by the applicant over a 5-year period.

Applicant: Lucky 7 Exotics Ranch, Eden, TX; PRT–70466A

The applicant requests an amendment of their permit authorizing interstate and foreign commerce, export, and cull of excess Arabian oryx (*Oryx leucoryx*), barasingha (*Rucervus duvaucelii*), and red lechwe (*Kobus leche*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Peter Stein, South Windsor, CT; PRT–165944

The applicant request the renewal of a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Geochelone radiata*) to enhance the species propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Minnesota Zoological Gardens, Apply Valley, MN; PRT–50631B

The applicant requests a permit to import one male captive-bred Amur tiger (*Panthera tigris altaica*), for the purpose of enhancement of the survival of the species through zoological display and propagation.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: William Lehrer, Kingswood, TX; PRT–48446B

Applicant: Nicholas Sackman, Sleepy Hollow, NY; PRT–46358B

Applicant: Elizabeth Krottinger, Wichita Falls, TX; PRT–43489B

Applicant: Austin Nick, Sands Point, NY; PRT–51146B

Applicant: Turner Butts, Spring, TX; PRT–54323B

Applicant: Joseph Borgesen, Clarkston, MI; PRT–54411B

Applicant: James Pollard, Nipomo, CA; PRT–52812B

Applicant: William Bachenberg, Allentown, PA; PRT–53625B

Applicant: Essa Kawaja, Houston, TX; PRT–52838B

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2015–00916 Filed 1–21–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Outer Continental Shelf Official Protraction Diagrams and Supplemental Official Outer Continental Shelf Block Diagrams

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Availability of revised North American Datum of 1927 (NAD 27) Outer Continental Shelf Official Protraction Diagrams and Two Lease Maps Diagrams.

SUMMARY: Notice is hereby given that effective with this publication, certain NAD 27-based Outer Continental Shelf (OCS) Official Protraction Diagrams (OPDs) and two Lease Maps depicting geographic areas located in the Gulf of Mexico with revision dates as indicated are now available. BOEM, in accordance with its authority and responsibility under the OCS Lands Act, is updating the maps used for the description of renewable energy, mineral, and oil and gas lease sales in the geographic areas they represent.

BOEM produces and maintains the official marine cadastre for the OCS areas of the United States. The marine cadastre is a comprehensive spatial data infrastructure whereby rights, restrictions and responsibilities in the marine environment can be assessed, administered and managed. The marine cadastre includes the block grids and official boundaries, which provide the base for nearly all of the BOEM offshore maps and leasing processes. It also gives BOEM the means to define, describe, analyze, and account for every acre/hectare of federal offshore submerged lands.

Pursuant to the ''Agreement between the United Mexican States and the United States of America Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico,'' which went into effect on July 18, 2014, certain activities carried out within three (3) statute miles of the U.S.-Mexico maritime boundary in the Gulf of Mexico trigger obligations for the United States related to such activities within its jurisdiction. The following OPDs and Lease Maps (dated October 1, 2014) have been revised to reflect this ''Transboundary Three Statute Mile Line.''

Outer Continental Shelf Official Protraction Diagrams in the Gulf of Mexico

Description/Date

NG14–06 (Port Isabel)—10/01/2014

NG15–04 (Alaminos Canyon)—10/01/2014

NG15–05 (Keathley Canyon)—10/01/2014

NG15–08 (Sigsbee Escarpment)—10/01/2014

NG15–09 (Amery Terrace)—10/01/2014

NG16–07 (Lund South)—10/01/2014

TX1 (South Padre Island Area)—10/01/2014

TX1A (South Padre Island Area, East Addition)—10/01/2014

SUPPLEMENTARY INFORMATION: Copies of the revised OPDs and two lease maps are available for download in .pdf format from *http://www.boem.gov/Official-Protraction-Diagrams/.*

FOR FURTHER INFORMATION CONTACT: Douglas Vandegraft, Chief, Mapping and Boundary Branch at (703) 787–1312 or via email at *Doug.Vandegraft@boem.gov.*

Dated: January 12, 2015.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–00930 Filed 1–21–15; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–451 and 731–TA–1126–1127 (Review)]

Lightweight Thermal Paper From China And Germany; Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty order and antidumping duty order on lightweight thermal paper from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines that revocation of the antidumping duty order on lightweight thermal paper from Germany would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on October 1, 2013 (78 FR 60313) and determined on January 23, 2014 that it would conduct full reviews (79 FR 6218, February 3, 2014). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 27, 2014 (79 FR 36557). The hearing was held in Washington, DC, on October 30, 2014, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission completed and filed its determinations in these reviews on January 16, 2015. The views of the Commission are contained in USITC Publication 4511 (January 2015), entitled *Lightweight Thermal Paper from China and Germany: Investigation Nos. 701–TA–451 and 731–TA–1126–1127 (Review).*

By order of the Commission.

Issued: January 15, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–00948 Filed 1–21–15; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

[OMB Number 1140–0031]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Imports List

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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.

DATES: Comments are encouraged and will be accepted for 60 days until March 23, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Majors, *William.Majors@atf.gov,* Chief, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25405.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection 1140–0031

1. *Type of Information Collection:* Extension of an existing collection.

2. *The Title of the Form/Collection:* Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Imports List.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: The records are of imported items that are on the United States Munitions Import List. The importers must register with ATF and must file an intent to import specific items as well as certify to the Bureau that the items were in fact received. The records are maintained at the registrant's business premises where they are available for inspection by ATF officers during compliance inspections or criminal investigations.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50 respondents will take 5 hours to maintain the records.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 250 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: January 16, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–01018 Filed 1–21–15; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0060]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Firearms Disabilities for Nonimmigrant Aliens

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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.

DATES: Comments are encouraged and will be accepted for 60 days until March 23, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Helen Koppe at *fipb-informationcollection@atf.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection 1140–0060

1. *Type of Information Collection:* Extension of an existing collection.
2. *The Title of the Form/Collection:* Firearms Disabilities for Nonimmigrant Aliens.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*
Form number: None.
Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*
Primary: Business or other for-profit.
Other: None.
Abstract: The nonimmigrant alien information will be used to determine if a nonimmigrant alien is eligible to purchase, obtain, possess, or import a firearm.
Nonimmigrant aliens also must maintain the documents while in possession of firearms or ammunition in the United States for verification purposes.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 15,871 respondents will take 6 minutes to respond.
6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,587 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: January 16, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–01019 Filed 1–21–15; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0067]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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.

DATES: Comments are encouraged and will be accepted for 60 days until March 23, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Helen Koppe at *fipb-informationcollection@atf.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection 1140–0067

1. *Type of Information Collection:* Extension of an existing collection.
2. *The Title of the Form/Collection:* Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*
Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Firearms manufacturers' records are permanent records of all firearms manufactured and records of their disposition. These records are vital to support ATF's mission to inquire into the disposition of any firearm in the course of a criminal investigation.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,378 respondents will take 1.068 minutes to maintain records.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 177,534 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: January 16, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–01020 Filed 1–21–15; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (BJA) Docket No. 1683]

Meeting of the Department of Justice's (DOJ's) National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of DOJ's National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee to discuss various issues relating to the operation and implementation of NMVTIS.

DATES: The meeting will take place on Tuesday, February 24, 2015, from 9:00 a.m. to 4:00 p.m. ET.

ADDRESSES: The meeting will take place at the Office of Justice Programs (OJP), 810 7th Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Todd Brighton, Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street NW., Washington, DC 20531; Phone: (202) 616–3879 [note: this is not a toll-free number]; Email: *Todd.Brighton@usdoj.gov*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Members of the public who wish to attend this meeting must register with Mr. Brighton at the above address at least seven (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Please bring photo identification and allow extra time prior to the meeting. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

Anyone requiring special accommodations should notify Mr. Brighton at least seven (7) days in advance of the meeting.

Purpose

The NMVTIS Federal Advisory Committee will provide input and recommendations to the Office of Justice Programs (OJP) regarding the operations and administration of NMVTIS. The primary duties of the NMVTIS Federal Advisory Committee will be to advise the Bureau of Justice Assistance (BJA) Director on NMVTIS-related issues, including but not limited to: Implementation of a system that is self-sustainable with user fees; options for alternative revenue-generating opportunities; determining ways to enhance the technological capabilities of the system to increase its flexibility; and options for reducing the economic burden on current and future reporting entities and users of the system.

Todd Brighton,

NMVTIS Enforcement Coordinator, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 2015–01022 Filed 1–21–15; 8:45 am]

BILLING CODE 4410–18–P

LEGAL SERVICES CORPORATION

Notice of Availability of Funding for Pro Bono Innovation Fund Grants and Letter of Intent to Apply Process

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) provides grants of federally-appropriated funds for civil legal services to low-income individuals and families. LSC is making available up to $3.8 million for Pro Bono Innovation Fund grants commencing in October 2015. Current recipients of LSC funding may submit a Letter of Intent to Apply for these funds.

DATES: The deadline to submit a Letter of Intent to Apply is 5:00 p.m., Eastern Time, on February 23, 2015.

ADDRESSES: Office of Program Performance, Legal Services Corporation, 3333 K Street, NW., Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: For more information about current Pro Bono Innovation Fund projects, please contact Mytrang Nguyen, Program Counsel, (202) 295–1564 or *nguyenm@lsc.gov.* For general questions about the Pro Bono Innovation Fund application process, please email *probonoinnovation@lsc.gov.* For technical questions or issues with the LSC Grants online application system, please email *techsupport@lsc.gov.*

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) provides grants of federally-appropriated funds for civil legal services to low-income individuals and families. 42 U.S.C. 2996 *et seq.* LSC offers Pro Bono Innovation Fund grants to develop and enhance pro bono programs that serve larger numbers of low-income clients and that improve the quality and effectiveness of the services clients receive. Projects should be innovative (new, replicable models and approaches to pro bono delivery) or replicate prior successful models. The Pro Bono Innovation Fund is designed to address issues identified in the 2012 report of LSC's Pro Bono Task Force, which is available at *http://bit.ly/LSCPBTF-Report.*

LSC is making available up to $3.8 million for Pro Bono Innovation Fund grants commencing in October 2015. Current recipients of LSC funding with Basic Field—General, Basic Field—Migrant, or Basic Field—Native American grants may submit a Letter of Intent to Apply for these funds. The Request for Letters of Intent to Apply for 2015 Grant Funding with instructions and application guidelines will be posted on January 23, 2015, at *http://grants.lsc.gov/apply-for-funding/pro-bono-innovation-fund.*

Dated: January 16, 2015.

Atitaya C. Rok,

Assistant General Counsel.

[FR Doc. 2015–00981 Filed 1–21–15; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Amendment to Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection notice is published to obtain comments from the public. In connection with NCUA's effort to streamline the process and increase feedback obtained from the public on service delivery, NCUA intends to amend, 3133–0188, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery''.

DATES: Comments will be accepted until March 23, 2015.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Jessica Khouri, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Jessica Khouri at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, by fax at Fax No. 703–837–2861, or by email at *OCIOPRA@ncua.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA intends to amend the current collection 3133–0188, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' The proposed amendment intends to increase the hours available to obtain feedback on services provided by NCUA offices. NCUA anticipates using a variety of methods to collect customer satisfaction feedback from credit unions, including, but not limited to, web and paper-based surveys or feedback forms, web-based polling or other interactive responses, comment cards, and social media. The information collection activity will garner qualitative stakeholder feedback in an efficient, timely manner, in accordance with NCUA's commitment to improving service delivery. Qualitative feedback is information that provides useful insights on perceptions and opinions, but is not a statistical survey that yields quantitative results that can be generalized to the population of study. This feedback will provide insights into 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 NCUA and its 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 to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission utilizing other information collections that are designed to yield quantitative results.

NCUA requests you send comments that address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 3133–0188.

Form Number: None.

Type of Review: Amendment of currently approved collection.

Description: The information collection activity will garner qualitative stakeholder feedback in an efficient, timely manner, in accordance with NCUA's commitment to improving service delivery. Feedback will include, but is not limited to, web- and paper-based surveys or feedback forms, web-based polling or other interactive responses, comment cards, and social media.

Respondents: Non-Profit Institutions, Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: 40,600.

Frequency of Response: Varies.

Estimated Burden Hours per Response: Varies (4–20 minutes), depending on feedback method.

Estimated Total Annual Burden Hours: 23,789 hours.

Estimated Total Annual Cost to Respondents: 0.

By the National Credit Union Administration Board on January 14, 2015.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2015–00974 Filed 1–21–15; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Extension of a Previously Approved Collection; for Change of Senior Executives and Officials forms; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection notice is published to obtain comments from the public. NCUA is requesting an

extension of a previously approved collection 3133–0121. The Federal Credit Union Act, 12 U.S.C. 1790a, specifically requires all federally insured credit unions to notify NCUA at least 30 days prior to a change in official or senior executive officer if that credit union is newly chartered or in troubled condition.

DATES: Comments will be accepted until March 23, 2015.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Jessica Khouri, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, or by Email at *OCIOPRA@ncua.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Jessica Khouri at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or by Email at *OCIOPRA@ncua.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is requesting an extension of the previously approved collection for 3133–0121. The Federal Credit Union (FCU) Act specifically requires all federally insured credit unions to notify NCUA at least 30 days prior to a change in official or senior executive officer if that credit union is newly chartered or in troubled condition. During that 30-day period, NCUA can disapprove the credit union's request. Since the last submission for 3133–0121, NCUA amended 12 CFR 701.14 to redefine ''troubled condition'' in relation to federally insured state chartered credit unions (FISCUs). The revised rule redefines a FISCU in ''troubled condition'' to be not only when its state supervisory authority (SSA) assigns it a ''4'' or ''5'' composite code rating, but also when either its SSA or NCUA assigns such a rating. Prior definitions of troubled credit unions did not include FISCUs rated a code 4 or 5 only by NCUA.

The FCU Act requires notice from the insured credit union to include certain personal information about the individual to determine the individual's fitness for the position. NCUA regulation at 12 CFR 701.14 implements Section 212. Section 701.14 requires that within 10 calendar days of receiving the notice, the Regional Director must inform the credit union either that the notice is complete or that additional specified information is required to be submitted within 30 calendar days. Additionally, this section requires the Regional Director or Director of Office of National Examinations and Supervision to issue a written decision of approval or disapproval to the individual and the credit union within 30 calendar days of receipt of the notice. Otherwise, the individual is approved. NCUA's regulation at 12 CFR 741.205 requires federally insured state-chartered credit unions to follow section 701.14.

NCUA's regulations at 12 CFR part 747 (Subpart J) sets forth the rights an individual or a credit union may exercise and procedures to be followed in responding to a notice of disapproval by NCUA.

NCUA's forms 4063 and 4063a provide a uniform method for credit unions and individuals to submit information to NCUA regarding changes to officials and senior executive officers. NCUA uses the information to determine an individual's fitness for the position.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

NCUA requests you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Change of Officials or Senior Executive Officer Forms

OMB Number: 3133–0121.

Form Number: NCUA Form 4063 and NCUA Form 4063a

Type of Review: Reinstatement, with change, of a previously approved collection.

Description: To comply with statutory requirements, the agency must obtain sufficient information from new officials or senior executive officers of newly chartered or troubled credit unions to determine the individual's fitness for the position. This is established by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. These forms standardize the information gathered to evaluate the individual's fitness for the position.

Respondents: Credit unions defined as newly chartered or in troubled condition and individuals applying for senior executive or official positions within a credit union defined as newly chartered or in troubled condition.

Estimated No. of Respondents/Record keepers: 1,017.

Estimated Burden Hours per Response: 1–2 hours.

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 1,907 hours.

Estimated Total Annual Cost: $40,692.

By the National Credit Union Administration Board on January 14, 2015.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2015–00949 Filed 1–21–15; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Extension of a Previously Approved Collection; for Prompt Corrective Action; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following proposed collection of information to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection notice is published to obtain comments from the public. This is related to NCUA's Prompt Corrective Action (PCA) regulation. NCUA uses the information provided to ensure the purpose of PCA is being carried out and that credit unions build adequate levels of net worth within a reasonable time.

DATES: Comments will be accepted until March 23, 2015.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Jessica Khouri, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Jessica Khouri at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at *OCIOPRA@ncua.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is requesting extension of the previously approved collection of information related to NCUA's regulation on PCA, 12 CFR part 702 (Part 702), which provides the requirements for PCA for federally insured credit unions (FICUs). Section 216 of the Federal Credit Union Act (12 U.S.C. 1790d) mandates the requirements of PCA. Section 216 requires the NCUA Board to (1) adopt, by regulation, a system of PCA to restore the net worth of inadequately capitalized FICUs; and (2) develop an alternative system of PCA for new credit unions that carries out the purpose of PCA while allowing reasonable time to build net worth to an adequate level. Part 702 implements the statutory mandate by establishing a system of PCA to restore the net worth of inadequately capitalized FICUs. To achieve this, various information collections are required on occasion as the circumstances require.

NCUA requests that you send your comments on this information collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Prompt Corrective Action, 12 CFR part 702.

OMB Number: 3133–0154.

Form Number: None.

Type of Review: Extension of a previously approved collection.

Description: Part 702 provides for a system of PCA. To comply with Part 702, a FICU may be subject to reporting requirements based on its net worth classification. Additionally, the rule allows FICUs to request waivers from certain requirements to which they may otherwise be subject. NCUA uses the information provided to ensure the purpose of PCA is being carried out and that FICUs build adequate levels of net worth within a reasonable time.

Respondents: Federally insured credit unions.

Estimated No. of Respondents: 642 FICUs.

Estimated Burden Hours per Response: Varies by collection.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 3,847 hours.

Estimated Total Annual Cost: $122,680.33.

By the National Credit Union Administration Board on January 14, 2015.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2015–00972 Filed 1–21–15; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request; for Extension of a Currently Approved Collection; Requirement for Insurance—Interest Rate Risk Policy

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: NCUA 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) (Pub. L. 104–13, 44 U.S.C. Chapter 35). The purpose of this notice is to allow for 30 days of public comment. Federally insured credit unions with more than $50 million in assets are required to have a written interest rate risk (IRR) policy and an effective IRR management program as a condition for insurance of accounts. The information collection is currently authorized under OMB Control Number 3133–0184. The information collection allows NCUA to determine whether a credit union's financial condition and policies regarding interest rate risk are both safe and sound and meet the requirements for insurance of accounts.

DATES: Comments will be accepted until February 23, 2015.

ADDRESSES: Interested persons are invited to submit comments to: (i) Desk Officer for the National Credit Union Administration, 3133–0184, U.S. Office of Management and Budget, 725 17th Street NW., #10102, Washington, DC 20503, or by email to: *oirasubmission@omb.eop.gov*; and (ii) Jessica Khouri by mail at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, by fax at Fax No. 703–837–2861, or by email at *OCIOPRA@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Jessica Khouri by mail at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, by fax at Fax No. 703–837–2861, or by email at *OCIOPRA@ncua.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

Section 741.3(b)(5) of NCUA Rules and Regulations (12 CFR 741.3(b)(5)) requires federally insured credit unions with more than $50 million in assets to have a written IRR policy and an effective IRR management program as a condition for insurance. In the appendix, the rule also provides guidance on how to establish an IRR policy and an effective program.

In the **Federal Register** of November 5, 2014 (79 FR 65711), NCUA published a 60-day notice requesting public comment on the proposed collection of information. NCUA received no comments.

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.

NCUA requests that you send your comments on the information collection requirements to the locations listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated

collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Requirement for Insurance—Interest Rate Risk Policy.

OMB Number: 3133–0184.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Description: Section 741.3(b)(5) of NCUA Rules and Regulations (12 CFR 741.3(b)(5)) requires federally insured credit unions with more than $50 million in assets to have a written IRR policy and an effective IRR management program as a condition for insurance. NCUA uses the information to evaluate credit unions' compliance with the rule and to determine credit unions' risk tolerances and consistency with their business strategies.

Respondents: Federally insured credit unions with assets of more than $50 million.

Estimated No. of Respondents/Record keepers: 225.

Frequency of Response: Once, then annual review.

Estimated Burden Hours per Response: 16.

Estimated Total Annual Burden Hours: 3,600.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on January 14, 2015.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2015–00975 Filed 1–21–15; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request; for Extension of a Previously Approved Collection; Golden Parachutes and Indemnification Payments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: NCUA 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) (Pub. L. 104–13, 44 U.S.C. Chapter 35). The purpose of this notice is to allow for 30 days of public comment. This is related to NCUA's regulation that prohibits, in certain circumstances, a federally insured credit union (FICU) from making golden parachute and indemnification payments to an institution-affiliated party (IAP). The regulation requires requests for a troubled FICU to make a severance or golden parachute payment to an IAP to be submitted in writing to NCUA.

DATES: Comments will be accepted until February 23, 2015.

ADDRESSES: Interested persons are invited to submit comments to: (i) Desk Officer for the National Credit Union Administration, 3133–0183, U.S. Office of Management and Budget, 725 17th Street NW., #10102, Washington, DC 20503, or by email to: *oirasubmission@omb.eop.gov;* and (ii) Jessica Khouri by mail at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, by fax at Fax No. 703–837–2861, or by email at *OCIOPRA@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Jessica Khouri by mail at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, by fax at Fax No. 703–837–2861, or by email at *OCIOPRA@ncua.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is extending a previously approved collection of information for 12 CFR 750, Golden Parachute and Indemnification Payments. Part 750 is NCUA's regulation that prohibits, in certain circumstances, a FICU from making golden parachute and indemnification payments to an IAP. The collection of information requirement applies to troubled FICUs seeking approval to make a severance or golden parachute payment to an IAP. Specifically, § 750.6 requires requests for an FICU to make nondiscriminatory severance plan payments under § 750.1(e)(2)(v) and golden parachute payments permitted by § 750.4 to be submitted in writing to NCUA.

In NCUA's experience, FICU requests to make severance and golden parachute payments within the scope of the rule do not occur often. NCUA estimates that, as of June 30, 2014, there are 6,429 FICUs. Of those, there were 278 problem FICUs with CAMEL 4 or 5 ratings. Of those, 229 FICUs had less than $50 million in total assets and an additional 22 FICUs had less than $100 million in total assets. These smaller FICUs are unlikely to seek NCUA approval to make severance or golden parachute payments because these payments are more typically seen in the executive compensation of larger, more complex FICUs. Of the remaining 27 larger problem FICUs, NCUA anticipates no more than 20 percent would seek NCUA approval to make a severance or golden parachute payment. Accordingly, NCUA estimates that on an annual basis and across all FICUs, only approximately five FICUs will need to solicit NCUA approval in advance of making a severance or golden parachute payment within the scope of the rule and that preparing the request for approval may take four hours. Five FICUs times four hours per respondent equals 20 annual burden hours.

In the **Federal Register** of November 5, 2014 (79 FR 65711), NCUA published a 60-day notice requesting public comment on the proposed collection of information. NCUA received no comments during that period.

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.

NCUA requests that you send your comments on the information collection requirements to the locations listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Golden Parachutes and Indemnification Payments.

OMB Number: 3133–0183.

Form Number: None.

Type of Review: Extension of a previously approved collection.

Description: Part 750 is NCUA's regulation prohibit, in certain circumstances, a FICU from making golden parachute and indemnification payments to an IAP. The collection of information requirement only affects troubled FICUs seeking approval to make a severance or golden parachute payment to an IAP. Specifically, § 750.6

requires requests for an FICU to make nondiscriminatory severance plan payments under § 750.1(e)(2)(v) and golden parachute payments permitted by § 750.4 to be submitted in writing to NCUA.

Respondents: Federally Insured Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 5.

Frequency of Response: Upon Request.

Estimated Burden Hours per Response: 4.

Estimated Total Annual Burden Hours: 20.

Estimated Total Annual Cost: $800.

By the National Credit Union Administration Board on January 14, 2015.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2015–00976 Filed 1–21–15; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request; for New Collection Involuntary Liquidation Proof of Claim Form and Instructions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: NCUA 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) (Pub. L. 104–13, 44 U.S.C. Chapter 35). The purpose of this notice is to allow for 30 days of public comment. NCUA is appointed the liquidating agent of a credit union when a credit union is placed into involuntary liquidation. NCUA is required to notify creditors of the liquidated credit union that they must submit claims, together with proof, to the liquidating agent. This is a one-time requirement to which creditors will respond by submitting the proposed Proof of Claim form.

DATES: Comments will be accepted until February 23, 2015.

ADDRESSES: Interested persons are invited to submit comments to: (i) Desk Officer for the National Credit Union Administration, 3133–NEW, U.S. Office of Management and Budget, 725 17th Street NW., #10102, Washington, DC 20503, or by email to: *oirasubmission@omb.eop.gov;* and (ii) Jessica Khouri by mail at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, by fax at Fax No. 703–837–2861, or by email to: *OCIOPRA@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Jessica Khouri by mail at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, by fax at Fax No. 703–837–2861, or by email at *OCIOPRA@ncua.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

Section 709.4(b) of NCUA's Rules and Regulations (*12 CFR 709*) requires the liquidating agent of a credit union placed into involuntary liquidation to publish a notice to creditors instructing creditors to present their claims to the liquidating agent by a specified date. Section 709.6 requires that any party wishing to submit a claim against the liquidated credit union must submit a written proof of claim. In addition, the liquidating agent may require claimants to submit supplemental evidence. The new collection of information requirement is that those creditors making a claim must document their claim and submit it to the liquidating agent by using the proposed Proof of Claim form. The liquidating agent notifies creditors of the need to submit a claim by means of a published notice or letters sent directly to creditors. Generally, one entity would have one claim against a credit union placed in liquidation. The liquidating agent would use the completed Proof of Claim form to determine a claim has been made against a liquidated credit union and evaluate the claim for payment. On occasion, the liquidating agent may require supplemental evidence from the claimant. NCUA estimates the liquidating agent will request ten percent (10%) of the claimants to furnish additional evidence to support the claim.

In the **Federal Register** of June 17, 2014 (*79 FR34555*), NCUA published a 60-day notice requesting public comment on the proposed collection of information. NCUA received no comments.

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.

NCUA requests that you send your comments on this collection to the locations listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Involuntary Liquidation Proof of Claim Form and Instructions.

OMB Number: 3133–NEW.

Form Number: None.

Type of Review: New Collection.

Description: Section 709.4(b) of the NCUA Rules and Regulations (12 CFR 709) requires the liquidating agent to publish notice to creditors, instructing creditors to present their claims to the liquidating agent by a specified date. Section 709.6 requires that creditors wishing to submit a claim against the liquidated credit union must submit a written proof of claim. Creditors would use the proposed Proof of Claim form to submit their claims. On occasion, the liquidating agent may require supplemental evidence from the claimant to support the claim.

Respondents: Creditors making a claim against a liquidated credit union.

Estimated No. of Respondents/ Recordkeepers: 220.

Frequency of Response: On occasion.

Estimated Burden Hours per Response: 1 hour.

Estimated Total Annual Burden Hours: 220 hours.

Estimated Total Annual Cost: $11,000.

By the National Credit Union Administration Board on January 14, 2015.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2015–00973 Filed 1–21–15; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Materials Research Science and Engineering Center (MRSEC) at Yale University by the Division of Materials Research (DMR) #1203.

Dates & Times:
February 18, 2015; 7:15 p.m.–9:00 p.m.
February 19, 2015; 7:15 a.m.–8:30 p.m.
February 20, 2015; 7:15 a.m.–4:00 p.m.

Place: Yale University, New Haven, CT.

Type of Meeting: Part open.

Contact Person: Dr. Daniele Finotello, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4676.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC at Yale University.

Agenda:

Wednesday, February 18, 2015

7:15 p.m.–9:00 p.m. Closed–Briefing of panel

Thursday, February 19, 2015

7:15 a.m.–4:30 p.m. Open–Review of the MRSEC
5:00 p.m.–6:45 p.m. Closed–Executive Session
6:45 p.m.–8:30 p.m. Open–Dinner

Friday, February 20, 2015

7:15 a.m.–9:50 a.m. Closed–Executive Session
9:50 a.m.–4:00 p.m. Closed–Executive Session, Draft and Review Report

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the MRSEC. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 15, 2015.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2015–00989 Filed 1–21–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368; NRC–2015–0008]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a January 21, 2014, request from Entergy Operations, Inc. (Entergy or the licensee), from certain requirements to perform Type B testing (seal pressure test) of the containment emergency escape air lock doors. This exemption would permit the licensee to perform a door seal contact verification check in lieu of the currently required seal pressure test.

DATES: January 22, 2015.

ADDRESSES: Please refer to Docket ID NRC–2015–0008 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–2015–0008. 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.
- *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: Andrea George, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1081, email: *Andrea.George@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Entergy is the holder of renewed Facility Operating License No. NPF–6, which authorizes operation of Arkansas Nuclear One (ANO), Unit 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

The ANO facility consists of two pressurized-water reactors, Units 1 and 2, located in Pope County, Arkansas.

II. Request/Action

Pursuant to § 50.12 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Specific exemptions,'' by letter dated January 21, 2014 (ADAMS Accession No. ML14021A085), as supplemented by letters dated March 17 and September 24, 2014 (ADAMS Accession Nos. ML14077A139 and ML14268A317, respectively), the licensee requested an exemption from certain requirements of 10 CFR part 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' Specifically, the licensee requested an exemption from Option B, Section III.B, Type B testing (seal pressure test) of the ANO, Unit 2, containment emergency escape air lock doors. This exemption would permit the licensee to perform a door seal contact verification check in lieu of the currently required seal pressure test.

Section III.B, Option B, Appendix J, 10 CFR part 50, defines Type B tests as pneumatic tests to detect and measure local leakage rates across pressure retaining, leakage-limiting boundaries, which include containment emergency escape air lock door seals. Section III.B, Option B, Appendix J, 10 CFR part 50, also states that these boundaries, such as containment emergency escape air locks, must be pneumatically tested (1) prior to initial criticality, and (2) periodically thereafter at intervals based on the safety significance and historical performance of each boundary and isolation valve to ensure the integrity of the overall containment system as a barrier to fission product release.

The licensee stated that the exemption request is necessary due to the design characteristics of the ANO, Unit 2, containment emergency escape air lock doors, in that the door sealing capability relies, in part, on rising containment pressure to provide sufficient closing force to produce an effective seal. In order to perform between-the-seals testing for the doors in the absence of containment pressure, a strongback must be installed to simulate this sealing force.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special

circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

A. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of Type B testing in Section III.B, Option B, Appendix J, 10 CFR part 50, is to verify containment integrity as a fission product barrier to provide reasonable assurance of public health and safety in the event of a loss-of-coolant accident. The evaluations described in the following sections of this exemption show that the underlying purpose of the regulations is met by the proposed seal contact check for the ANO, Unit 2, containment emergency escape airlock doors. Specifically, due to the design of the doors at ANO, Unit 2, the currently required between-the-seals testing (for the annulus between the inner and outer emergency air lock doors), if done without the strongback installed, is unable to hold pressure at or near the Technical Specification (TS) required pressure, and so meaningful between-the-seals testing is not possible without installing the strongback or exerting significant closing torque to the door closure mechanism. The seal contact check, where chalk is applied to the air lock door seal face, the door is cycled open and closed, and the chalk outline left is representative of the door seal bead mating with the seal. If the chalk pattern does not show adequate contact, the seals are adjusted and the seal contact test is reperformed until a 360-degree seal results. The seal contact check and seal adjustments (if necessary), the practices for which have been incorporated into ANO, Unit 2, maintenance procedures, ensure that the containment emergency air lock doors are sealing properly and that seal integrity of the doors is maintained. The underlying purpose of Type B testing in Section III.B, Option B, Appendix J, 10 CFR part 50, is achieved through application of the seal contact check for the air lock doors. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption exist.

B. Authorized by Law

This exemption would allow the use of a seal contact check, in lieu of a seal pressure test, to verify the seal tightness of the ANO, Unit 2, containment emergency escape air lock doors. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50 provided that special circumstances are present. As described above, the NRC staff has determined that special circumstances exist to grant the requested exemption. In addition, granting the exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

C. No Undue Risk to Public Health and Safety

This exemption request is necessary due to the original design of the containment emergency escape air lock at ANO, Unit 2. The air lock consists of a steel cylinder with a circular door at each end, an outer door and inner door, with the inner door being directly in contact with the interior of the containment building. Both of the air lock doors open inward toward the containment building interior, and so, during between-the-seals pressure testing (between the two air lock doors), the increasing pressure tends to more tightly seat the outer air lock door and push the inner airlock door off of its seat. The licensee stated that though each air lock door is fitted with two latching pins, one for the top and one for the bottom, these pins are not designed to provide enough closing force for meaningful between-the-seals testing without a strongback installed. During a postulated design basis event, both air lock doors rely on rising containment building pressure to provide closing force for a sufficiently tight seal in order to constitute a fission product boundary.

In its application, the licensee stated that during trial testing, the annulus between the door seals could not be successfully tested without the door strongback installed, even at pressures as low as 12 pounds per square inch gauge. This indicates that the leak rates for between-the-seals testing on the emergency escape air lock doors cannot meet the acceptance criteria found in Section III.B.1.(c), Appendix J, 10 CFR part 50, without the use of a strongback. The licensee stated that it has taken efforts to improve the test without the use of a strongback, and that these efforts have produced conflicting results. The licensee concluded that a complete change-out of the inner and outer bulkhead and door assemblies would be required to support incorporating an ''O'' ring seal design with a 3-pin latching configuration. Based on vendor information, the ''O'' ring seal design is superior to the flat seal profile design. Consideration was also given to a gear reduction design for the opening and closing mechanism. The licensee stated that while this option would increase sealing forces, there is insufficient evidence to determine whether such a modification would ensure future success with respect to between-the-seals pressure testing.

The licensee stated that in recent years, it has performed significant maintenance and modification activities on the air lock doors with onsite vendor support. By letter dated August 11, 2014 (ADAMS Accession No. ML14218A602), the NRC staff submitted a request for additional information to the licensee regarding whether seal design, seal material, seal shape, and seal operation conditions had been evaluated to address the between-the-seals testing difficulties. In its response dated September 24, 2014, the licensee stated that the following activities have been completed in recent years regarding the air locks: (1) Increased door to seal contact by adjusting door settings, (2) designed a torque amplifying device to assist in opening/closing the door due to increasing the contact pressures, (3) replaced door seals every refueling outage, (4) upgraded door locking bolt compression springs to allow for additional closing forces with improved ability to open the doors, (5) replaced locking bolt brackets and pins, and (6) obtained vendor support and expertise to maintain and adjust the door for optimum performance. The licensee also stated that the seal material currently in use is an ethylene-propylene-diamine-monomer, which is the vendor recommended and qualified material. The seals are a square cross-section shape design formed in a continuous circle to fit the bulk head frame seal channel. By design of the channel, the seal shape is limited. In addition, each door is designed with a ''nose/sealing bar'' that provides a continuous protrusion into the flat-faced seal for improved sealing contact. These features prevent seal design changes without extensive changes to the design and hardware of the hatch.

In its application, the licensee indicated that the vendor has clearly stated that the ANO, Unit 2, air lock design does not support testing without the use of a strongback and, to meet leak rate limits, the airlock's latching mechanism must generate a high latch contact such that it will maintain a residual compressive load on the gasket greater than the unseating effect produced by the test pressure.

Adjustment and/or modification of the latch in this manner defeats the purpose of the emergency escape air lock since excessive human force would be required to open the air lock door in an emergency situation. The licensee provided information regarding two events where personnel or equipment difficulties precluded the air lock doors from being opened or opening as designed. In 2008, after an individual became trapped in the air lock due to being unable to open the door, the licensee installed a torque amplifying device to assist personnel in door opening/closing. In 2012, the air lock outer door required mechanical agitation to open, and it was noted that the 3/4-inch stainless steel latch pins were bent. Based on efforts to date, the licensee has concluded that attempting to apply excessive closing torque to the door necessary to overcome the original design characteristics is inappropriate.

The licensee has investigated the potential of substantial modifications to the air lock doors in order to meet the current seal pressure test requirements and the Occupational Safety and Health Administration's requirements. Beyond the many components previously replaced, along with spring upgrades to help alleviate the excessive force now needed to operate the doors, the licensee has determined complete door replacement (retrofit) would be necessary to resolve the aforementioned issues and have the ability to perform a meaningful between-the-seals pressure test. The licensee stated that vendor proposals for door replacement reflect an extremely high estimated cost, without any guarantee that such a modification would resolve the issue of air lock seal pressure testing. The cost of pursuing such a modification is unwarranted because no appreciable increase in nuclear or public safety would be realized.

In its application, the licensee stated that past TS surveillance testing for the emergency escape air lock has shown that testing with strongbacks in place is successful; however, the pressure applied by the strongbacks, or the pressure applied to the outer door during the overall air lock pressure test, can cause door seals to take a set that reflects the shape of the seal grooves. With strongbacks installed or test pressure applied to the air lock barrel, the male portion of the door seal (the seal bead) can be pressed into the seal. The seal will remain in this compressed condition for the entire test period, causing the seal to take a set in the seal groove of the air lock bulkhead. After completion of an overall air lock barrel pressure test, both doors must be opened to verify proper seal contact with the door seal bead in order to ensure that the seals rebound to the pre-test condition. During the seal contact check, a seal adjustment may be required after testing because the force of the strongbacks on a given door and/or the force due to the air lock barrel test pressure on the outer door can draw the seal bead on the doors further into the seal groove than what would occur under normal door closure forces.

The seal contact check consists of applying chalk or other viable medium on the seal face and then closing and reopening the emergency escape air lock door. This will result in a pattern in the chalk (or other medium) that is representative of the door seal bead mating with the seal. If the chalk (or other medium) pattern does not show adequate contact, the seals are adjusted in the area of the gap. Following adjustment, the licensee performs a final seal contact check to verify the integrity of the sealing surface. The practice of verifying acceptable seal contact following performance of the overall air lock leak test and the acceptance criteria for this verification have been incorporated into the ANO, Unit 2, maintenance procedures.

The performance of the door seal contact check has led to the successful completion of subsequent emergency escape air lock full pressure tests since the procedural practice began. In a request for additional information dated August 11, 2014 (ADAMS Accession No. ML14218A602), the NRC staff requested that the licensee provide test results to show the effectiveness of the seal contact check. In its supplement dated September 24, 2014, the licensee provided the test results following seal contact checks for refueling outages from 2008 (2R19) to 2014 (2R23). In its supplement, the licensee stated that the results indicate that performance of the seal contact check is instrumental in the successful completion of subsequent leak testing. In its application, the licensee noted that acceptance criteria for containment building integrated leak rate testing (ILRT) has been met for each ILRT since initial plant startup, indicating that the emergency escape airlock door seals are meeting their design function when exposed to pressure in the correct (accident) direction.

As an alternative to the between-the-seals pressure test of the emergency escape air lock required by Section III.B, Option B, Appendix J, 10 CFR part 50, the licensee has proposed a final door seal contact verification. This seal performance verification is completed following the full pressure airlock test, after the removal of the inner door strongback, and just prior to final closure of the airlock doors. The requested exemption would not affect compliance with the requirement to perform a full pressure emergency escape airlock test each refueling outage. Based on these results and information provided by the licensee, the NRC staff concludes that the containment building emergency airlock doors at ANO, Unit 2, function as designed using current methods of testing and maintenance, including seal contact checks. The NRC staff further concludes that the seal contact checks performed on the emergency escape airlock door seals ensure that the doors are sealing properly and will perform their design function to limit radiological release in the case of a postulated accident. Therefore, the NRC staff determined that the between-the-seals testing required by Section III.B, Option B, Appendix J, 10 CFR part 50, is not necessary to achieve the underlying purpose of the rule for the emergency escape air lock doors, given their current design. Since the above evaluations demonstrate that the underlying purpose of the rule will be met with the seal contact check, the NRC staff concludes that there is no undue risk to the public health and safety.

D. Consistent With the Common Defense and Security

The licensee's exemption request is to utilize an alternative to the Type B containment emergency escape air lock door seal pressure testing requirement in Section III.B, Option B, Appendix J, 10 CFR part 50. This exemption request is not related to, and does not impact any security issues at ANO, Unit 2. Therefore, the NRC staff determined that this exemption does not impact, and is consistent with, the common defense and security.

E. Environmental Considerations

The NRC staff determined that the exemption discussed herein meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9) because it is related to a requirement concerning the installation or use of a facility component located within the restricted area, as defined in 10 CFR part 20, and issuance of this exemption involves no significant hazards consideration, no significant change in the types or a significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative occupational radiation exposure. Therefore, in accordance with 10 CFR

51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's consideration of this exemption request. The basis for the NRC staff's determination is discussed as follows with an evaluation against each of the requirements in 10 CFR 51.22(c)(9)(i)–(iii).

Requirements in 10 CFR 51.22(c)(9)(i)

The NRC staff evaluated whether the exemption involves no significant hazards consideration using the standards described in 10 CFR 50.92(c), as presented below:

1. Does the proposed exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would permit emergency escape air lock door seal leak integrity testing to be performed by a seal contact check in place of the between-the-seals pressure test. The seal contact check will be performed following emergency escape air lock door opening, overall full pressure test of the emergency escape air lock, or air lock door seal contact adjustments. The seal contact test method will result in a continuation of the established practice at ANO, Unit 2, which has provided a high degree of confidence in door seal performance. The performance of the door seal contact test method at ANO, Unit 2, has led to the successful completion of subsequent emergency escape air lock full pressure tests since the procedural practice began. Furthermore, the acceptance criteria for containment building ILRT has been met for each ILRT since initial plant startup, indicating that the air lock door seals are meeting their design function when exposed to pressure in the correct (accident) direction. At Palisades Nuclear Plant, emergency escape air lock door seals which have been inspected in accordance with the proposed methodology have passed subsequent full pressure emergency escape air lock leakage tests and have not interfered with successful Containment Building ILRT.

Since the proposed methodology can be used to successfully verify door seal condition and contact, the use of this methodology for testing will not cause an increase in the probability of a leaking emergency escape air lock door seal going undetected. The combination of the door seal contact check and the overall full pressure testing of the emergency escape air lock will provide high confidence of the air lock performing its design function under accident conditions.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is associated exclusively with testing of features related to Containment Building integrity. The change affects only the testing methodology of the emergency escape air lock door seals. The proposed testing method does not result in any physical alterations to the plant configuration, no new structure, system, or component (SSC) is added, no SSC interfaces are modified, and no changes to any design function of an SSC or the methods of SSC operation are being made. As the proposed change would not change the design, configuration, or operation of the plant, the change would not cause the Containment Leakage Rate Testing Program to become an accident initiator.

Therefore, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed exemption involve a significant reduction in a margin of safety?

Response: No.

The proposed change is associated exclusively with testing of features related to Containment Building integrity. The change affects only the testing methodology of the emergency escape air lock door seals. The change is unrelated to an initiator of any accident previously evaluated. The proposed application of a door seal contact check in lieu of a between-the-seals pressure test along with continuation of the overall full pressure test of the emergency escape air lock will continue to provide high confidence that the Containment Building leakage rate criteria for the emergency escape air lock will not exceed the maximum allowable leakage rates defined in the TSs or assumed in the accident analysis.

Therefore, this change does not involve a significant reduction in a margin safety.

Based on the above evaluation of the standards set forth in 10 CFR 50.92(c), the NRC staff concludes that the proposed exemption involves no significant hazards consideration. Accordingly, the requirements of 10 CFR 51.22(c)(9)(i) are met.

Requirements in 10 CFR 51.22(c)(9)(ii)

The proposed exemption would allow containment emergency escape air lock door seal pressure testing to be performed by a seal contact verification test. This change only affects the leakage integrity testing methodology of the door seals, and does not change the frequency at which the testing must be performed. The proposed testing methodology serves the same purpose as the pressure testing required by regulations. Therefore, the proposed alternative testing methodology will not significantly change the types of effluents that may be released offsite, or significantly increase the amount of effluents that may be released offsite. Therefore, the requirements of 10 CFR 51.22(c)(9)(ii) are met.

Requirements in 10 CFR 51.22(c)(9)(iii)

The proposed exemption would allow containment emergency escape air lock door seal pressure testing to be performed by a seal contact verification test. This change only affects the leakage integrity testing methodology of the door seals and has no impact on, or change to, fuel or core design. Therefore, the proposed alternative testing methodology will not significantly increase individual occupational radiation exposure or significantly increase cumulative occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(9)(iii) are met.

Conclusion

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of this exemption.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from 10 CFR part 50, Appendix J, Option B, Section III.B, Type B testing (seal pressure test) to perform a seal contact verification test, in lieu of seal pressure testing, for the ANO, Unit 2, emergency escape air lock doors.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of January 2015.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–01032 Filed 1–21–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0183]

Laboratory Investigations of Soils and Rocks for Engineering Analysis and Design of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide: issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 3 to Regulatory Guide (RG) 1.138, ''Laboratory Investigations of Soils and Rocks for Engineering Analysis and Design of Nuclear Power Plants.'' This guide describes a method that the NRC staff considers acceptable for use in the laboratory testing of soils and rocks needed to comply with NRC requirements for the siting and design of nuclear power plants.

DATES: January 22, 2015.

ADDRESSES: Please refer to Docket ID NRC–2014–0183 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–2014–0093. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 3 of Regulatory Guide 1.138 is available in ADAMS under Accession No. ML14289A600. The regulatory analysis may be found in ADAMS under Accession No. ML14289A602.
- 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.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Scott Stovall, telephone: 301–251–7922, email: *Scott.Stovall@nrc.gov,* or Edward O'Donnell, telephone: 301–251–7455, email: *Edward.Odonnell@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 3 of RG 1.138 was issued with a temporary identification as draft regulatory guide (DG)–1256. The guide describes laboratory investigations and testing practices acceptable to the NRC staff for determining soil and rock properties and characteristics needed for engineering analysis and design of foundations and earthworks for nuclear power plants. The guide was reformatted and was revised to reflect changes in standards for testing procedures developed since 2003. The most significant change is in Section C.6.3, ''Resonant Column Tests,'' which provides an alternative method for resonant column and torsional shear testing of soil and rock samples.

II. Additional Information

The DG–1256 was published in the **Federal Register** on August 4, 2014 (79 FR 45223), for a 60-day public comment period. The public comment period closed on October 3, 2014. No public comments were received.

III. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

Issuance of this guide in final form does not constitute backfitting as defined in § 50.109 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. This guide would not apply to any construction permits, operating licenses, early site permits, or limited work authorizations already issued under 10 CFR 50.10 for which the NRC issued a final environmental impact statement (EIS) preceded by a draft EIS under 10 CFR 51.76 or 51.75, or combined licenses, any of which were issued by the NRC prior to issuance of the final regulatory guide. The NRC has already completed its siting determination for those construction permits, operating licenses, early site permits, limited work authorizations, and combined licenses. Absent voluntary action by the licensee (*e.g.,* license amendment, exemption request), no further NRC regulatory action on siting will occur for those licenses, permits, and authorizations for which the guidance in the guide would be relevant. Licensees and holders of NRC regulatory approvals may perform testing of soils and rocks for engineering analysis and design activities consistent with the licensing basis for each permit and license. This testing need not comply with this regulatory guide. However, when a licensee or holder of an NRC regulatory approval voluntarily requests a change to its license or regulatory approval for which new soils or rock testing is necessary and is an essential consideration of the NRC's evaluation of the request, then the NRC may condition its approval of the request on the licensee's or holder's agreement to conduct the soil or rock testing in accordance with the guidance in the guide.

The guidance in this regulatory guide may be applied to applications for early site permits, combined licenses, and limited work authorizations issued under 10 CFR 50.10 (including information under 10 CFR 51.49(b) or (f)), any of which are docketed and under review by the NRC as of the date of issuance of the final regulatory guide. The guidance in this regulatory guide may also be applied to applications for

construction permits, early site permits, combined licenses, and limited work authorizations (including information under 10 CFR 51.49(b) or (f)), any of which are submitted after the issuance of the final regulatory guide. Such action does not constitute backfitting as defined in 10 CFR 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52. Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under part 52.

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

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2015–00985 Filed 1–21–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 4, 2015, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, February 4, 2015—12:00 p.m. Until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 13, 2014 (79 FR 59307–59308).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: January 15, 2015.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2015–01027 Filed 1–21–15; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; OPIC Annual Public Hearing

TIME AND DATE: 1 p.m., Wednesday, March 11, 2015.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC

STATUS: Hearing OPEN to the Public at 1 p.m.

PURPOSE: Annual Public Hearing to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Friday, February 27, 2015. The notice must include the individual's name, title, organization, address, email, telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Friday, February 27, 2014. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, or via email at *connie.downs@opic.gov.*

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency that provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for environmentally sound projects that confer positive developmental benefits upon the project country while creating employment in the U.S. OPIC is required by section 231A(c) of the Foreign Assistance Act of 1961, as amended (the ''Act'') to hold at least one public hearing each year.

Dated: January 20, 2015.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2015–01132 Filed 1–20–15; 11:15 am]

BILLING CODE 3210–01–P

POSTAL SERVICE

Temporary Emergency Committee of the Board of Governors; Sunshine Act Meeting

DATES AND TIMES: Thursday, February 5, 2015, at 10:00 a.m.; and Friday, February 6, at 8:30 a.m. and 10:30 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., in the Benjamin Franklin Room.

STATUS: Thursday, February 5 at 10:00 a.m.—Closed; Friday, February 6 at 8:30 a.m.—Open; and Friday, February 6 at 10:30 a.m.—Closed. (Via notational voting, the Temporary Committee of the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for February 5 and a portion of the meeting scheduled for February 6, 2015, in Washington, DC).

MATTERS TO BE CONSIDERED:

Thursday, February 5, at 10:00 a.m. (Closed)

1. Strategic Issues.
2. Pricing.
3. Financial Matters.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board governance.

Friday, February 6, at 8:30 a.m. (Open)

1. Remarks of the Chairman of the Temporary Emergency Committee.
2. Remarks of the Postmaster General and CEO.
3. Approval of Minutes of Previous Meetings.
4. Committee Reports and Assignments.
5. Quarterly Report on Financial Performance.
6. Quarterly Service Performance Report.
7. Tentative Agenda for the April 13 and 14 Meeting.

Friday, February 6, at 10:30 a.m. (Closed)

1. Continuation of Thursday's closed session agenda.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

FOR FURTHER INFORMATION CONTACT: Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at 202–268–4800.

Julie S. Moore,

Secretary, Board of Governors.

[FR Doc. 2015–01091 Filed 1–20–15; 11:15 am]

BILLING CODE P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and purpose of information collection: Appeal Under the Railroad Retirement and Railroad Unemployment Insurance Act; OMB 3220–0007.

Under Section 7(b)(3) of the Railroad Retirement Act (RRA), and Section 5(c) of the Railroad Unemployment Insurance Act (RUIA) any person aggrieved by a decision made by an office of the RRB on his or her application for an annuity or benefit under those Acts has the right to appeal to the RRB. This right is prescribed in 20 CFR 260 and 20 CFR 320. The notification letter, which is provided at the time of filing the original application, informs the applicant of such right. When an applicant protests a decision, the concerned RRB office reviews the entire file and any additional evidence submitted and sends the applicant a letter explaining the basis of the determination. The applicant is then notified that to protest further, they can appeal to the RRB's Bureau of Hearings and Appeals. The appeal process is prescribed in 20 CFR 260.5 and 260.9 and 20 CFR 320.12 and 320.38.

To file a request for an appeal the applicant must complete Form HA–1, *Appeal Under the Railroad Retirement Act or Railroad Unemployment Insurance Act.* The form asks the applicant to explain the basis for their request for an appeal and, if necessary, to describe any additional evidence they wish to submit in support of the appeal. Completion is voluntary, however, if the information is not provided the RRB cannot process the appeal. The RRB proposes no changes to Form HA–1.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
HA–1	550	20	185

2. Title and purpose of information collection: Annual Earnings Questionnaire; OMB 3220–0179.

Under section 2(e)(3) of the Railroad Retirement Act (RRA), an annuity is not payable for any month in which a beneficiary works for a railroad. In addition, an annuity is reduced for any month in which the beneficiary works for an employer other than a railroad employer and earns more than a prescribed amount. Under the 1988 amendments to the RRA, the Tier II portion of the regular annuity and any supplemental annuity must be reduced by one dollar for each two dollars of Last Pre-Retirement Non-Railroad Employment (LPE) earnings for each month of such service. However, the reduction cannot exceed fifty percent of the Tier II and supplemental annuity amount for the month to which such deductions apply. The LPE generally refers to an annuitant's last employment with a non-railroad person, company, or institution prior to retirement, which was performed at the same time as railroad employment or after the annuitant stopped railroad employment. The collection obtains earnings information needed by the RRB to determine if possible reductions in annuities are in order due to LPE.

The RRB utilizes Form G–19L, *Annual Earnings Questionnaire,* to obtain LPE earnings information from annuitants. One response is requested of each respondent. Completion is required to retain a benefit. The RRB proposes no changes to Form G–19L.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–19L	300	15	75
Total	300		75

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2015–00980 Filed 1–21–15; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74067; File No. SR–CBOE–2015–004]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation Date of Rule Change SR–CBOE–2014–040

January 15, 2015.

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 January 7, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 delay the implementation date of rule change SR–CBOE–2014–040. There is no proposed change to the rule language.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 13, 2014, CBOE Rules 6.53(y) and 15.2A were approved by the Securities Exchange Commission (SR–CBOE–2014–040).[5] Rule 6.53(y) added a definition of a tied to stock order.[6] Rule 15.2A requires, among other things, that each Trading Permit Holder, (''TPH''), on the business day following the order execution date, report to the Exchange certain information regarding the executed stock or convertible security legs of Qualified Contingent Cross (''QCC'') orders, stock-option orders and other Tied to Stock Orders that the TPH executed on the Exchange that trading day. CBOE stated that it would consider feedback from TPHs regarding the timing of the implementation date of SR–CBOE–2014–040.[7] Based on that feedback, the Exchange seeks to extend the implementation date of SR–CBOE–2014–040.

Pursuant to SR–CBOE–2014–040, the Exchange issued CBOE Regulatory Circular RG14–171 on December 10, 2014, to announce the implementation date of Rules 6.53(y) and 15.2A. However, SR–CBOE–2014–040 required the Exchange to announce the implementation date no later than 90 days following the effective date of the filing (*i.e.,* by November 12, 2014).[8] Therefore, even though the rule filing was approved on August 13, 2014, TPHs were unable to fully assess the impact of the rule filing until RG14–171 was issued on December 10, 2014. In addition, the CBOE Regulatory Division held a session with TPHs on December 19, 2014, to discuss the implementation of Rules 6.53(y) and 15.2A.[9] TPHs requested clarity regarding several aspects of Rules 6.53(y) and 15.2A; however, several issues remain outstanding. Furthermore, TPHs expressed their inability to plan technological modifications without further clarity. Although the Exchange plans to hold future training sessions, the Exchange does not believe TPHs are in a position to comply with the requirements of Rules 6.53(y) and 15.2A by the current implementation date of February 9, 2015. Therefore, the Exchange seeks to extend the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Securities Exchange Act Release No. 34–72839 (August 13, 2014), 79 FR 49123 (August 19, 2014) (Approval Order) (SR–CBOE–2014–040).

[6] Rule 6.53(y) provides that an order is tied to stock if, at the time the Trading Permit Holder representing the order on the Exchange receives the order (if the order is a customer order) or initiates the order (if the order is a proprietary order), has knowledge that the order is coupled with an order(s) for the underlying stock or a security convertible into the underlying stock (''convertible security'' and, together with underlying stock, ''non-option'').

[7] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Laura G. Dickman, Senior Attorney, CBOE, dated August 6, 2014 (''CBOE Letter II'') at 2.

[8] SR–CBOE–2014–040 was approved on August 13, 2014, but the implementation date was not announced until December 10, 2014.

[9] *See* CBOE Regulatory Circular RG14–185—Session on December 19, 2014 Regarding Tied to Stock Order Marking and Reporting Requirements (December 17, 2014).

implementation date of SR–CBOE–2014–040.

The Exchange will announce the implementation date of the proposed rule in a Regulatory Circular to be published no later than 90 days following the effective date of this filing. The implementation date will be no later than 180 days following the effective date of this filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes Rules 6.53(y) and 15.2A will aid the Exchange's efforts to prevent fraudulent and manipulate acts and practice with respect to tied to stock orders, because it will improve the Exchange's ability to tie executed non-option legs to the applicable option orders that were separately submitted for execution. Additionally, the Exchange believes the data provided pursuant to Rules 6.53(y) and 15.2A will help to remove impediments to and perfect the mechanism of a free and open market, but only if TPHs have a better understanding of their obligations because a better understanding is likely to lead to more accurate data, which will permit CBOE to more efficiently and effectively conduct its regulatory surveillance. Therefore, the Exchange believes that if Rules 6.53(y) and 15.2A is implemented on February 9, 2015, TPHs and CBOE will be negatively impacted.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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 [13] and Rule 19b–4(f)(6) [14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2015–004. 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 a.m. and 3 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–CBOE–2015–004, and should be submitted on or before February 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00968 Filed 1–21–15; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74063; File No. SR–NYSE–2015–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Price Protection Mechanism To Prevent the Automatic Execution of Incoming Market Orders and Marketable Limit Orders Outside a Specified Parameter and Eliminate Liquidity Replenishment Points and the Gap Quote Policy

January 15, 2015.

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 January 8, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to proposes to [sic] (i) amend Rule 1000 to add a price protection mechanism to prevent the automatic execution of incoming market orders and marketable limit orders outside a specified parameter, and (ii) eliminate its Exchange-specific volatility mechanisms—Liquidity Replenishment Points (''LRPs'') and its Gap Quote Policy—and to delete any references thereto from the Exchange rules. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1000 to add a price protection mechanism to prevent the automatic execution of incoming market orders and marketable limit orders outside a specified parameter (referred to as a ''Trading Collar''). The Exchange also proposes to eliminate its Exchange-specific volatility mechanisms—LRPs and Gap Quote Policy—and to delete any references thereto from the Exchange rules. The Exchange believes that the proposed Trading Collars would assist with the maintenance of fair and orderly markets by mitigating the risks associated with orders sweeping through multiple price points, resulting in executions at prices that are away from the best bid or offer and potentially erroneous. As discussed further below, the discontinuation of the Exchange-specific volatility mechanisms were anticipated changes following implementation of the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan'').[4]

Background: Liquidity Replenishment Points and Gapping the Quote

Rule 1000 provides for the basic operative principles regarding the immediate, automatic execution of market orders and marketable limit orders against the Exchange's published quotation.[5] The Rule also lists instances in which automatic execution would not be available due to certain market conditions, including when Exchange-specific volatility mechanisms, specifically LRPs and gapping the quote, have been triggered.

Liquidity Replenishment Points

In March 2006, the Exchange implemented the LRP mechanism to address market volatility on the Exchange.[6] The Exchange has utilized LRPs, which are triggered by rapid price movements over a short period of time, to moderate volatility in a security by temporarily converting the electronic market for the security into an auction market to afford new trading interests the opportunity to add liquidity.[7] The Exchange believes that LRPs were effective in moderating some of the impact from the events of May 6, 2010 for Exchange trading customers, as evidenced by the lack of erroneous trades on the Exchange.[8] In 2012, in approving the Plan, the Commission noted the ''potential for unnecessary complexity that could result if the Plan were adopted, and exchange-specific volatility mechanisms were retained''; thus, the Commission stated its ''expect[ation], that upon implementation of the Plan, such exchange-specific volatility mechanisms would be discontinued by the respective exchanges.'' [9]

In 2013, to coincide with the implementation of the Plan, the Exchange filed amendments to Rule 1000 that provided for the phasing out of the functionality associated with LRPs as the Plan was phased in across all NMS Stocks.[10] The Plan was fully implemented across all NMS Stocks on February 24, 2014, and as such, pursuant to Rule 1000(a)(iv)(A), the Exchange has discontinued the use of LRPs for all NMS Stocks that are subject to the Plan.[11]

Gapping the Quote

When an imbalance in a particular security exists, the manual process known as ''gapping the quote'' occurs—specifically, the DMM for the security widens the spread between the bid and

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No 67091 (May 31, 2012), 77 FR 33498, 33510, n. 182 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the Plan) (The Commission ''expects, that upon implementation of the Plan, such exchange-specific volatility mechanisms would be discontinued by the respective exchanges.'') *See also* Securities Exchange Act Release No 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014) (File No. 4–631) (the Seventh Amendment to the Plan).

[5] Automatic executions may also be against orders on the Display Book®, Floor broker agency file interest, Floor broker proprietary file interest, Designated Market Maker (''DMM'') interest, and interest placed in the Exchange's systems by DMMs pursuant to a Capital Commitment Schedule in accordance with, and to the extent provided by, Exchange rules and shall be immediately reported as Exchange transactions. *See* Rule 1000(a).

[6] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05).

[7] *See* Securities Exchange Act Release No. 69295 (April 4, 2013), 78 FR 21457 (April 10, 2013) (SR–NYSE–2013–27).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498, 33510, n. 182 (June 6, 2012).

[10] *See supra* n. 7; *See* Securities Exchange Act Release No. 69695 (June 4, 2013), 78 FR 34695 [sic] (June 10, 2013) (SR–NYSE–2013–36).

[11] *See* Securities and Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014) (File No. 4–631) (the Seventh Amendment to the Plan). The Exchange notes that rights and warrants are not subject to the Plan, and therefore continue to be subject to LRPs.

offer and publishes a new gapped quote. Order imbalances may occur when the Exchange receives a sudden influx of orders for a particular security on the same side of the market within a short time interval, or when one or more large-size orders for a security are entered, and there is insufficient offsetting interest. The Exchange first implemented its policies and procedures for gapping the quote in 1994 and updated the Gap Quote Policy in 2010.[12] As stated in the Policy, a DMM gaps a quote to ''provide public notice of order imbalances for securities, facilitate price discovery, and minimize short-term price dislocation, by allowing for the entry of offsetting orders or the cancellation of orders on the side.''[13] A DMM may gap a quote after an LRP has been reached. A gapped quote is not available for automatic execution.

Proposed Trading Collar

The Exchange proposes to amend Rule 1000 to add a price protection mechanism to prevent the automatic execution or routing of incoming market orders, including elected stop orders, and marketable limit orders[14] outside a specified parameter (referred to as a ''Trading Collar''). As proposed, an incoming market order or marketable limit order to buy (sell) would not execute or route to another market center at a price above (below) the Trading Collar. Trading Collars would be applicable only when automatic executions are in effect.[15] As discussed below, on arrival, a buy/sell order would be automatically executed up/down to (and including, but not beyond) the Trading Collar and any remaining interest shall be cancelled. Unless it is a non-routable order, the order would route to all markets at or better than the Trading Collar.[16]

Pursuant to proposed Rule 1000(c)(i), a Trading Collar would be a specified percentage away from the National Best Bid or Offer (''NBBO''), depending on whether it is a buy or sell order, and the specified percentage would vary depending on the NBBO at the time the order arrives and/or is executed. For buy orders, the Trading Collar would be a specified percentage above the National Best Offer (''NBO''). For sell orders, the Trading Collar would be a specified percentage below the National Best Bid (''NBB''). The proposed Trading Collars are set forth in the table below.

NBB/NBO	Percentage away from the NBB/NBO
Greater than $0.00, up to and including $25.00	10
Greater than $25.00, up to and including $50.00	5
Greater than $50.00	3

The Exchange notes that these proposed percentages are based on the current numerical guidelines for determining whether a clearly erroneous execution has occurred.[17] The Exchange further notes that the proposed percentages are the same as the percentages applicable to similar trading collar functionality on NYSE Arca Equities, Inc. (''NYSE Arca Equities'').[18] The Exchange believes that the proposed specified percentages are appropriate because the Trading Collar is designed to reduce the risk of, and to potentially prevent, the automatic execution of orders at prices that may be considered clearly erroneous. Because the specified percentage may extend multiple decimal points, the Exchange proposes to truncate Trading Collars to the nearest minimum price variation (''MPV'') for the security.[19]

Consider an example where the NBBO is $24.95 x 25.01. In such scenario, the Trading Collar for buy orders would be $26.26 (*i.e.,* $25.01 + 5% = $26.2605, truncated to $26.26) and the Trading Collar for sell orders would be $22.45 (*i.e.,* $24.95 − 10% = $22.455, truncated to $22.45).

The Exchange proposes that if the NBBO is crossed, the Exchange would use the Exchange Best Offer (''BO'') instead of the NBO for buy orders, and the Exchange Best Bid (''BB'') instead of the NBB for sell orders.

The Exchange believes it is appropriate to use the BB/BO when the NBBO is crossed as a crossed NBBO is generally indicative of an erroneously priced or stale bid and/or offer, and may not be appropriate reference prices for calculating Trading Collars. The Exchange believes that this practice will help ensure that market participants obtain timely executions of their market orders and marketable limit orders while still being afforded the price protection benefit of the Trading Collars. As proposed, in the event there is no NBB or BB, the lower boundary of the Trading Collar would be zero because there would be no reference price against which to determine the appropriate Trading Collar. Similarly, in the event there is no NBO or BO, the upper boundary of the Trading Collar would be set to the maximum price that the System could handle. Notwithstanding the Trading Collar, any incoming market orders or marketable limit orders would still be subject to the Plan and could not execute outside of the Upper (Lower) Price Band, as defined in Rule 80C.

Pursuant to proposed Rule 1000(c)(ii), an incoming market order, including an elected stop order, or marketable limit order would execute and/or route up or down to (and including) the Trading Collar and any remaining interest would be cancelled. The Exchange believes that Trading Collars, working in conjunction with the Plan, could help limit potential harm from extreme price volatility by preventing executions that could occur at a price significantly away from the contra side. As proposed, if the Trading Collar for incoming buy (sell) interest is lower (higher) than or equals the Upper (Lower) Price Band[20], the Exchange would cancel any remaining interest. The Plan, however, would take priority over the Trading Collars where the Plan affords more price protection to incoming orders. Specifically, if the Upper (Lower) Price Band is lower (higher) than the Trading Collar, the order would execute at the more

[12] *See* Information Memo 94–32 (August 9, 1994), filed as SR–NYSE–93–48. *See* Securities Exchange Act Release No. 34303 (July 1, 1994), 59 FR 35157(July 8, 1994). *See also* Information Memorandum 10–3 (January 7, 2010), filed as NYSE–2010–05. *See* Securities and Exchange Act Release No. 61401 (January 22, 2010), 75 FR 4605 (January 28, 2010) (changing the minimum size and value requirements for use of gap quotes).

[13] *See* Securities Exchange Act Release No. 61048 (November 23, 2009), 74 FR 62863 (December 1, 2009) (SR–NYSE–2009–112).

[14] A market order is an ''order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the Trading Crowd or routed to the Display Book®.'' *See* Rule 13. A marketable limit order is defined as ''a limit order to buy (sell) priced at or above (below) the Exchange best offer (bid) at the time such order is routed to the Display Book®.'' *Id.* Because a stop order becomes a market order when elected, the Exchange believes it is appropriate to provide that elected stop orders would be subject to the proposed Trading Collar.

[15] *See* proposed Rule 1000(c)(ii). Both market orders and marketable limit orders are ''auto ex orders'' that initiate automatic executions immediately upon entry into the Exchange systems. *See* Rule 13. Trading Collars would not be applicable to Set Slow Stocks, or to pre-opening, opening, closing or manual transactions, and are not in effect during a halt, suspension, or pause in trading. Trading Collars would apply, and be determined, when discretionary pricing instructions are triggered. Trading Collars would not be displayed.

[16] If, however, an order that routed to an away market returns to the Exchange unexecuted, the Trading Collar based on the NBBO in place at the time of execution would be used for that incoming (now returning) order, not the Trading Collar based on the NBBO in place at the time of the original arrival of the order.

[17] *See* Rule 128(c)(1).

[18] *See* NYSE Arca Equities Rule 7.31(a)(2).

[19] *See* Rule 62.

[20] *See* Rule 80C.

restrictive Upper (Lower) Price Band and not beyond and any remaining interest would be displayed or repriced to the Price Band, consistent with Rule 80C(a)(5).

The Exchange notes that if there is no execution opportunity at the Exchange for an incoming buy (sell) order at a price above (below) the NBO (NBB), the Exchange would not be obligated to route the order to an away market protected offer (bid) because the incoming order would not be trading through such protected quotation. The Exchange therefore proposes that if there is no execution opportunity at the Exchange for an incoming buy (sell) order at a price above (below) the NBO (NBB) and at or below (above) the Trading Collar, a buy (sell) order that is priced at or above (below) the Trading Collar would be cancelled. The Exchange further proposes that a similarly-priced, partially-executed order would also be cancelled.

For example, assume the NBO is 10.00, based on a quote from an away market, and therefore the proposed Trading Collar is 11.00. Assume further that the Exchange's best offer is 11.05 and with these conditions, the Exchange receives an incoming buy order priced at 11.02. Because there is no execution opportunity for the incoming buy order above the NBO and at or below the Trading Collar, and because the order's limit price exceeds the Trading Collar, the incoming buy order would be cancelled. The buy order would cancel rather than route because the Exchange would not trade through another market. Similarly, assuming the same facts, but the Exchange has non-displayed interest to sell priced at 9.99. An incoming buy order priced at 11.02 would execute against that 9.99 non-displayed sell interest, and then any remainder of the buy order would similarly be cancelled because there is no execution opportunity priced above the NBO of 10.00 or at or below the Trading Collar of 11.00.

Finally, pursuant to proposed Rule 1000(c)(iii), during a Short Sale Price Test [21], if the NBBO is crossed, short sale orders that would be re-priced to a Trading Collar would be cancelled. Under Rule 201 of Regulation SHO,[22] when the NBBO is crossed, a short sale order in a covered security may be displayed or executed at a price that is less than or equal to the current national best bid.[23] Accordingly, if the NBBO is crossed, a short sale order priced at or below the Trading Collar could be re-priced to the Trading Collar, which is by definition a price below the NBB. In the spirit of Rule 201 of Regulation SHO, which is to prevent the display or execution of short sale orders at prices equal to or below the NBB, the Exchange believes that it is appropriate during a crossed market to cancel a short sale order that would be re-priced to a Trading Collar rather than display the order at that price.

The Exchange also proposes to amend Rule 70.25(b)(i), regarding price discretion or ''d-Quotes,'' which states that ''[a] Floor broker may set a discretionary price range [that] specifies the prices at which the Floor broker is willing to trade.'' [24] Specifically, the Exchange proposes to amend this Rule to provide that d-Quotes are subject to the Trading Collar and/or the Price Bands and, thus, pursuant to the amended rule, Floor Brokers may use discretion to initiate or participate in a trade with interest capable of trading at a price within the discretionary price range ''unless the interest reaches a Trading Collar or Price Band, whichever is reached first.'' [25] The Exchange believes it is appropriate to similarly afford Trading Collar price protection to d-Quotes to prevent the execution of orders with discretionary price instructions at prices outside the prevailing market price from causing significant price dislocation in the market.[26]

Proposed Elimination of LRPs and Gap Quote Policy

As noted above, by rule, the Exchange has already discontinued the use of LRPs for any security subject to the Plan. However, LRPs continue to be available for rights and warrants, which are not subject to the Plan. The Exchange believes that with the introduction of Trading Collars it will have in place appropriate price protections for rights and warrants and the Exchange will no longer need LRPs for those securities. Accordingly, the Exchange proposes to complete the Exchange's discontinuation of LRPs in their entirety by deleting references to LRPs in the following Rules: 60, 79A, 104, 128, and 1000.

For similar reasons, the Exchange believes it appropriate to discontinue the Gap Quote Policy. Accordingly, the Exchange proposes to eliminate its Gap Quote Policy in its entirety and to delete references thereto in the following Rules: 60, 79A, 104, and 1000.

Relatedly, the Exchange also proposes to amend Rule 1000(e) (Executions at and Outside the Exchange Best Bid or Offer) to add references to Trading Collars and/or Price Bands, in certain cases to replace deleted references to LRPs. The Exchange believes these proposed changes will add transparency and clarity to the Exchange's rules.

Other Proposed Amendments

In connection with the addition of the Trading Collar, the Exchange also proposes to amend the definition of market order, in Rule 13, to state that if a market order to sell has exhausted all eligible buy interest, any unfilled balance of the market order to sell will be cancelled. The Exchange believes that this is appropriate because it assures that a market order to sell will not be held at a price that it is not executable, *i.e.,* $0.00.

Finally, unrelated to issues raised in present filing, the Exchange is also proposing technical, non-substantive edits to delete from the Exchange rules the outdated/obsolete references to securities operating in ''Non-Firm Mode,'' including in Rule 60(c)(ii)(A) and Rule 1000(a)(i), or the block template, referred to in Rule 60(ii)(B), which is the ''manual reporting of a block-sized transaction.'' The Exchange also proposes to delete the reference to ''S-quotes'' in Rule 60(d), 1000(a) and 1000(e)(iii)(A), as DMM interest is no longer solely referred to in this manner and the Exchange believes the proposed amendment will remove this outmoded and narrow reference. The Exchange also proposes to amend the last sentence of Rule 60(d), regarding ''[a]utoquoting of highest bid/lowest offer,'' to account for the impact of the Trading Collars.[27] The Exchange proposes to amend Rule 1000(b) to update an incorrect reference to the resumption of autoquoting as set forth in Rule 60(d)—not Rule 60(e) as this rule presently states.[28] Finally, the Exchange proposes to delete an erroneous reference in Rule 1000(e)(iv)

[21] *See* Rule 440B(b).

[22] 17 CFR Part 242.201.

[23] *See* SEC Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation Show, FAQ 6.1, available at: *http://www.sec.gov/divisions/marketreg/rule201faq.htm.*

[24] Because the rule erroneously omits the word ''that'' from this sentence, the Exchange proposes to correct this omission as part of this rule filing.

[25] *See* proposed Rule 70.25(b)(i).

[26] The Trading Collar applies to d-Quotes in the same manner as other order types. *See supra* n. 15 (Trading Collars apply when discretionary pricing instructions are triggered, but do not apply to openings, re-openings, or closing trades).

[27] As proposed, the final sentence of Rule 60(d) would state the following: ''When the Exchange's highest bid or lowest offer has been executed or cancelled in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of displayable orders at the next highest (in the case of a bid) or lowest (in the case of an offer) price.''

[28] *See* proposed Rule 1000(b).

to paragraph (d)(iii), as there is no such paragraph in the Rule.

Implementation

The Exchange will announce the implementation date of the proposed rule change by Trader Update.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [29] that an Exchange have rules that are designed to promote the 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.

As an initial matter, the Exchange notes that the proposed Trading Collar, which is designed to designed to promote the 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, is similar to the price protection features offered on other markets, including NYSE Arca Equities.[30] As noted above, the specified percentages relating to the Trading Collar are based on the current numerical guidelines for determining whether a clearly erroneous execution has occurred and are the same as the approved specified percentages applicable to similar trading collar functionality on NYSE Arca Equities.[31]

Moreover, the Exchange believes that the proposed Trading Collar assists with the maintenance of fair and orderly markets by helping to mitigate the risks associated with orders sweeping through multiple price points, thereby resulting in executions that are potentially erroneous, which, in turn, protects investors from potentially receiving executions away from the prevailing prices at any given time. Specifically, the Exchange believes the Trading Collars will remove impediments to and perfect the mechanisms of a free and open market because the Trading Collars will operate in tandem with the Plan and will only execute/route incoming market orders or marketable limit orders priced within the Trading Collars or within the Upper (Lower) Band set forth in the Plan, if the latter is more conservative. The Exchange believes this mechanism will mitigate the risk of potentially erroneous executions, which protects investors and the public interest.

The Exchange also believes its use of the BB/BO when the NBBO is crossed assists with the maintenance of fair and orderly markets as a crossed NBBO is generally indicative of an erroneously priced bid and/or offer, and should not be considered reliable for the purposes of determining the specified percentages for a Trading Collar. The Exchange believes that this practice will help ensure that market participants obtain timely executions of their market orders and marketable limit orders while still being afforded the price protection benefit of Trading Collar functionality, which protects investors and the public interest.

Similarly, the Exchange believes that affording Trading Collar price protection to d-Quotes would remove impediments to and perfect the mechanism of a free and open market as the Trading Collar would prevent the execution of d-Quotes that are priced far away from the prevailing market price from causing significant price dislocation in the market, which, in turn, benefits investors and is in the public interest.

The Exchange believes that the technical, non-substantive proposed amendments and/or deletions related to the Trading Collar in rules other than Rule 1000, as described above, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. Specifically, the Exchange believes that the proposed changes add transparency and clarity to the Exchange's rules and will enhance the understanding of market participants by reducing potential confusion that the obsolete references would otherwise create.

Finally, the Exchange previously committed to discontinue the Exchange-specific volatility mechanisms; thus, the elimination of LRPs and the Exchange's Gap Quote Policy are expected changes.[32] Moreover, the implementation of the Plan, together with the proposed Trading Collars eliminates the necessity for these Exchange-specific volatility mechanisms, as the Exchange will have in place appropriate price protections for all securities traded on the Exchange, including for rights and warrants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the adding of Trading Collar protection will provide market participants with additional protection from anomalous executions. Thus, the Exchange does not believe the proposal creates any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [33] and Rule 19b–4(f)(6) thereunder.[34] 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 [35] and Rule 19b–4(f)(6)(iii) thereunder.[36]

A proposed rule change filed under Rule 19b–4(f)(6) [37] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[38] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange asserts that the rule change proposed herein

[29] 15 U.S.C. 78f(b)(5).

[30] *See e.g.,* NYSE Arca Equities Rule 7.31(a)(2). *See also* BATS Exchange, Inc. (''BATS) Rule 11.9(a)(2); BATS Y-Exchange, Inc. (''BATS–Y'') Rule 11.9(a)(2); EDGA Exchange, Inc. (''EDGA'') Rule 11.8(a)(7); EDGX Exchange, Inc. (''EDGX'') Rule 11.8(a)(7); Nasdaq Stock Market LLC (''Nasdaq'') Rule 4751(f)(13).

[31] *See supra* nn. 17–18.

[32] *See supra* nn. 4, 7–9.

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6).

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[37] 17 CFR 240.19b–4(f)(6).

[38] 17 CFR 240.19b–4(f)(6)(iii).

would meet the Commission's previously stated expectation that the Exchange discontinue its LRPs.[39] Furthermore, the Exchange states its belief that meeting this expectation as soon as the technology becomes available, which the Exchange represents would be before the end of the operative-delay period, is consistent with the protection of investors and the public interest because it would implement the discontinuation of its LRPs as expeditiously as possible. Finally, the Exchange asserts that the proposed rule change would also add market collars that are similar to existing mechanisms on other markets and would reduce the potential of a clearly erroneous execution occurring on the Exchange. The Exchange, therefore, concludes that waiver of the operative delay so that it can implement market collars as soon as the technology is available is not only consistent with the protection of investors and the public interest, but would also benefit investors and the public interest. Because the proposed rule change would eliminate the Exchange's LRPs, consistent with the adoption of the Plan, and because the proposed rule change is designed to prevent clearly erroneous order executions, the Commission believes that waiver of the operative delay is consistent with investor protection and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[40]

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 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 S SR–NYSE–2015–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2015–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–NYSE–2015–01, and should be submitted on or before February 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Brent J. Fields,

Secretary.

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[39] *See supra* n. 4.

[40] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74064; File No. SR–NYSEMKT–2015–02]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Price Protection Mechanism To Prevent the Automatic Execution of Incoming Market Orders and Marketable Limit Orders Outside a Specified Parameter and Eliminate Liquidity Replenishment Points and the Gap Quote Policy

January 15, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 8, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) amend Rule 1000 to add a price protection mechanism to prevent the automatic execution of incoming market orders and marketable limit orders outside a specified parameter and (ii) eliminate its Exchange-specific volatility mechanisms—Liquidity Replenishment Points (''LRPs'') and its Gap Quote Policy—and to delete any references thereto from the Exchange rules. 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1000—Equities to add a price protection mechanism to prevent the automatic execution of incoming market orders and marketable limit orders outside a specified parameter (referred to as a ''Trading Collar''). The Exchange also proposes to eliminate its Exchange-specific volatility mechanisms—LRPs and Gap Quote Policy—and to delete any references thereto from the Exchange rules. The Exchange believes that the proposed Trading Collars would assist with the maintenance of fair and orderly markets by mitigating the risks associated with orders sweeping through multiple price points, resulting in executions at prices that are away from the best bid or offer and potentially erroneous. As discussed further below, the discontinuation of the Exchange-specific volatility mechanisms were anticipated changes following implementation of the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan'').[4]

Background: Liquidity Replenishment Points and Gapping the Quote

Rule 1000—Equities provides for the basic operative principles regarding the immediate, automatic execution of market orders and marketable limit orders against the Exchange's published quotation.[5] The Rule also lists instances in which automatic execution would not be available due to certain market conditions, including when Exchange-specific volatility mechanisms, specifically LRPs and gapping the quote, have been triggered.

Liquidity Replenishment Points

In March 2006, the Exchange implemented the LRP mechanism to address market volatility on the New York Stock Exchange, LLC (''NYSE'') and, in 2008, adopted LRPs for use on the Exchange.[6] The Exchange has utilized LRPs, which are triggered by rapid price movements over a short period of time, to moderate volatility in a security by temporarily converting the electronic market for the security into an auction market to afford new trading interests the opportunity to add liquidity.[7] The Exchange believes that LRPs were effective in moderating some of the impact from the events of May 6, 2010 for Exchange trading customers, as evidenced by the lack of erroneous trades on the Exchange.[8] In 2012, in approving the Plan, the Commission noted the ''potential for unnecessary complexity that could result if the Plan were adopted, and exchange-specific volatility mechanisms were retained''; thus, the Commission stated its ''expect[ation], that upon implementation of the Plan, such exchange-specific volatility mechanisms would be discontinued by the respective exchanges.'' [9]

In 2013, to coincide with the implementation of the Plan, the Exchange filed amendments to Rule 1000 that provided for the phasing out of the functionality associated with LRPs as the Plan was phased in across all NMS Stocks.[10] The Plan was fully implemented across all NMS Stocks on February 24, 2014, and as such, pursuant to Rule 1000(a)(iv)(A), the Exchange has discontinued the use of LRPs for all NMS Stocks that are subject to the Plan.[11]

Gapping the Quote

When an imbalance in a particular security exists, the manual process known as ''gapping the quote'' occurs—specifically, the DMM for the security widens the spread between the bid and offer and publishes a new gapped quote. Order imbalances may occur when the Exchange receives a sudden influx of orders for a particular security on the same side of the market within a short time interval, or when one or more large-size orders for a security are entered, and there is insufficient offsetting interest. The Exchange first implemented its policies and procedures for gapping the quote in 1994 and updated the Gap Quote Policy in 2010.[12] As stated in the Policy, a DMM gaps a quote to ''provide public notice of order imbalances for securities, facilitate price discovery, and minimize short-term price dislocation, by allowing for the entry of offsetting orders or the cancellation of orders on the side.'' [13] A DMM may gap a quote after an LRP has been reached. A gapped quote is not available for automatic execution.

Proposed Trading Collar

The Exchange proposes to amend Rule 1000—Equities to add a price protection mechanism to prevent the automatic execution or routing of incoming market orders, including elected stop orders, and marketable limit orders [14] outside a specified parameter (referred to as a ''Trading Collar''). As proposed, an incoming market order or marketable limit order to buy (sell) would not execute or route to another market center at a price above (below) the Trading Collar. Trading Collars would be applicable only when automatic executions are in effect.[15] As

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498, 33510, n. 182 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the Plan) (The Commission ''expects, that upon implementation of the Plan, such exchange-specific volatility mechanisms would be discontinued by the respective exchanges.'') *See also* Securities Exchange Act Release No 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014) (File No. 4–631) (the Seventh Amendment to the Plan).

[5] Automatic executions may also be against orders on the Display Book®, Floor broker agency file interest, Floor broker proprietary file interest, Designated Market Maker (''DMM'') interest, and interest placed in the Exchange's systems by DMMs pursuant to a Capital Commitment Schedule in accordance with, and to the extent provided by, Exchange rules and shall be immediately reported as Exchange transactions. *See* Rule 1000(a).

[6] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05); *see also* Securities Exchange Act Release Nos. 58265 (July 30, 2008), 73 FR 46075 (Aug. 7, 2008) (notice); 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (approval order for the adoption of NYSE Rules 1–1004 on the Exchange).

[7] *See* Securities Exchange Act Release No. 69294 (April 4, 2013), 78 FR 21441 (April 10, 2013) (SR–NYSEMKT–2013–33).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498, 33510, n. 182 (June 6, 2012).

[10] *See supra* n. 7; See Securities Exchange Act Release No. 69696 (June 4, 2013) 78 FR 34687 (June 10, 2013) (SR–NYSEMKT–2013–46).

[11] *See* Securities and Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014) (File No. 4–631) (the Seventh Amendment to the Plan). The Exchange notes that rights and warrants are not subject to the Plan, and therefore continue to be subject to LRPs.

[12] *See* Information Memo 94–32 (August 9, 1994), filed as SR–NYSE–93–48. See Securities Exchange Act Release No. 34303 (July 1, 1994), 59 FR 35157 (July 8, 1994). *See also* Information Memorandum 10–3 (January 7, 2010), filed as NYSEAmex–2010–05. *See* Securities and Exchange Act Release No. 61402 (January 22, 2010), 75 FR 4602 (January 28, 2010) (changing the minimum size and value requirements for use of gap quotes).

[13] *See* Securities Exchange Act Release No. 61049 (November 23, 2009), 74 FR 62851 (SR–NYSEAmex–2009–82) (December 1, 2009).

[14] A market order is an ''order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the Trading Crowd or routed to the Display Book®.'' *See* Rule 13—Equities. A marketable limit order is defined as ''a limit order to buy (sell) priced at or above (below) the Exchange best offer (bid) at the time such order is routed to the Display Book®.'' *Id.* Because a stop order becomes a market order when elected, the Exchange believes it is appropriate to provide that elected stop orders would be subject to the proposed Trading Collar.

[15] *See* proposed Rule 1000(c)(ii)—Equities. Both market orders and marketable limit orders are ''auto ex orders'' that initiate automatic executions immediately upon entry into the Exchange systems. *See* Rule 13—Equities. Trading Collars would not

discussed below, on arrival, a buy/sell order would be automatically executed up/down to (and including, but not beyond) the Trading Collar and any remaining interest shall be cancelled. Unless it is a non-routable order, the order would route to all markets at or better than the Trading Collar.[16]

Pursuant to proposed Rule 1000(c)(i), a Trading Collar would be a specified percentage away from the National Best Bid or Offer (''NBBO''), depending on whether it is a buy or sell order, and the specified percentage would vary depending on the NBBO at the time the order arrives and/or is executed. For buy orders, the Trading Collar would be a specified percentage above the National Best Offer (''NBO''). For sell orders, the Trading Collar would be a specified percentage below the National Best Bid (''NBB''). The proposed Trading Collars are set forth in the table below.

NBB/NBO	Percentage away from the NBB/NBO
Greater than $0.00, up to and including $25.00	10
Greater than $25.00, up to and including $50.00	5
Greater than $50.00	3

The Exchange notes that these proposed percentages are based on the current numerical guidelines for determining whether a clearly erroneous execution has occurred.[17] The Exchange further notes that the proposed percentages are the same as the percentages applicable to similar trading collar functionality on NYSE Arca Equities, Inc. (''NYSE Arca Equities'').[18] The Exchange believes that the proposed specified percentages are appropriate because the Trading Collar is designed to reduce the risk of, and to potentially prevent, the automatic execution of orders at prices that may be considered clearly erroneous. Because the specified percentage may extend multiple decimal points, the Exchange proposes to truncate Trading Collars to the nearest minimum price variation (''MPV'') for the security.[19]

Consider an example where the NBBO is $24.95 × 25.01. In such scenario, the Trading Collar for buy orders would be $26.26 (*i.e.,* $25.01 + 5% = $26.2605, truncated to $26.26) and the Trading Collar for sell orders would be $22.44 [sic] (*i.e.,* $24.95 − 10% = $22.455, truncated to $22.45).

The Exchange proposes that if the NBBO is crossed, the Exchange would use the Exchange Best Offer (''BO'') instead of the NBO for buy orders, and the Exchange Best Bid (''BB'') instead of the NBB for sell orders.

The Exchange believes it is appropriate to use the BB/BO when the NBBO is crossed as a crossed NBBO is generally indicative of an erroneously priced or stale bid and/or offer, and may not be appropriate reference prices for calculating Trading Collars. The Exchange believes that this practice will help ensure that market participants obtain timely executions of their market orders and marketable limit orders while still being afforded the price protection benefit of the Trading Collars. As proposed, in the event there is no NBB or BB, the lower boundary of the Trading Collar would be zero because there would be no reference price against which to determine the appropriate Trading Collar. Similarly, in the event there is no NBO or BO, the upper boundary of the Trading Collar would be set to the maximum price that the System could handle. Notwithstanding the Trading Collar, any incoming market orders or marketable limit orders would still be subject to the Plan and could not execute outside of the Upper (Lower) Price Band, as defined in Rule 80C—Equities.

Pursuant to proposed Rule 1000(c)(ii), an incoming market order, including an elected stop order, or marketable limit order would execute and/or route up or down to (and including) the Trading Collar and any remaining interest would be cancelled. The Exchange believes that Trading Collars, working in conjunction with the Plan, could help limit potential harm from extreme price volatility by preventing executions that could occur at a price significantly away from the contra side. As proposed, if the Trading Collar for incoming buy (sell) interest is lower (higher) than or equals the Upper (Lower) Price Band[20], the Exchange would cancel any remaining interest. The Plan, however, would take priority over the Trading Collars where the Plan affords more price protection to incoming orders. Specifically, if the Upper (Lower) Price Band is lower (higher) than the Trading Collar, the order would execute at the more restrictive Upper (Lower) Price Band and not beyond and any remaining interest would be displayed or repriced to the Price Band, consistent with Rule 80C(a)(5)—Equities.

The Exchange notes that if there is no execution opportunity at the Exchange for an incoming buy (sell) order at a price above (below) the NBO (NBB), the Exchange would not be obligated to route the order to an away market protected offer (bid) because the incoming order would not be trading through such protected quotation. The Exchange therefore proposes that if there is no execution opportunity at the Exchange for an incoming buy (sell) order at a price above (below) the NBO (NBB) and at or below (above) the Trading Collar, a buy (sell) order that is priced at or above (below) the Trading Collar would be cancelled. The Exchange further proposes that a similarly-priced, partially-executed order would also be cancelled.

For example, assume the NBO is 10.00, based on a quote from an away market, and therefore the proposed Trading Collar is 11.00. Assume further that the Exchange's best offer is 11.05 and with these conditions, the Exchange receives an incoming buy order priced at 11.02. Because there is no execution opportunity for the incoming buy order above the NBO and at or below the Trading Collar, and because the order's limit price exceeds the Trading Collar, the incoming buy order would be cancelled. The buy order would cancel rather than route because the Exchange would not trade through another market. Similarly, assuming the same facts, but the Exchange has non-displayed interest to sell priced at 9.99. An incoming buy order priced at 11.02 would execute against that 9.99 non-displayed sell interest, and then any remainder of the buy order would similarly be cancelled because there is no execution opportunity priced above the NBO of 10.00 or at or below the Trading Collar of 11.00.

Finally, pursuant to proposed Rule 1000(c)(iii), during a Short Sale Price Test,[21] if the NBBO is crossed, short sale orders that would be re-priced to a Trading Collar would be cancelled. Under Rule 201 of Regulation SHO,[22] when the NBBO is crossed, a short sale order in a covered security may be displayed or executed at a price that is less than or equal to the current national

be applicable to Set Slow Stocks, or to pre-opening, opening, closing or manual transactions, and are not in effect during a halt, suspension, or pause in trading. Trading Collars would apply, and be determined, when discretionary pricing instructions are triggered. Trading Collars would not be displayed.

[16] If, however, an order that routed to an away market returns to the Exchange unexecuted, the Trading Collar based on the NBBO in place at the time of execution would be used for that incoming (now returning) order, not the Trading Collar based on the NBBO in place at the time of the original arrival of the order.

[17] *See* Rule 128(c)(1)—Equities.

[18] *See* NYSE Arca Equities Rule 7.31(a)(2).

[19] *See* Rule 62—Equities.

[20] *See* Rule 80C—Equities.

[21] *See* Rule 440B(b)—Equities.

[22] 17 CFR part 242.201.

best bid.[23] Accordingly, if the NBBO is crossed, a short sale order priced at or below the Trading Collar could be re-priced to the Trading Collar, which is by definition a price below the NBB. In the spirit of Rule 201 of Regulation SHO, which is to prevent the display or execution of short sale orders at prices equal to or below the NBB, the Exchange believes that it is appropriate during a crossed market to cancel a short sale order that would be re-priced to a Trading Collar rather than display the order at that price.

The Exchange also proposes to amend Rule 70.25(b)(i)—Equities, regarding price discretion or ''d-Quotes,'' which states that ''[a] Floor broker may set a discretionary price range that specifies the prices at which the Floor broker is willing to trade.'' Specifically, the Exchange proposes to amend this Rule to provide that d-Quotes are subject to the Trading Collar and/or the Price Bands and, thus, pursuant to the amended rule, Floor Brokers may use discretion to initiate or participate in a trade with interest capable of trading at a price within the discretionary price range ''unless the interest reaches a Trading Collar or Price Band, whichever is reached first.'' [24] The Exchange believes it is appropriate to similarly afford Trading Collar price protection to d-Quotes to prevent the execution of orders with discretionary price instructions at prices outside the prevailing market price from causing significant price dislocation in the market.[25]

The Exchange also proposes to amend Rule 512—Equities to state that Trading Collars would apply to UTP Securities.[26] Although LRPs do not apply to UTP Securities, the Exchange believes it is appropriate to afford these securities Trading Collar protection because application of the Trading Collar is a straightforward and objective process that does not raise the same issue as was at issue for UTP Securities, *i.e.,* identifying appropriate LRP values for actively-traded symbols that have low volume on the Exchange.

Proposed Elimination of LRPs and Gap Quote Policy

As noted above, by rule, the Exchange has already discontinued the use of LRPs for any security subject to the Plan. However, LRPs continue to be available for rights and warrants, which are not subject to the Plan. The Exchange believes that with the introduction of Trading Collars it will have in place appropriate price protections for rights and warrants and the Exchange will no longer need LRPs for those securities. Accordingly, the Exchange proposes to complete the Exchange's discontinuation of LRPs in their entirety by deleting references to LRPs in the following Equities Rules: 60, 79A, 104, 128, 501, 508, 512, and 1000.

For similar reasons, the Exchange believes it appropriate to discontinue the Gap Quote Policy. Accordingly, the Exchange proposes to eliminate its Gap Quote Policy in its entirety and to delete references thereto in the following Equities Rules: 60, 79A, 104, 501, 508, and 1000.

Relatedly, the Exchange also proposes to amend Rule 1000(e) (Executions at and Outside the Exchange Best Bid or Offer) to add references to Trading Collars and/or Price Bands, in certain cases to replace deleted references to LRPs. The Exchange believes these proposed changes will add transparency and clarity to the Exchange's rules.

Other Proposed Amendments

In connection with the addition of the Trading Collar, the Exchange also proposes to amend the definition of market order, in Rule 13—Equities, to state that if a market order to sell has exhausted all eligible buy interest, any unfilled balance of the market order to sell will be cancelled. The Exchange believes that this is appropriate because it assures that a market order to sell will not be held at a price that it is not executable, *i.e.,* $0.00.

Finally, unrelated to issues raised in present filing, the Exchange is also proposing technical, non-substantive edits to delete from the Exchange rules the outdated/obsolete references to securities operating in ''Non-Firm Mode,'' including in Rule 60(c)(ii)(A) and Rule 1000(a)(i), or the block template, referred to in Rule 60(ii)(B), which is the ''manual reporting of a block-sized transaction.'' The Exchange also proposes to delete the reference to ''S-quotes'' in Rule 60(d), 1000(a) and 1000(e)(iii)(A), as DMM interest is no longer solely referred to in this manner and the Exchange believes the proposed amendment will remove this outmoded and narrow reference. The Exchange also proposes to amend the last sentence of Rule 60(d), regarding ''[a]utoquoting of highest bid/lowest offer,'' to account for the impact of the Trading Collars.[27] In addition, the Exchange proposes to amend Rule 1000(e)(iii)(A)(4) to replace an incorrect reference to NYSE with a reference to the Exchange. The Exchange proposes to delete Rule 79A.15(ii)(C)(6), which is an outmoded reference to bonds that does not conform to how bonds currently operate on the Exchange or the NYSE, and to renumber the remaining subparts of this rule accordingly. Finally, the Exchange proposes to delete an erroneous reference in Rule 1000(e)(iv) to paragraph (d)(iii), as there is no such paragraph in the Rule.

Implementation

The Exchange will announce the implementation date of the proposed rule change by Trader Update.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [28] that an Exchange have rules that are designed to promote the 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.

As an initial matter, the Exchange notes that the proposed Trading Collar, which is designed to designed to promote the 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, is similar to the price protection features offered on other markets, including NYSE Arca Equities.[29] As noted above, the specified

[23] *See* SEC Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation Show, FAQ 6.1, available at: *http://www.sec.gov/divisions/marketreg/rule201faq.htm.*

[24] *See* proposed Rule 70.25(b)(i).

[25] The Trading Collar applies to d-Quotes in the same manner as other order types. *See supra* n. 15 (Trading Collars apply when discretionary pricing instructions are triggered, but do not apply to openings, re-openings, or closing trades).

[26] Current Rule 512—Equities states that LRPs will not apply to UTP Securities. *See* Information Memo 10–34 (July 12, 2010) (explaining that the Nasdaq Securities newly-listed on the Exchange would ''be more thinly traded on the Exchange, with lower volume and less liquidity than its listed securities, and that prices for Nasdaq Securities will therefore be more volatile'' and thus ''in order to avoid triggering too many 'slow' trading situations, the Exchange removed the application of LRP parameters for trading Nasdaq Securities.''). In 2014, the Exchange expanded the UTP Program beyond Nasdaq securities. *See* Securities Exchange Act Release No. 71952 (April 16, 2014) 79 FR 22558 (April 22, 2014) (SR–NYSEMKT–2014–32).

[27] As proposed, the final sentence of Rule 60(d) would state the following: ''When the Exchange's highest bid or lowest offer has been executed or cancelled in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of displayable orders at the next highest (in the case of a bid) or lowest (in the case of an offer) price.''

[28] 15 U.S.C. 78f(b)(5).

[29] *See e.g.,* NYSE Arca Equities Rule 7.31(a)(2). *See also* BATS Exchange, Inc. (''BATS) Rule 11.9(a)(2); BATS Y-Exchange, Inc. (''BATS–Y'') Rule 11.9(a)(2); EDGA Exchange, Inc. (''EDGA'') Rule 11.8(a)(7); EDGX Exchange, Inc. (''EDGX'')

percentages relating to the Trading Collar are based on the current numerical guidelines for determining whether a clearly erroneous execution has occurred and are the same as the approved specified percentages applicable to similar trading collar functionality on NYSE Arca Equities.[30]

Moreover, the Exchange believes that the proposed Trading Collar assists with the maintenance of fair and orderly markets by helping to mitigate the risks associated with orders sweeping through multiple price points, thereby resulting in executions that are potentially erroneous, which, in turn, protects investors from potentially receiving executions away from the prevailing prices at any given time. Specifically, the Exchange believes the Trading Collars will remove impediments to and perfect the mechanisms of a free and open market because the Trading Collars will operate in tandem with the Plan and will only execute/route incoming market orders or marketable limit orders priced within the Trading Collars or within the Upper (Lower) Band set forth in the Plan, if the latter is more conservative. The Exchange believes this mechanism will mitigate the risk of potentially erroneous executions, which protects investors and the public interest.

The Exchange also believes its use of the BB/BO when the NBBO is crossed assists with the maintenance of fair and orderly markets as a crossed NBBO is generally indicative of an erroneously priced bid and/or offer, and should not be considered reliable for the purposes of determining the specified percentages for a Trading Collar. The Exchange believes that this practice will help ensure that market participants obtain timely executions of their market orders and marketable limit orders while still being afforded the price protection benefit of Trading Collar functionality, which protects investors and the public interest.

Similarly, the Exchange believes that affording Trading Collar price protection to d-Quotes as well as to UTP Securities would remove impediments to and perfect the mechanism of a free and open market as the Trading Collar would prevent the execution of d-Quotes and UTP Securities that are priced far away from the prevailing market price from causing significant price dislocation in the market, which, in turn, benefits investors and is in the public interest.

The Exchange believes that the technical, non-substantive proposed amendments and/or deletions related to the Trading Collar in rules other than Rule 1000—Equities, as described above, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. Specifically, the Exchange believes that the proposed changes add transparency and clarity to the Exchange's rules and will enhance the understanding of market participants by reducing potential confusion that the obsolete references would otherwise create.

Finally, the Exchange previously committed to discontinue the Exchange-specific volatility mechanisms; thus, the elimination of LRPs and the Exchange's Gap Quote Policy are expected changes.[31] Moreover, the implementation of the Plan, together with the proposed Trading Collars eliminates the necessity for these Exchange-specific volatility mechanisms, as the Exchange will have in place appropriate price protections for all securities traded on the Exchange, including for rights and warrants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the adding of Trading Collar protection will provide market participants with additional protection from anomalous executions. Thus, the Exchange does not believe the proposal creates any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[32] and Rule 19b–4(f)(6) thereunder.[33] 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[34] and Rule 19b–4(f)(6)(iii) thereunder.[35]

A proposed rule change filed under Rule 19b–4(f)(6)[36] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[37] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange asserts that the rule change proposed herein would meet the Commission's previously stated expectation that the Exchange discontinue its LRPs.[38] Furthermore, the Exchange states its belief that meeting this expectation as soon as the technology becomes available, which the Exchange represents would be before the end of the operative-delay period, is consistent with the protection of investors and the public interest because it would implement the discontinuation of its LRPs as expeditiously as possible. Finally, the Exchange asserts that the proposed rule change would also add market collars that are similar to existing mechanisms on other markets and would reduce the potential of a clearly erroneous execution occurring on the Exchange. The Exchange, therefore, concludes that waiver of the operative delay so that it can market collars as soon as the technology is available is not only consistent with the protection of investors and the public interest, but would also benefit investors and the public interest. Because the proposed rule change would eliminate the Exchange's LRPs, consistent with the adoption of the Plan, and because the proposed rule change is designed to prevent clearly erroneous order executions, the Commission

Rule 11.8(a)(7); Nasdaq Stock Market LLC (''Nasdaq'') Rule 4751(f)(13).

[30] *See supra* nn. 17–18.

[31] *See supra* nn. 4, 7–9.

[32] 15 U.S.C. 78s(b)(3)(A)(iii).

[33] 17 CFR 240.19b–4(f)(6).

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[36] 17 CFR 240.19b–4(f)(6).

[37] 17 CFR 240.19b–4(f)(6)(iii).

[38] *See supra* n. 4.

believes that waiver of the operative delay is consistent with investor protection and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[39]

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 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–2015–02 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–2015–02. 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 proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–NYSEMKT–2015–02, and should be submitted on or before February 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Brent J. Fields,

Secretary.

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[39] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74062; File No. SR–Phlx–2015–06]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Sections II and IV of the Pricing Schedule

January 15, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 13, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Monthly Market Maker Cap[3] and certain transaction fees applicable to Specialists[4] and Market Makers[5] that have reached the Monthly Market Maker Cap, which are located in the Exchange's Pricing Schedule at Section II, entitled ''Multiply Listed Options.''[6] The Exchange also proposes to make conforming and clarifying amendments to Section IV, Part A of the Pricing Schedule entitled ''PIXL Pricing.''

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend certain Specialist and Market Maker pricing located in the Exchange's Pricing Schedule in Section II, entitled ''Multiply Listed Options'' in order to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are excluded from the Monthly Market Maker Cap.

[4] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

[5] A ''market maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

[6] This includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

continue to incentivize Specialists and Market Makers to transact a greater amount of volume on Phlx and bring additional liquidity to the Exchange. The pricing changes are described in further detail below.

Today, Specialists and Market Makers are subject to a Monthly Market Maker Cap of $550,000 for: (i) Electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL [7] Order or specifically responding to a PIXL auction.[8] The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are excluded from the Monthly Market Maker Cap.

Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered [9] and executed Customer order; and (ii) have reached the Monthly Market Maker Cap are assessed $0.00 per contract in the following symbols: AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF and $0.17 per contract in Penny Pilot Options [10] and Non-Penny Pilot Options.

The Exchange proposes to decrease the Monthly Market Maker Cap from $550,000 to $500,000 and amend the types of trades that qualify for the Monthly Market Maker Cap to exclude fees specifically responding to a PIXL auction. While the Exchange is excluding fees related to responding to a PIXL auction as eligible transactions to reach the Monthly Market Maker Cap, the Exchange believes that lowering the cap to $500,000 will continue to incentivize Specialists and Market Makers to transact greater displayed liquidity on the Exchange to be eligible for the Monthly Market Maker Cap and, in turn, will benefit Phlx members and the Phlx market.

The Exchange is also proposing to amend the fees applicable to Specialists and Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, and (ii) have reached the Monthly Market Maker Cap to assess: a $0.00 per contract Fee for Adding Liquidity in Penny Pilot Options; a $0.17 per contract Fee for Removing Liquidity in Penny Pilot Options; and a $0.17 per contract in Non-Penny Pilot Options. The Exchange is proposing to amend the language to state: ''Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, *excluding responses to a PIXL auction* and (ii) have reached the Monthly Market Maker Cap. . .''

The Exchange would therefore exclude responses to a PIXL auction from the Monthly Market Maker Cap and those responses would be subject to the pricing in Section IV, A of the Pricing Schedule, as is the case today for all other Specialists and Market Makers that do not qualify for the Monthly Market Maker Cap, as well as all other market participants. Today, Specialists or Market Makers that are on the contra-side of an electronically-delivered and executed Customer PIXL Order and have reached the Monthly Market Maker Cap are assessed $0.00 per contract in the following symbols: AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF and $0.17 per contract in Penny Pilot Options and Non-Penny Pilot Options. With this proposal, an Initiating Order would be assessed $0.07 per contract or $0.05 per contract if Customer Rebate Program Threshold Volume defined in Section B is greater than 100,000 contracts per day in a month.[11] The Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order will be reduced to $0.00 if the Customer PIXL Order is greater than 399 contracts. Also, with respect to executions in Multiply-Listed Options, when the PIXL Order is contra to the Initiating Order a Customer PIXL Order will be assessed $0.00 per contract and non-Customer PIXL Orders will be assessed $0.30 per contract. When a PIXL Order is contra to a PIXL Auction Responder, a Customer PIXL Order will be assessed $0.00 per contract, other market participants will be assessed $0.30 per contract in Penny Pilot Options or $0.38 per contract in non-Penny Pilot Options. A Responder will be assessed $0.30 per contract in Penny Pilot Options or $0.38 per contract in non-Penny Pilot Options, unless the Responder is a Customer, in which case the fee will be $0.00 per contract. When a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed $0.00 per contract, other market participants will be assessed $0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Section II. All other fees discussed in Section II, including Payment for Order Flow and surcharges, will also apply as appropriate. The Exchange proposes to amend Section IV, A to indicate that the Monthly Market Maker Cap will no longer apply to PIXL Orders as noted above. The Exchange proposes to add the words ''per contract'' to Section IV, A where appropriate for clarity.

The Exchange also proposes to expand and modify the $0.00 per contract pricing that today is available to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap in the following symbols: AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF to all Penny Pilot Options, provided the Specialist or Market Maker is adding liquidity. The Exchange will continue to assess a $0.17 per contract fee to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap for Penny Pilot Options, when removing liquidity and for Non-Penny Pilot Options when either adding or removing liquidity. Finally, the Exchange would also assess $0.17 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process.[12]

The Exchange believes that Specialists and Market Makers will

[7] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL℠). *See* Rule 1080(n).

[8] A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (''Initiating Order'') provided it submits the PIXL order for electronic execution into the PIXL Auction (''Auction'') pursuant to Rule 1080. *See* Exchange Rule 1080(n). Non-Initiating Order interest could be a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction.

[9] A transaction resulting from an order that was electronically delivered utilizes Phlx XL. *See* Exchange Rules 1014 and 1080. Electronically delivered orders do not include orders transacted on the Exchange floor. A transaction resulting from an order that is non-electronically-delivered is represented on the trading floor by a floor broker. *See* Exchange Rule 1063. All orders will be either electronically or non-electronically delivered.

[10] The Penny Pilot was established in January 2007 and was last extended in June 30, 2015. *See* Securities and Exchange Release No. 73688 (November 25, 2014), 79 FR 71484 (December 2, 2014) (SR–Phlx–2014–77).

[11] Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier discount in Section B receives the PIXL Initiating Order discount.

[12] A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (''COLA'').

continue to be incentivized to transact a greater amount of liquidity on Phlx and to add and remove liquidity to the benefit of all other market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to decrease the Monthly Market Maker Cap from $550,000 to $500,000 is reasonable because by lowering the cap, Specialists and Market Makers will be able to take advantage of lower fees presumably earlier in the month because the cap is lower.

The Exchange's proposal to decrease the Monthly Market Maker Cap from $550,000 to $500,000 is equitable and not unfairly discriminatory because this benefit would be uniformly applied to all Specialists and Market Makers that qualified for the Monthly Market Maker Cap. Specialists and Market Makers have burdensome quoting obligations [15] to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. Additionally, Specialists and Market Makers incur costs unlike other market participants including, but not limited to, Payment for Order Flow (''PFOF'') [16] and other costs associated with market making activities, which results in a higher average cost per execution as compared to Firms, Broker-Dealers and Professionals. The proposed differentiation as between Specialists and Market Makers as compared to other market participants recognizes the differing contributions made to the trading environment on the Exchange by these market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend the types of trades that qualify for the Monthly Market Maker Cap to exclude responses to a PIXL auction and assess Specialists and Market Makers the PIXL pricing located in Section IV, A of the Pricing Schedule is reasonable because all other market participants on Phlx, including Specialists and Market Makers that are not subject to the Monthly Market Maker Cap, are currently subject to the PIXL pricing located in Section IV, A of the Pricing Schedule. Pursuant to this proposal, all market participants will be uniformly assessed the same fees when responding to a PIXL auction. The Exchange believes that Specialists and Market Makers will continue to be incentivized to participate in PIXL, as is the case today with Specialists and Market Makers that do not qualify for the Monthly Market Maker Cap and are subject to Section IV, A pricing.

The Exchange's proposal to amend the types of trades that qualify for the Monthly Market Maker Cap to exclude fees related to responding to a PIXL auction and assess Specialists and Market Makers the PIXL pricing located in Section IV, A of the Pricing Schedule is equitable and not unfairly discriminatory because the Exchange is proposing to assess all market participants, including Specialists and Market Makers, the same PIXL pricing located in Section IV, A of the Pricing Schedule.

The Exchange believes that the pricing in Section IV, A of the Pricing Schedule will continue to encourage market participants to transact a greater number of PIXL Orders. The proposed PIXL pricing is competitive with other rates assessed to Specialists and Market Makers to transact similar orders on other options exchanges with price improvement mechanisms.[17] The Exchange will continue to offer competitive pricing, including Customer rebates in Section B of the Pricing Schedule. The Exchange's current Pricing Schedule also offers to reduce the $0.07 per contract PIXL Initiating Order Fee to $0.05 per contract if the Customer Rebate Program Threshold Volume, defined in Section B of the Pricing Schedule, for that member is greater than 100,000 contracts per day in a month. Additionally, the Exchange offers a volume incentive for Specialist and Market Maker orders (as well as Professional, Firm and Broker-Dealer orders) that are contra to a Customer PIXL Order. In that situation, the Initiating Order fee is reduced to $0.00 if the Customer PIXL Order is greater than 399 contracts. The PIXL Initiation Order Fee reduction to $0.00, when contra to a Customer PIXL Order, is similar to the Exchange's assessment of fees for Firm Floor Facilitation orders. Today, the Exchange waives Firm Floor Options Transaction Charges [18] for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. The Exchange waives Firm Facilitation Fees because the waiver of such fees serves to encourage Firms to facilitate Customer order flow. Likewise, the Exchange seeks to similarly assess Specialist and Market Maker fees for PIXL orders, which are electronic orders, as compared to floor orders, by encouraging Specialists and Market Makers or other Broker-Dealer members to initiate PIXL Orders within the PIXL auction mechanism in an effort to lower execution charges by transacting with a Customer PIXL Order. When a Firm enters an Initiating Order, similar to Firm Facilitation orders on the Exchange floor, market participants are afforded an opportunity to respond to the order which should in turn generate additional responders to a PIXL auction. All market participants are eligible to respond to an Initiating PIXL Order. Therefore, offering all market participants an opportunity to deliver orders into the PIXL auction, for purposes of price improvement, benefits all market participants by incentivizing order interaction in PIXL.

Further, the Exchange's proposal to assess Specialists and Market Makers the PIXL pricing in Section IV, A provides market participants the opportunity to lower fees by transacting a greater number of Customer orders. When the PIXL Order is contra to the Initiating Order a Customer PIXL Order will be assessed $0.00 per contract and non-Customer PIXL Orders will be assessed $0.30 per contract. When a PIXL Order is contra to a PIXL Auction Responder, a Customer PIXL Order will be assessed $0.00 per contract, other market participants will be assessed $0.30 per contract in Penny Pilot Options or $0.38 per contract in non-

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[16] Specialists and Market Makers, as compared to other market participants, are assessed PFOF when transacting Customer electronic orders.

[17] *See* BOX Options Exchange LLC's (''BOX'') Fee Schedule. Specifically, BOX's auction transaction fees are those transactions executed through Price Improvement Period (''PIP''), the Complex Order Price Improvement Period (''COPIP''), the Solicitation Auction mechanism, and Facilitation Auction mechanism.

[18] *See* Section II of the Pricing Schedule.

Penny Pilot Options. A Responder will be assessed $0.30 per contract in Penny Pilot Options or $0.38 per contract in non-Penny Pilot Options, unless the Responder is a Customer, in which case the fee will be $0.00 per contract. Finally, when a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed $0.00 per contract, other market participants will be assessed $0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Section II. Customer PIXL Orders will remain free in all instances and all non-Customer market participant PIXL Orders will be assessed a fee of $0.30 per contract in Penny Pilot Options and $0.38 per contract in Non-Penny Pilot Options fee uniformly. All non-Customers market participants are assessed the same fees with respect to Section II when a PIXL Order is contra to a resting order or quote. In this case the resting contra-side orders or quotes will continue to pay the appropriate Options Transaction Charges in Section II. For the reasons noted above, the Exchange believes that the PIXL pricing, which will be uniformly assessed to all market participants, is reasonable, equitable and not unfairly discriminatory.

The Exchange's proposal to expand the $0.00 per contract pricing that today is available to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap in certain symbols [19] to all Penny Pilot Options provided the Specialist or Market Maker is adding liquidity is reasonable because the Exchange desires to expand this incentive to all Penny Pilot Options to enhance the displayed liquidity available on the Exchange to the benefit of investors and other market participants. Specialists and Market Makers will be able to benefit to a greater extent and be incentivized to add liquidity in all Penny Pilot Option symbols, provided they qualified for the Monthly Market Maker Cap. All market participants will benefit from the increased Customer liquidity brought to the Exchange by this displayed liquidity incentive.

The Exchange's proposal to expand the $0.00 per contract pricing that today is available to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap in certain symbols [20] to all Penny Pilot Options provided the Specialist or Market Maker is adding liquidity is equitable and not unfairly discriminatory because Specialists and Market Makers have burdensome quoting obligations [21] to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. In addition, the proposed fees would apply only in certain circumstances where the Market Maker or Specialist is not otherwise subject to transaction fees (because the Monthly Market Maker Cap has been reached) and specifically on the contra-side of an electronically-delivered Customer order.

The Exchange's proposal to continue to assess a $0.17 per contract fee to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap for Penny Pilot and Non-Penny Pilot Options provided the Specialist or Market Maker is removing liquidity is reasonable because the Exchange will be assessing the same fee as today. The $0.17 per contract fee will continue to be assessed to remove liquidity. Further, this fee subsidizes Customer rebates offered by the Exchange.[22]

The Exchange's proposal to continue to assess a $0.17 per contract fee to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap for Penny Pilot and Non-Penny Pilot Options provided the Specialist or Market Maker is removing liquidity is equitable and not unfairly discriminatory because Specialists and Market Makers have burdensome quoting obligations [23] to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. In addition, the proposed fees would apply only in certain circumstances where the Market Maker or Specialist is not otherwise subject to transaction fees (because the Monthly Market Maker Cap has been reached) and specifically on the contra-side of an electronically-delivered Customer order.

The Exchange's proposal to continue to assess a $0.17 per contract fee to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process is reasonable because the Exchange will be assessing the same fee as today. The $0.17 per contract fee will continue to be assessed to these auctions and the opening process. Further, this fee subsidizes Customer rebates offered by the Exchange.[24]

The Exchange's proposal to add the words ''per contract'' in Section IV, A of the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the Exchange believes the addition of the words ''per contract'' will add clarity to the Pricing Schedule to avoid any confusion as to the fee.

The Exchange's proposal to continue to assess a $0.17 per contract fee to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process is equitable and not unfairly discriminatory because Specialists and Market Makers have burdensome quoting obligations [25] to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. In addition, the proposed fees would apply only in certain circumstances where the Market Maker or Specialist is not otherwise subject to transaction fees (because the Monthly Market Maker Cap has been reached) and specifically on the contra-side of an electronically-delivered Customer order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because Specialists and Market Makers will be offered the opportunity to cap certain transaction fees and pay lower

[19] The symbols are: AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF.

[20] *Id.*

[21] *See* note 15.

[22] *See* Section B of the Pricing Schedule.

[23] *See* note 15.

[24] *See* Section B of the Pricing Schedule.

[25] *See* note 15.

transaction fees when they transact $500,000 versus $550,000 of qualifying transactions. Other market participants will continue to benefit from the order interaction and liquidity that Specialists and Market Markers provide to the marketplace.

The Exchange does not believe that amending the types of trades that qualify for the Monthly Market Maker Cap by excluding certain transaction fees related to an order or quote that is contra to a PIXL Order or assessing Specialists and Market Makers the PIXL pricing located in Section IV, A of the Pricing Schedule will impose an undue burden on competition because the Exchange's proposal results in all market participants on Phlx being assessed the same PIXL pricing.

The Exchange's proposal for Specialists and Market Makers to pay no fees after they have satisfied the obligations related to the Monthly Market Maker Cap, in all Penny Pilot Options, provided they have added liquidity, and to pay lower fees for all other types of transactions, including those transacted in auctions and during the opening process, also does not provide an undue burden on competition. As noted above Specialists and Market Makers have burdensome quoting obligations to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers.[26] Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. The proposed differentiation as between Specialists and Market Makers as compared to other market participants recognizes the differing contributions made to the trading environment on the Exchange by these market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. For these reasons noted above, the Exchange does not believe that offering Specialists and Market Makers the opportunity to cap fees in certain symbols imposes an undue burden on competition.

The Exchange operates in a highly competitive market, comprised of twelve exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange, as described in the proposal, are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[27] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–Phlx–2015–06 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–Phlx–2015–06.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–06 and should be submitted on or before February 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00971 Filed 1–21–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74072; File No. SR–EDGX–2015–02]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Use of Certain Data Feeds

January 15, 2015.

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 January 7, 2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The

[26] *Id.*

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend certain rules to adopt or align system functionality with that currently offered by BATS Exchange, Inc. (''BZX'') and BATS Y-Exchange, Inc. (''BYX'', and collectively with BZX, ''BATS'') in order to provide a consistent technology offering amongst the Exchange and its affiliates. These changes, which are described in detail below, propose to clarify for Members [3] and non-Members the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance.

On July 15, 2014, the Exchange filed a proposed rule change that described its use of data feeds for order handling and execution, order routing, and regulatory compliance (the ''Initial Proposal'') with the Commission.[4] The Exchange submits this supplemental filing in order to specify for Members and non-Members the Exchange's use of certain data feeds in connection with the technology migration described in further detail below.[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.directedge.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On June 5, 2014, Chair White requested that all national securities exchanges develop proposed rule changes to disclose their use of data feeds to execute and route orders and comply with regulatory requirements.[6] In addition, on June 20, 2014, the Commission's Division of Trading and Markets requested that the Exchange file proposed rule changes that disclose its usage of particular market data feeds, among other things.[7] In response to these requests, the Exchange filed the Initial Proposal with the Commission on July 15, 2014.[8] The Exchange submits this supplemental filing to describe the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance in connection with the technology migration described in further detail below.[9]

Technology Migration

Earlier this year, the Exchange and its affiliate EDGA Exchange, Inc. (''EDGA'') received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent company of BATS (the Exchange, together with BZX, BYX and EDGA, the ''BGM Affiliated Exchanges'').[10] In the context of the Merger, the BGM Affiliated Exchanges are working to migrate EDGA and EDGX onto the BATS technology platform, and align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges.

The proposed amendments are intended to align certain system functionality with that currently offered by BATS in order to provide a consistent technology offering for Users[11] of the BGM Affiliated Exchanges. The Exchange notes that the proposed rule text is based on corresponding proposals being submitted by all of the BGM Affiliated Exchanges. The proposed amendments do not propose to implement new or unique functionality that has not been previously filed with the Commission or is not available on BATS or BYX.

To ensure proper context and a complete filing describing the Exchange's procedures in this area both prior to and after the technology migration, the Exchange has repeated relevant information from the Initial Proposal and supplemented such information as necessary. In each section below the Exchange first describes its pre-integration functionality, which will be in place until the technology migration is complete, followed by a description of post-integration functionality. The Exchange anticipates completing the technology migration on or about January 12, 2015.

Order Handling and Execution

Pre-Integration Functionality. The Exchange's Matching Engine (the ''ME'') determines whether an order should be displayed, executed internally, or routed to another market center. In making this determination, the ME continually receives and maintains quote data that is delivered from an internal processor (the ''Feed Handler''). The market data processed by the Feed Handler is sourced directly from the Securities Information Processors (''SIP'') feeds. Specifically, the Exchange's ME uses the Consolidated Tape Association (CTA) market data operated by the Securities Industry Automation Corp. in Tapes A and B and Unlisted Trading Privileges (UTP) market data operated by NASDAQ OMX Group, Inc. in Tape C securities.

These SIP feeds contain the best (top-of-book) prices in round lot quotations of each protected venue. The Exchange's ME consumes the SIP feeds to obtain the top-of-book quotes from each protected venue, including the Exchange's affiliates, EDGX, BZX, and BYX, and the Financial Industry Regulatory Authority's (''FINRA'') Alternative Display Facility (''ADF''). The SIP feeds do not display odd lot quotations; therefore, the ME does not use odd lot quotations to calculate the national best

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[4] *See* Securities Exchange Act Release No. 72683 (July 28, 2014), 79 FR 44950 (August 1, 2014) (SR–EDGX–2014–20). Other national securities exchange filed similar proposals. *See e.g.,* Securities Exchange Act Release Nos. 72710 (July 29, 2014), 79 FR 45511 (August 5, 2014) (SR–NYSE–2014–38), and 72684 (July 28, 2014), 79 FR44956 (August 1, 2014) (SR–NASDAQ–2014–072).

[5] The Exchange understands that other national security exchanges will file similar proposed rule changes with the Commission to further describe their use of data feeds for order handling and execution, order routing, and regulatory compliance.

[6] *See* Mary Jo White, Chair, Securities and Exchange Commission, Speech at Sandler O'Neill & Partners L.P. Global Exchange and Brokerage Conference (June 5, 2014).

[7] *See* letter from Stephen Luparello, Director, Division of Trading and Markets, Securities and Exchange Commission, to Joe Ratterman, Chief Executive Officer, BATS Global Markets, Inc., dated June 20, 2014.

[8] *See supra* note 6.

[9] *See supra* note 7.

[10] *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–43; SR–EDGA–2013–34).

[11] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

bid and offer (''NBBO''). However, a protected venue may aggregate odd lot quotations to create round lot quotations and publish those round lot quotations to the SIPs feeds. Based on the SIP feeds and the EDGX Book,[12] the ME constructs the NBBO.

The ME will also update the NBBO upon receipt of an Intermarket Sweep Order (''ISO'') with a time-in-force of Day (''Day ISO''). When a Day ISO is posted on the EDGX Book, the ME uses the receipt of a Day ISO as evidence that the protected quotes have been cleared, and the ME does not check away markets for equal or better-priced protected quotes.[13] The ME will then display and execute non-ISO orders at the same price as the Day ISO.

The NBBO is utilized for order handling and execution. The Exchange looks to its calculation of the NBBO, based on the SIP feeds and the EDGX Book, when determining the price at which an order with a Pegged instruction,[14] MidPoint Peg Order,[15] MidPoint Discretionary Order,[16] Market Maker Peg Order,[17] or Supplemental Peg Order[18] is to be pegged.

Post-Integration Functionality. As proposed, following the technology migration, in order to calculate the NBBO in its Matching Engine (the ''ME''), the Exchange will use quotes disseminated by market centers through proprietary data feeds (generally referred to as ''Direct Feeds'') as well as by the SIP. The ME will use quotes disseminated from SIP feeds for the Chicago Stock Exchange, Inc., NYSE MKT LLC and FINRA's ADF. The ME will consume the Direct Feeds from every other protected venue, including the Exchange's affiliates, BZX, BYX and EDGA.

The ME will include odd lot quotations in its calculation of the NBBO depending on the source of the quotation. Where a protected market center aggregates odd lot quotations at a single price level into round lot quotations and publishes such aggregated quotations to the SIPs, then the ME will include those odd lot quotations in its calculation of the NBBO. In addition, where a protected market center aggregates odd lot quotations across more than one price level and publishes such aggregated quotations to the SIPs, then the ME will include those odd lot quotations in its calculation of the NBBO.

In addition to receiving Direct Feeds and SIP feeds, the ME's calculation of the NBBO may be adjusted based on orders sent to other venues with protected quotations, execution reports received from those venues, and certain orders received by the Exchange (collectively ''Feedback''). The Exchange does not include its quotes in the calculation of the Exchange's NBBO because the system is designed such that all incoming orders are separately compared to the Exchange's Best Bid or Offer and the Exchange calculated NBBO, which together create a complete view of the NBBO, prior to display, execution, or routing.

Feedback from the receipt of ISOs with a time-in-force of Day (''Day ISOs'') and feedback from the Exchange's routing broker/dealer, BATS Trading, Inc., (''BATS Trading''),[19] defined respectively as ''Day ISO Feedback and ''Router Feedback,'' will be used to augment the market data received by Direct Feeds and the SIP feeds as further described below. The Exchange's ME will update the NBBO upon receipt of a Day ISO. When a Day ISO is posted on the EDGX Book, the ME uses the receipt of a Day ISO as evidence that the protected quotes have been cleared, and the ME does not check away markets for equal or better-priced protected quotes.[20] The ME will then display and execute non-ISO orders at the same price as the Day ISO.

All Feedback expires as soon as: (i) one (1) second passes; (ii) the Exchange receives new quote information; or (iii) the Exchange receives updated Feedback information. With the exception of Day ISO Feedback, the Exchange currently generates Feedback where an order was routed using a routing strategy offered by the Exchange that accesses protected quotes of trading venues on the System Routing Table (''Smart Order Routing'').[21]

As described above, the NBBO is utilized for order handling and execution. In determining the price where an order with a Pegged instruction, [22] MidPoint Peg Order, [23] MidPoint Discretionary Order, [24] Market Maker Peg Order[25] or Supplemental Peg Order[26] is to be pegged, the Exchange uses the Pegged NBBO (''PBBO''). The Exchange will calculate the PBBO using information regarding orders displayed on the EDGX Book in addition to the quotes disseminated by market centers through Direct Feeds, SIP feeds, and Feedback used by the ME for its NBBO calculation.

Order Routing

Pre-Integration Functionality. When the Exchange has a marketable order with instructions from the sender that the order is eligible to be routed, and the ME identifies that there is no matching price available on the Exchange, but there is a matching price represented at another venue that displays protected quotes, then the ME will send the order to the Routing Engine (''RE'') of Direct Edge ECN LLC (d/b/a DE Route).[27]

In determining whether to route an order and to which venue(s) it should be routed, the RE uses quotes disseminated from Direct Feeds, including EDGA, EDGX, BZX and BYX, and the SIP feeds from those venues where the Exchange does not take the Direct Feeds, including FINRA's ADF.

The RE utilizes a third-party market data processor that consumes the Direct Feeds and the SIP feeds, aggregates the quantities of symbols by price level, and redistributes them to an internal quote processor (the ''Quote Server''). The RE will request from the Quote Server a market data snapshot which includes the top-of-book and/or depth-of-book of each market center offering depth-of-book feeds. Depending on the source of the quotation, the Quote Server may include odd lot quotations if the market

[12] The term ''EDGX Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(d).

[13] Pursuant to Regulation NMS, a broker-dealer routing a Day ISO is required to simultaneously route one or more additional ISOs, as necessary, to execute against the full displayed size of any protected quote priced equal to or better than the Day ISO. *See also* Question 5.02 in the ''Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610–11.htm.*

[14] *See* Exchange Rule 11.6(j).

[15] *See* Exchange Rule 11.8(d).

[16] *See* Exchange Rule 11.8(e).

[17] *See* Exchange Rule 11.8(f).

[18] *See* Exchange Rule 11.8(g).

[19] The Exchange notes that it recently filed a separate proposal reflecting a change from its current routing broker-dealer, Direct Edge ECN LLC (d/b/a DE Route), to the use of BATS Trading, Inc. as the Exchange's routing broker-dealer in connection with the technology migration. *See* Securities Exchange Act Release No. 73940 (December 24, 2014), 80 FR 63 (January 2, 2015) (SR–EDGX–2014–35).

[20] Pursuant to Regulation NMS, a broker-dealer routing a Day ISO is required to simultaneously route one or more additional ISOs, as necessary, to execute against the full displayed size of any protected quote priced equal to or better than the Day ISO. *See also* Question 5.02 in the ''Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610–11.htm.*

[21] As set forth in Rule 11.11(g), the term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them.

[22] *See* Exchange Rule 11.6(j).

[23] *See* Exchange Rule 11.8(d).

[24] *See* Exchange Rule 11.8(e).

[25] *See* Exchange Rule 11.8(f).

[26] *See* Exchange Rule 11.8(g).

[27] *See supra* note 21.

center publishes odd lot quotations in its Direct Feed.

Based on this snapshot, the RE determines where to route the order, allocating the shares to the venues at each price level up to the limit price of the order, starting with the best quotes subject to the Member's instructions. If there are any shares remaining after the response to the initial route is received, the RE will take another snapshot from the Quote Server and send out orders based on the same logic. If the full quantity of the order is not executed after multiple route attempts, the order is returned to the ME.

In addition, the RE utilizes in-flight order information in its routing methodology. The RE tracks the details of each in-flight order, including the quantity routed and the corresponding quote published by the routed venue. After the RE requests a market data snapshot from the Quote Server and the RE has already targeted this quote (identified by venue, symbol, price, quantity and time stamp), then the RE will subtract the routed quantity of in-flight orders from the quote size displayed in the market data snapshot. The RE will route an order for the remaining quantity to the venue. If there are no residual shares, the RE will bypass the quote.

The RE also utilizes responses from other venues displaying protected quotes in its routing methodology. When the RE receives a response from a venue that does not completely fill the order targeting a quote, and no subsequent quote update has been received from that venue at the same price level, the RE will mark that venue's quote as stale at that price level.[28] Absent additional quote updates from that venue, the RE will bypass the quote for one (1) second. After one second, if the quote is still included in the market data snapshot, the RE will target the quote again.

Post Integration Functionality. As proposed, following the technology migration, when the Exchange has a marketable order with instructions from the sender that the order is eligible to be routed, and the ME identifies that there is no matching price available on the Exchange but there is a matching price represented at another venue that displays protected quotes, then the ME will send the order to the RE of BATS Trading.

In determining whether to route an order and to which venue(s) it should be routed, the RE will make its own calculation of the NBBO using the Direct Feeds, SIP feeds, and Router Feedback, as described below.[29] The RE will include odd lot quotations in its calculation of the NBBO depending on the source of the quotation. Where a protected market center aggregates odd lot quotations at a single price level into round lot quotations and publishes such aggregated quotations to the SIPs, then the RE will include those odd lot quotations in its calculation of the NBBO.

The RE will not utilize Day ISO Feedback in constructing the NBBO; however, because all orders initially flow through the ME, to the extent Day ISO Feedback has updated the ME's calculation of the NBBO, all orders processed by the RE will take Day ISO Feedback into account. The RE will receive Feedback from all Smart Order Routing strategies.

There are three types of Router Feedback that contribute to the Exchange's calculation of the NBBO:

- Immediate Feedback. Where BATS Trading routes an order to a venue with a protected quotation using Smart Order Routing (a ''Feedback Order''), the number of shares available at that venue will be immediately decreased by the number of shares routed to the venue at the applicable price level.

- Execution Feedback. Where BATS Trading receives an execution report associated with a Feedback Order that indicates that the order has fully executed with no remaining shares associated with the order, all opposite side quotes on the venue's order book that are priced more aggressively than the price at which the order was executed will be ignored.

- Cancellation Feedback. Where BATS Trading receives an execution report associated with a Feedback Order that indicates that the order has not fully executed (either a partial execution or a cancellation), all opposite side quotes on the venue's order book that are priced equal to or more aggressively than the limit price for the order will be ignored.

All Feedback expires as soon as: (i) one (1) second passes; (ii) the Exchange receives new quote information; or (iii) the Exchange receives updated Feedback information.

Regulatory Compliance

Locked or Crossed Markets.

Pre-Integration Functionality. The ME determines whether the display of an order would lock or cross the market. At the time an order is entered into the ME, the ME will establish, based upon the prevailing top-of-book quotes of other exchanges displaying protected quotes received from the SIP feeds, whether the order will lock or cross the prevailing NBBO for a security. In the event that the order would produce a locking or crossing condition, the ME will cancel the order, re-price[30] the order or route the order based on the Member's instructions. Two exceptions to this logic are Day ISOs and declarations of self-help.

Pursuant to Regulation NMS, when an Exchange receives a Day ISO, the sender of the ISO retains the responsibility to comply with applicable rules relating to locked and crossed markets.[31] In such case, the Exchange will display a Day ISO order at the Member's price, even if such price would lock or cross the market.[32]

Declarations of self-help occur when the RE detects that an exchange displaying protected quotes is slow, as defined in Regulation NMS, or non-responsive to the Exchange's routed orders. In this circumstance, according to Rule 611(b) of Regulation NMS, the Exchange may display a quotation that may lock or cross quotations from the market that the Exchange invoked self-help against.[33] The ME and RE, when they process market data, maintain logic that ignores the quotes generated from the self-helped market in their calculations of the NBBO for execution and routing determinations in compliance with Regulation NMS. The Exchange also disables all routing to the self-helped market. The ME and Quote Server continue to consume the self-helped market center's quotes, however, in order to immediately include the quote in the NBBO calculation and enable routing once self-help is revoked. The Exchange excludes quotes from the self-helped market for re-pricing purposes and to price orders such as orders with a Pegged instruction and MidPoint Peg Orders.

Post-Integration Functionality. The Exchange's post-integration

[28] Question 11 of the ''Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' describes routing practices in the context of stale quotes, *available at http://www.sec.gov/divisions/marketreg/rule611faq.pdf.*

[29] The ME and RE consume the same Direct Feeds and SIP feeds.

[30] *See* Exchange Rule 11.6(l).

[31] *See supra* note 22.

[32] *See supra* note 22.

[33] *See also* Question 5.03 in the ''Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

functionality is similar to the pre-integration functionality. However, the Exchange notes that at the time an order is entered into the ME, the ME will establish, based upon its calculation of the NBBO from Direct Feeds, SIP feeds and Feedback, whether the order will lock or cross the prevailing NBBO for a security.

Trade-Through Rule

Pre-Integration Functionality. Pursuant to Rule 611 of Regulation NMS, the Exchange shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on trading centers of protected quotations in NMS stocks that do not fall within a valid exception and, if relying on such an exception, that are reasonably designed to ensure compliance with the terms of the exception. The ME does not permit an execution on the Exchange if there are better-priced protected quotations displayed in the market unless the order is an ISO. At the time an order is entered into the ME, the ME uses the view of the NBBO as described above. If the NBBO is priced better than what is resident on the Exchange, the Exchange will not match such order on the EDGX Book, and based on the Member's instructions, the ME will cancel the order, re-price the order or route the order.

Post-Integration Functionality. The Exchange's post-integration functionality that describes compliance with the trade-through rule is the same as the Exchange's pre-integration functionality. The Exchange again notes that following the technology migration, it will calculation the NBBO using Direct Feeds, SIP Feeds, and Feedback.

Regulation SHO

Pre-Integration Functionality. The Exchange cannot execute a short sale order [34] equal to or below the current National Best Bid (''NBB'') when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (''Short Sale Circuit Breaker'').[35] When a Short Sale Circuit Breaker is in effect, the Exchange utilizes information received from the SIP feeds and a view of the EDGX Book to assess its compliance with Rule 201 of Regulation SHO. The NBBO used for compliance with Rule 201 of Regulation SHO includes quotes from market centers against which the Exchange has declared self-help.

Post-Integration Functionality. The Exchange's post-integration functionality is similar to the pre-integration functionality, including that the NBBO used for compliance with Rule 201 of Regulation SHO will include quotes from market centers against which the Exchange has declared self-help. However, the Exchange notes that when a Short Sale Circuit Breaker is in effect, the Exchange will utilize information received from Direct Feeds, SIP feeds, Feedback and a view of the EDGX Book to assess its compliance with Rule 201 of Regulation SHO.

Latent or Inaccurate Direct Feeds

Pre-Integration Functionality. Where the Exchange's systems detect problems with one or more Direct Feeds, the Quote Server can manually fail over to the SIP feed to calculate the NBBO for the market center(s) where the applicable Direct Feed is experiencing issues. In order to make this determination, the Quote Server continuously polls every Direct Feed line and generates an email alert if the difference between a quote's sent time (as stamped by the sending market) and the time of receipt by the Exchange exceeds one (1) second.

Post-Integration Functionality. As proposed, where the Exchange's systems detect problems with one or more Direct Feeds, the Exchange will immediately fail over to the SIP feed to calculate the NBBO for the market center(s) where the applicable Direct Feed is experiencing issues. The Exchange can also manually fail over to the SIP feed in lieu of Direct Feed data upon identification by a market center of an issue with its Direct Feed(s).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[36] in general, and furthers the objectives of Section 6(b)(5) of the Act[37] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because it will be available to all Users.

The Exchange believes that its proposal to describe the Exchange's use of data feeds removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity and transparency regarding both the current operation of the System and the operation of the System following the migration to BATS technology. The Exchange's proposal will enable investors to better assess the quality of the Exchange's execution and routing services. The Exchange believes the additional transparency into the operation of the Exchange as described in the proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes the proposal would enhance competition because describing the Exchange's use of data feeds enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve a consistent technology offering by the BGM Affiliated Exchanges [sic]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange filed the Initial Proposal with the Commission on July 15, 2014, and it was published for comment in the **Federal Register** on August 1, 2014. The Commission received one (1) written comment letter

[34] *See* Exchange Rule 11.6(l)(2).

[35] 17 CFR 242.200(g); 17 CFR 242.201. On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201, pursuant to which, among other things, short sale orders in covered securities generally cannot be executed or displayed by a trading center, such as the Exchange, at a price that is at or below the current NBB when a Short Sale Circuit Breaker is in effect for the covered security. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a ''short exempt'' marking requirement. *See also* Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010) (extending the compliance date for Rules 201 and 200(g) to February 28, 2011). *See also* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, *www.sec.gov/divisions/marketreg/rule201faq.htm.*

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

commenting on the Initial Proposal.[38] The Commission also received three (3) letters commenting on companion filings: two (2) letters commented on SR–BATS–2014–029,[39] and one (1) letter commented on SR–BATS–2014–029 and SR–BYX–2014–012.[40] The Exchange believes that the comments raised in these letters are either not directly related to the Exchange's proposal but instead raise larger market structure issues or are adequately addressed in this proposal, particularly as it relates to the Commission's request to describe the Exchange's use of data feeds for order handling and execution, order routing, and regulatory compliance.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[41] and Rule 19b–4(f)(6) thereunder.[42]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[43] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[44] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of the operative delay will allow the Exchange to immediately adopt rule text consistent with the Initial Proposal and operate in the same manner as BATS with respect to the use of data feeds. In addition, the Exchange stated that waiver of the operative delay will allow it to continue to move towards a complete technology integration of the BGM Affiliated Exchanges to ensure stability of the System. For these reasons, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[45]

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–EDGX–2015–02 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–EDGX–2015–02.* 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 proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2015–02 and should be submitted on or before February 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00969 Filed 1–21–15; 8:45 am]

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[38] *See* Letter from Suzanne Hamlet Shatto to the Commission, dated August 19, 2014 (SR–EDGX–2014–20) (discussing Dodd Frank principles).

[39] *See* Letter from R.T. Leuchtkafer to the Commission, dated August 22, 2014 (SR–BATS–2014–029) (discussing the Exchange's market data feed practices). *See* Letter from Eric Scott Hunsader, Nanex, LLC, to the Commission, dated August 22, 2014 (SR–BATS–2014–029) (discussing the Exchange's use of NBBO as a defined term).

[40] *See* Letter from Donald Bollerman, Head of Market Operations, IEX ATS, to the Commission, dated September 25, 2014 (SR–BATS–2014–029) (SR–BYX–2014–012) (discussing the Exchange's calculation of the PBBO).

[41] 15 U.S.C. 78s(b)(3)(A).

[42] 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.

[43] 17 CFR 240.19b–4(f)(6).

[44] 17 CFR 240.19b–4(f)(6)(iii).

[45] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74073; File No. SR–OCC–2014–812]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Concerning Extended and Overnight Trading Sessions

January 15, 2015.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 [1] (''Payment, Clearing and Settlement Supervision Act'') and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 [2] notice is hereby given that on December 12, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

advance notice as described in Items I and II below, which Items have been prepared by OCC.[3] The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed by OCC in connection with a proposed change to its operations concerning the clearance of confirmed trades executed in extended and overnight trading sessions (hereinafter, ''overnight trading sessions'') offered by exchanges for which OCC provides clearance and settlement services.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments on the advance notice were not and are not intended to be solicited with respect to the advance notice and none have been received.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Description of Change

This advance notice is being filed in connection with a proposed change to OCC's operations concerning the clearance of confirmed trades executed in overnight trading sessions offered by exchanges for which OCC provides clearance and settlement services. OCC currently clears overnight trading activity for CBOE Futures Exchange, LLC (''CFE'').[4] The total number of trades submitted to OCC from overnight trading sessions is nominal, typically less than 3,000 contracts per session. However, OCC has recently observed an industry trend whereby exchanges are offering overnight trading sessions beyond traditional hours. Exchanges offering overnight trading sessions have indicated that such sessions benefit market participants by providing additional price transparency and hedging opportunities for products traded in such sessions, which, in turn, promotes market stability.[5] In light of this trend, OCC proposes to implement a framework for clearing trades executed in such sessions that includes: (1) Qualification criteria used to approve clearing members for overnight trading sessions, (2) systemic controls to identify trades executed during overnight trading sessions by clearing members not approved for such sessions, (3) enhancements to OCC's overnight monitoring of trades submitted by exchanges during overnight trading sessions, (4) enhancements to OCC's credit controls with respect to monitoring clearing members' credit risk during overnight trading sessions, including procedures for contacting an exchange offering overnight trading sessions in order to invoke use of the exchange's kill switch, and (5) taking appropriate disciplinary action against clearing members who attempt to clear during overnight trading session without first obtaining requisite approvals. These changes (described in greater detail below) are designed to reduce and mitigate the risks associated with clearing trades executed in overnight trading sessions. In addition, the only products that will be eligible for overnight trading sessions are index options and index futures products.

OCC's standards for determining whether to provide clearing services for overnight trading sessions offered by an exchange and the implementation of a framework are designed to work in conjunction with the risk controls of the exchanges that offer overnight trading sessions. OCC would confirm an exchange's risk controls as well as its staffing levels as they relate to overnight trading sessions to determine if OCC may reasonably rely on such risk controls to reduce risk presented to OCC by the exchange's overnight trading sessions. Such exchange risk controls will consist of: (1) Price reasonability checks, (2) controls to prevent orders from being executed beyond a certain percentage (determined by the exchange) from the initial execution price, (3) activity based protections which focus on risk beyond price, such as a high number of trades occurring in a set period of time, and (4) kill switch capabilities, which may be initiated by the exchange and can cancel all open quotes or all orders of a particular participant. OCC believes that confirming the existence of applicable pre-trade risk controls as well as overnight staffing at the relevant exchanges is essential to mitigating risks presented to OCC from overnight trading sessions.[6] Providing clearing services to exchanges offering such sessions is consistent with OCC's mission to provide market participants with clearing and risk management solutions that respond to changes in the marketplace and may result in increased cleared contract volume.

Qualification Criteria

In order to mitigate risks associated with clearing for overnight trading sessions, clearing members that participate in such trading sessions would be required to provide contact information to OCC for operational and risk personnel available to be contacted by OCC during such sessions. In addition, OCC would require that clearing members participating in an overnight trading session to post additional margin in a designated account in order to mitigate against the risk that OCC cannot draft a clearing member's bank account during an overnight trading session.[7] OCC would also adopt a procedure whereby, on a quarterly basis, it confirms its record of clearing members eligible for overnight trading sessions with a similar record maintained by exchanges offering such overnight trading sessions.

With respect to providing operational and risk contacts, under OCC Rule 201, each clearing member is required to maintain facilities for conducting

[3] OCC initially filed a similar advance notice on September 17, 2014. Securities Exchange Act Release No. 73343 (October 14, 2014), 79 FR 62684 (October 20, 2014), (SR–OCC–2014–805). OCC withdrew that advance notice on October 28, 2104. Securities Exchange Act Release No. 73710 (December 1, 2014), 79 FR 72225 (December 5, 2014), (SR–OCC–2014–805).

[4] ELX Futures LP (''ELX'') previously submitted overnight trading activity to OCC, but currently does not submit trades from overnight trading sessions to OCC. OCC will re-evaluate ELX's risk controls in the event ELX re-institutes its overnight trading sessions.

[5] *See* CFE–2014–010 at *http://cfe.cboe.com/publish/CFErulefilings/SR-CFE-2014-010.pdf.*

[6] Comparable controls are applied to futures and future option trades executed in overnight trading sessions currently cleared by OCC, although such controls have been implemented by clearing futures commission merchants (''clearing FCMs'') pursuant to Commodity Futures Trading Commission (''CFTC'') Regulation 1.73, which also requires such clearing FCMs to monitor for adherence to such controls during regular and overnight trading sessions. OCC believes that it may reasonably rely on such regulation to reduce risk presented to OCC during futures markets overnight trading sessions. *See* 17 CFR 1.73. OCC also confirmed CFE maintains kill switch capabilities.

[7] Clearing members will be required to designate a firm account to ensure that OCC has a general lien on the assets in the account and can use them to satisfy any obligation of the clearing member to OCC.

business with OCC, and a representative of the clearing member authorized in the name of the clearing member to take all action necessary for conducting business with OCC is required to be available at the facility during such hours as may be specified from time-to-time by OCC. Similarly, OCC Rules 214(c) and (d) require clearing members to ensure that they have the appropriate number of qualified personnel and to maintain the ability to process anticipated volumes and values of transactions. OCC would use this existing authority to require clearing members trading during overnight trading sessions to maintain operational and risk staff that may be contacted by OCC during such sessions.

OCC would impose upon clearing members qualified to participate in overnight trading sessions additional margin requirement in an amount of the lesser of $10 million or 10% of the clearing member's net capital (''Additional Margin''), which would be equal to the first monitoring risk threshold (described below) and which would be collected the morning before each overnight trading sessions. Clearing members must identify the proprietary account that would be charged the Additional Margin amount. The Additional Margin requirement is intended to provide OCC with additional margin assets should a clearing member's credit risk increase during overnight trading sessions.[8] OCC proposes to adopt a process whereby each morning OCC Financial Risk Management staff would assess the Additional Margin requirement against clearing members eligible to participate in overnight trading sessions. Clearing members that do not have sufficient excess margin on deposit with OCC to meet the Additional Margin amount would be required to deposit additional funds with OCC to satisfy the Additional Margin requirement.[9] This process would be adopted under existing rule authority.

Moreover, OCC also would confirm that an exchange offering overnight trading sessions has adopted a procedure whereby such exchange would contact OCC when a trader requests trading privileges during overnight trading sessions. The purpose of this contact is to verify that the trader's clearing firm (*i.e.,* the OCC clearing member) is approved for overnight trading sessions. If the applicable OCC clearing member is not approved for overnight trading sessions, then the clearing member must receive OCC's approval for overnight trading sessions, or the exchange would not provide the trader trading privileges during overnight trading sessions. Moreover, OCC would confirm that an exchange offering overnight trading sessions has implemented a procedure to periodically (*i.e.,* quarterly) validate its record of approved clearing firms against OCC's record of clearing members approved for overnight trading sessions. Any discrepancies between the two records would be promptly resolved by either the clearing member obtaining approval at OCC for overnight trading sessions, or by the exchange revoking the clearing firm's trading privileges for overnight trading sessions.

Systemic Controls

OCC plans to implement system changes so that trades submitted to OCC during overnight trading sessions that have been executed by clearing members not approved for such trading sessions would be reviewed by OCC staff after acceptance but before being processed (each such trade a [sic] being a ''Reviewed Trade''). OCC would contact the submitting exchange regarding each Reviewed Trade in order to determine if the trade is a valid trade. If the exchange determines that the Reviewed Trade was in error such that, as provided in Article VI, Section 7(c), new or revised trade information is required to properly clear the transaction, OCC expects the exchange would instruct OCC to disregard or ''bust'' the trade. If the exchange determines that the Reviewed Trade was not in error, then OCC would clear the Reviewed Trade and take appropriate disciplinary action against the non-approved clearing member, as described below. OCC believes that clearing the Reviewed Trade is appropriate in order to avoid potentially harming the clearing member approved for overnight trading sessions that is on the opposite side of the transaction.

Overnight Monitoring

OCC plans to implement additional overnight monitoring in order to better monitor clearing members' credit risk during overnight trading sessions. Such monitoring of credit risk is similar to existing OCC practices concerning futures cleared during overnight trading hours and includes automated processes within ENCORE to measure, by clearing member: (i) The aggregate mark-to-market amounts of a clearing member's positions, including positions created during overnight trading, based on current prices using OCC's Portfolio Revaluation system, (ii) the aggregate incremental margin produced by all positions resulting from transactions executed during overnight trading, and (iii) with respect to options cleared during overnight trading hours, the aggregate net trade premium positions resulting from trades executed during overnight trading (each of these measures being a ''Credit Risk Number''). Hourly credit reports would be generated by ENCORE containing the Credit Risk Numbers expressed in terms of both dollars and, except for the mark-to-market position values, as a percentage of net capital for each clearing member trading during overnight trading sessions. The Credit Risk Numbers are the same information used by OCC staff to evaluate clearing member exposure during regular trading hours and, in addition to OCC's knowledge of its clearing members' businesses, are effective measures of the risk presented to OCC by each clearing member. OCC's Operations staff would review such reports as they are generated and, in the event that any of the Credit Risk Numbers for positions established by a clearing member during an overnight trading session exceeds established thresholds, staff would alert OCC's Market Risk staff[10] of the exceedance in accordance with established procedures, as described below. Market Risk staff would follow a standardized process concerning such exceedances, including escalation to OCC's management, if required by such process. Given the nominal volume of trades executed in overnight trading sessions that are presently submitted for clearance, no changes in current staffing levels that support overnight clearing activities is contemplated at this time, however, such staffing levels will be periodically assessed and adjusted, as appropriate. As part of the overnight clearing activities, OCC has, however, designated an on-call Market Risk duty officer who would be responsible for reviewing issues that arise when clearing for overnight trading session and determining what measures to be taken as well as additional escalation, if necessary.

With respect to OCC's escalation thresholds, if any Credit Risk Number of a clearing member approved for overnight trading sessions is $10 million

[8] Clearing members approved for overnight trading sessions who do not meet the Additional Margin requirement for a given overnight trading session would be treated like a clearing member not approved overnight trading sessions, as described below.

[9] Under OCC Rule 601, OCC has the discretion to fix the margin requirement for any account at an amount that it deems necessary or appropriate under the circumstances to protect the interests of clearing members, OCC and the public.

[10] OCC's Member Services staff will also receive alerts in order to contact clearing members as may be necessary.

or more, or any Credit Risk Number equals 10% or more of the clearing member's net capital, OCC's Operations staff would be required to provide email notification to Market Risk and Member Services staff. If any Credit Risk Number of a clearing member not approved for overnight trading sessions is $10 million or more, or any Credit Risk Number equals 10% or more of the clearing member's net capital, OCC's Operations would also notify Market Risk and Member Services staff as well as its senior management. Such departments would take action to prevent additional trading by the non-approved clearing member, including contacting the exchange to invoke use of the exchange's kill switch.

If any Credit Risk Number of a clearing member approved for overnight trading sessions is $50 million or more, or equals 25% or more of the clearing member's net capital, Operations staff would be required to contact, by telephone: (i) Market Risk and Member Services, (ii) the applicable exchange for secondary review, and (iii) the clearing member's designated contacts. The on-call Market Risk duty officer would also consider if additional action is necessary, which may include contacting a designated executive officer in order to issue an intra-day margin call, increase the clearing member's margin requirement in order to prevent the withdrawal of a specified amount of excess margin collateral, if any, the clearing member has on deposit with OCC or contacting the exchange in order to invoke use of its kill switch. If any Credit Risk Number is $75 million or more, or equals 50% or more of the clearing member's net capital, Operations staff would be required to contact, by telephone, Market Risk staff, the on-call Market Risk duty officer and a designated executive officer. Such officer would be responsible for reviewing the situation and determining whether to implement credit controls, which are described in greater detail below and include: issuing an intra-day margin call, increasing a clearing member's margin requirement in order to prevent the withdrawal of a specified amount of excess margin collateral, if any, the clearing member has on deposit with OCC, whether further escalation is warranted in order for OCC to take protective measures pursuant to OCC Rule 305, or contact the exchange in order to invoke use of its kill switch. OCC chose the above described escalation thresholds based on its analysis of historical overnight trading activity across the futures industry. OCC believes that these thresholds strike an appropriate balance between effective risk monitoring and operational efficiency.

Credit Controls

In order to address credit risk associated with trading during overnight trading sessions, and as described above, OCC would collect Additional Margin from clearing members as well as monitor and analyze the impact that positions established during such sessions have on a clearing member's overall exposure. Should the need arise based on threshold breaches described above, and pursuant to OCC Rule 609, OCC may require the deposit of additional margin (''intra-day margin'') by any clearing member that increases its incremental risk as a result of trading activity during overnight trading sessions. Accordingly, a clearing member's positions established during such sessions will be incorporated into OCC's intra-day margin process. Should a clearing member's exposure significantly increase while settlement banks are not open to process an intra-day margin call, OCC has the authority under OCC Rule 601 to increase a clearing member's margin requirement which would restrict its ability to withdraw excess margin collateral. The implementation of these measures is discussed more fully below.

In the event that a clearing member's exposure during overnight trading sessions causes a clearing member to exceed OCC's intra-day margin call threshold for overnight night trading sessions, OCC would require the clearing member to deposit intra-day margin equal to the increased incremental risk presented by the clearing member. Specifically, if a clearing member has a total risk charge [11] exceeding 25% (a reduction of the usual figure of 50%), as computed overnight by OCC's STANS system, and a loss of greater than $50,000 from an overnight trading session(s), as computed by Portfolio Revaluation, OCC would initiate an intra-day margin call. OCC would know at approximately 8:30 a.m. (Central Time) if an intra-day margin call on a clearing member would be initiated based on breaches of these thresholds. This ''start of business'' margin call is in addition to daily margin OCC collects from clearing members pursuant to OCC Rule 605, any intra-day margin call that OCC may initiate as a result of regular trading sessions or special margin call that OCC may initiate.

In addition to, or instead of, requiring additional intra-day margin, OCC Rule 601 [12] and OCC's Clearing Member Margin Call Policy work together to authorize Market Risk staff to increase a clearing member's margin requirement which may be in an amount equal to an intra-day margin call.[13] (Any increased margin requirement will remain in effect until the next business day.) This action would immediately prevent clearing members from withdrawing any excess margin collateral (in the amount of the increased margin requirement) the clearing member has deposited with OCC. With respect to clearing trades executed in overnight trading sessions, and in the event OCC requires additional margin from a clearing member, Market Risk staff may use increased margin requirements as a means of collateralizing the increase in incremental risk a clearing member incurred during such sessions without having to wait for banks to open to process an intra-day margin call.[14] Such action may be taken by OCC instead of or in addition to issuing an intra-day margin call depending on the amount of excess margin a clearing member has on deposit with OCC and the amount of the incremental risk presented by such clearing member. The expansion of OCC's intra-day margin call process as described in the preceding paragraph, including OCC's ability to manually increase clearing members' margin requirements, would mitigate the risk that OCC is under-collateralized as a result of overnight trading hours.

Moreover, a designated executive officer may call an exchange offering overnight trading sessions to invoke use of its kill switch. The kill switch would prevent a clearing member (or the market participant clearing through a clearing member) from executing trades on the exchange during a given overnight trading session or, if needed, stop all trading during a given overnight trading session. Finally, pursuant to OCC Rule 305, the Executive Chairman or the President of OCC, in certain situations, has the authority to impose limitations and restrictions on the transactions, positions and activities of

[11] Total risk charge is a number derived from STANS outputs and is the sum of expected shortfall, stress test charges and any add-on charges computed by STANS. STANS is OCC's proprietary margin methodology.

[12] In addition, OCC Rule 601 provides OCC with the authority to fix the margin requirement for any account or any class of cleared contracts at such amount as it deems necessary or appropriate under the circumstances to protect the respective interests of clearing members, OCC and the public.

[13] Clearing members frequently deposit margin at OCC in excess of requirements.

[14] Clearing members would be able to substitute the locked-up collateral during normal time frames (*i.e.,* 6 a.m. to 5 p.m. (Central Time) for equity securities).

a clearing member. This authority would be used, as needed, in the event a clearing member accumulates significant credit risk during overnight trading sessions, or a clearing member's activities during such trading sessions otherwise warrant OCC taking protective action.

Rule Enforcement Actions

In order to deter clearing members from attempting to participate in overnight trading sessions without authorization as well as appropriately enforce the above described processes, OCC would ensure that any attempt by a clearing member to participate in overnight trading sessions without first obtaining the necessary approval would result in the initiation of a rule enforcement action against such clearing member. As described above, clearing members not approved for overnight trading sessions who trade during such overnight sessions would have their trades reviewed by OCC staff. Clearing members who attempted to participate in overnight trading sessions that did not obtain the necessary approval to do so would be subject to a minor rule violation fine.[15] In addition, if a clearing member's operational or risk contacts for overnight trading sessions were unavailable had OCC attempted to contact such individuals, the clearing member would be subject to a minor rule violation fine. OCC has existing processes in place to monitor for clearing member violations of OCC's rules and such processes would also apply to clearing member activity during overnight trading sessions.

Anticipated Effect on and Management of Risk

Clearing transactions executed in overnight trading sessions may increase risk presented to OCC due to the period of time between trade acceptance and settlement, the staffing levels at clearing members during such trading sessions and the deferment of executing intra-day margin calls until banking settlement services are operational. However, OCC would expand its risk management practices in order to mitigate these risks by implementing, and expanding, the various tools discussed above. For example, OCC would enhance its monitoring practices in order to closely monitor clearing members' credit risk from trades placed during overnight trading sessions as well as implement processes so that OCC takes appropriate action when such credit risk exceeds certain limits. OCC would also use its existing authority to require adequate clearing member staffing during such trading sessions, in order to mitigate the operational risk associated with clearing members trading while they are not fully staffed. These risk management functions would work in tandem with risk controls, including the implementation of kill switch capabilities, adopted by the exchanges operating overnight trading sessions or by clearing FCMs, as applicable.

In addition to the above, OCC would adapt existing processes so that such processes can be used to mitigate risk associated with overnight trading sessions. Specifically, OCC would exercise its authority to issue margin calls, and prevent the withdrawal of excess margin on deposit at OCC, as a result of activity during such trading sessions as a means of reducing risk. OCC also would implement a systemic function to identify trades executed during overnight trading sessions by clearing members not approved for such trading sessions for further review prior to allowing such trades to proceed further through OCC's clearance processing, and therefore mitigate the risk of losses from erroneous trades. Finally, OCC would be able to assess the need to take protective action pursuant to OCC Rule 305 as a result of clearing member activity during such sessions.

Consistency With the Payment, Clearing and Settlement Supervision Act

OCC believes that the proposed change is consistent with Section 805(b)(1) of the Payment, Clearing and Settlement Supervision Act[16] because the proposed change would promote robust risk management.[17] OCC believes that the proposed changes described above would provide OCC with the tools necessary to mitigate risks that may occur as a result of overnight trading sessions. Specifically, OCC would implement risk monitoring processes designed to identify increases in credit risk presented to OCC as a result of such sessions as well as implement changes designed to mitigate operational risk associated with overnight trading sessions. In addition, OCC would adapt certain existing practices to accommodate these overnight trading sessions including its margin call process and its authority to take protective action pursuant to OCC Rule 305. These practices are designed to identify and mitigate risks that may be presented to OCC as a result of overnight trading sessions and thereby promote robust risk management.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the Commission receives the notice of proposed change, or (ii) the date the Commission receives any further information it requests for consideration of the notice. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed change, is consistent with the Payment, Clearing and Settlement Supervision Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR-OCC-2014-812 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2014–812. 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

[15] *See* OCC Rule 1201(b).

[16] 12 U.S.C. 5464(b).

[17] 12 U.S.C. 5464(b)(1).

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 advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_812.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2014–812 and should be submitted on or before February 6, 2015.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2015–00970 Filed 1–21–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74059; File No. SR–Phlx–2015–01]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Rebate Program

January 15, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 2, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Customer Rebate Program in Section B of the Pricing Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the ''Customer Rebate Program,'' in Section B of the Pricing Schedule to: (i) Increase certain Category B rebates; and (ii) increase the additional Category B Tier 2 and 3 rebates paid to Specialists [3] and Market Makers [4] that reach the Monthly Market Maker Cap.[5] The Exchange believes that the proposed increased rebates will encourage market participants to direct a greater number of Customer orders to the Exchange.

Currently, the Exchange has a Customer Rebate Program consisting of five tiers that pays Customer rebates on two Categories, A [6] and B,[7] of transactions.[8] A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, excluding volume associated with electronic Qualified Contingent Cross (''QCC'') Orders,[9] as defined in Exchange Rule 1080(o).[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

[4] A ''market maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

[5] Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are excluded from the Monthly Market Maker Cap.

[6] Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order will be paid a rebate of $0.14 per contract.

[7] Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will be paid a rebate of $0.17 per contract. The Category B Rebate is not paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.

[8] *See* Section B of the Pricing Schedule.

[9] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (''QCTs'') that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[10] Members and member organizations under common ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership means members or member organizations under 75% common ownership or control.

The Exchange pays the following rebates: [11]

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed equity and ETF options classes, excluding SPY options (monthly)	Category A	Category B
Tier 1	0.00%–0.60%	$0.00	$0.00
Tier 2	Above 0.60%–1.10%	*0.10	*0.17
Tier 3	Above 1.10%–1.60%	*0.12	*0.17
Tier 4	Above 1.60%–2.50%	0.16	0.19
Tier 5	Above 2.50%	0.17	0.19

The Exchange proposes to increase the Tier 4 and 5 Category B rebates from $0.19 to $0.20 per contract.

Currently, the Exchange offers Specialists and Market Makers, or its affiliate under Common Ownership,[12] that have reached the Monthly Market Maker Cap [13] an increased $0.02 per contract Category A and B rebate in addition to the Tier 2 and 3 rebates. The Exchange proposes to increase the additional Category B rebate, which is currently paid in addition to the applicable Tier 2 or 3 rebate, to a Specialist or Market Maker, or its affiliate under Common Ownership, provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, from $0.02 to $0.03 per contract. The Exchange will continue to pay Specialists and Market Makers, or its affiliate under Common Ownership, that have reached the Monthly Market Maker Cap an increased $0.02 per contract Category A rebate in addition to the Tier 2 and 3 rebates.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to increase the Tier 4 and 5 Category B rebates will encourage market participants to send a greater amount of Customer liquidity to Phlx. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that its proposal to increase the Tier 4 and 5 Category B rebates is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. All members are eligible to receive the rebate provided they submit a qualifying number of electronic Customer volume.

The Exchange believes that its proposal to pay an increased $0.03 per contract Category B rebate, in addition to the applicable Tier 2 or 3 rebate, to a Specialist or Market Maker, or its affiliate under Common Ownership, provided the Specialist or Market Maker has reached the Monthly Market Maker Cap is reasonable because the Exchange intends to continue to encourage Specialists and Market Makers to transact Customer Complex Orders on the Exchange to receive the enhanced rebate. The Exchange will continue to encourage Specialists and Market Makers to transact Customer Simple Orders on the Exchange by offering the additional $0.02 per contract Category A rebate in addition to the applicable Tier 2 or 3 rebate.

The Exchange believes that its proposal to pay an increased $0.03 per contract Category B rebate, in addition to the applicable Tier 2 or 3 rebate, to a Specialist or Market Maker, or its affiliate under Common Ownership, provided the Specialist or Market Maker has reached the Monthly Market Maker Cap is equitable and not unfairly discriminatory because unlike other market participants, Specialists and Market Makers have burdensome quoting obligations [16] to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. Additionally, Specialists and Market Makers incur costs unlike other market participants including, but not limited to, PFOF and other costs associated with market making activities,[17] which results in a higher average cost per execution as compared to Firms, Broker-Dealers and Professionals. The proposed differentiation as between Specialists and Market Makers as compared to other market participants recognizes the differing contributions made to the trading environment on the Exchange by these market participants.

Additionally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to pay Specialists and Market Makers different rebates for transacting Simple versus Complex Orders. Today, the Exchange pays different Category A (Simple Order) and Category B (Complex Order) rebates. The Exchange also differentiates pricing for Simple and Complex Orders transaction fees in Section I as do other options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the Customer Rebate Program will continue to encourage Customer order flow to be directed to the Exchange. Certain market participants will receive higher Tier 4 and 5 Category B rebates for transacting the same Customer order flow as today. The Exchange believes that the

[11] Options overlying SPY are included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program, however, rebates are not paid for electronic executions in options overlying SPY.

[12] The term "Common Ownership" means members or member organizations under 75% common ownership or control.

[13] *See* note 5.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See* Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

[17] Specialists and Market Makers pay for certain data feeds including the SQF Port Fee. SQF Port Fees are listed in the Exchange's Pricing Schedule at Section VII. SQF is an interface that allows Specialists and Market Makers to connect and send quotes into Phlx XL and assists them in responding to auctions and providing liquidity to the market.

Customer Rebate Program will continue to encourage Customer order flow to be directed to the Exchange. By incentivizing members to route Customer orders, the Exchange desires to attract liquidity to the Exchange, which in turn benefits all market participants. All market participants are eligible to qualify for a Customer Rebate. The Exchange believes this pricing amendment does not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange.

The Exchange does not believe that offering Specialists and Market Makers an enhanced Category B rebate of $0.03 per contract in addition to the applicable Tier 2 or 3 rebate creates an undue burden on competition because Specialists and Market Makers have burdensome quoting obligations [18] to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. In addition, paying different rebates for Simple and Complex Orders is not novel. Other options exchanges today similarly differentiate rebates.[19]

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–Phlx–2015–01 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2015–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–01 and should be submitted on or before February 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00965 Filed 1–21–15; 8:45 am]

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[18] *See* note 16.

[19] *See* the Chicago Board Options Exchange, Inc.'s Fees Schedule and the International Securities Exchange, LLC's Schedule of Fees.

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74058; File No. SR–NYSEArca–2014–114]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendments No. 1 and No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to List and Trade Shares of the iShares Interest Rate Hedged 0–5 Year High Yield Bond ETF, iShares Interest Rate Hedged 10+ Year Credit Bond ETF, and the iShares Interest Rate Hedged Emerging Markets Bond ETF Under NYSE Arca Equities Rule 8.600

January 15, 2015.

I. Introduction

On September 29, 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 list and trade shares (''Shares'') of the iShares Interest Rate Hedged 0–5 Year High Yield Bond ETF (''High Yield Bond Fund''), iShares Interest Rate Hedged 10+ Year Credit Bond ETF (''Credit Bond Fund''), and the iShares Interest Rate Hedged Emerging Markets Bond ETF (''Emerging Markets Bond Fund'') (collectively ''the Funds'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on October 17, 2014.[3] The Commission received one supporting comment on the proposal,[4] and on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73342 (Oct. 10, 2014), 79 FR 62492.

[4] Letter to SEC from Anonymous Commenter, dated November 7, 2014. Comments regarding the

November 18, 2014, the Exchange filed Amendment No 1. to the proposed rule change, which entirely replaced and superseded its proposal as originally filed.[5] The Commission designated a longer period for Commission action.[6] On January 14, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.[7] The Commission is publishing this notice to solicit comments on Amendments No. 1 and No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of Proposed Rule Change

A. In General

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by iShares U.S. ETF Trust (''Trust''),[8] a registered open-end management investment company. BlackRock Fund Advisors (''BFA'') will be the investment adviser for the Funds (the ''Adviser'').[9] BFA is an indirect wholly-owned subsidiary of BlackRock, Inc. BlackRock Investments, LLC will be the principal underwriter and distributor of the Funds' Shares. State Street Bank and Trust Company will serve as administrator, custodian and transfer agent for the Funds.

B. The Exchange's Description of the Funds

The Exchange has made the following representations and statements in describing the Funds and its investment strategies, including other portfolio holdings and investment restrictions.[10]

1. Principal Investments of the iShares Interest Rate Hedged 0–5 Year High Yield Bond ETF

The High Yield Bond Fund will seek to mitigate the interest rate risk of a portfolio composed of U.S. dollar-denominated, high yield corporate bonds with remaining maturities of less than five years. This Fund will seek to achieve its investment objective by investing, under normal circumstances,[11] at least 80% of its net assets in U.S. dollar-denominated high yield corporate bonds with remaining maturities of less than five years, in one or more investment companies (exchange-traded and non-exchange-traded) that principally invest in high yield bonds, in U.S. Treasury securities (or cash equivalents), and by taking short positions in U.S. Treasury futures, other interest rate futures contracts, and interest rate swaps.[12]

The High Yield Bond Fund intends to initially invest a substantial portion of its assets in one underlying fund, the iShares 0–5 Year High Yield Corporate Bond ETF (the ''Underlying High Yield Corporate Bond Fund''). This Fund will attempt to mitigate the interest rate risk primarily through the use of U.S. Treasury futures contracts and interest rate swaps. The High Yield Bond Fund may also take short positions in other interest rate futures contracts, including but not limited to, Eurodollar and Federal Funds futures.

BFA will utilize a model-based proprietary investment process to assemble an investment portfolio composed of (i) long positions in the Underlying High Yield Corporate Bond Fund, (ii) long positions in U.S. dollar-denominated high yield corporate bonds, (iii) long positions in U.S. Treasury securities, and (iv) short positions in U.S. Treasury futures, other interest rate futures contracts, and interest rate swaps. The Exchange notes that the short positions are expected to have, in the aggregate, approximately equivalent duration to the underlying securities in the Underlying High Yield Corporate Bond Fund and to the high yield corporate bonds. By taking these short positions, BFA will seek to mitigate the potential impact of rising interest rates on the performance of the Underlying High Yield Corporate Bond Fund and the high yield corporate bonds (conversely also limiting the potential positive impact of falling interest rates). The short positions will not be intended to mitigate other factors influencing the price of high yield bonds, such as credit risk, which may have a greater impact than rising or falling interest rates. Relative to a long-only investment in the same high yield bonds, the High Yield Bond Fund's investment strategy is designed to outperform in a rising interest rate environment and underperform in a falling interest rate environment.

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proposed rule change are available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2014-114/nysearca2014114.shtml.*

[5] In Amendment No. 1, the Exchange (1) clarified that there presently is no sub-adviser to the Funds; (2) specified that US Treasury futures are a type of interest rate future; (3) provided more information about the Federal Funds futures the Funds may hold; (4) clarified the scope of the investment restriction on illiquid assets; (5) clarified one aspect of the net asset value calculation process for the Funds; (6) supplemented the information that would be provided in the disclosed portfolios of the Funds; and (7) clarified the availability of price information regarding the Funds' holdings.

[6] *See* Securities Exchange Act Release No. 73659 (Nov. 20, 2014), 79 FR 70607 (Nov. 26, 2014). The Commission designated a longer period within which to take action on the proposed rule change to provide more time for it to consider the proposed rule change, as modified by Amendment No. 1.

[7] In Amendment No. 2, the Exchange stated that (1) with respect to corporate bond issuances, the Adviser expects that under normal circumstances, each of the Funds will generally seek to invest in corporate bond issuances that have at least $100,000,000 par amount outstanding in developed countries and at least $200,000,000 par amount outstanding in emerging market countries; and (2) with respect to each Fund's investments in fixed-income securities, no fixed-income security (excluding Treasury Securities, government-sponsored entity and other exempted securities) will represent more than 30% of the weight of that Fund's total assets, and the five highest weighted fixed income securities held by that Fund (excluding Treasury Securities, government-sponsored entity and other exempted securities) will not in the aggregate account for more than 65% of the weight of that Fund's total assets.

[8] The Trust is registered under the 1940 Act. According to the Exchange, on December 6, 2013, the Trust filed with the Commission registration statements on Form N–1A relating to the Funds (''Registration Statements'') (File Nos. 333–179904 and 811–22649). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29571 (File No. 812–13601) (''Exemptive Order'').

[9] The Exchange represents that the Adviser is not registered as a broker-dealer, but is affiliated with multiple broker-dealers. The Exchange further represents that the Adviser has implemented a ''fire wall'' with respect to its broker-dealer affiliates regarding access to information concerning the composition of and changes to the Funds' portfolio. In addition, according to the Exchange, in the event (a) the Adviser or any sub-adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is, or becomes affiliated with, a broker-dealer, the Adviser or any new adviser or sub-adviser, as applicable, will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of and changes to the Funds' portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[10] Additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, net asset value (''NAV'') calculation, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in the Amendments No. 1, No. 2, and the Registration Statements, as applicable. *See* Amendment No. 1, *supra* note 5, Amendment No. 2, *supra* note 7, and Registration Statements, *supra* note 8.

[11] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[12] All Funds will invest only in futures contracts that are traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. Swaps will be centrally cleared. All derivatives held by the Funds will be collateralized.

2. Principal Investments of the iShares Interest Rate Hedged 10+ Year Credit Bond ETF

The Credit Bond Fund will seek to mitigate the interest rate risk of a portfolio composed of investment-grade U.S. corporate bonds and U.S. dollar-denominated bonds, including those of non-U.S. corporations and governments, with remaining maturities greater than ten years. This Fund will seek to achieve its investment objective by investing, under normal circumstances,[13] at least 80% of its net assets in investment-grade U.S. corporate bonds and U.S. dollar-denominated bonds, including those of non-U.S. corporations and governments, with remaining maturities greater than ten years, in one or more investment companies (exchange-traded and non-exchange-traded) that principally invest in investment-grade bonds, in U.S. Treasury securities (or cash equivalents), and by taking short positions in U.S. Treasury futures, other interest rate futures contracts, and interest rate swaps.[14]

The Credit Bond Fund intends to initially invest a substantial portion of its assets in one underlying fund, the iShares 10+ Year Credit Bond ETF (the ''Underlying Credit Bond Fund''). The Credit Bond Fund will attempt to mitigate the interest rate risk primarily through the use of U.S. Treasury futures contracts and interest rate swaps. The Credit Bond Fund may also invest in other interest rate futures contracts, including but not limited to, Eurodollar and Federal Funds futures.

BFA will utilize a model-based proprietary investment process to assemble an investment portfolio composed of (i) long positions in the Underlying Credit Bond Fund, (ii) long positions in U.S. dollar-denominated investment-grade corporate bonds, (iii) long positions in U.S. Treasury securities, and (iv) short positions in U.S. Treasury futures, other interest rate futures contracts, and interest rate swaps. The short positions are expected to have, in the aggregate, approximately equivalent duration to the underlying securities in the Underlying Credit Bond Fund and to the investment-grade corporate bonds. By taking these short positions, BFA will seek to mitigate the potential impact of rising interest rates on the performance of the Underlying Credit Bond Fund and the investment-grade corporate bonds (conversely also limiting the potential positive impact of falling interest rates). Further, the short positions are not intended to mitigate other factors influencing the price of investment-grade bonds, such as credit risk, which may have a greater impact than rising or falling interest rates. Relative to a long-only investment in the same investment-grade bonds, the Credit Bond Fund's investment strategy is designed to outperform in a rising interest rate environment and underperform in a falling interest rate environment.

3. Principal Investments of the iShares Interest Rate Hedged Emerging Markets Bond ETF

The Emerging Markets Bond Fund will seek to mitigate the interest rate risk of a portfolio composed of U.S. dollar-denominated, emerging market bonds. This Fund will seek to achieve its investment objective by investing, under normal circumstances,[15] at least 80% of its net assets in U.S. dollar-denominated emerging market bonds, in one or more investment companies (exchange-traded and non-exchange-traded) that principally invest in emerging market bonds, in U.S. Treasury securities (or cash equivalents), and by taking short positions in U.S. Treasury futures, other interest rate futures contracts, and interest rate swaps.[16]

The Emerging Markets Bond Fund intends to initially invest a substantial portion of its assets in one underlying fund, the iShares J.P. Morgan USD Emerging Markets Bond ETF (the ''Underlying Emerging Markets Bond Fund''). This Fund will attempt to mitigate the interest rate risk primarily through the use of U.S. Treasury futures contracts and interest rate swaps. It may also take short positions in other interest rate futures contracts, including but not limited to, Eurodollar and Federal Funds futures.

BFA will utilize a model-based proprietary investment process to assemble an investment portfolio composed of (i) long positions in the Underlying Emerging Markets Bond Fund, (ii) long positions in U.S. dollar-denominated emerging market bonds, (iii) long positions in U.S. Treasury securities, and (iv) short positions in U.S. Treasury futures, other interest rate futures contracts, and interest rate swaps. The short positions are expected to have, in the aggregate, approximately equivalent duration to the underlying securities in the Underlying Emerging Markets Bond Fund and to the emerging market bonds. By taking these short positions, BFA will seek to mitigate the potential impact of rising interest rates on the performance of the Underlying Emerging Markets Bond Fund and the emerging market bonds (conversely also limiting the potential positive impact of falling interest rates). Further, the short positions are not intended to mitigate other factors influencing the price of emerging market bonds, such as credit risk, which may have a greater impact than rising or falling interest rates. Relative to a long-only investment in the same emerging market bonds, the Emerging Markets Bond Fund's investment strategy is designed to outperform in a rising interest rate environment and underperform in a falling interest rate environment.

4. Other Investments of the Funds

While each of the Funds, under normal circumstances,[17] will invest at least 80% of its net assets in investments as described above, the Funds may also invest in other certain investments as described below.

The Funds may invest in repurchase and reverse repurchase agreements. The Funds may invest in money market instruments. The instruments in which the Funds may invest include: (i) Shares of money market funds (including those advised by BFA or otherwise affiliated with BFA); (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper rated, at the date of purchase, ''Prime-1'' by Moody's® Investors Service, Inc., ''F–1'' by Fitch Inc., or ''A–1'' by Standard & Poor's® (''S&P®''), or if unrated, of comparable quality as determined by BFA; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by the Funds. Any of these instruments may be purchased on a current or forward-settled basis.

Each of the Funds also may invest in options that are traded on a U.S. or non-U.S. exchange and that reference U.S. Treasury securities. To the extent that

[13] *See supra* note 11.

[14] *See supra* note 12.

[15] *See supra* note 11.

[16] *See supra* note 12.

[17] *See supra* note 11.

the High Yield Bond Fund, the Credit Bond Fund, or the Emerging Markets Bond Fund invests in options, not more than 10% of such investment would be in options whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

Each of the Funds may invest in debt securities of non-U.S. issuers and may invest in privately-issued debt securities.

III. Description of Comment Letter

As noted above, the Commission received one comment letter from an anonymous commenter.[18] The commenter supported the proposal and stated that the Funds would be a useful tool for individual and small-institutional investors because it is difficult for many investors to otherwise achieve what the Funds claim they will deliver. The commenter also stated that the isolation of credit spread exposure in a liquid and relatively simple product should be attractive to many types of investors.

IV. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[22] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Quotation and last-sale information for the Shares and the shares of the Underlying High Yield Corporate Bond Fund, Underlying Credit Bond Fund, the Underlying Emerging Markets Bond Fund, and any other exchange-traded funds held by any of the Funds will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Indicative Optimized Portfolio Indicative Value (''IOPV''), which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every fifteen seconds during the NYSE Arca Core Trading Session by one or more major market data vendors.[23] On a daily basis, each of the Funds will disclose for each portfolio security or other financial instrument the following information on the Funds' Web site: Ticker symbol, if any; CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security or other asset or instrument underlying the holding,[24] if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; market value of the holding; and the percentage weighting of the holding in the portfolio.[25] The Web site information will be publicly available at no charge.

In addition, for each of the Funds, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for that Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange (''NYSE'') via National Securities Clearing Corporation. The NAV of each of the Funds will be determined as of the close of trading (normally 4 p.m., Eastern Time) on each day the NYSE is open for business.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intra-day, closing and settlement prices of exchange-traded portfolio assets, including investment companies, money market instruments, futures and options will be available from the securities exchanges and futures exchanges trading such securities and futures contracts, respectively; automated quotation systems; published or other public sources; or on-line information services, such as Bloomberg or Reuters or any such future service provider. The Funds' Web site will include a form of the prospectus for the High Yield Bond Fund, the Credit Bond Fund, and the Emerging Markets Bond Fund and additional data relating to NAV and other applicable quantitative information for the Funds.

The Exchange will obtain a representation from the issuer of the Shares that, for each Fund, the NAV per Share will be calculated daily and the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[26] and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which trading in the Shares may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Commission notes that the Reporting Authority must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Funds' portfolios. In addition, the Exchange states that the Adviser is affiliated with multiple broker-dealers and that the Adviser has implemented a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and changes to the Funds' portfolios.[27] The Exchange represents

[18] *See supra* note 4.

[19] 15 U.S.C. 78f.

[20] 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).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[23] The Exchange understands that several major market data vendors display and/or make widely available IOPVs taken from CTA or other data feeds.

[24] Derivatives that reference or allow delivery of more than one asset, such as U.S. Treasury futures, will name the underlying asset generically.

[25] *See supra* note 5.

[26] These reasons may include: (1) The extent to which trading is not occurring in the securities or the financial instruments composing the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.

[27] *See supra* note 9. The Exchange states that an investment adviser to an open-end fund is required

Continued

that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[28] The Exchange further represents that these procedures are adequate to properly monitor Exchange-trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. Moreover, prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Commission notes that the Funds and the Shares must comply with the initial and continued listing criteria in NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange. The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has also made the following representations:

(1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded equity securities, futures and options contracts with other markets and other entities that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-traded equity securities, futures and options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-trade equity securities, futures and options contracts from ISG member markets or markets with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) With respect to its exchange-traded equity securities investments, the Funds will invest only in equity securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. To the extent that any of the Funds invest in options, not more than 10% of such investment would be in options whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Funds will invest only in futures contracts that are traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value and Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act,[29] as provided by NYSE Arca Equities Rule 5.3.

(7) Each of the Funds may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment).

(8) A minimum of 100,000 Shares for each of the Funds will be outstanding at the commencement of trading on the Exchange.

(9) With respect to each Fund's investments in fixed-income securities, no fixed-income security (excluding Treasury Securities, government-sponsored-entity securities, and other exempted securities) will represent more than 30% of the weight of that Fund's total assets, and the five highest weighted fixed income securities held by such Fund (excluding Treasury Securities, government-sponsored entity and other exempted securities) will not in the aggregate account for more than 65% of the weight of that Fund's total assets.

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendments No. 1 and No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act[30] and the rules and regulations thereunder applicable to a national securities exchange.

V. Solicitation of Comments on Amendments No. 1 and No. 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendments No. 1 and No. 2 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–NYSEArca–2014–114 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.

to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients, as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[28] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[29] 17 CFR 240.10A–3.

[30] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–NYSEArca–2014–114. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–114 and should be submitted on or before February 12, 2015.

V. Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendments No. 1 and No. 2, prior to the thirtieth day after the date of publication of notice of the amendments in the **Federal Register**. Amendment No. 1 supplements the proposed rule change by, among other things, supplementing the information that will be provided regarding the Disclosed Portfolios of the Funds. The Commission believes that dissemination of this additional information should aid in the pricing of the Shares. Amendment No. 2 modifies the proposed rule change by specifying (1) the minimum par amounts outstanding for the corporate bonds that generally will be held by the Funds; and (2) portfolio concentration limits for fixed income securities held by the Funds. This assisted the Commission in evaluating the liquidity of certain types of potential holdings and the susceptibility of the Shares to price manipulation. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[31] to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change as modified by Amendments No. 1 and No. 2 (SR–NYSEArca–2014–114) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00964 Filed 1–21–15; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78s(b)(2).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 9007]

30-Day Notice of Proposed Information Collection: Ten DDTC Information Collections

ACTION: Notice of request for public comments.

SUMMARY: The Department of State has submitted the information collections described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on these collections from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment.

DATES: The Department will accept comments from the public up to 30 days from January 22, 2015.

ADDRESSES: Comments and questions should be directed to Mr. Robert Hart, Office of Defense Trade Controls Policy, U.S. Department of State, who may be reached via the following methods:

- *Internet:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.regulations.gov* and searching for the document by entering the docket ID: ''DOS–2014–0024'' in the search bar. If necessary, use the ''narrow by agency'' filter option on the results page.
- *Email: hartrl@state.gov.*
- *Mail:* Mr. Robert Hart, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

You must include the information collection title and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information to Mr. Robert Hart, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC, 20522–0112, who may be reached via phone at (202) 736–9221, or via email at *hartrl@state.gov.*

- *Title of Information Collection:* Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.
- *OMB Control Number:* 1405–0003.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DSP–5.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 2,748.
- *Estimated Number of Responses:* 53,170.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 53,170 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain Benefits.
- *Title of Information Collection:* Application/License for Temporary Import of Unclassified Defense Articles.
- *OMB Control Number:* 1405–0013.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DSP–61.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 311.
- *Estimated Number of Responses:* 1,671.
- *Average Hours per Response:* ½ hour.
- *Total Estimated Burden:* 835 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain Benefits.
- *Title of Information Collection:* Application/License for Temporary Export of Unclassified Defense Articles.
- *OMB Control Number:* 1405–0023.
- *Type of Request:* Extension of Currently Approved Collection.

• *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
• *Form Number:* DSP–73.
• *Respondents:* Business and Nonprofit Organizations.
• *Estimated Number of Respondents:* 605.
• *Estimated Number of Responses:* 4,807.
• *Average Hours per Response:* 1 hour.
• *Total Estimated Burden:* 4,807 hours.
• *Frequency:* On Occasion.
• *Obligation to Respond:* Required to Obtain Benefits.

• *Title of Information Collection:* Application/License for the Permanent/Temporary Export or Temporary Import of Classified Defense Articles.
• *OMB Control Number:* 1405–0022.
• *Type of Request:* Extension of Currently Approved Collection.
• *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
• *Form Number:* DSP–85.
• *Respondents:* Business and Nonprofit Organizations.
• *Estimated Number of Respondents:* 153.
• *Estimated Number of Responses:* 530.
• *Average Hours per Response:* ½ hour.
• *Total Estimated Burden:* 265 hours.
• *Frequency:* On Occasion.
• *Obligation to Respond:* Required to Obtain Benefits.

• *Title of Information Collection:* Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements.
• *OMB Control Number:* 1405–0093.
• *Type of Request:* Extension of Currently Approved Collection.
• *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
• *Form Number:* None.
• *Respondents:* Business and Nonprofit Organizations.
• *Estimated Number of Respondents:* 885.
• *Estimated Number of Responses:* 7,274.
• *Average Hours per Response:* 2 hours.
• *Total Estimated Burden:* 14,548 hours.
• *Frequency:* On Occasion.
• *Obligation to Respond:* Required to Obtain Benefits.

• *Title of Information Collection:* Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services.
• *OMB Control Number:* 1405–0025.
• *Type of Request:* Extension of Currently Approved Collection.
• *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
• *Form Number:* None.
• *Respondents:* Business and Nonprofit Organizations.
• *Estimated Number of Respondents:* 750.
• *Estimated Number of Responses:* 1,900.
• *Average Hours per Response:* 1 hour.
• *Total Estimated Burden:* 1,900 hours.
• *Frequency:* On Occasion.
• *Obligation to Respond:* Mandatory.
• *Title of Information Collection:* Nontransfer and Use Certificate.
• *OMB Control Number:* 1405–0021.
• *Type of Request:* Extension of Currently Approved Collection.
• *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
• *Form Number:* DSP–83.
• *Respondents:* Business and Nonprofit Organizations.
• *Estimated Number of Respondents:* 2,400.
• *Estimated Number of Responses:* 8,800.
• *Average Hours per Response:* 1 hour.
• *Total Estimated Burden:* 8,800 hours.
• *Frequency:* On Occasion.
• *Obligation to Respond:* Required to Obtain Benefits.

• *Title of Information Collection:* Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.
• *OMB Control Number:* 1405–0051.
• *Type of Request:* Extension of Currently Approved Collection.
• *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
• *Form Number:* DSP–94.
• *Respondents:* Business and Nonprofit Organizations.
• *Estimated Number of Respondents:* 250.
• *Estimated Number of Responses:* 2,500.
• *Average Hours per Response:* ½ hour.
• *Total Estimated Burden:* 1,250 hours.
• *Frequency:* On Occasion.
• *Obligation to Respond:* Required to Obtain Benefits.

• *Title of Information Collection:* ''Maintenance of Records by Registrants,'' Section 122.5 of the International Traffic in Arms Regulations.
• *OMB Control Number:* 1405–0111.
• *Type of Request:* Extension of Currently Approved Collection.
• *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
• *Form Number:* None.
• *Respondents:* Business and Nonprofit Organizations.
• *Estimated Number of Respondents:* 9,100.
• *Estimated Number of Responses:* 720.
• *Average Hours per Response:* 20 hours.
• *Total Estimated Burden:* 182,000 hours.
• *Frequency:* On Occasion.
• *Obligation to Respond:* Mandatory.

• *Title of Information Collection:* Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Classified Technical Data.
• *OMB Control Number:* 1405–0092.
• *Type of Request:* Extension of Currently Approved Collection.
• *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
• *Form Number:* DSP–6, DSP–62, DSP–74, DSP–119.
• *Respondents:* Business and Nonprofit Organizations.
• *Estimated Number of Respondents:* 1,007.
• *Estimated Number of Responses:* 6,829.
• *Average Hours per Response:* ½ hour.
• *Total Estimated Burden:* 3,415 hours.
• *Frequency:* On Occasion.
• *Obligation to Respond:* Required to Obtain Benefits.

We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public

record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collections: The export, temporary import, and brokering of defense articles, defense services, and related technical data are licensed by the Directorate of Defense Trade Controls (DDTC) in accordance with the International Traffic in Arms Regulations (''ITAR,'' 22 CFR 120–130) and Section 38 of the Arms Export Control Act. Those who manufacture or export defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State. Persons desiring to engage in export, temporary import, and brokering activities must submit an application or written request to conduct the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, registered brokers must submit annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporter must maintain records of defense trade activities for five years.

• *1405–0003, Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data:* This form is an application that, when completed and officially approved by PM/DDTC, Department of State, constitutes the official record and authorization for the permanent commercial export of unclassified U.S. Munitions List articles and technical data, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0013, Application/License for Temporary Import of Unclassified Defense Articles:* This form is an application that, when completed and officially approved by PM/DDTC, Department of State, constitutes the official record and authorization for the temporary commercial import of unclassified U.S. Munitions List articles, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0023, Application/License for Temporary Export of Unclassified Defense Articles:* This form is an application that, when completed and officially approved by PM/DDTC, Department of State, constitutes the official record and authorization for the temporary commercial export of unclassified U.S. Munitions List articles, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0022, Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data:* This form is an application that, when completed and officially approved by PM/DDTC, Department of State, constitutes the official record and authorization for all classified commercial defense trade transactions, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0093, Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements:* These documents are reviewed by PM/DDTC, Department of State and, when approved, constitute authorization for U.S. companies to engage in defense article and technology exchanges for long term cooperation and assistance.

• *1405–0025, Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services:* This statement is required when an entity registered with PM/DDTC, Department of State, engages in a transaction valued at $500,000 or more, pursuant to the Arms Export Control Act. The aim is to ensure activities like those prohibited by the Foreign Corrupt Practices Act are properly addressed.

• *1405–0021, Nontransfer and Use Certificate:* This form is required to ensure foreign consignees and foreign end-users in defense trade will not re-export, re-sell, or otherwise dispose of exports of U.S. defense equipment/technology without prior United States Government approval.

• *1405–0051, Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data:* This form, when completed, constitutes the official record of commercial transaction pursued in furtherance of government-to-government transfer of defense articles, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0111, ''Maintenance of Records by Registrants,'' Section 122.5 of the International Traffic in Arms Regulations:* The Department of State requires access to defense trade-related information to ensure compliance with law and furtherance of national security/foreign policy interests. This information is to be maintained by persons required to register with the Directorate of Defense Trade Controls per Parts 122 and 129 of the International Traffic in Arms Regulations.

• *1405–0092, Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Classified Technical Data:* This form is an application that, when completed and officially approved by PM/DDTC, Department of State, constitutes the official record and authorization for all requests to amend existing defense trade authorizations made pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

Methodology: This information collection may be sent to the Directorate of Defense Trade Controls via the following methods: electronically or mail.

Dated: January 13, 2015.

C. Edward Peartree,

Director, Office of Defense Trade Controls Policy, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2015–00913 Filed 1–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting: RTCA Special Committee 233, Addressing Human Factors/Pilot Interface Issues for Avionics

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

ACTION: Meeting Notice of RTCA Special Committee 233, Addressing Human Factors/Pilot Interface Issues for Avionics.

SUMMARY: The FAA is issuing this notice to advise the public of the first meeting of the RTCA Special Committee 233, Addressing Human Factors/Pilot Interface Issues for Avionics.

DATES: The meeting will be held February 18–19th 2015 from 9:00 a.m.–5:00 p.m.

ADDRESSES: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0662 or (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* In addition, Jennifer Iversen may be contacted directly at email: *JIversen@rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal

Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 227. The agenda will include the following:

Tuesday, February 18th

- Welcome/Introductions/Administrative Remarks
  Chairs—Susan Taylor (Gulfstream) & Trish Ververs (Honeywell)
  Program Director—Jennifer Iversen (RTCA)
  Designated Federal Officer—Michelle Yeh (FAA)
  Secretary—Cathy Swider (FAA)
  All participants/members
- Agenda Overview—Susan Taylor & Trish Ververs
- RTCA Functional Overview—Jennifer Iversen
- Current Committee Scope, Terms of Reference Overview Presentation, Discussion, Recommendations
- Review of Notice 8110.98, *Addressing Human Factors/Pilot Interface Issues of Complex, Integrated Avionics as Part of the Technical Standard Order (TSO) Process*
- Review of *Human Factors Considerations in the Design and Evaluation of Flight Deck Displays and Controls, Version 1.0*
- Identify topic areas for deliverable
  - Assign group members
- Determine/request participation of other members/groups
- Establish/review major milestones and deliverables
- Organization of Work, Assign Tasks and Workgroups
  - Presentation, Discussion, Recommendations
  - Assignment of Responsibilities

Wednesday February 19th

- Review Agenda, other actions
- Working Groups meeting
- Working Group report, review progress and actions
- Other Business
- Establish Agenda for Next Meeting
- Date and Place of Next Meeting

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 15, 2015.

Mohannad Dawoud,

Management Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–01025 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review San Antonio International Airport San Antonio, Texas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by City of San Antonio Aviation Department for San Antonio International Airport under the provisions of 49 U.S.C. 47501 et. seq (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for San Antonio International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before July 11, 2015.

DATES: *Effective:* The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 12, 2015. The public comment period ends March 13, 2015.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, John MacFarlane, Environmental Specialist, ASW–652B, 2601 Meacham Boulevard, Fort Worth, Texas 76137. Telephone (817) 222–5681.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for San Antonio International Airport are in compliance with applicable requirements of Part 150, effective January 12, 2015. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 11, 2015. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

City of San Antonio Aviation Department submitted to the FAA on December 17, 2014 noise exposure maps, descriptions and other documentation that were produced during the Part 150 Noise Exposure Map Update and Noise Compatibility Program Revision for San Antonio International Airport, December 2014. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by City of San Antonio Aviation Department. The specific documentation determined to constitute the noise exposure maps includes: Figure 10—Existing (2014) NEM and Figure 11—Forecast (2019) NEM, Figure 3—Existing SAT Airport Layout, Figure 6—Representative Sample of Modeled Arrival Flight Tracks (2014 & 2019), Figure 7—Representative Sample of Modeled Departure Flight Tracks (2014 & 2019), Table 4—2014 Operations Summary, Table 5—Modeled Average Daily Aircraft Operations for 2014, Table 6—2019 Operations Summary, Table 7—Modeled Average Daily Aircraft Operations for 2019, Table 9—Modeled Average Daily Runway Use for 2014, Table 11—Modeled Average Daily Runway Use for 2019, and Table 13—

Estimated Residential Population within 2014 and 2019 DNL Contours. The FAA has determined that these maps for San Antonio International Airport are in compliance with applicable requirements. This determination is effective on January 12, 2015. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for San Antonio International Airport, also effective on January 12, 2015. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 11, 2015.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Texas Airports Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76137

City of San Antonio Aviation Department, 9800 Airport Boulevard, San Antonio, Texas 78216

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas (January 12, 2015).

Ed Agnew,

Acting Manager, Airports Division.

[FR Doc. 2015–01004 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Eufaula Municipal Aiport, Eufaula, Oklahoma, Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; correction.

SUMMARY: The FAA published a document in the **Federal Register** of December 5, 2014, concerning request for comments on the release of land at Eufaula Municipal Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21). The document contained the incorrect state.

FOR FURTHER INFORMATION CONTACT: Kathy Franklin, 817–222–5634

Correction

In the **Federal Register** of December 5, 2014, in FR Doc. 2014–28562, on page 1, in the Notice title, correct the Notice title to read: Notice of Intent to Rule on Request to Release Airport Property at Eufaula Municipal Airport, EUFAULA, OKLAHOMA.

Dated: January 8, 2015,

Edward N. Agnew,

Acting Manager, Airports Division, Southwest Region.

[FR Doc. 2015–00996 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Environmental Impact Statement: Henderson County, Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplemental Environmental Impact Statement (EIS) will be prepared for the proposed widening and reconstruction of US 34 in Henderson County, Illinois.

FOR FURTHER INFORMATION CONTACT: Catherine A. Batey, Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600. Kensil A. Garnett, P.E. Acting Deputy Director of Highways, Region 3 Engineer, Illinois Department of Transportation, 401 Main Street, Peoria, Illinois 61602, Phone: (309) 671–3333.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation (IDOT), will prepare a Supplemental EIS for the proposed widening and reconstruction of US 34 in Henderson County. The original EIS study limits were Carman Road (east of the Village of Gulfport) to the Village of Monmouth, Illinois, a total distance of approximately 24.8 miles, for which the Record of Decision was issued on August 18, 2003. The purpose of the project is to re-evaluate alternatives due to decertification of the Mississippi River levees in the portion near Gulfport. The anticipated project termini for this Supplemental EIS are from approximately one mile west of Carman Road to just east of TR 111 in Henderson County, a study area of approximately 8.2 miles.

The Supplemental EIS will evaluate alternatives including a No Action Alternative and various Build Alternatives. The Supplemental EIS will develop and evaluate a range of reasonable alternatives with an ultimate outcome of a single preferred alternative that addresses the type of facility to be

implemented, roadway horizontal and vertical alignment, and preliminary interchange/intersection geometrics. Engineering and environmental conditions will be evaluated in order to determine an alignment that meets the transportation needs of the region while minimizing the impacts to the environment.

The Supplemental EIS will evaluate potential effects on the social, economic, natural and physical environments, including land use and socioeconomic conditions, ecological resources, and cultural resources. Potentially affected resources include: Agricultural, residential and commercial properties; streams, wetlands and floodplains; forested areas and potentially historic properties. Preliminary measures to minimize harm, estimates of probable construction costs and estimated right-of-way requirements will be developed as part of this study.

Public involvement is a critical component of the National Environmental Policy Act (NEPA) project development process and will occur throughout the development of the environmental document. This document will be made available for review by federal and state resource agencies and the public. Public informational meetings, local government meetings, property owner meetings and other community organization meetings will provide opportunities for public input. A public hearing will be held at the time the Draft Supplemental EIS is made available for public and agency review and comment. Public notice will be given of the time and place of public meetings and hearings. Comments or questions regarding this proposed action and the Supplemental EIS are invited from all interested parties and should be directed to the FHWA or the IDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued On: January 15, 2015.

Catherine A. Batey,

Division Administrator, Federal Highway Administration, Springfield, Illinois.

[FR Doc. 2015–01062 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed local assistance project, Bent Avenue Bridge [Federal Aid Number BRLS–NBIL(522)] and Via Vera Cruz Bridge [Federal Aid Number BRLS–5381(033)] in the City of San Marcos, in the County of San Diego, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 22, 2015. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Kevin Hovey, Chief, Environmental Branch D, California Department of Transportation—District 11, 4050 Taylor Street, San Diego, CA 92110, 8 a.m. to 5 p.m., 619–688–0240, *kevin.hovey@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The City of San Marcos proposes the replacement of Via Vera Cruz Bridge, the construction of a new Bent Avenue Bridge, and the widening of Discovery Street, in the City of San Marcos, San Diego County. The existing Via Vera Cruz Bridge between San Marcos Boulevard and Discovery Street would be replaced with a new bridge spanning over San Marcos Creek that would be longer in length and elevated higher above the current grade. The new Bent Avenue Bridge would be constructed between San Marcos Boulevard and Discovery Street, spanning San Marcos Creek where a low-water crossing currently exists. The portion of Discovery Street between approximately 400 feet west of Via Vera Cruz to just west of Bent Avenue would be reconstructed and widened from a two-lane facility to a four-lane facility. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Categorical Exclusion (CE) for the project, approved on January 6, 2015, and in other documents in the FHWA project records. The CE and other project records are available by contacting Caltrans at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA);
3. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU);
4. Department of Transportation Act of 1966;
5. Federal Aid Highway Act of 1970;
6. Clean Air Act Amendments of 1990;
7. Noise Control Act of 1970;
8. 23 CFR part 772 FHWA Noise Standards, Policies and Procedures;
9. Department of Transportation Act of 1966, Section 4(f);
10. Clean Water Act of 1977 and 1987;
11. Endangered Species Act of 1973;
12. Migratory Bird Treaty Act;
13. Uniform Relocation Assistance and Real Property Acquisition Act of 1970;
14. National Historic Preservation Act of 1966, as amended;
15. Historic Sites Act of 1935;
16. Executive Order 11990, Protection of Wetlands
17. Executive Order 13112, Invasive Species; and,
18. Executive Order 11988, Floodplain Management.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Dated: January 15, 2015.

Zylkia Martin-Yambo,

Team Leader South, Project Delivery, Federal Highway Administration, Sacramento, California.

[FR Doc. 2015–00987 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26066; FMCSA–2008–0340]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective February 5, 2015. Comments must be received on or before February 23, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2006–26066; FMCSA–2008–0340], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

II. Exemption Decision

This notice addresses 11 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 11 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Ricky J. Childress (AL)
David L. Dykman (ID)
Milan D. Frasier (ID)
Harold J. Haier (NY)
Timothy L. Kelly (TX)
Lewis A. Kielhack (IL)
Robert T. Lantry (MA)
Joe A. McIlroy (NY)
Elmer R. Miller (IL)
Richard L. Moreland (MO)
Ronald M. Scott (IN)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 11 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (71 FR 63379; 72 FR 1051; 73 FR 75803; 73 FR 78423; 74 FR 6209; 75 FR 79083; 76 FR 4413; 77 FR 74734; 78 FR 797). Each of these 11 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two

years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2006–26066; FMCSA–2008–0340), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number, ''FMCSA–2006–26066; FMCSA–2008–0340'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2006–26066; FMCSA–2008–0340'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: January 12, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–01001 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0106]

Qualification of Drivers; Application for Exemptions; Hearing

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces that 14 individuals have applied for a medical exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). In accordance with the statutory requirements concerning applications for exemptions, FMCSA requests public comments on these requests. The statute and implementing regulations concerning exemptions require that exemptions must provide an equivalent or greater level of safety than if they were not granted. If the Agency determines the exemptions would satisfy the statutory requirements and decides to grant theses requests after reviewing the public comments submitted in response to this notice, the exemptions would enable 14 individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before February 23, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0106 using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Federal Motor Carrier Safety Administration has authority to grant exemptions from many of the Federal Motor Carrier Safety Regulations (FMCSRs) under 49 U.S.C. 31315 and 31136(e), as amended by Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, June 9, 1998, 112 Stat. 107, 401).

FMCSA has published in 49 CFR part 381, subpart C final rules implementing the statutory changes in its exemption procedures made by section 4007, 69 FR 51589 (August 20, 2004).[1] Under the rules in part 381, subpart C, FMCSA must publish a notice of each exemption request in the **Federal Register**. The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted and any research reports, technical papers and other publications referenced in the application. The Agency must also provide an opportunity to submit public comment on the applications for exemption.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved without the exemption. The decision of the Agency must be published in the **Federal Register**. If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed.

The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA also issues instructions for completing the medical examination report and includes advisory criteria on the report itself to provide guidance for medical examiners in applying the hearing standard. See 49 CFR 391.43(f). The current advisory criteria for the hearing standard include a reference to a report entitled ''Hearing Disorders and Commercial Motor Vehicle Drivers'' prepared for the Federal Highway Administration, FMCSA's predecessor, in 1993.[2]

FMCSA Requests Comments on the Exemption Applications

FMCSA requests comments from all interested parties on whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce. Further, the Agency asks for comments on whether a driver who cannot meet the hearing standard should be limited to operating only certain types of vehicles in interstate commerce, for example, vehicles without air brakes. The statute and implementing regulations concerning exemptions require that the Agency request public comments on all applications for exemptions. The Agency is also required to make a determination that an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be *achieved absent such exemption before granting any such requests.*

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0106'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, to submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0106'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Information on Individual Applicants

Weston Tyler Arthurs

Mr. Arthurs, 27, holds an operator's license in California.

Kevin Ray Ballard

Mr. Ballard, 37, holds an operator's license in Texas.

Jeremy Wayne Brandyberry

Mr. Brandyberry, 33, holds an operator's license in Nebraska.

Scott C. Friede

Mr. Friede, 39, holds a Class A commercial driver's license (CDL) in Nebraska.

Glenn E. Hivey

Mr. Hivey, 80, holds a Class A commercial driver's license (CDL) in Pennsylvania.

Jeremiah Putnam Hoagland

Mr. Hoagland, 34, holds a Class A commercial driver's license (CDL) in Colorado.

Curtis J. Horning

Mr. Horning, 39, holds an operator's license in Pennsylvania.

Leroy Lynch

Mr. Lynch, 58, holds a Class A commercial driver's license (CDL) in Ohio.

Floyd McClain, Jr.

Mr. McClain, 37, holds an operator's license in Florida.

Christopher David McKenzie

Mr. McKenzie, 36, holds an operator's license in Texas.

Kimothy Fred Mcleod

Mr. Mcleod, 50, holds a Class A commercial driver's license (CDL) in Georgia.

[1] This action adopted as final rules the interim final rules issued by FMCSA's predecessor in 1998 (63 FR 67600 (Dec. 8, 2008)), and adopted by FMCSA in 2001 [66 FR 49867 (Oct. 1, 2001)].

[2] This report is available on the FMCSA Web site at *http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreport_archives.htm.*

Victor Morales-Contreras

Mr. Morales-Contreras, 26, holds an operator's license in Texas.

Brandon Veronie, Sr.

Mr. Veronie, 35, holds a chauffeur's license in Louisiana.

Anthony L. Witcher

Mr. Witcher, 54, holds a chauffeur's license in Michigan.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business February 23, 2015. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: January 12, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–00995 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0337]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective February 11, 2015. Comments must be received on or before February 23, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2012–0337], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

II. Exemption Decision

This notice addresses 13 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Joseph Colecchi (PA)
William A. Donovan (WA)
Douglas Eamens (NY)
Brian Knust (IL)
James W. Long (AR)
Dean L. Price (WA)
Roberto A. Ramos (TX)
Johnie Reed (VA)
Sammie Q. Soles, Jr. (MI)
Joseph Stenberg (MT)
Karl H. Strangfeld (UT)
Grover C. Taylor (VA)
Donald L. Weston (PA)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless

rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 13 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (77 FR 70534; 78 FR 9772). Each of these 13 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2012–0337), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number, ''FMCSA–2012–0337'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2012–0337'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: January 12, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–01007 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0380]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 15 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the ''Instructions for Performing and Recording Physical Examinations'' have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for 2 years in interstate commerce.

DATES: Comments must be received on or before February 23, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2014–0380 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or

postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366–4001, or via email at *fmcsamedical@dot.gov,* or by letter FMCSA, Room W64–113, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 15 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0380'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0380'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Summary of Applications

Allen James Broll

Mr. Broll is a 26 year-old class A CDL holder in Minnesota. He has a history of spontaneous subdural hematoma. He has no history of seizure. He takes anti-seizure medication as a prophylactic measure. If granted an exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Broll receiving an exemption.

Dennis Lee Brown

Mr. Brown is a 69 year-old class C CDL holder in Arizona. He has a history of epilepsy and has remained seizure free since 1999. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Brown receiving an exemption.

Grover M. Curtis

Mr. Curtis is a 52 year-old class A CDL holder in Oregon. He has a history of a seizure disorder and has remained seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Curtis receiving an exemption.

Harold James Durkee

Mr. Durkee is a 64 year-old driver in Wisconsin. He has a history of a seizure disorder and has remained seizure free since 1977. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Durkee receiving an exemption.

Timothy W. Eyerly

Mr. Eyerly is a 59 year-old driver in Pennsylvania. He has a history of a seizure disorder and has remained seizure free since 1981. He takes anti-seizure medication with the dosage and

frequency remaining the same since 2002. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Eyerly receiving an exemption.

Mark A. Grafton

Mr. Grafton is a 61 year-old class A CDL holder in Indiana. He has a history of a seizure in October 2014 secondary to a stroke. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Grafton receiving an exemption.

Zachary Kyle Griffin

Mr. Griffin is a 28 year-old driver in North Carolina. He has a history of post-traumatic seizure disorder and has remained seizure free since 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Griffin receiving an exemption.

Denton L. Hineline

Mr. Hineline is a 55 year-old class A CDL holder in Washington. He has a history of a seizure disorder and has remained seizure free since 1979. He takes anti-seizure medication with the dosage and frequency remaining the same since 1988. If granted an exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hineline receiving an exemption.

Matthew M. Lohman

Mr. Lohman is a 26 year-old driver in Illinois. He has a history of seizures and has remained seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Lohman receiving an exemption.

Nicholas Blake Malott

Mr. Malott is a 22 year-old driver in Virginia. He has a history of a seizure disorder and has remained seizure free since January 2014. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Malott receiving an exemption.

Kevin W. Mathis

Mr. Mathis is a 28 year-old driver in New Jersey. He has a history of epilepsy and has remained seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Mathis receiving an exemption.

Jason R. McKenzie

Mr. McKenzie is a 45 year-old driver in Michigan. He has a history of seizures and has remained seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. McKenzie receiving an exemption.

Steven R. Plummer

Mr. Plummer is a 60 year-old class A CDL holder in Ohio. He has a history of a movement disorder with symptoms of unsteadiness and muscle twitching. He has no history of seizure. He takes anti-seizure medication for his movement disorder and his physician states his symptoms remain stable. If granted an exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Plummer receiving an exemption.

Benjamin A. Reineke

Mr. Reineke is a 44 year-old class A CDL holder in Ohio. He has a history of seizures and has remained seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Reineke receiving an exemption.

Clinton James Howard Sheller

Mr. Sheller is a 21 year-old class A CDL holder in Indiana. He has a history of a seizure disorder and has remained seizure free since 2010. He takes anti-seizure medication with the dosage and frequency remaining the same since 1996. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Sheller receiving an exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: January 12, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–01012 Filed 1–21–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Actions on Special Permit Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline And Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (October to October 2014). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1-Motor vehicle, 2-Rail freight, 3-Cargo vessel, 4-Cargo aircraft only, 5-Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on January 8, 2015.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT GRANTED			
15866–M	Saft America Inc., Jacksonville, FL.	49 CFR 173.185	To modify the special permit to authorize lithium metal batteries.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
8451–M	Mustang Technology Group, Plano, TX.	49 CFR 173.60; 173.54; 175.3; 173.3; 174.3; 177.801; 173.52.	To modify the special permit to authorize a larger inside packaging (4-inch minimum X 14-inch minimum Schedule 80 seamless steel pipe nipple closed at both ends with forged steel end caps, 3,000 psi per ASTM 105, or other caps which have been shown by test to contain the explosive effect of 25 grams of PETN).
NEW SPECIAL PERMIT GRANTED			
16155–N	B.J. Alan Company dba Phantom Fireworks, Canfield, OH.	49 CFR 172.101 Column (8C) and 173.62.	To authorize the transportation in commerce of certain fireworks in UN certified large packagings. (mode 1)
16121–N	U.S. Department of Defense (DOD), Scott AFB, IL.	49 CFR 171.23(a) and Packaging Instruction 200 of ICAO and P200 of IMDG.	To authorize the transportation in commerce of certain composite fiberglass wrapped stainless steel high pressure cylinders containing argon, compressed. (modes 1, 2, 3, 4, 5)
16295–N	CYTEC INDUSTRIES INC., Woodland Park, NJ.	49 CFR 172.519(c)	To authorize the transportation in commerce of certain IBCs containing combustible liquids with a placard meeting the label specifications for size in § 172.407(c). (mode 1)
16195–N	Jaguar Instruments, Inc., Houston, TX.	49 CFR 173.302a and 173.304a	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders made in conformance with DOT Specification 3E with exceptions, for shipment of certain Division 2.1 and Division 2.2 gases. (modes 1, 2, 3, 4)
16194–N	U.S. Department of Defense (DOD), Scott AFB, IL.	49 CFR 171.23(a)	To authorize the transportation in commerce of certain compressed gases in non-DOT specification pressure receptacles. (modes 1, 3, 4)
EMERGENCY SPECIAL PERMIT GRANTED			
11536–M	Boeing Company, The, Los Angeles, CA.	49 CFR 173.102 Spec. Prov. 101, 173.24(g), 173.62, 173.185, 173.202; 173.211, and 173.304.	To modify the special permit to authorize new shipping and storage containers. (modes 1, 3, 4)
16340–N	Praxair Distribution Mid-Atlantic, LLC, Bethlehem, PA.	49 CFR 171.2 and 177.801	To authorize the transportation in commerce of certain DOT cylinders marked with RIN A890 that have not been requalified in accordance with Subpart C of part 180. (mode 1)
NEW SPECIAL PERMIT WITHDRAWN			
16344–N	Candle Lamp Company, LLC, Corona, CA.	49 CFR 173.304a(d)(3)(ii)	To authorize the transportation in commerce of a Division 2.1 hazardous materials in nonrefillable non-DOT specification inside container conforming with the DOT Specification 2P except for size, testing requirements and markings. (modes 1, 2, 3, 4)
16345–N	Katadyn North America Brooklyn Center, MN.	49 CFR 173.302a and 173.304a	To authorize the transportation in commerce of Division 2.1 hazardous materials in nonrefillable non-DOT specification inside containers conforming to DOT Specification 2P except for size, testing requirements and markings. (modes 1, 2, 3)
16342–N	Eniware LLC, Washington, DC.	49 CFR Special Provision A2 of the ICAO TI and Section 7.9.1 of the IMDG Code.	To authorize the transportation in commerce of sterilization devices containing certain Division 2.3 gases as excepted quantities under § 173.4a. (modes 1, 2, 3, 4, 5)
16355–N	Universal Storage Systems, LLC, Colorado Springs, CO.	49 CFR 177.834(h), 178.509(b)(7)	To authorize the manufacture, mark, sale and use of UN 3H1 jerricans each with a maximum capacity exceeding 16 gallons. The discharge of liquid hazardous materials from these UN 3H1 jerricans without removing them from the vehicle on which they are transported is authorized. (mode 1)
DENIED			
16153–M	Request by Trailers y Tanques de Aluminio S.A. de C.V. Mexico, December 5, 2014. To modify the special permit to authorize less restrictive inspection requirements.		

[FR Doc. 2015–00678 Filed 1–21–15; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two individuals and one entity whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the two individuals and one entity identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on January 16, 2015.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On January 16, 2015, the Director of OFAC designated the following two individuals and one entity whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. BILAKHIA, Aziz Moosa; DOB 03 Apr 1960; alt. DOB 1958; POB Mumbai, India; nationality India (individual) [SDNTK].

2. KASKAR, Shaikh Anis Ibrahim (a.k.a. KASKAR, Anees Ibrahim; a.k.a. ''EBRAHIM, Sayed Omar Haji''; a.k.a. ''IBRAHIM, Haji Anees''), Pakistan; DOB 05 May 1960; POB Mumbai, India; nationality India (individual) [SDNTK].

Entity

3. MEHRAN PAPER MILL, F–11, S.I.T.E., Kotri, Sindh, Pakistan; Tax ID No. 25735349 (Pakistan) [SDNTK].

Dated: January 16, 2015.

John Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–01049 Filed 1–21–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0777]

Agency Information Collection (Medical Foster Homes Record Keeping Requirements)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Under OMB Review.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 23, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0777'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0777'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles: Medical Foster Homes Recordkeeping Requirements

OMB Control Number: 2900–0777.

Type of Review: Revision of an approved collection.

Abstract: As proposed, § 17.74(q) contains a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Paragraph (q) of § 17.74 requires medical foster homes to comply with the recordkeeping requirements of 38 CFR 17.63(i) regarding facility records, and must document all inspection, testing, drills and maintenance activities required by this section. Such documentation must be maintained for 3 years or for the period specified by the applicable standards, whichever is longer. Documentation of emergency egress and relocation drills must include the date, time of day, length of time to evacuate the home, the name of each medical foster home caregiver who participated, the name of each resident, whether the resident participated, and whether the resident required assistance.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 600 hours.

Estimated Average Burden Per Respondent: 3 minutes.

Frequency of Response: Annually

Estimated Number of Respondents: 1,800.

Dated: January 9, 2015.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2015–00911 Filed 1–21–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 80 Thursday,

No. 14 January 22, 2015

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Consolea corallicola (Florida Semaphore Cactus) and Harrisia aboriginum (Aboriginal Prickly-Apple); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2014–0057: 4500030113]

RIN 1018–AZ92

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Consolea corallicola (Florida Semaphore Cactus) and Harrisia aboriginum (Aboriginal Prickly-Apple)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for *Consolea corallicola* (Florida semaphore cactus) and *Harrisia aboriginum* (aboriginal prickly-apple) under the Endangered Species Act (Act). In total, approximately 4,411 acres (1,785 hectares) for *Consolea corallicola* in Miami-Dade and Monroe Counties, Florida; and 3,444 acres (1,394 hectares) for *Harrisia aboriginum* in Manatee, Charlotte, Sarasota, and Lee Counties, Florida, fall within the boundaries of the proposed critical habitat designations. We also announce the availability of a draft economic analysis of the proposed designation for these species.

DATES: We will accept comments received or postmarked on or before March 23, 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 public hearings, in writing, at the address shown in **ADDRESSES** by March 9, 2015.

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 Keyword box, enter FWS–R4–ES–2014–0057, 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–2014–0057; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested below for more information).

The coordinates, plot points, or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/verobeach/,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2014–0057, and at the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the U.S. Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Acting Field Supervisor Roxanna Hinzman, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960; by telephone 772–562–3909; or by facsimile 772–562–4288. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), when we determine that any species is threatened or endangered, we must designate critical habitat, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule. We listed *Consolea corallicola* (Florida semaphore cactus) and *Harrisia aboriginum* (aboriginal prickly-apple) as endangered species under the Act on October 24, 2013 (78 FR 63795).

What this rule contains. This rule consists of a proposed rule for designation of critical habitat for two endangered plant species, *Consolea corallicola* and *Harrisia aboriginum.*

The basis for our action. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

We have prepared an economic analysis of the proposed designations of critical habitat. We are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. We hereby announce the availability of the draft economic analysis and seek additional public review and comment.

We will seek peer review. We are seeking comments from independent specialists to ensure that our critical habitat designation proposal is based on scientifically sound data and analyses. We have invited these peer reviewers to comment on our specific assumptions and conclusions in this critical habitat proposal. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

Information Requested

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 government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to these species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of *Consolea corallicola* and *Harrisia aboriginum* habitat,

(b) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species,

(c) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features

essential to the conservation of the species, should be included in the designation and why,

(d) Special management considerations or protections that may be needed in the critical habitat areas we are proposing, including managing for the potential effects of climate change, and

(e) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on *Consolea corallicola* and *Harrisia aboriginum* and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Information on the extent to which the description of economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(8) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

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**.

All comments submitted electronically via *http://www.regulations.gov* will be presented on the Web site in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing 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, South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

Previous Federal actions for *Consolea corallicola* and *Harrisia aboriginum* are outlined in our proposed and final rules to list both species as endangered species published in the **Federal Register** on October 11, 2012 (77 FR 61836), and October 24, 2013 (78 FR 63796), respectively.

Summary of Biological Status for Consolea corallicola and Harrisia aboriginum

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for *Consolea corallicola* and *Harrisia aboriginum* in this section of the proposed rule. For more information on *C. corallicola* and *H. aboriginum* taxonomy, life history, habitat, population descriptions, and factors affecting the species, please refer to the proposed listing rule published October 11, 2012 (77 FR 61836), in the **Federal Register**, and the final listing rule published October 24, 2013 (78 FR 63796), in the **Federal Register**.

Consolea corallicola and *Harrisia aboriginum* (Family: Cactaceae) are large tree- or shrub-like cacti and are endemic to South Florida. *C. corallicola* occurs in Miami-Dade and Monroe Counties in coastal berms, rockland hammocks, and buttonwood forests on sandy or limestone rockland soils with little organic matter. *H. aboriginum* occurs in Manatee, Sarasota, Charlotte, and Lee Counties on coastal berms, coastal strand, coastal grasslands, and maritime hammocks, with a sand substrate. It also occurs on shell mounds with a calcareous shell substrate.

Habitat

Consolea corallicola occurs in rockland hammocks (Small 1930, pp. 25–26; Benson 1982, p. 531), coastal berm, and buttonwood forests (Bradley and Gann 1999, p. 77; Gann *et al.* 2002, p. 480; Higgins 2007, pers. comm.). *Consolea corallicola* occurs on sandy soils and limestone rockland soils with little organic matter (Small 1930, pp. 25–26) and seems to prefer areas where canopy cover and sun exposure are moderate (Grahl and Bradley 2005, p. 4). Detailed descriptions of these habitats are presented in the proposed listing rule for *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* (October 11, 2012; 77 FR 61836), with a revised description of buttonwood forests provided in the final listing rule for these plants (October 24, 2013; 78 FR 63796).

Harrisia aboriginum occurs on coastal berms, coastal strand, coastal grasslands and maritime hammocks, with a sand substrate. It also occurs on shell mounds with a calcareous shell substrate (Bradley et al. 2004, pp. 4, 14). Detailed descriptions of these habitats are presented in the proposed listing rule for *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* (October 11, 2012; 77 FR 61836).

Distribution and Range

The current range of *Consolea corallicola* includes two naturally occurring populations and five reintroduced populations in Miami-Dade and Monroe Counties, Florida. These populations account for fewer than 1,500 plants, and all are located on conservation lands. Wild populations, on Key Largo and Big Pine Key in the Florida Keys, were lost more than a decade ago by development and collecting by cactus enthusiasts. *C. corallicola* has subsequently been reintroduced to Key Largo and Big Pine Key.

The current range of *Harrisia aboriginum* includes 12 populations in Charlotte, Sarasota, and Lee Counties, Florida. Plants occur in eight public and private conservation areas, as well as two County parcels not managed for conservation and at least three unprotected private parcels. In total, the species was represented by an estimated 300 to 500 individuals in 2007, when population sizes were last estimated. Populations formerly known from Terra Ceia in Manatee County and Cayo Costa Island in Lee County are extirpated (no longer in existence). A large population on Longboat Key has been reduced from 226 individuals in 1981 to 5 in 2007 due to development.

Although *Consolea corallicola* and *Harrisia aboriginum* populations occur largely within public conservation lands, threats remain from a wide array of natural and anthropogenic sources.

Habitat loss, storm surge, poaching, disease, predation, and climate change are the imminent threats to these cacti (78 FR 63796).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we may designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential for the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include, but are not limited to, the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of *Consolea corallicola* and *Harrisia aboriginum.* Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at

the time of these planning efforts calls for a different outcome.

Prudency Determination for *Consolea corallicola* and *Harrisia aboriginum*

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.

In the proposed rule to list *Consolea corallicola* and *Harrisia aboriginum* (77 FR 61836), we found critical habitat to be not prudent because of the potential for an increase in poaching. Rare cacti are valuable to collectors and there remains an imminent threat of collection (poaching) for *C. corallicola* and *H. aboriginum.* There is evidence that the designation of critical habitat could result in an increased threat from taking, specifically collection, for both cacti, through publication of maps and a narrative description of specific critical habitat units in the rule. However, based on public comment in response to the proposed listing rule, we have determined that information on locations of extant *C. corallicola* and *H. aboriginum* populations is already widely available in the public domain such as scientific journals, online databases, and documents the Service has previously published in the **Federal Register**. Therefore, we have determined that identification and mapping of critical habitat is not expected to initiate any threat of collection or significantly increase existing collection pressure.

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, then a prudent finding 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, the area is or has become unoccupied or the occupancy is in question;

(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.

Therefore, we have reevaluated our prudency determination for both cacti and have determined that the designation of critical habitat will not likely increase the degree of threat to either species and may provide some measure of benefit. Accordingly, we determine that designation of critical habitat is prudent for both species.

Critical Habitat Determinability

Having determined that designation of critical habitat is prudent for both species, under section 4(a)(3) of the Act we must find whether critical habitat for *Consolea corallicola* and *Harrisia aboriginum* is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking; or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available. Based on our review of this information, we conclude that critical habitat is determinable for *Consolea corallicola* and *Harrisia aboriginum.*

Physical or Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing may be designated as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical geographic and ecological distributions of a species.

We derive the specific physical or biological features essential to *Consolea corallicola* and *Harrisia aboriginum* from studies of the species' habitat, ecology, and life history as described below. Additional information on these cacti can be found in the proposed and final listing rules published on October 11, 2012 (77 FR 61836), and October 24, 2013 (78 FR 63796), respectively, in the **Federal Register**. We have determined that the following physical or biological features are essential to the conservation of *Consolea corallicola.*

Consolea corallicola

Space for Individual and Population Growth and for Normal Behavior

Plant Community and Competitive Ability. Consolea corallicola occurs in communities classified as coastal berm, buttonwood forests, and rockland hammocks restricted to the Florida Keys. These communities and their associated native plant species are described in the Status Assessment for *Consolea corallicola* in the proposed listing rule published on October 11, 2012 (77 FR 61836), and in the final listing rule published on October 24, 2013 (78 FR 63796), in the **Federal Register**. These habitats and their associated plant communities provide vegetation structure that allows for adequate growing space, sunlight, and a competitive regime that is required for *C. corallicola* to persist and spread. Therefore, based on the information above, we identify upland habitats consisting of coastal berm, rockland hammock, and buttonwood forest to be a physical or biological feature for *C. corallicola.*

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Climate (temperature and precipitation). Consolea corallicola requires adequate rainfall and does not tolerate prolonged freezing temperatures. The climate of south Florida where *C. corallicola* occurs is characterized by distinct wet and dry seasons, a monthly mean temperature above 18 °C (64.4 °F) in every month of the year, and annual rainfall averaging 75 to 150 cm (30 to 60 inches (in)) (Gabler *et al.* 1994, p. 211). Freezes can occur in the winter months, but are very infrequent at this latitude in Florida. Therefore, based on the information above, we determined this type of climate to be a physical or biological feature for *C. corallicola.*

Soils. Substrates supporting *Consolea corallicola* include loose sediment formed by a mixture of coarse sand, shell fragments, pieces of coralline algae, and other coastal debris, exposed bare limestone rock or with a thin layer of leaf litter or highly organic soil (Bradley and Gann 1999, p. 37; Florida Natural Areas Inventory (FNAI) 2010a,b, and c, p. 1; FNAI 2010d,e, p. 2). These substrates provide anchoring spots, nutrients, moisture regime, and suitable soil chemistry for *C corallicola;* and facilitate a community of associated plant species that create a competitive regime that allows *C. corallicola* to persist and spread. Therefore, based on the information above, we identify substrates derived from calcareous sand or limestone that provide anchoring and nutritional requirements to be a physical or biological feature for *C. corallicola.*

Hydrology. The species requires coastal berms and buttonwood forests that occur at an elevation higher than the daily tidal range, but are subject to flooding by seawater during extreme tides and storm surge (FNAI 2010b, p. 2; FNAI 2010c, p. 2). This flooding helps to limit the variety of plants that may grow in these habitats and compete with *Consolea corallicola.* Rockland hammocks occur on high ground that does not regularly flood, but this habitat is often dependent upon a high water table to keep humidity levels high, and may be inundated during storm surges (FNAI 2010e, p. 2). Therefore, based on the information above, we identify rockland hammock habitat with groundwater levels needed to maintain humidity and buttonwood and coastal berm habitat inundated by storm surge or tidal events at a frequency and duration needed to limit plant species competition while not creating overly saline conditions to be a physical or biological feature for *C. corallicola.*

Cover or Shelter

Consolea corallicola occurs in open canopy and semi-open to closed canopy habitats. The spatial and temporal distribution of open canopy areas varies by habitat type and time since the last disturbance, such as a hurricane, caused canopy openings. In rockland hammocks, suitable sites will often be found near the hammock edge or where there are openings in the forest canopy. More open communities (*e.g.,* coastal berm and buttonwood forests) provide more abundant and temporally consistent suitable habitat than communities capable of establishing a dense canopy (*e.g.,* hardwood hammocks). Therefore, based on the information above, we identify habitats that have a vegetation composition and structure that allows for adequate sunlight and space for individual growth and population expansion to be a physical or biological feature for *C. corallicola.*

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The habitats identified above as physical or biological features also provide a plant community with associated plant species that foster a competitive regime suitable to *Consolea corallicola* and contain adequate open space for the recruitment of new plants. Associated plant species in these habitats attract and provide cover for generalist pollinators (*e.g.,* bees, butterflies, and beetles) that pollinate *C. corallicola.*

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

Consolea corallicola continues to occur in habitats that are protected from human-generated disturbances and are representative of the species' historical, geographical, and ecological distribution although its range has been reduced. The species is still found in coastal berm, buttonwood forest, and rockland hammocks. As described above, these habitats provide a community of associated plant and animal species that are compatible with *C. corallicola,* vegetation structure that provides adequate sunlight levels and open space for plant growth and regeneration, and substrates with adequate moisture availability and suitable soil chemistry. Representative communities are located on Federal, State, local, and private conservation lands that implement conservation measures benefitting the species. Therefore, based on the information above, we identify habitat of sufficient size and connectivity that can support species growth, distribution, and population expansion to be physical or biological features for *C. corallicola.*

Disturbance Regime. Coastal berm, buttonwood forest, and rockland hammock habitats that could or currently support *Consolea corallicola* depend on natural disturbance regimes from hurricanes or tidal inundation to open the canopy in order to provide light levels sufficient to support the species. The historical frequency and magnitude of hurricanes and tidal inundation has allowed for the persistence of *C. corallicola* by occasionally creating areas of open canopy. In the absence of disturbance, some of these habitats may have closed canopies, resulting in areas lacking enough available sunlight to support *C. corallicola.* However, too frequent or severe disturbance that transitions the habitat toward more saline conditions could result in the decline of the species in the area. Therefore, based on the information above, we identify habitats that have disturbance regimes, including hurricanes, and infrequent inundation events that maintain habitat suitability to be physical or biological features for *C. corallicola.*

Primary Constituent Elements for *Consolea corallicola*

According to 50 CFR 424.12(b), we are required to identify the physical or biological features essential to the conservation of *Consolea corallicola* in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to *Consolea corallicola* are:

(i) Areas of upland habitats consisting of coastal berm, rockland hammocks, and buttonwood forest.

(A) Coastal berm habitat that contains:

(1) Open to semi-open canopy, subcanopy, and understory; and

(2) Substrate of coarse, calcareous, and storm-deposited sediment.

(B) Rockland hammock habitat that contains:

(1) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory; and

(2) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the limestone.

(C) Buttonwood forest habitat that contains:

(1) Open to semi-open canopy and understory; and

(2) Substrate with calcareous marl muds, calcareous sands, or limestone rock.

(ii) A plant community of predominately native vegetation with no invasive, nonnative animal or plant species or such species in quantities low enough to have minimal effect on survival of *Consolea corallicola.*

(iii) A disturbance regime, due to the effects of strong winds or saltwater inundation from storm surge or

infrequent tidal inundation, that creates canopy openings in coastal berm, rockland hammocks, and buttonwood forest.

(iv) Habitats that are connected and of sufficient size to sustain viable populations in coastal berm, rockland hammocks, and buttonwood forest.

(v) Habitats that provide populations of the generalist pollinators that visit the flowers of *Consolea corallicola.*

Special Management Considerations or Protection for *Consolea corallicola*

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

Special management considerations or protection are necessary throughout the critical habitat areas proposed here to avoid further degradation or destruction of the habitat that provides those features essential to the species' conservation. The primary threats to the physical or biological features that *Consolea corallicola* depends on include:

(1) Habitat destruction and modification by development and sea level rise;

(2) Competition with nonnative, invasive plant and animal species;

(3) Wildfire; and

(4) Hurricanes and storm surge.

Some of these threats can be addressed by special management considerations or protection while others (*e.g.,* sea level rise, hurricanes, storm surge) are beyond the control of landowners and managers. However, even when landowners or land managers may not be able to control all the threats, they may be able to address the results of the threats.

Proposed Actions To Ameliorate Threats

The following measures or management activities can ameliorate threats to *Consolea corallicola:*

(1) Protecting habitats from residential, commercial, or recreational facility development;

(2) Avoiding ditching or filling that may alter hydrological conditions;

(3) Nonnative plant and animal species control programs to reduce competition, predation, and prevent habitat degradation; and

(4) Hardwood reduction to maintain the open vegetation structure of the species habitats.

The reduction of these threats will require the implementation of special management actions within each of the critical habitat areas identified in this proposed rule. All proposed critical habitat will need management to address the ongoing threats listed above and those presented in the *Summary of Factors Affecting the Species* sections in the proposed listing rule published on October 11, 2012 (77 FR 61836), and in the final listing rule published on October 24, 2013 (78 FR 63796).

Ongoing Actions To Ameliorate Threats

The Service, National Park Service (NPS), State of Florida, Miami-Dade and Monroe Counties, and several local governments own and manage conservation lands within the range of *Consolea corallicola.* The Nature Conservancy purchased Torchwood Hammock Preserve on Little Torch Key in 1988, to protect what was at the time the only known remaining population of *C. corallicola.* The comprehensive conservation plan (CCP) for the Lower Florida Keys National Wildlife Refuges (National Key Deer Refuge, Key West National Wildlife Refuge, and Great White Heron National Wildlife Refuge) and Crocodile Lake National Wildlife Refuge promote the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals, especially imperiled species that are found only in the Florida Keys. This CCP provides specifically for maintaining and expanding populations of *C. corallicola.*

NPS regulations at 36 CFR 2.1 prohibit visitors from harming or removing plants, listed or otherwise, from Everglades National Park (ENP) or Biscayne National Park (BNP). *Consolea corallicola* is listed on the Regulated Plant Index as endangered under chapter 5B–40, Florida Administrative Code. Florida Statutes 581.185 sections (3)(a) and (b) prohibit any person from willfully destroying or harvesting any species listed as endangered or threatened on the Regulated Plant Index, or growing such a plant on the private land of another, or on any public land, without first obtaining the written permission of the landowner and a permit from the Florida Department of Plant Industry.

The Service, NPS, State of Florida, Miami-Dade and Monroe Counties, and several local governments conduct nonnative species control efforts on sites that support, or have suitable habitat for *C. corallicola.* The introduced *Cactoblastis* moth (*Cactoblastis cactorum*) infests *C. corallicola* plants and may cause mortality. We consider the moth to be a major threat to the species. Monitoring for *Cactoblastis* moth infestations, and hand removal efforts of the moth larvae and eggs are conducted at BNP and Torchwood Hammock Preserve in an effort to protect *C. corallicola.* No satisfactory method of large-scale control for the *Cactoblastis* moth is known at this time. The U.S. Department of Agriculture (USDA) Agricultural Research Service's Center for Medical, Agricultural, and Veterinary Entomology in Tallahassee, Florida, is developing containment methods to control the spread of the *Cactoblastis* moth (USDA 2006, p. 9).

Reintroductions of *Consolea corallicola* have been implemented at several locations on State and Federal lands in the Florida Keys over the past 15 years. Attempts at reintroduction implemented in the 1990s were largely unsuccessful due to poor site selection, *Cactoblastis* moth predation, crown rot, and burial of small plants by leaf litter. It is too early to judge the results of more recent reintroductions that were implemented in 2013 and 2014. Reintroduction of *C. corallicola* serves multiple objectives towards the plant's conservation, including increasing the number of populations to address the threat of few, small populations; establishing populations across a wider geographic area to reduce the chance that all populations will be affected by natural disturbances, such as hurricanes and storm surge events; and establishing populations at higher elevation sites that will be less vulnerable to storm surge events and sea level rise. Assisted migration to higher elevations at existing sites may be needed in the future to conserve populations if the area supporting the existing population shows indications of increased soil salinity and population decline due to sea level rise.

Criteria Used To Identify Critical Habitat for *Consolea corallicola*

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If, after identifying currently occupied areas, a determination is made that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e) we then consider whether designating additional areas—outside

those currently occupied—are essential for the conservation of the species.

We have proposed units throughout the historical range of *Consolea corallicola*. The species currently occupies all of the islands of the Florida Keys where it was recorded historically. We determined that there is no unoccupied habitat that is essential for the conservation of the species.

As discussed above we are proposing to designate critical habitat in areas within the geographical area presently occupied by the species, *i.e.,* occupied at the time of listing.

The wild populations of *Consolea corallicola* are much reduced (50 percent) from the species' historical distribution, and one of the two remaining wild populations is small, consisting of only 12 mature plants. The habitats required by *C. corallicola* are severely fragmented by development in the Florida Keys. We anticipate that recovery will require continued protection of the remaining extant populations and habitat, augmenting existing small populations, and establishing populations in additional areas to more closely approximate its historical distribution in order to ensure there are adequate numbers of plants in stable populations and that these populations occur over a wide geographic area. This will help to ensure that catastrophic events, such as storms, cannot simultaneously affect all known populations.

Small plant populations with limited, fragmented distributions, such as *Consolea corallicola,* are vulnerable to relatively minor environmental disturbances (Frankham 2005, pp. 135–136) that could result in the loss of genetic diversity from genetic drift, the random loss of genes, and inbreeding (Ellstrand and Elam 1993, pp. 217–237; Leimu *et al.* 2006, pp. 942–952). Plant populations with lowered genetic diversity are more prone to local extinction (Barrett and Kohn 1991, pp. 4, 28). Smaller plant populations generally have lower genetic diversity, and lower genetic diversity may in turn lead to even smaller populations by decreasing the species' ability to adapt, thereby increasing the probability of population extinction (Newman and Pilson 1997, p. 360; Palstra and Ruzzante 2008, pp. 3428–3447). Because of the dangers associated with small populations or limited distributions, the recovery of many rare plant species includes the creation of new sites or reintroductions to ameliorate these effects.

Habitat fragmentation can have negative effects on populations, especially rare plants, and can affect survival and recovery (Aguilar *et al.* 2006, pp. 968–980; Aguilar *et al.* 2008, pp. 5177–5188; Potts *et al.* 2010, pp. 345–352). In general, habitat fragmentation causes habitat loss, habitat degradation, habitat isolation, changes in species composition, changes in species interactions, increased edge effects, and reduced habitat connectivity (Fahrig 2003, pp. 487–515; Fischer and Lindenmayer 2007, pp. 265–280). Habitat fragments are often functionally smaller than they appear because edge effects (such as increased nonnative, invasive species or wind speeds) impact the available habitat within the fragment (Lienert and Fischer 2003, p. 597).

In selecting areas to propose for critical habitat designation, we utilized the Shaffer and Stein (2000) methodology for conserving imperiled species known as the 'three Rs': Representation, resiliency, and redundancy. Representation, or preserving some of everything, means conserving not just a species but its associated plant communities. Resiliency and redundancy ensure there is enough of a species so it can survive into the future. Resiliency means ensuring that the habitat is adequate for a species and its representative components. Redundancy ensures an adequate number of sites and individuals. This methodology has been widely accepted as a reasonable conservation strategy (Tear *et al.* 2005, p. 841).

We have addressed representation through the primary constituent elements (as discussed above) and by identifying areas of habitat for the expansion of *Consolea corallicola* populations. There are only approximately 800 to 1,000 known individuals and only 6 populations. All but 2 populations consist of fewer than 100 individuals (low redundancy). All populations occur on small islands where the amount of suitable remaining habitat is limited (low resiliency), and much of the remaining habitat may be lost to sea level rise over the next century.

Sources of Data To Identify Critical Habitat Boundaries

To determine the location and boundaries of critical habitat, the Service used the following sources of information and considerations:

(1) Florida Natural Areas Inventory (FNAI) population records and ArcGIS geographic information system software to spatially depict the location and extent of documented populations of *Consolea corallicola* (FNAI 2011a, pp. 1–4);

(2) Reports prepared by botanists with the Institute for Regional Conservation (IRC), NPS, and Florida Department of Environmental Protection (FDEP) (Some of these were funded by the Service; others were requested or volunteered by biologists with the NPS or FDEP.);

(3) Historical records found in reports and associated voucher specimens housed at herbaria, all of which are referenced in the above-mentioned reports from the IRC and FNAI;

(4) Digitally produced habitat maps provided by Monroe County; and

(5) Aerial images of Miami-Dade and Monroe Counties. The presence of primary constituent elements was determined through the use of GIS spatial data depicting the current habitat status. These habitat data for the Florida Keys were developed by Monroe County from 2006 aerial images, and ground conditions for many areas were checked in 2009. Habitat data for BNP were provided by the NPS. The areas that contain the primary constituent elements follow predictable landscape patterns and have a recognizable signature in the aerial imagery.

We have identified areas to include in this proposed designation by applying the following considerations. The amount and distribution of critical habitat being proposed for designation would allow existing and future established populations of *Consolea corallicola* to:

(1) Maintain their existing distribution;

(2) Expand their distribution into previously occupied areas (needed to offset habitat loss and fragmentation);

(3) Use habitat depending on habitat availability (response to changing nature of coastal habitat including sea level rise) and support genetic diversity;

(4) Increase the size of each population to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished; and

(5) Maintain their ability to withstand local or unit-level environmental fluctuations or catastrophes.

Areas Occupied at the Time of Listing

The proposed occupied critical habitat designation for *Consolea corallicola* focuses on areas occupied at the time the species was listed within the historical range that have retained the necessary primary constituent elements that will allow for the maintenance and expansion of existing populations. The proposed occupied critical habitat units were delineated around documented extant populations. These units include the mapped extent of the population that contains one or

more of the physical or biological features. We considered the following when identifying occupied areas of critical habitat:

(1) The delineation included space to allow for the successional nature of the occupied habitats (*i.e.,* gain and loss of areas with sufficient light availability due to disturbance of the tree canopy driven by natural events such as inundation and hurricanes), and habitat transition or loss due to sea level rise.

(2) Some areas will require special management to be able to support a higher density of the plant within the occupied space. These areas generally are habitats where some of the primary constituent elements have been lost through natural or human causes. These areas would help to offset the anticipated loss and degradation of habitat occurring or expected from the effects of climate change (such as sea level rise) or due to development.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for *Consolea corallicola.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

Units were proposed for designation based on sufficient elements of physical or biological features being present to support *Consolea corallicola* life-history processes. Some units contained all of the identified elements of physical or biological features and supported multiple life-history processes. Some segments contained only some elements of the physical or biological features necessary to support *C. corallicola's* particular use of that habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates, plot points, or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2014–0057, on our Internet site at *http://www.fws.gov/verobeach/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation for *Consolea corallicola*

We are proposing four units as critical habitat for *Consolea corallicola.* The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for *C. corallicola.* The four areas we propose as critical habitat are:

(1) FSC1 Swan Key in Biscayne National Park, Miami-Dade County, Florida;

(2) FSC2 Key Largo, Monroe County, Florida;

(3) FSC3 Big Pine Key, Monroe County, Florida; and

(4) FSC4 Little Torch Key in Monroe County, Florida.

Land ownership within the proposed critical habitat consists of Federal (28 percent), State (58 percent), County (1 percent), and private and other (14 percent). Table 1 shows these units by land ownership, area, and occupancy.

TABLE 1—CONSOLEA CORALLICOLA PROPOSED CRITICAL HABITAT UNITS

[All areas rounded to the nearest whole acre (ac) and hectare (ha)]

Unit	Total Ac (Ha)	Federal Ac (Ha)	State Ac (Ha)	County Ac (Ha)	Private/other Ac (Ha)	Occupied
FSC1—Swan Key–Biscayne National Park	37 (15)	37 (15)	0	0	0	Yes.
FSC2—Key Largo	3,434 (1,389)	702 (284)	2,331 (943)	17 (7)	384 (155)	Yes.
FSC3—Big Pine Key	772 (313)	508 (205)	172 (70)	11 (5)	81 (33)	Yes.
FSC4—Little Torch Key	168 (68)	0	47 (19)	10 (4)	111 (45)	Yes.
Total	4,411 (1,785)	1,247 (504)	2,550 (1,032)	38 (16)	576 (233)	
Percent of Total	100	28	58	1	13	

Note: Area sizes may not sum due to rounding.

Two (FSC1 and FSC2) of the four critical habitat units proposed for *Consolea corallicola* are also currently designated under the Act as critical habitat for the American crocodile (*Crocodylus acutus*), and two (FSC2 and FSC3) are designated as critical habitat units for *Chromolaena frustrata* (Cape Sable thoroughwort).

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *Consolea corallicola,* below.

Unit FSC1: Swan Key-Biscayne National Park, Miami-Dade County, Florida

Unit FSC1 consists of approximately 37 ac (15 ha) in Miami-Dade County. This unit is composed entirely of lands in Federal ownership, 100 percent of which are located on Swan Key within Biscayne National Park. The unit includes all upland rockland hammock habitat on Swan Key, most of which is located on the eastern side of Swan Key, surrounded by the island's mangrove fringe. A second, smaller area is located on the island's elongate western half and is also surrounded by mangroves.

This unit was occupied at the time the species was listed and contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species and the coastal hardwood hammock and buttonwood forest primary constituent elements. The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant and animal species and sea level rise. However, in most cases these threats are being

addressed or coordinated with BNP to implement needed actions. BNP conducts nonnative species control on Swan Key and monitors *Consolea corallicola* for population trends and *Cactoblastis* moth damage. The NPS is currently revising the BNP General Management Plan (Plan), which identifies *C. corallicola* but does not discuss specific conservation measures. However, the Plan states that Swan Key will continue to be a ''sensitive resource area'' and managed to protect critical ecosystems, habitats, and natural processes. Access will be tightly controlled and limited to permitted research activities. In addition, the Service believes assisted migration to the highest elevations on Swan Key on BNP may be needed in the future to conserve the population if the area supporting the existing population shows indications of increased soil salinity and population decline due to sea level rise.

Unit FSC2: Key Largo, Monroe County, Florida

Unit FSC2 consists of approximately 3,434 ac (1,389 ha) in Monroe County. This unit is composed of Federal lands within Crocodile Lake National Wildlife Refuge (NWR) (702 ac (284 ha)); State lands within Dagny Johnson Botanical State Park, John Pennekamp Coral Reef State Park, and the Florida Keys Wildlife and Environmental Area (2,331 ac (943 ha)); lands owned by Monroe County (17 ac (7 ha)); and parcels in private or other ownership (384 ac (155 ha)). This unit extends from near the northern tip of Key Largo, along the length of Key Largo, beginning at the south shore of Ocean Reef Harbor near South Marina Drive and the intersection of County Road (CR) 905 and Clubhouse Road on the west side of CR 905, and between CR 905 and Old State Road 905, then extending to the shoreline south of South Harbor Drive. The unit then continues on both sides of CR 905 through the Crocodile Lake NWR, Dagny Johnson Key Largo Hammock Botanical State Park, and John Pennekamp Coral Reef State Park. The unit then terminates near the junction of U.S. 1 and CR 905 and Garden Cove Drive. The unit resumes on the east side of U.S. 1 from South Andros Road to Key Largo Elementary; then from the intersection of Taylor Drive and Pamela Street to Avenue A; then from Sound Drive to the intersection of Old Road and Valencia Road; then resumes on the east side of U.S. 1 from Hibiscus Lane and Ocean Drive. The unit continues south near the Port Largo Airport from Poisonwood Road to Bo Peep Boulevard. The unit resumes on the west side of U.S. 1 from the intersection of South Drive and Meridian Avenue to Casa Court Drive. The unit then continues on the west side of U.S. 1 from the point on the coast directly west of Peace Avenue south to Caribbean Avenue. The unit also includes a portion of El Radabob Key in Largo Sound located directly east of Avenue A, extending south to a point directly east of Mahogany Drive.

This unit was occupied at the time the species was listed and contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species and the rockland hammock and buttonwood forest primary constituent elements. The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant species and sea level rise. The CCP for Crocodile Lake NWR promotes the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals, especially imperiled species that are found only in the Florida Keys, but does not identify *Consolea corallicola* because it does not presently occur on the Refuge. The Management Plan for Dagny Johnson Key Largo Hammocks Botanical State Park calls for the protection and restoration of habitats and to continue conservation efforts already under way for *C. corallicola.* The Service and FDEP conduct nonnative species control on their respective lands on Key Largo. FDEP monitors the reintroduced *C. corallicola* at Dagny Johnson Key Largo Hammocks Botanical State Park for population trends and *Cactoblastis* moth damage. In addition, assisted migration of the cacti to the highest elevations on these lands is needed because the population already shows the effects of increased soil salinity and is partially inundated by high tides.

Unit FSC3: Big Pine Key, Monroe County, Florida

Unit FSC3 consists of approximately 772 ac (313 ha) in Monroe County. This unit is composed of Federal land within the National Key Deer Refuge (NKDR) (508 ac (205 ha)); State land managed as part of the NKDR (172 ac (70 ha)); lands owned by Monroe County (11 ac (5 ha)); and parcels in private or other ownership (81 ac (33 ha)). This unit extends from near the northern tip of Big Pine Key along the eastern shore to the vicinity of Hellenga Drive and Watson Road; from Gulf Boulevard south to West Shore Drive; Big Pine Avenue and Elma Avenues on the east, Coral and Yacht Club Road, and U.S. 1 on the north, and Industrial Avenue on the east from the southeastern tip of Big Pine Key to Avenue A.

This unit was occupied at the time the species was listed and contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species and the coastal berm, rockland hammock, and buttonwood forest primary constituent elements. The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant species and sea level rise. The CCP for the Lower Florida Keys NWRs (NKDR, Key West NWR, and Great White Heron NWR) promotes the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals, and provides specifically for maintaining and expanding populations of candidate plant species including *C. corallicola.* The Service conducts nonnative species control in areas that could support *C. corallicola.*

Unit FSC4: Little Torch Key, Monroe County, Florida

Unit FSC4 consists of approximately 168 ac (68 ha) in Monroe County. This unit is composed of State lands (47 ac (19 ha)); lands owned by Monroe County (10 ac (4 ha)); and parcels in private and other ownership (111 ac (45 ha)). This unit extends along State Highway 4A, from Coral Shores Road, south to County Road, resuming at Linda Street and extending south to the Overseas Highway. South of the Overseas Highway, the unit includes areas west of Kings Cove Road, and an area comprising the southern tip of Little Torch Key that includes portions of The Nature Conservancy's (TNC) John J. Pescatello Torchwood Hammock Preserve.

This unit was occupied at the time the species was listed and contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species and the coastal hardwood hammock and buttonwood forest primary constituent elements. The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant species and sea level rise. TNC's 1994 Management Plan calls for monitoring, *Cactoblastis*

control, vegetation management, and basic research on *Consolea corallicola* and threats to the species. TNC monitors *C. corallicola* at the Torchwood Hammock Preserve and conducts nonnative plant and animal species control. The Preserve is fenced, and potential visitors must request access to enter the site. Assisted migration to the highest elevations in the Preserve may be needed in the future to conserve the population if the area supporting the existing population shows indications of increased soil salinity and population decline due to sea level rise.

Physical or Biological Features for Harrisia aboriginum

We have determined that the following physical or biological features are essential to the conservation of *Harrisia aboriginum.*

Space for Individual and Population Growth and for Normal Behavior

Plant Community and Competitive Ability. Harrisia aboriginum occurs in communities classified as coastal strand, coastal grasslands, coastal berms, maritime hammocks, and shell mounds (Bradley *et al.* 2004, pp. 4, 14). Detailed descriptions of these communities and their associated native plant species are provided in the Status Assessment for *Harrisia aboriginum* section of the proposed listing rule published on October 11, 2012 (77 FR 61836), and the final listing rule published on October 24, 2013 (78 FR 63796), in the **Federal Register**. These habitats and their associated plant communities provide vegetation structure that provides adequate growing space, sunlight, and a competitive regime that is required for *H. aboriginum* to persist and spread. Therefore, based on the information above, we identify upland habitats consisting of coastal strand, coastal grasslands, coastal berms, maritime hammocks, and shell mounds to be a physical or biological feature for *H. aboriginum.*

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Climate (temperature and precipitation). Harrisia aboriginum requires adequate rainfall and does not tolerate freezing temperatures. The climate of south Florida where *H. aboriginum* occurs is characterized by distinct wet and dry seasons, a monthly mean temperature above 18 °C (64.4 °F) in every month of the year, and annual rainfall averaging 75 to 150 cm (30 to 60 in) (Gabler *et al.* 1994, p. 211). Freezes can occur in the winter months, but are very infrequent at this latitude in Florida. Therefore, based on the information above, we determined this type of climate to be a physical or biological feature for *H. aboriginum.*

Soils. Substrates supporting *Harrisia aboriginum* include sand and calcareous shell material (Bradley *et al.* 2004, pp. 4, 14). These substrates provide anchoring spots, nutrients, moisture regime, and suitable soil chemistry for *H. aboriginum,* and facilitate a community of associated plant species that create a competitive regime that allows *H. aboriginum* to persist and spread. Therefore, based on the information above, we identify substrates derived from calcareous sand or shell material to be a physical or biological feature for *H. aboriginum.*

Hydrology. Harrisia aboriginum requires upland habitats that occur above the daily tidal range, but are potentially subject to flooding by seawater during extreme tides and storm surge. *H. aboriginum* will not tolerate hydric or saline soils, and these soil conditions may also cause these habitats to transition to a community of species that will outcompete *H. aboriginum* for space. Maritime hammocks occur on high ground that does not regularly flood, but can be inundated during storm surges (FNAI 2010h, p. 3). Some sites that support *H. aboriginum* show indications that soil salinization are driving changes in the plant community toward salt-tolerant species, and will eventually lead to conditions unsuitable for *H. aboriginum.* Therefore, based on the information above, we identify upland habitats at elevations not affected by soil salinization due to sea level rise to be physical or biological features for *H. aboriginum.*

Cover or Shelter

Harrisia aboriginum occurs in open canopy and semi-open to closed canopy habitats. The amount and frequency of open canopy areas varies by habitat type and time since the last disturbance, such as a hurricane, caused canopy openings. In maritime hammocks, suitable areas will often be found near the hammock edge or where there are openings in the forest canopy. More open communities (*e.g.,* coastal berm, coastal strand, and coastal grasslands) provide more abundant and temporally consistent suitable habitat than communities capable of establishing a dense canopy (*e.g.,* maritime hammocks, shell mounds). Therefore, based on the information above, we identify habitats that have a vegetation composition and structure that allows for adequate sunlight and space for individual growth and population expansion to be a physical or biological feature for *H. aboriginum.*

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The habitats identified above as physical or biological features also provide a plant community with associated plant species that foster a competitive regime that is suitable for *Harrisia aboriginum* and contain adequate open space for the recruitment of new plants. Associated plant species in these habitats attract and provide cover for generalist pollinators (*e.g.,* bees, butterflies, and beetles) that pollinate *H. aboriginum.*

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

Harrisia aboriginum continues to occur in habitats that are protected from human-generated disturbances and are representative of the species' historical, geographical, and ecological distribution although its range has been reduced. The species is still found in its representative plant communities of coastal strand, coastal grassland, coastal berm, maritime hammock, and shell mound habitat. As described above, these habitats provide a community of associated plant and animal species that are compatible with *H. aboriginum,* vegetation structure that provides adequate sunlight levels and open space for plant growth and regeneration, and substrates with adequate moisture availability and suitable soil chemistry. In addition, representative communities are located on Federal, State, local, and private conservation lands that implement conservation measures benefitting the species. Therefore, based on the information above, we identify habitat of sufficient size and connectivity that can support species growth, distribution, and population expansion to be a physical or biological feature for *H. aboriginum.*

Disturbance Regime. Coastal strand, coastal berm, coastal grassland, maritime hammock, and shell mound habitats that support *Harrisia aboriginum* depend on natural disturbance regimes from hurricanes or tidal inundation to reduce the canopy in order to provide light levels sufficient to support the species. The historical frequency and magnitude of hurricanes and tidal inundation has allowed for the persistence of *H. aboriginum* by occasionally creating areas of open canopy. In the absence of disturbance, some of these habitats may have closed canopies, resulting in areas lacking enough available sunlight to support *H.*

aboriginum. However, too frequent or severe disturbance that transitions the habitat toward more saline conditions could result in the decline of the species in the area. In addition, fires are rare to nonexistent in coastal strand, coastal grassland, coastal berm, maritime hammocks, and shell mound communities (FNAI 2010a, p. 2; FNAI 2010f, p. 2; FNAI 2010g, p. 2; FNAI 2010h, p. 3; FNAI 2010i, p. 2). Therefore, based on the information above, we identify habitats that have disturbance regimes, including hurricanes, and infrequent inundation events that maintain the habitat suitability to be physical or biological features for *H. aboriginum.*

Primary Constituent Elements for Harrisia aboriginum

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to *Harrisia aboriginum* are:

(i) Areas of upland habitats consisting of coastal strand, coastal grassland, coastal berm, maritime hammocks, and shell mounds.

(A) Coastal strand habitat that contains:

(1) Open to semi-open canopy and understory; and

(2) Substrate of sand and shell fragments of stabilized coastal dunes.

(B) Coastal grassland habitat that contains:

(1) No canopy and an open understory; and

(2) Substrate of sand and shell fragments.

(C) Coastal berm habitat that contains:

(1) Open to semi-open canopy, subcanopy, and understory; and

(2) Substrate of coarse, calcareous, storm-deposited sediment.

(D) Maritime hammock habitat that contains:

(1) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory; and

(2) Substrate of calcareous sand and shell fragments.

(E) Shell mound habitat that contains:

(1) Open to semi-open canopy and understory; and

(2) Substrate of soil derived from calcareous shells deposited by Native Americans during prehistoric times.

(ii) A plant community of predominately native vegetation with no invasive, nonnative animal or plant species or such species in quantities low enough to have minimal effect on survival of *Harrisia aboriginum.*

(iii) Canopy openings in coastal strand, coastal grassland, coastal berm, maritime hammock, and shell mound habitats that are created by the effects of strong winds or saltwater inundation from storm surge or infrequent tidal inundation.

(iv) Habitats that are connected and of sufficient size to sustain viable populations in coastal strand, coastal grassland, coastal berm, maritime hammock, and shell mound habitats.

(v) Habitats that provide populations of the generalist pollinators that visit the flowers of *Harrisia aboriginum.*

Special Management Considerations or Protection for Harrisia aboriginum

Management considerations or protection are necessary throughout the critical habitat areas proposed here to avoid further degradation or destruction of the habitat that provides those features essential to the species' conservation. The primary threats to the physical or biological features that *Harrisia aboriginum* depends on include:

(1) Habitat destruction and modification by development and sea level rise;

(2) Competition with nonnative, invasive plant species;

(3) Herbivorous nonnative animal species;

(4) Wildfire; and

(5) Hurricanes and storm surge.

Some of these threats can be addressed by special management considerations or protection while others (*e.g.,* sea level rise, hurricanes, storm surge) are beyond the control of landowners and managers. However, even when landowners or land managers may not be able to control all the threats, they may be able to address the results of the threats.

Management activities that could ameliorate these threats include the monitoring and minimization of impacts from recreational activities, nonnative species control, and protection from development. Precautions are needed to avoid the inadvertent trampling of *Harrisia aboriginum* in the course of management activities and public use. Development of recreational facilities or programs should avoid impacting these habitats directly or indirectly. Ditching should be avoided because it alters the hydrology and species composition of these habitats. Sites that have shown increasing encroachment of woody species over time may require efforts to maintain the open nature of the habitat, which favors these species. Nonnative species control programs are needed to reduce competition, predation, and prevent habitat degradation. The reduction of these threats will require the implementation of special management actions within each of the critical habitat areas identified in this proposed rule. All proposed critical habitat requires active management to address the ongoing threats above and those presented in the *Summary of Factors Affecting the Species* sections in the proposed listing rule published on October 11, 2012 (77 FR 61836), and in the final listing rule published on October 24, 2013 (78 FR 63796).

The Service, State of Florida, and Manatee, Sarasota, Charlotte, and Lee Counties own and manage conservation lands within the historical range of *Harrisia aboriginum.* The CCP for J.N. 'Ding' Darling National Wildlife Refuge (JDDNWR) promotes the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals, especially imperiled species. This CCP provides specifically for maintaining populations of *H. aboriginum.* The State Management Plans for Charlotte Harbor Preserve, Cayo Costa, Stump Pass Beach, Delnor-Wiggins Pass, and Gasparilla Island State Parks and Bocilla Preserve promote the protection of habitats and native species. The Service, State of Florida, and Manatee, Sarasota, Charlotte, and Lee Counties conduct nonnative species control efforts on sites that support, or have suitable habitat for, *H. aboriginum.* The Service monitors the population of *H. aboriginum* at JDDNWR. FDEP monitors the *H. aboriginum* population at Charlotte Harbor Preserve State Park.

Nonnative species control is currently lacking at Manasota Beach Park and Kitchen Key in areas that support *H. aboriginum.* Poaching, vandalism, and wildfire have been observed at Manasota Beach Park. Most populations are at elevations close to sea level and may require assisted migration as sea level rise continues to drive the transition toward salt-tolerant plant species in these areas. Reintroduction is needed to restore the species' historical distribution on Cayo Costa and Madira Bickell Mound State Historical Park. Augmentation of small populations at Longboat Key, Terra Ceia, Lemon Bay Preserve, Kitchen Key, Gasparilla Island, and Cayo Pelau would reduce the risk of population loss to hurricanes, storm surge, or wildfire.

Harrisia aboriginum is listed on the Regulated Plant Index as endangered under chapter 5B–40, Florida Administrative Code. Florida Statutes 581.185 sections (3)(a) and (b) prohibit any person from willfully destroying or harvesting any species listed as endangered or threatened on the Regulated Plant Index, or growing such

a plant on the private land of another, or on any public land, without first obtaining the written permission of the landowner and a permit from the Florida Department of Plant Industry.

Criteria Used To Identify Critical Habitat for Harrisia aboriginum

We are proposing to designate critical habitat in areas within the geographical area occupied by *Harrisia aboriginum* at the time of listing in 2013. We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing that were historically occupied, but are presently unoccupied, because such areas are essential for the conservation of the species as described for *Consolea corallicola* above.

We have determined that all habitat known to be occupied at the time of listing should be proposed for critical habitat designation. However, realizing that occupied habitat is not adequate for the conservation of *Harrisia aboriginum,* we also used habitat and historical occurrence data to identify unoccupied habitat essential for the conservation of the species. To determine the location and boundaries of both occupied and unoccupied critical habitat, the Service used the following sources of data and information for *H. aboriginum* that include the following:

(1) FNAI population records and ArcGIS software to spatially depict the location and extent of documented populations of *Harrisia aboriginum* (FNAI 2011b, pp. 1–28);

(2) Reports prepared by botanists with the IRC and the Service (Some of these were funded by the Service; others were requested or volunteered by biologists with the Service.);

(3) Historical records found in reports and associated voucher specimens housed at herbaria, all of which are also referenced in the above-mentioned reports from the IRC and FNAI;

(4) Digitally produced habitat maps provided by FNAI; and

(5) Aerial images of Manatee, Charlotte, Sarasota, and Lee Counties. The presence of primary constituent elements was determined through the interpretation of aerial imagery. The areas that contain primary constituent elements follow predictable landscape patterns and have a recognizable signature in the aerial imagery.

Only approximately 300 to 500 individuals and 12 populations of *Harrisia aboriginum* are known to exist. All but 2 of these populations consist of fewer than 100 individuals, with 7 populations having 10 or fewer individuals (low redundancy). Most populations occur on coastal barrier islands where the amount of suitable remaining habitat is limited (low resiliency), and much of the remaining habitat will be lost to sea level rise over the next century. We have addressed representation through our primary constituent elements (as discussed above) and by providing habitat for *H. aboriginum.* For adequate redundancy and resiliency, it is essential for the conservation of *H. aboriginum* for additional populations to be established and existing populations to be augmented. Therefore, we have proposed two unoccupied areas for designation as critical habitat units where *H. aboriginum* was historically recorded, but has since been extirpated.

The current distribution of *Harrisia aboriginum* is reduced from its historical distribution, with no populations remaining in Manatee County, at the northern extent of the species' range. We anticipate that recovery will require continued protection of the remaining extant population and habitat, as well as establishing populations in additional areas that more closely approximate its historical distribution in order to ensure there are adequate numbers of plants in stable populations and that these populations occur over a wide geographic area. This will help to ensure that catastrophic events, such as storms, cannot simultaneously affect all known populations.

Areas Occupied at the Time of Listing

The occupied critical habitat units were delineated around documented extant populations. These units include the mapped extent of the population that contain one or more of the physical or biological features. We considered the following when identifying occupied areas of critical habitat:

(1) The delineation included space to allow for the successional nature of the occupied habitats (*i.e.,* gain and loss of areas with sufficient light availability due to disturbance of the tree canopy driven by natural events such as inundation and hurricanes), and habitat transition or loss due to sea level rise.

(2) Some areas will require special management to be able to support a higher density of the plant within the occupied space. These areas generally are habitats where some of the primary constituent elements have been lost through natural or human causes. These areas would help to offset the anticipated loss and degradation of habitat occurring or expected from the effects of climate change (such as sea level rise) or due to development.

Areas Outside the Geographic Area Occupied at the Time of Listing

After completing the above analysis, we determined that occupied areas were not sufficient for the conservation of the species for the following reasons: (1) Restoring the species to its historical range and reducing its vulnerability to stochastic events such as hurricanes and storm surge requires reintroduction to areas where it occurred in the past but has since been extirpated; (2) providing increased connectivity for populations and areas for small populations to expand requires currently unoccupied habitat; and (3) reintroduction or assisted migration to reduce the species vulnerability to sea level rise and storm surge requires higher elevation sites that are currently unoccupied by *Harrisia aboriginum.* Therefore, we looked for unoccupied areas that may be essential for the conservation of the species.

The unoccupied areas are essential for the conservation of the species because they:

(1) Represent the historical range of *Harrisia aboriginum. H. aboriginum* has been extirpated from two locations where it was previously recorded. Of those areas found in reports, we are proposing critical habitat only for those that are well-documented and essential for the conservation of the species (*i.e.,* Terra Ceia, Cayo Costa) (Bradley and Gann 1999, p. 77; Bradley *et al.* 2004, p. 4). These areas also still retain some or all of the elements of the physical or biological features.

(2) Provide areas of sufficient size to support ecosystem processes for populations of *Harrisia aboriginum.* These areas are essential for the conservation of the species because they will provide areas for population expansion and growth. Large contiguous parcels of habitat are more likely to be resilient to ecological processes of disturbance and succession, and support viable populations of *H. aboriginum.* The unoccupied areas selected were at least 30 ac (12 ha) or greater in size.

The amount and distribution of designated critical habitat will allow *Harrisia aboriginum* to:

(1) Maintain its existing distribution;

(2) Expand its distribution into historically occupied areas (needed to offset habitat loss and fragmentation);

(3) Use habitat depending on habitat availability (response to changing nature of coastal habitat including sea level rise) and support genetic diversity;

(4) Increase the size of each population to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished; and

(5) Maintain its ability to withstand local or unit-level environmental fluctuations or catastrophes.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for *Harrisia aboriginum.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates, plot points, or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2014–0057, on our Internet site, *http://www.fws.gov/verobeach/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation for *Harrisia aboriginum*

We are proposing 11 units as critical habitat for *Harrisia* aboriginum. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for *Harrisia aboriginum.* The 11 areas we propose as critical habitat are:

(1) Unit APA1 Terra Ceia, Manatee County, Florida;

(2) Unit APA2 Longboat Key, Sarasota County, Florida;

(3) Unit APA3 Osprey, Sarasota County, Florida;

(4) Unit APA4 Manasota Key, Sarasota and Charlotte Counties, Florida;

(5) Unit APA5 Charlotte Harbor, Charlotte County, Florida;

(6) Unit APA6 Gasparilla Island North, Charlotte and Lee Counties, Florida;

(7) Unit APA7 Gasparilla Island South, Lee County, Florida;

(8) Unit APA8 Cayo Pelau, Charlotte and Lee Counties, Florida;

(9) Unit APA9 Cayo Costa, Lee County, Florida;

(10) Unit APA10 Bocilla Island, Lee County, Florida; and

(11) Unit APA11 Sanibel Island and Buck Key, Lee County, Florida.

Land ownership within the proposed critical habitat consists of Federal (11 percent), State (48 percent), County (15 percent), and private and other (26 percent). Table 2 summarizes these units.

TABLE 2—HARRISIA ABORIGINUM PROPOSED CRITICAL HABITAT UNITS

[All areas rounded to the nearest whole number, except where less than 1 acre (ac) or hectare (ha)]

Unit	Total Ac (Ha)	Federal Ac (Ha)	State Ac (Ha)	County Ac (Ha)	Private/other Ac (Ha)	Occupied
APA1—Terra Ceia	222 (90)	0	66 (27)	70 (28)	87 (35)	No.
APA2—Longboat Key	54 (22)	0	0	0	54 (22)	Yes.
APA3—Osprey	116 (47)	0	0	50 (20)	66 (27)	Yes.
APA4—Manasota Key	415 (168)	0	58 (23)	111 (45)	245 (99)	Yes.
APA5—Charlotte Harbor	51 (21)	0	51 (21)	0	0	Yes.
APA6—Gasparilla North	98 (40)	0	0.06 (0.02)	22 (9)	77 (31)	Yes.
APA7—Gasparilla South	92 (37)	3 (1)	69 (28)	12 (5)	8 (3)	Yes.
APA8—Cayo Pelau	25 (10)	0	0	25 (10)	0	Yes.
APA9—Cayo Costa	1,702 (689)	0	1,379 (558)	94 (38)	230 (93)	No.
APA10—Bocilla	33 (13)	0	0	32 (13)	0.7 (0.3)	Yes.
APA11—Sanibel Island and Buck Key.	635 (257)	373 (151)	47 (19)	90 (36)	126 (51)	Yes.
Total	3,444 (1,394)	376 (152)	1,669 (676)	505 (204)	893 (361)	
Percent of Total	100	11	48	15	26	

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *Harrisia aboriginum,* below.

Unit APA1: Terra Ceia, Manatee County, Florida

Unit APA1 consists of approximately 222 ac (90 ha) in Manatee County, Florida. This unit is composed of State lands within Madira Bickel Mound State Historical Park, Terra Ceia Preserve State Park, Cockroach Bay State Buffer Preserve, and the Tampa Bay Estuarine System (66 ac (27 ha)); Manatee County lands at Emerson Point Preserve and parcels owned by the Manatee County Port Authority (70 ac (28 ha)); and parcels in private or other ownership (87 ac (35 ha)). This unit includes lands west of Highway 41 extending from just south of South Dock Street south to Snead Island. The unit also includes areas of Harbor Key, Mariposa Key, Horseshoe Key, Joe Island, Skeet Key, Paradise Island, Ed's Key, and Rattlesnake Key.

This unit was not occupied at the time the species was listed but is essential for the conservation of the species because it serves to protect habitat needed to recover the species, reestablish wild populations within the historical range of the species, and maintain populations throughout the historic distribution of the species in Manatee County, and will provide population redundancy in the case of stochastic events that otherwise hold the potential to eliminate the species from the one or more locations where it is presently found.

The Management Plan for Madira Bickel Mound State Historical Park, Terra Ceia Preserve State Park, Cockroach Bay State Buffer Preserve, and the Tampa Bay Estuarine System calls for the protection and restoration

of habitats, but does not identify actions specific to *Harrisia aboriginum.* The FDEP conducts nonnative species control on their lands within the unit. Reintroduction of *H. aboriginum* within Madira Bickel Mound State Historical Park, Terra Ceia Preserve State Park, and the Tampa Bay Estuarine System is needed to restore the species to its historical distribution in Manatee County and reduce the risks associated with hurricanes, storm surge, and sea level rise.

Unit APA2: Longboat Key, Sarasota County, Florida

Unit APA2 consists of approximately 54 ac (22 ha) in Sarasota County, Florida. This unit is composed entirely of parcels in private or other ownership. This unit includes lands west of Gulf of Mexico Drive, extending from 0.40 miles (mi) (0.6 kilometers (km)) south of the intersection of Bay Isles Parkway and Gulf of Mexico Drive, to the southern tip of Longboat Key. It also includes lands on the north side of Gulf of Mexico Drive, east of Longboat Club Key Drive, on the northwest tip of Longboat Key.

This unit was occupied at the time the species was listed and contains all the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, essential to the conservation of the species, and the primary constituent elements of coastal strand, coastal berm, and maritime hammock. The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant species and sea level rise. Augmentation of the *Harrisia aboriginum* population within the unit is needed to restore the species to its historical abundance and reduce the risks associated with small population size, hurricanes, storm surge, and sea level rise.

Unit APA3: Osprey, Sarasota County, Florida

Unit APA3 consists of approximately 116 ac (47 ha) in Sarasota County, Florida. This unit is composed of Sarasota County lands within Palmer Point County Park (50 ac (20 ha)) and parcels in private or other ownership (66 ac (27 ha)). This unit extends along the barrier island (Casey Key) from the south terminus of Blind Pass Road, south for approximately 1.2 mi (1.9 km) along North Casey Key Road. On the mainland, the unit includes lands bordered on the north by Vamo Way, to the east by Highway 41, and to the south by Palmetto Avenue.

This unit was occupied at the time the species was listed and contains the biological or physical features including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes essential to the conservation of the species and contains coastal strand, coastal berm, maritime hammock, and shell mound primary constituent elements. The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant species, and sea level rise. Augmentation of the *Harrisia aboriginum* population within the unit is needed to restore the species to its historical abundance and reduce the risks associated with small population size, hurricanes, storm surge, and sea level rise.

Unit APA4: Manasota Key, Sarasota and Charlotte Counties, Florida

Unit APA4 consists of approximately 415 ac (168 ha) in Sarasota and Charlotte Counties, Florida. This unit is composed of State lands within Stump Pass Beach State Park (58 ac (23 ha)); County lands within Blind Pass Park, Brohard Beach and Paw Park, Manasota Beach Park, Casperson Beach Park, and Service Club Park (111 ac (45 ha)); and parcels in private or other ownership (245 ac (99 ha)). This unit extends from Beach Road in the City of Venice, south along Manasota Key to the barrier islands southern tip, including a portion of Peterson Island.

This unit was occupied at the time the species was listed and contains the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes essential to the conservation of the species and contains coastal strand, coastal berm, and maritime hammock primary constituent elements. The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant species and sea level rise. The Management Plan for Stump Pass Beach State Park calls for the protection and restoration of habitats, but does not identify actions specific to *Harrisia aboriginum.* The FDEP conducts nonnative species control on their lands within the unit. Augmentation of the *H. aboriginum* population within the unit is needed to restore the species to its historical abundance and reduce the risks associated with small population size, hurricanes, storm surge, and sea level rise.

Unit APA5: Charlotte Harbor, Charlotte County, Florida

Unit APA5 consists of approximately 51 ac (21 ha) in Charlotte County, Florida. This unit is composed entirely of State lands within the Charlotte Harbor Preserve State Park. This unit includes the Big Mound, Boggess Ridge, and a shell mound located on the east side of Charlotte Harbor, south of the City of Charlotte Park. This unit was occupied at the time the species was listed and contains all the physical or biological features essential to the conservation of the species and contains coastal berm and shell mound primary constituent elements.

The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant species and sea level rise. The Management Plan for Charlotte Harbor Preserve State Park calls for the protection and restoration of habitats, and identifies actions specific to *Harrisia aboriginum.* The FDEP conducts nonnative species control and monitors the *H. aboriginum* population in Charlotte Harbor Preserve State Park. Augmentation of the *H. aboriginum* population within the unit is needed to restore the species to its historical abundance and reduce the risks associated with small population size, hurricanes, storm surge, and sea level rise.

Unit APA6: Gasparilla North, Charlotte and Lee Counties, Florida

Unit APA6 consists of approximately 98 ac (40 ha) in Charlotte and Lee Counties, Florida. This unit is composed of State land (0.006 ac (0.02 ha)), county land (22 ac (9 ha)), and parcels in private or other ownership (77 ac (31 ha)). This unit includes most of Kitchen Key (Live Oak Key) and the area east of Gasparilla Road, from the intersection of Grouper Hole Road and Grouper Hole Court, south to 0.15 mi (0.24 km) north of Snail Island Court, from approximately 0.10 mi (0.21 km) south of 35th Street to 23rd Street, including the small island separated from Gasparilla Island by a canal; and from 22nd Street to 20th Street.

This unit was occupied at the time the species was listed and contains the physical or biological features including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes essential to the conservation of the species and contains coastal berm and maritime hammock primary constituent elements. The physical or biological features in this unit may require special management

considerations or protection to address threats of nonnative plant species and sea level rise. Augmentation of the *Harrisia aboriginum* population within the unit is needed to restore the species to its historical abundance and reduce the risks associated with small population size, hurricanes, storm surge, and sea level rise.

Unit APA7: Gasparilla South, Lee County, Florida

Unit APA7 consists of approximately 92 ac (37 ha) in Lee County, Florida. This unit is composed of Federal land owned by the Service and Bureau of Land Management (BLM) (3 ac (1 ha)), State lands within Gasparilla Island State Park (69 ac (28 ha)), Lee County lands (12 ac (5 ha)), and parcels in private or other ownership (8 ac (3 ha)). This unit includes lands located from south of 1st Street to the southern tip of Gasparilla Island.

This unit was occupied at the time the species was listed and contains the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes essential to the conservation of the species and contains coastal strand, coastal berm, and maritime hammock primary constituent elements. The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant species and sea level rise. The Management Plan for Gasparilla Island State Park calls for the protection and restoration of habitats, but does not identify actions specific to *Harrisia aboriginum.* The FDEP conducts nonnative species control on its lands within the unit. Augmentation of the *H. aboriginum* population within the unit is needed to restore the species to its historical abundance and reduce the risks associated with small population size, hurricanes, storm surge, and sea level rise.

Unit APA8: Cayo Pelau, Charlotte and Lee Counties, Florida

Unit APA8 consists of approximately 25 ac (10 ha) in Charlotte and Lee Counties, Florida. This unit is composed of Lee County lands within Cayo Pelau Preserve, and parcels in private or other ownership (0.6 ac (0.2 ha)). This unit includes lands located from 0.13 mi (0.21 km) south of the northern tip of Cayo Pelau, extending south to the southeastern tip of Cayo Pelau.

This unit was occupied at the time the species was listed and contains the physical or biological features including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes essential to the conservation of the species and contains coastal berm and shell mound primary constituent elements. The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant species and sea level rise. Augmentation of the *Harrisia aboriginum* population within the unit is needed to restore the species to its historical abundance and reduce the risks associated with small population size, hurricanes, storm surge, and sea level rise.

Unit APA9: Cayo Costa, Lee County, Florida

Unit APA9 consists of approximately 1,702 ac (689 ha) in Lee County, Florida. This unit is composed of State lands within Cayo Costa State Park (1,379 ac (558 ha)), lands owned by Lee County (94 ac (38 ha)), and parcels in private or other ownership (230 ac (93 ha)). This unit includes lands located from the northern tip to the southern tip of Cayo Costa.

This unit was not occupied at the time the species was listed but is essential for the conservation of the species because it serves to protect habitat needed to recover the species, reestablish wild populations within the historical range of the species, maintain populations throughout the historic distribution of the species in Manatee County, and provide population redundancy in the case of stochastic events that otherwise hold the potential to eliminate the species from the one or more locations where it is presently found. The Management Plan for Cayo Costa State Park calls for the protection and restoration of habitats and identifies actions specific to *Harrisia aboriginum.* The FDEP conducts nonnative species control and monitored the population at Cayo Costa State Park until the last plant died in 2007. Reintroduction of *H. aboriginum* within Cayo Costa State Park is needed to restore the species to its historical distribution and reduce the risks associated with hurricanes, storm surge, and sea level rise.

Unit APA10: Bocilla, Lee County, Florida

Unit APA10 consists of approximately 33 ac (13 ha) in Lee County, Florida. This unit is composed of Lee County lands within the Bocilla Preserve (32 ac (13 ha)) and parcels in private or other ownership (0.7 ac (0.3 ha)). This unit includes lands located on the undeveloped portion of Bokeelia Island from 0.02 mi (0.03 km) west of the terminus of Ebbtide Way, extending south and west to the northwest and southeast corners of Bokeelia Island.

This unit was occupied at the time the species was listed and contains the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes essential to the conservation of the species and contains the coastal berm primary constituent element. The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant species and sea level rise. The Management Plan for Bocilla Preserve calls for the protection and restoration of habitats and identifies actions specific to *Harrisia aboriginum.*

Unit APA11: Sanibel Island and Buck Key, Lee County, Florida

Unit APA11 consists of approximately 635 ac (257 ha) in Lee County, Florida. This unit is composed of Federal lands owned by the Bureau of Land Management, and Service lands within the JDDNWR (373 ac (151 ha)), State lands (47 ac (13 ha)), lands owned by Lee County (90 ac (36 ha)), and parcels in private or other ownership (126 ac (51 ha)). This unit includes lands on Buck Key, Runyan Key, and Sanibel Island. On Sanibel Island, the unit includes a portion of Bowman's Beach, from just south of Silver Key to the western terminus of Water's Edge Lane; uplands within JDDNWR; and a shell mound located near the northern terminus of Tarpon Bay Road.

This unit was occupied at the time the species was listed and contains the physical or biological features, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes essential to the conservation of the species and contains the maritime hammock primary constituent elements. The physical or biological features in this unit may require special management considerations or protection to address threats of nonnative plant species and sea level rise. The CCP for JDDNWR promotes the protection and restoration of habitats, and identifies actions specific to *Harrisia aboriginum.* The Service conducts nonnative species control and monitors the population at JDDNWR.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of

any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for *Consolea corallicola* and *Harrisia aboriginum.* As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the *Consolea corallicola* and *Harrisia aboriginum.* These activities include, but are not limited to:

(1) Actions that would significantly alter the hydrology or substrate, such as ditching or filling. Such activities may include, but are not limited to, road construction or maintenance, and residential, commercial, or recreational development.

(2) Actions that would significantly alter vegetation structure or composition, such as clearing vegetation for construction of roads, residential and commercial development, and recreational facilities, and trails.

(3) Actions that would introduce nonnative species that would significantly alter vegetation structure or composition. Such activities may include, but are not limited to, residential and commercial development and road construction.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the proposed critical habitat for *Consolea corallicola* or *Harrisia aboriginum.*

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis

of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of *Consolea corallicola* and *Harrisia aboriginum,* the benefits of designating critical habitat include public awareness of the presence of *Consolea corallicola* and *Harrisia aboriginum* and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for *Consolea corallicola* and *Harrisia aboriginum* due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Exclusions Based on Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species.

The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional section 4(b)(2) exclusion analysis.

For this designation, we developed an Incremental Effects Memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for *Consolea corallicola* and *Harrisia aboriginum* (IEc 2014, entire). In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species.

The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation for the species which may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, is what we consider our draft economic analysis (DEA) of the proposed critical habitat designation for *Consolea corallicola* and *Harrisia aboriginum* and is summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess to the extent practicable, the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for *Consolea corallicola* and *Harrisia aboriginum,* first we identified, in the IEM dated July 30, 2014, probable incremental economic impacts associated with the following categories of activities:

(1) Federal lands management (National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management);

(2) Roadway and bridge construction;

(3) Dredging;

(4) Commercial or residential development;

(5) Recreation (including construction of recreation infrasturcture).

We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical

habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where *Consolea corallicola* or *Harrisia aboriginum* is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Therefore, disproportionate impacts to any geographic area or sector are not likely as a result of this critical habitat designation.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for *Consolea corallicola's* and *Harrisia aboriginum's* critical habitat. Because the designation of critical habitat for *Consolea corallicola* and *Harrisia aboriginum* is being proposed so soon after the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to *Consolea corallicola* or *Harrisia aboriginum* would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for these species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

Consolea corallicola

The proposed critical habitat designation for *Consolea corallicola* totals approximately 4,411 ac (1,785 ha) across four units in Miami-Dade and Monroe Counties, Florida, all of which was occupied by the species at the time of listing. The proposed critical habitat includes lands under Federal (28 percent), State (58 percent), county (1 percent), and private or other (13 percent) ownership. In these areas any actions that may affect the species or its habitat would also affect designated critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of *C. corallicola.* Therefore, only administrative costs are expected in the proposed critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, in most circumstances, these costs would predominantly be administrative in nature and would not be significant.

Based on the available information, we anticipate no more than three consultations per year within the proposed critical habitat units. Communications with affected entities indicate that critical habitat designation is likely only to result in no more than just a few consultations, with minor conservation efforts that would likely result in relatively low probable economic impacts. Unit costs of such administrative efforts range from approximately $410 to $5,000 per consultation (2014 dollars, total cost for all parties participating in a single consultation) (IEc 2014, p. 10). Applying these unit cost estimates, this analysis conservatively estimates that the administrative cost of considering adverse modification in section 7 consultation will result in incremental costs of up to $7,100 (2014 dollars) in a given year for *Consolea corallicola* (IEc 2014, pp. 10–11).

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities we expect will be subject to consultations that may involve private entities as third parties are residential and commercial development that may occur on private lands. However, based on coordination efforts with State and local agencies, the cost to private entities within these sectors is expected to be relatively minor (administrative costs of $5,000 or less per consultation effort) and, therefore, would not be significant.

The probable incremental economic impacts of *Consolea corallicola* critical habitat designation are expected to be limited to additional administrative effort as well as minor costs of conservation efforts resulting from a small number of future section 7 consultations. This is due to two factors: (1) The units proposed as critical habitat are all considered to be occupied by the species and incremental economic impacts of critical habitat designation, other than administrative costs, are unlikely; and (2) few actions are anticipated that will result in section 7 consultation or associated project modifications.

Harrisia aboriginum

The proposed critical habitat designation for *Harrisia aboriginum* totals approximately 3,444 ac (1,394 ha) across 11 units in Manatee, Sarasota, Charlotte, and Lee County. Nine of these units (approximately 44 percent of the area) were occupied by the species at the time of listing; the remaining two units (approximately 56 percent of the area) were unoccupied. The proposed critical habitat includes lands under Federal (11 percent), State (48 percent), county (15 percent), and private or other (26 percent) ownership.

Based on the available information, we anticipate no more than four consultations per year within the occupied proposed critical habitat units. In the occupied areas, any actions that may affect the species or its habitat would also affect designated critical habitat and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of *Harrisia aboriginum.* Therefore, only administrative costs are expected in approximately 44 percent of the proposed critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, in most circumstances, these costs would predominantly be administrative in nature and would not be significant. Unit costs of such administrative efforts range from approximately $410 to $5,000 per consultation (2014 dollars, total cost for all parties participating in a single consultation) (IEc 2014, p. 10). Applying these unit cost estimates to the occupied units, this analysis conservatively estimates that the administrative cost of considering adverse modification in section 7 consultation will result in incremental costs of up to $7,000 (2014 dollars) in a given year for *H. aboriginum* (IEc 2014, p. 11).

In the unoccupied areas, any conservation efforts or associated probable impacts would be considered incremental effects attributed to the critical habitat designation. Within the unoccupied critical habitat, few actions are expected to occur that will result in

section 7 consultation or associated project modifications because no Federal lands are included in these units. Based on the results from past consultation history for these areas and communications with potentially affected entities, we anticipate that an additional six projects will result in section 7 consultation (two formal and four informal) within the proposed unoccupied units per year, with minor conservation efforts that would likely result in relatively low probable economic impacts. Unit costs of such administrative efforts range from approximately $1,200 to $15,000 per consultation (2014 dollars, total cost for all parties participating in a single consultation) (IEc 2014, p. 10). Applying these unit cost estimates to the unoccupied units, this analysis conservatively estimates that the administrative cost of considering adverse modification in section 7 consultation will result in incremental costs of up to $60,000 (2014 dollars) in a given year for *H. aboriginum* (IEc 2014, pp. 10–11). Therefore, the estimate of incremental costs for all units (occupied and unoccupied) is $67,000 (2014 dollars) in a given year for *H. aboriginum* (IEc 2014, pp. 10–11).

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities we expect will be subject to consultations that may involve private entities as third parties are residential and commercial development that may occur on private lands. However, based on coordination efforts with State and local agencies, the cost to private entities within these sectors is expected to be relatively minor (administrative costs of less than $5,000 (occupied) or $15,000 (unoccupied) per consultation effort), and any costs from required conservation measures, therefore, would not be significant.

The probable incremental economic impacts of *Harrisia aboriginum* critical habitat designation are expected to be limited to additional administrative effort as well as minor costs of conservation efforts resulting from a small number of future section 7 consultations. This is due to two factors: (1) Incremental economic impacts of critical habitat designation, other than administrative costs, are unlikely; and (2) in proposed areas that are not occupied by *H. aboriginum* (56 percent), few actions are anticipated that will result in section 7 consultation or associated project modifications.

The DEA also discusses the potential for incremental costs to occur outside of the section 7 consultation process, including costs associated with the potential triggering of additional requirements or project modifications under State laws or regulations, and perceptional effects on markets. For both species, it is unlikely that the designation of critical habitat will trigger additional State or local restrictions (IEc 2014, pp. 11–12). Public perception of critical habitat may result in landowners or buyers believing that the rule will restrict land or water use activities in some way and, therefore, valuing the resource less than they would have absent critical habitat. This is a perceptional, or stigma, effect of critical habitat on markets. Costs resulting from public perception of the impact of critical habitat, if they occur, are more likely to occur on private lands. However, based on the DEA, ''possible costs resulting from public perception of the effect of critical habitat designation, when combined with section 7 costs, are unlikely to exceed the threshold for an economically significant rulemaking under [Executive Order] 12866'' (IEc 2014, p. 13). Under Executive Order 12866, agencies must assess the potential costs and benefits of regulatory actions and quantify those costs and benefits if that action may have an effect on the economy of $100 million or more annually.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of these species.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for *Consolea corallicola* or *Harrisia aboriginum* are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not intending to exercise her discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

We have determined that the Monroe County HCP for Big Pine and No Name Keys is the only HCP or other management plan that will be affected by either proposed designations. The Monroe County HCP for Big Pine and No Name Keys, which covers a portion of unit FSC3, does not include *Consolea corallicola* as a 'Covered Species' and *C. corallicola* is not mentioned specifically anywhere in the HCP document. Further, the proposed designation does not include any tribal lands or trust resources. Therefore, we anticipate no impact on tribal lands, partnerships, or other HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not intend to exercise her discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information received during the comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

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 **ADDRESSES**. 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.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Federal agencies are not small entities and to this end, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not foresee any energy development projects that may affect the proposed critical habitat units for *Consolea corallicola* or *Harrisia aboriginum.* Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment,

these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments. The government lands being proposed for critical habitat designation are owned by the Town of Longboat Key, the State of Florida, and the BLM, NPS, and the Service. None of these government entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. Due to current public knowledge of the species protections and the prohibition against take of the species both within and outside of the proposed areas, we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet finalized the economic analysis for this proposed rule. Once the economic analysis is final, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we request information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Florida. From a Federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

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.

As discussed above (see *Exclusions Based on Other Relevant Impacts*), we have determined that there are no tribal lands that were occupied by *Consolea corallicola* and *Harrisia aboriginum* at the time of listing that contain the features essential for conservation of the species, and no tribal lands unoccupied by *C. corallicola* and *H. aboriginum* that are essential for the conservation of the species.

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.

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 South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the South Florida Ecological Services 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—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 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. In § 17.12(h), revise the entries for ''*Consolea corallicola* Cactus, Florida semaphore'' and ''*Harrisia aboriginum* Prickly-apple, aboriginal'' under ''Flowering Plants'' in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Consolea corallicola	Cactus, Florida semaphore.	U.S.A. (FL)	Cactaceae	E	826	17.96(a)	NA
*	*	*	*	*	*		*
Harrisia aboriginum	Prickly-apple, aboriginal.	U.S.A. (FL)	Cactaceae	E	826	17.96(a)	NA
*	*	*	*	*	*		*

■ 3. Amend § 17.96(a) by adding entries for ''*Consolea corallicola* (Florida semaphore cactus)'' and ''*Harrisia aboriginum* (aboriginal prickly-apple)'' in alphabetical order under the family Cactaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Cactaceae: *Consolea corallicola* (Florida semaphore cactus)

(1) Critical habitat units are depicted for Miami-Dade and Monroe Counties, Florida, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Consolea corallicola* are:

(i) Areas of upland habitats consisting of coastal berm, rockland hammocks, and buttonwood forest.

(A) Coastal berm habitat that contains:

(*1*) Open to semi-open canopy, subcanopy, and understory; and

(*2*) Substrate of coarse, calcareous, and storm-deposited sediment.

(B) Rockland hammock habitat that contains:

(*1*) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory; and

(*2*) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the limestone.

(C) Buttonwood forest habitat that contains:

(*1*) Open to semi-open canopy and understory; and

(*2*) Substrate with calcareous marl muds, calcareous sands, or limestone rock.

(ii) A plant community of predominately native vegetation with no invasive, nonnative animal or plant species or such species in quantities low enough to have minimal effect on survival of *Consolea corallicola.*

(iii) A disturbance regime, due to the effects of strong winds or saltwater inundation from storm surge or infrequent tidal inundation, that creates canopy openings in coastal berm, rockland hammocks, and buttonwood forest.

(iv) Habitats that are connected and of sufficient size to sustain viable populations in coastal berm, rockland hammocks, and buttonwood forest.

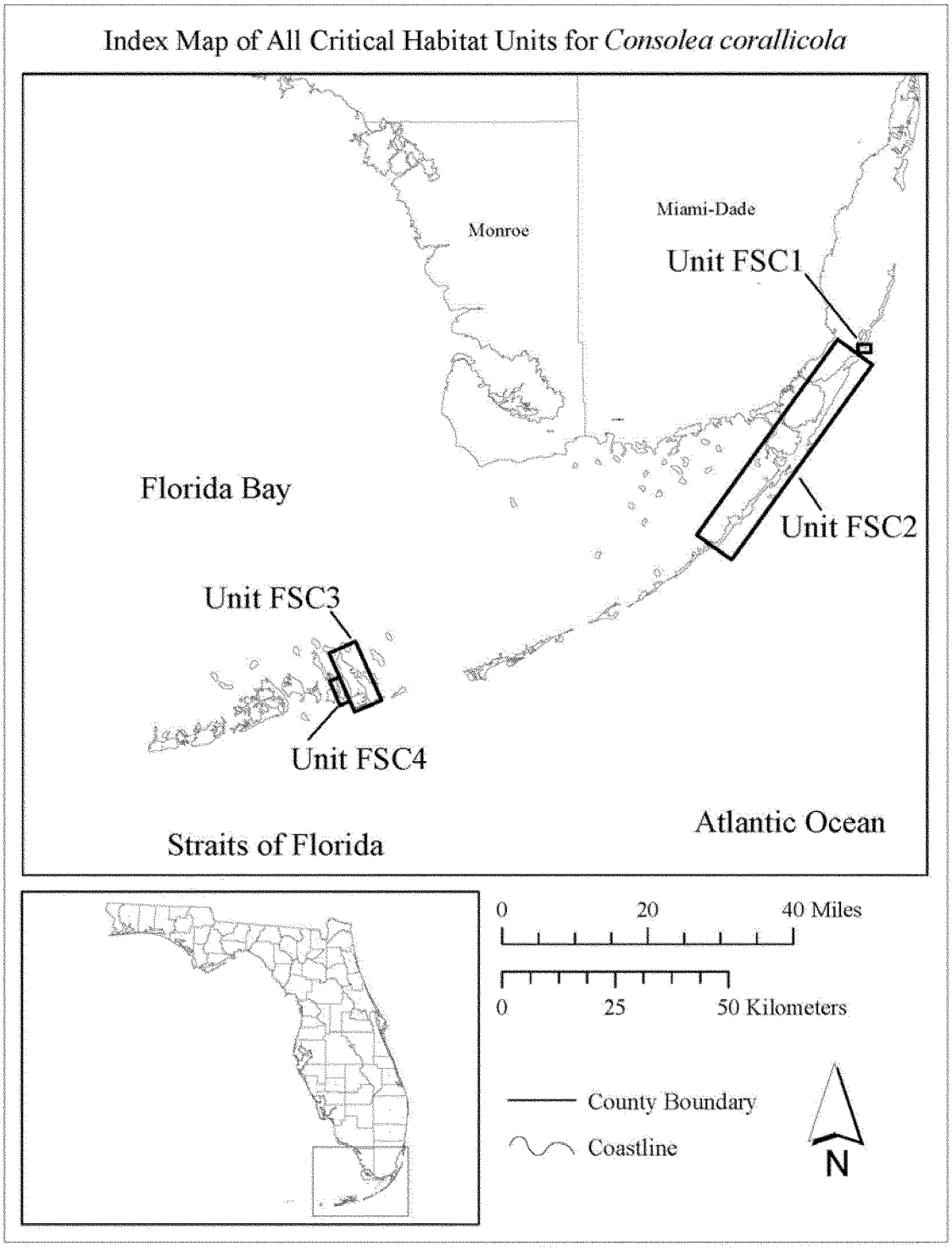
(v) Habitats that provide populations of the generalist pollinators that visit the flowers of *Consolea corallicola.*

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located that exists within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were developed using ESRI ArcGIS mapping software along with various spatial data layers. ArcGIS was also used to calculate area. The projection used in mapping and calculating distances and locations within the units was North American Albers Equal Area Conic, NAD 83. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates, plot points, or both on which each map is based are available to the public at the Service's Internet site at *http://www.fws.gov/verobeach/,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2014–0057, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

Note: Index map of all critical habitat units for *Consolea corallicola* follows:

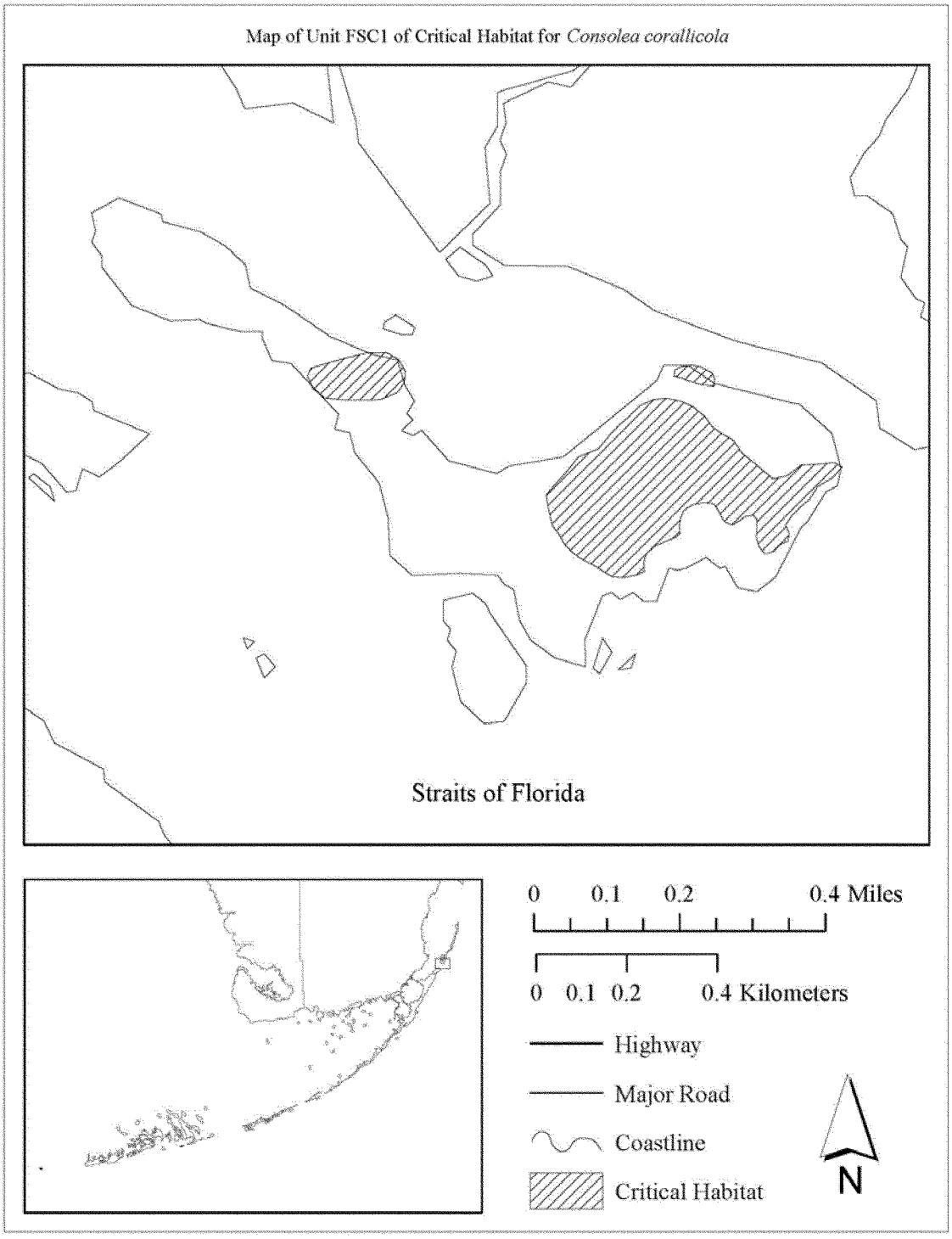
BILLING CODE 4310–55–P



(6) Unit FSC1: Swan Key, Biscayne National Park, Miami-Dade County, Florida.

(i) *General Description:* Unit FSC1 consists of 37 ac (15 ha) in Miami-Dade County. This unit is composed entirely of lands in Federal ownership, 100 percent of which are located on Swan Key within Biscayne National Park. The unit includes all upland rockland hammock habitat on Swan Key, most of which is located on the eastern side of Swan Key, surrounded by the island's mangrove fringe. A second, smaller area is located on the island's elongated western half and is also surrounded by mangroves.

(ii) Map of Unit FSC1 follows:



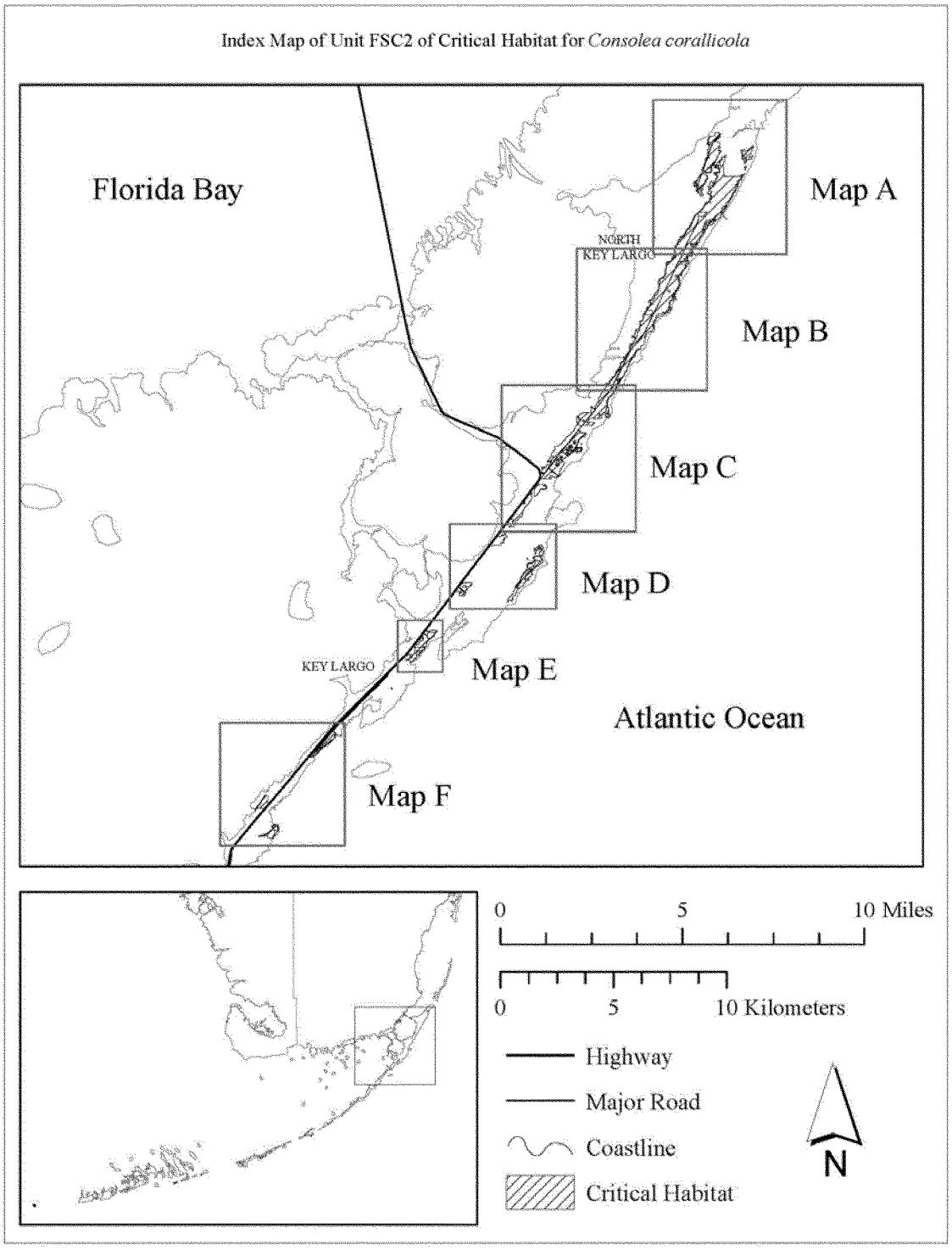
(7) Unit FSC2: Key Largo, Monroe County, Florida.

(i) *General Description:* Unit FSC2 consists of 3,434 ac (1,389 ha) in Monroe County. This unit is composed of Federal lands within Crocodile Lake National Wildlife Refuge (NWR) (702 ac (284 ha)); State lands within Dagny Johnson Botanical State Park, John Pennekamp Coral Reef State Park, and the Florida Keys Wildlife and Environmental Area (2331 ac (943 ha)); lands owned by Monroe County (17 ac (7 ha)); and parcels in private or other ownership (384 ac (155 ha)). This unit extends from near the northern tip of Key Largo, along the length of Key Largo, beginning at the south shore of Ocean Reef Harbor near South Marina Drive and the intersection of County Road (CR) 905 and Clubhouse Road on the west side of CR 905, and between CR 905 and Old State Road 905, then extending to the shoreline south of South Harbor Drive. The unit then continues on both sides of CR 905 through the Crocodile Lake NWR, Dagny

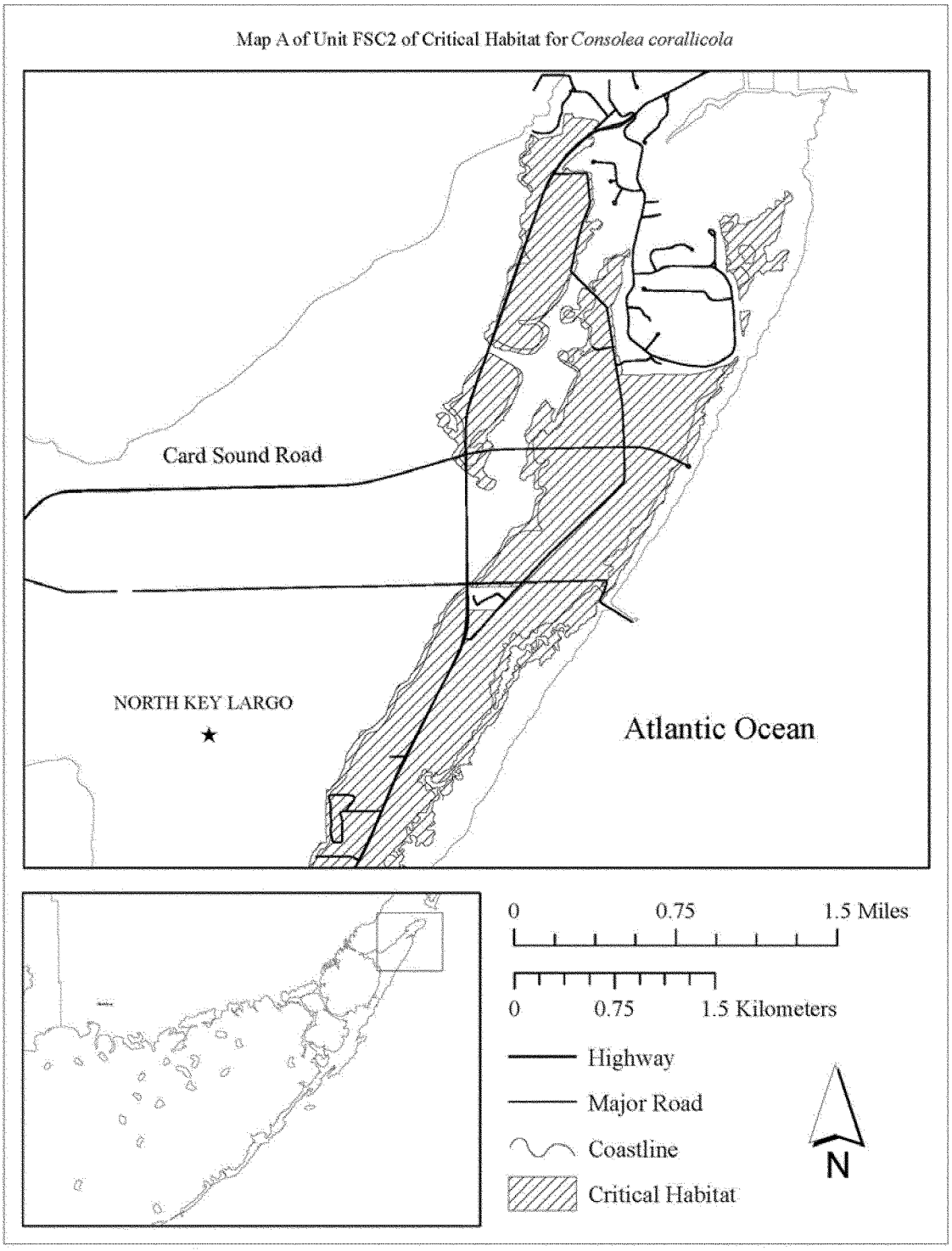
Johnson Key Largo Hammock Botanical State Park, and John Pennekamp Coral Reef State Park. The unit then terminates near the junction of U.S. 1 and CR 905 and Garden Cove Drive. The unit resumes on the east side of U.S. 1 from South Andros Road to Key Largo Elementary; then from the intersection of Taylor Drive and Pamela Street to Avenue A, then from Sound Drive to the intersection of Old Road and Valencia Road, then resumes on the east side of U.S. 1 from Hibiscus Lane and Ocean Drive. The unit continues south near the Port Largo Airport from Poisonwood Road to Bo Peep Boulevard. The unit resumes on the west side of U.S. 1 from the intersection of South Drive and Meridian Avenue to Casa Court Drive. The unit then continues on the west side of U.S. 1 from the point on the coast directly west of Peace Avenue south to Caribbean Avenue. The unit also includes a portion of the barrier island (El Radabob Key) in Largo Sound located directly east of Avenue A, extending south to a point directly east of Mahogany Drive.

(ii) Index map of Unit FSC2 follows:

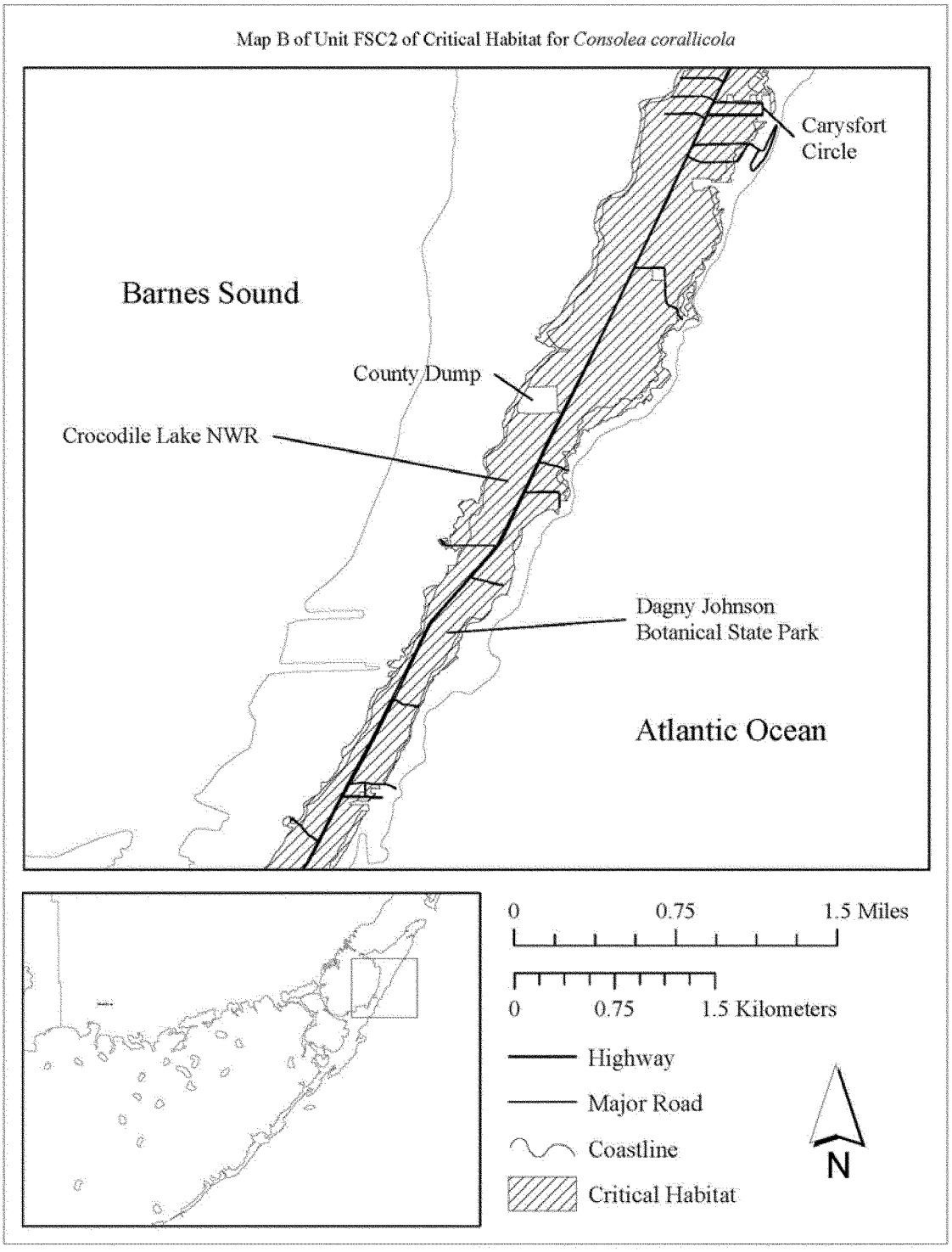
BILLING CODE 4310–55–P



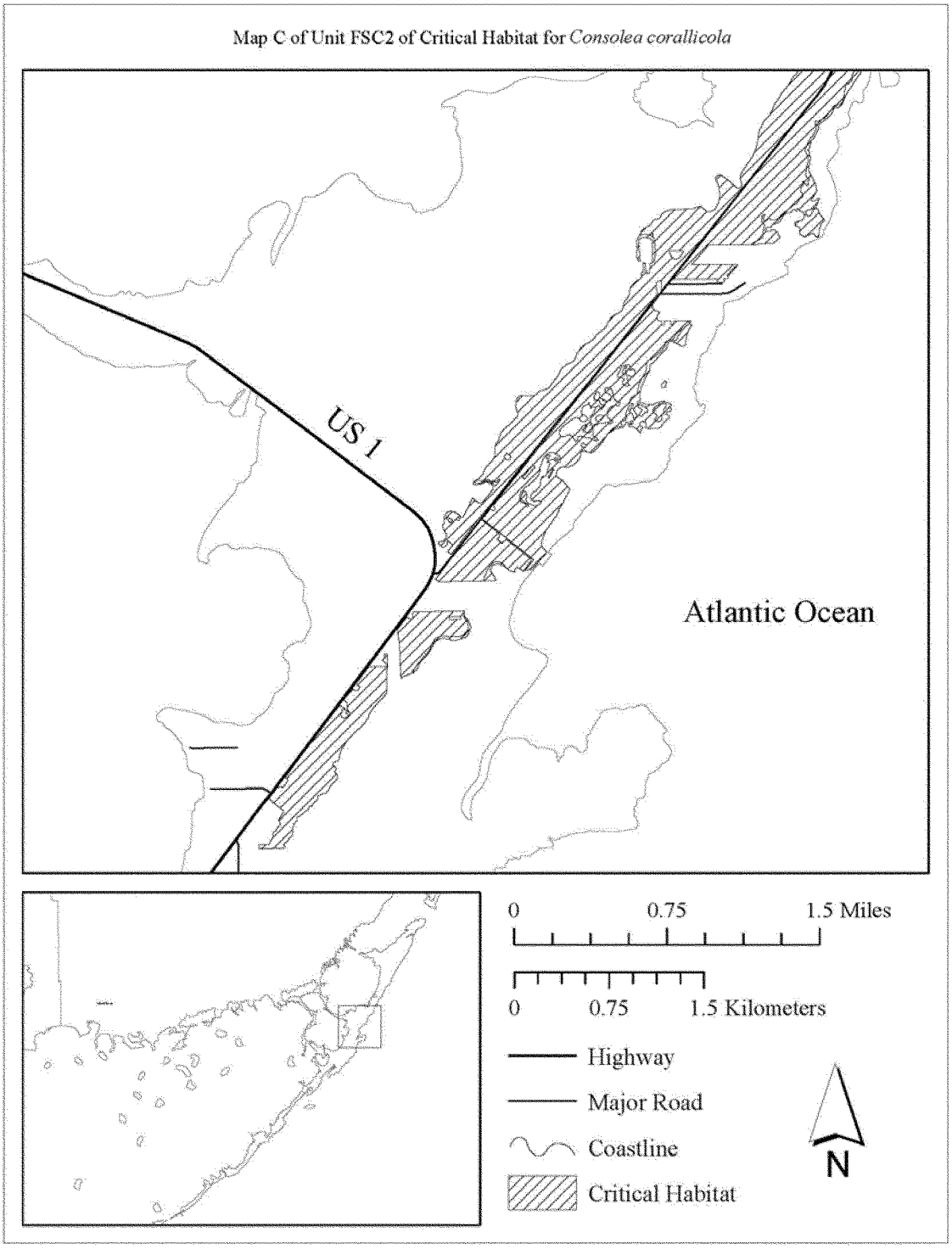
(iii) Map A of Unit FSC2 follows:



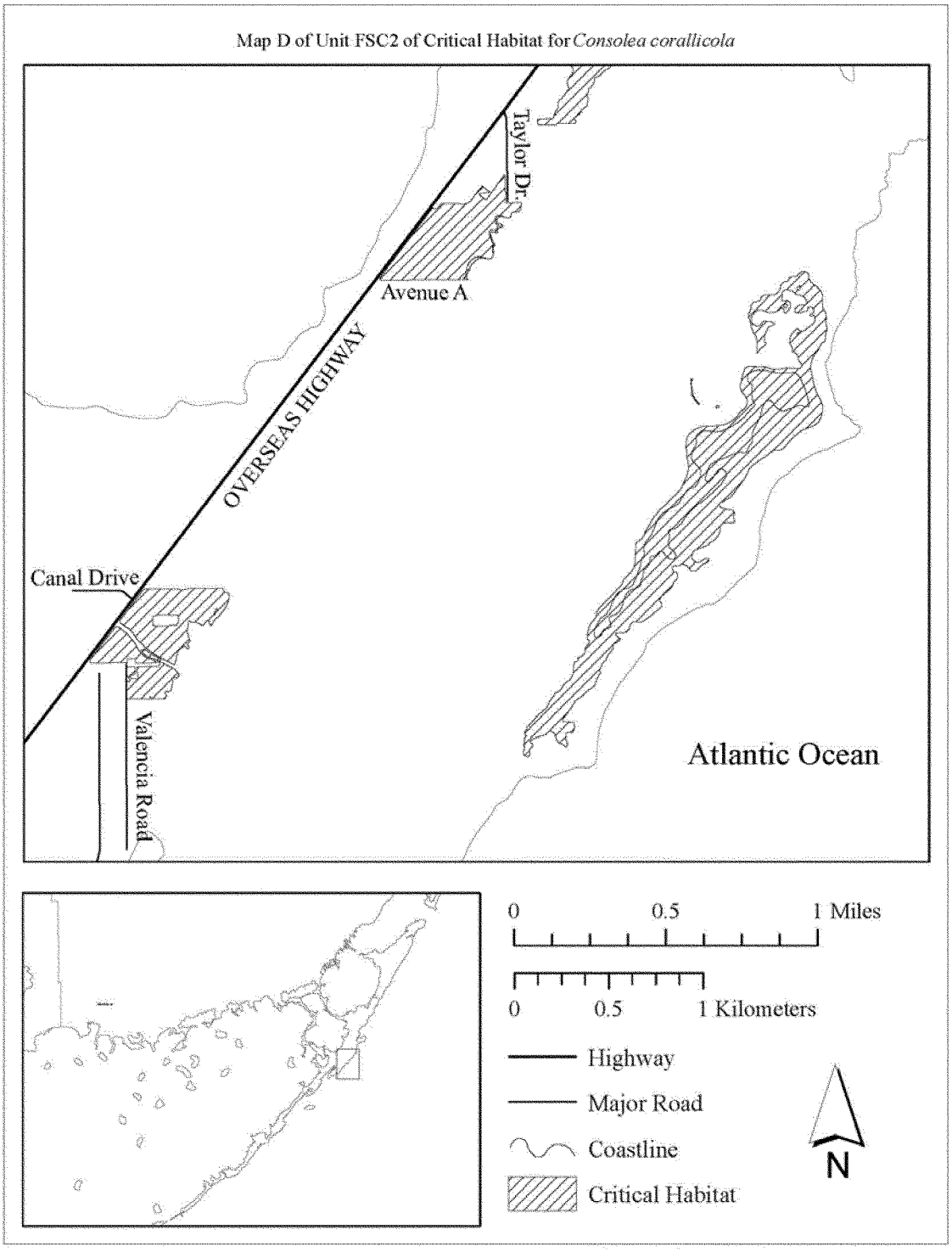
(iv) Map B of Unit FSC2 follows:



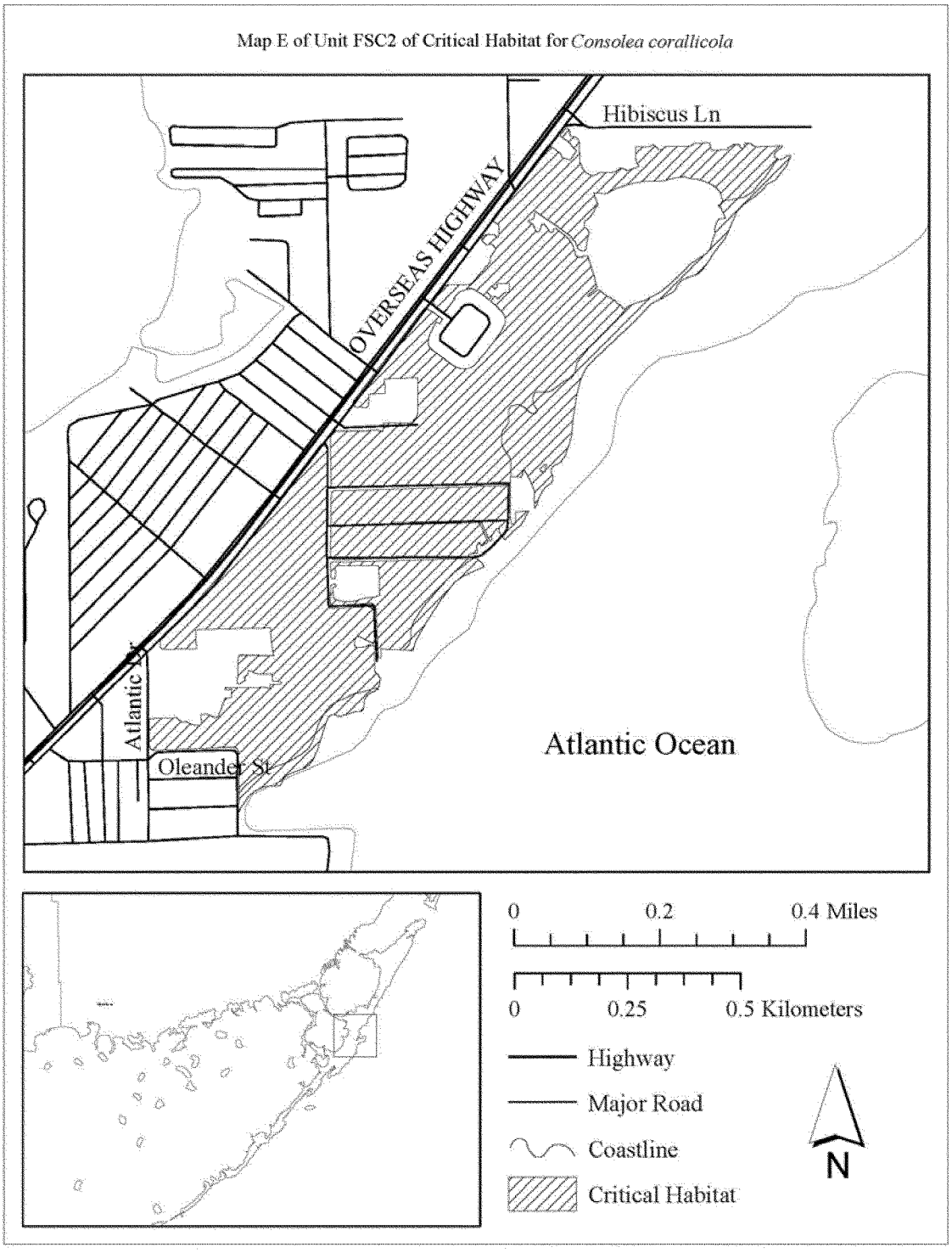
(v) Map C of Unit FSC2 follows:



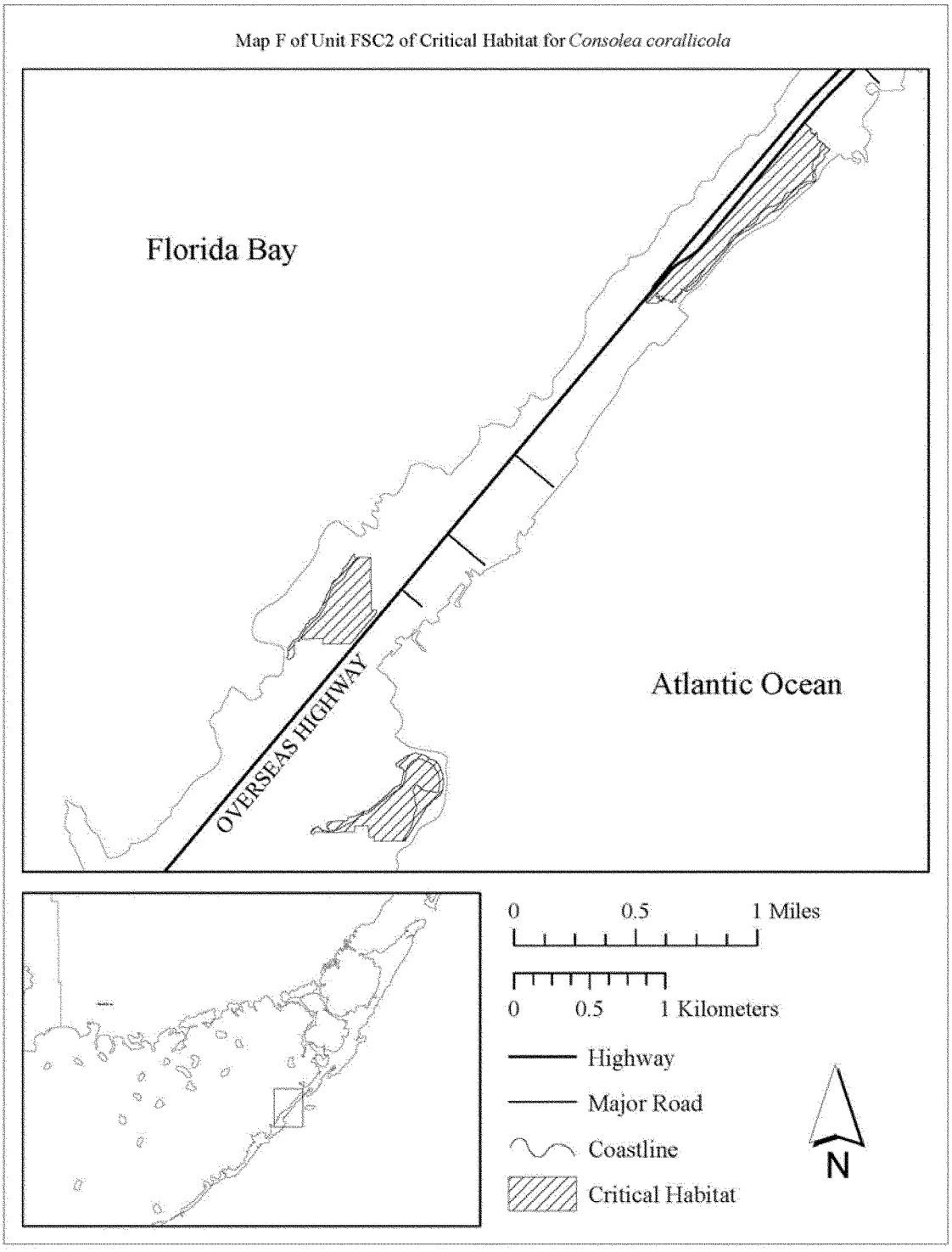
(vi) Map D of Unit FSC2 follows:



(vii) Map E of Unit FSC2 follows:



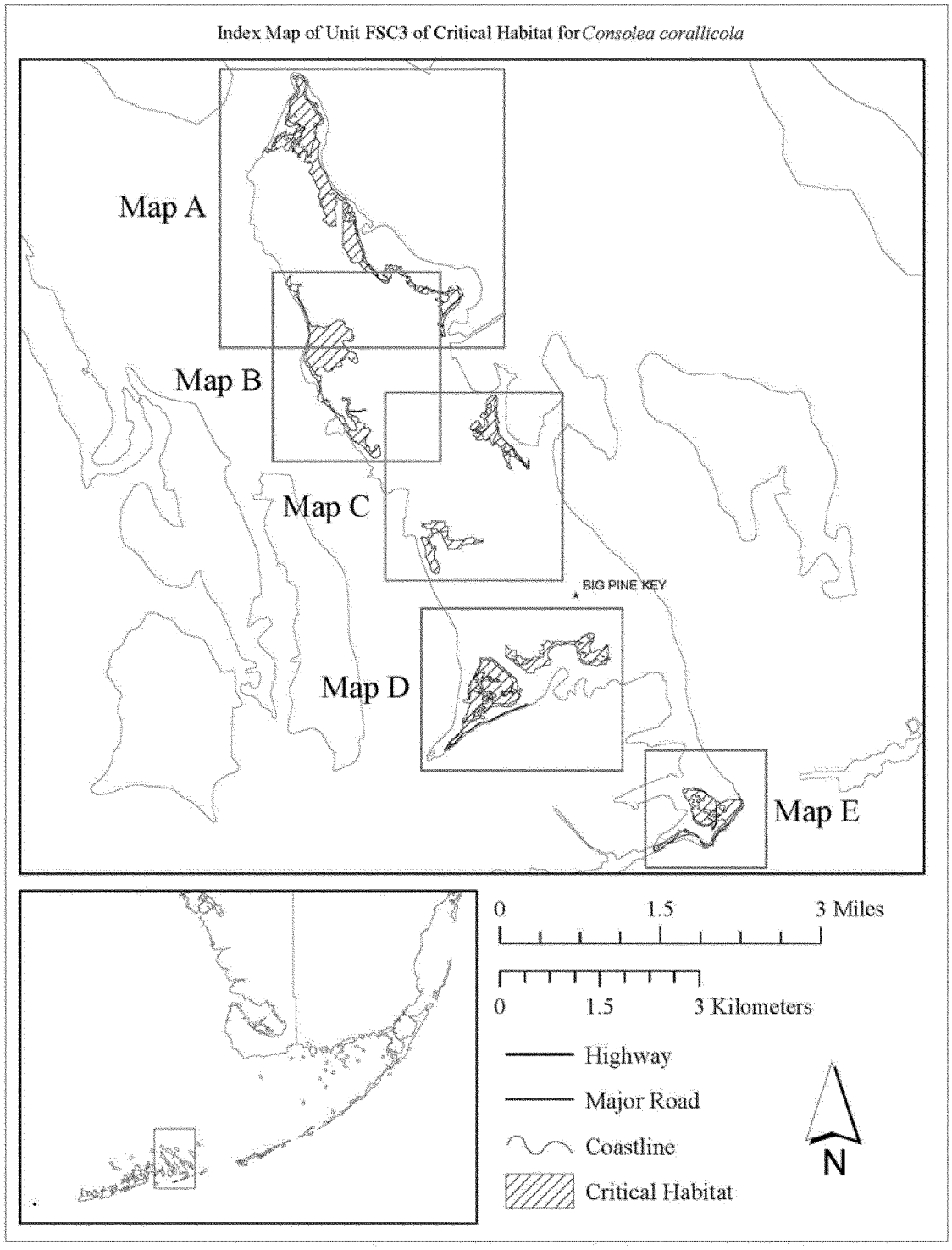
(viii) Map F of Unit FSC2 follows:



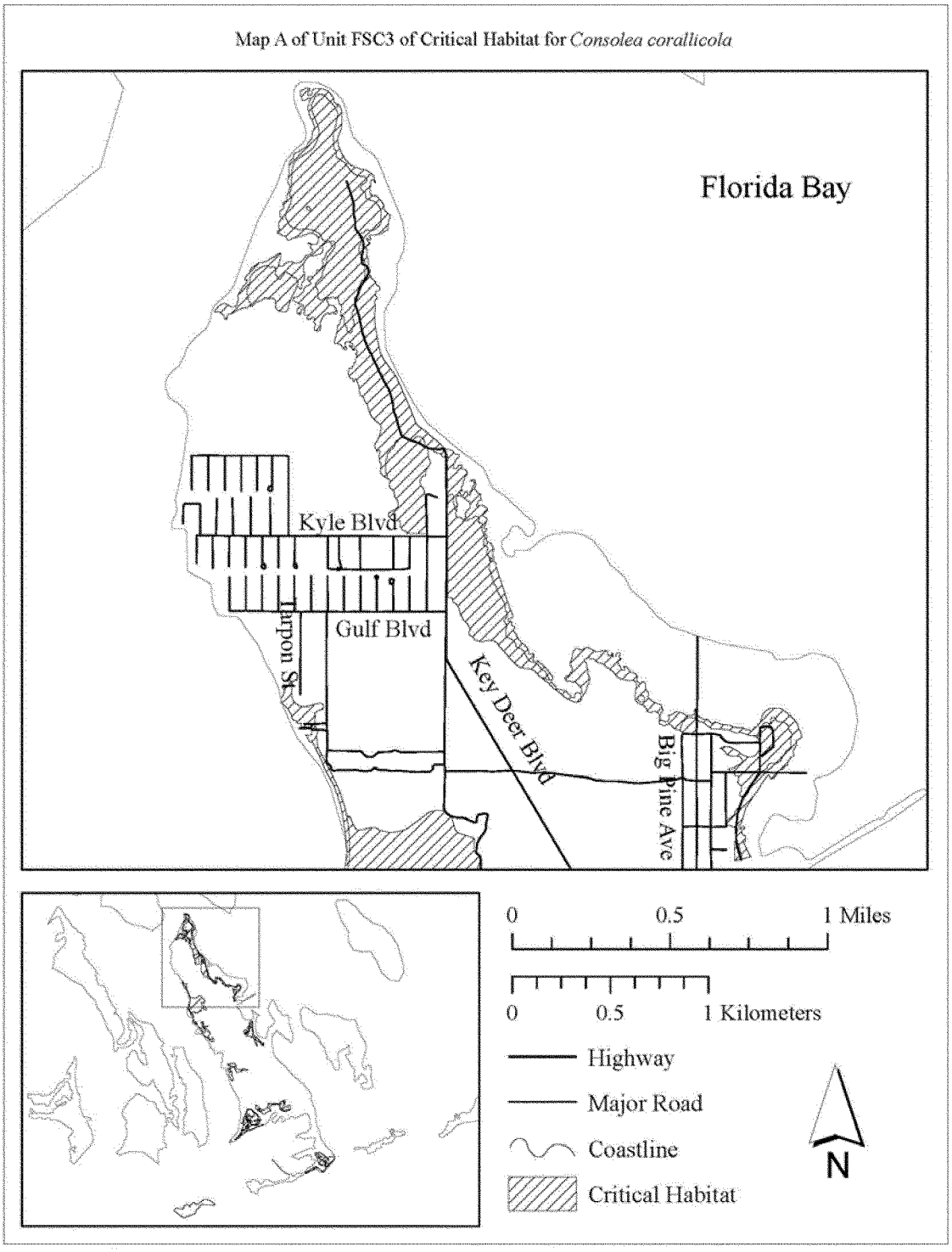
(8) Unit FSC3: Big Pine Key, Monroe County, Florida.

(i) *General Description:* Unit FSC3 consists of 772 ac (313 ha) in Monroe County. This unit is composed of Federal land within the National Key Deer Refuge (NKDR) (508 ac (205 ha)), State land managed as part of the NKDR (172 ac (70 ha)), lands owned by Monroe County (11 ac (5 ha)), and parcels in private or other ownership (81 ac (33 ha)). This unit extends from near the northern tip of Big Pine Key along the eastern shore to the vicinity of Hellenga Drive and Watson Road; from Gulf Boulevard south to West Shore Drive; Big Pine Avenue and Elma Avenues on the east, Coral and Yacht Club Road, and U.S. 1 on the north, and Industrial Avenue on the east from the southeastern tip of Big Pine Key to Avenue A.

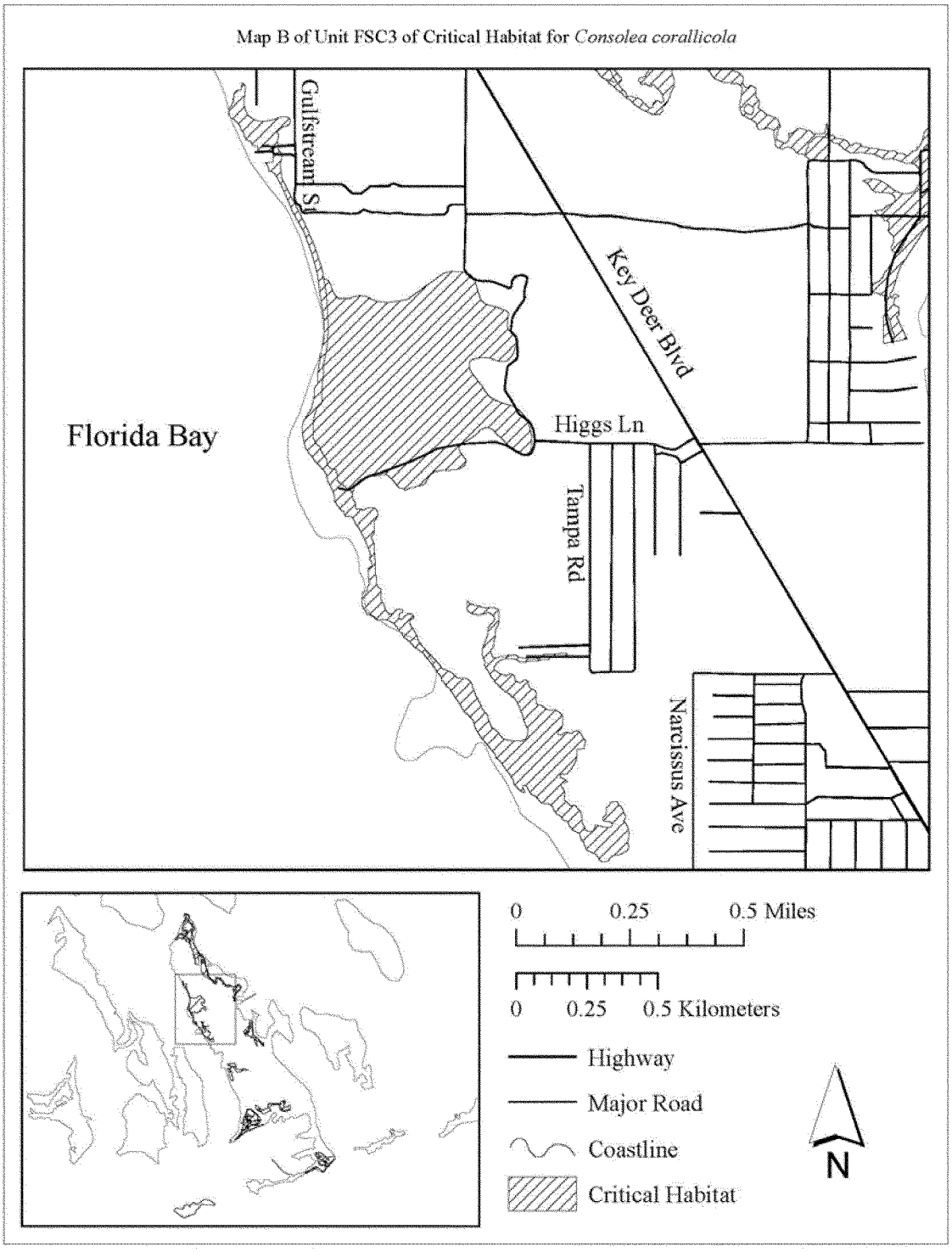
(ii) Index map of Unit FSC3 follows:



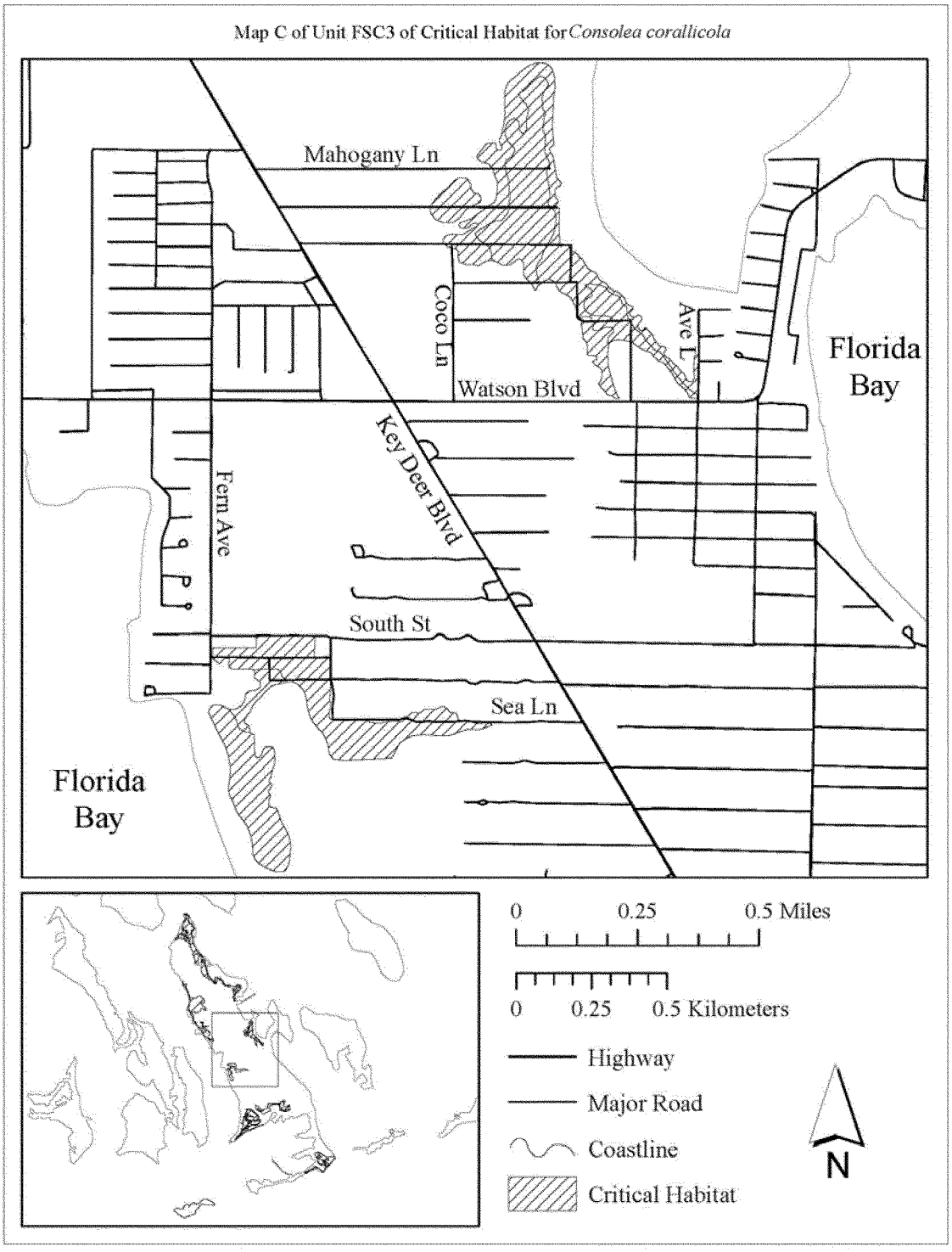
(iii) Map A of Unit FSC3 follows:



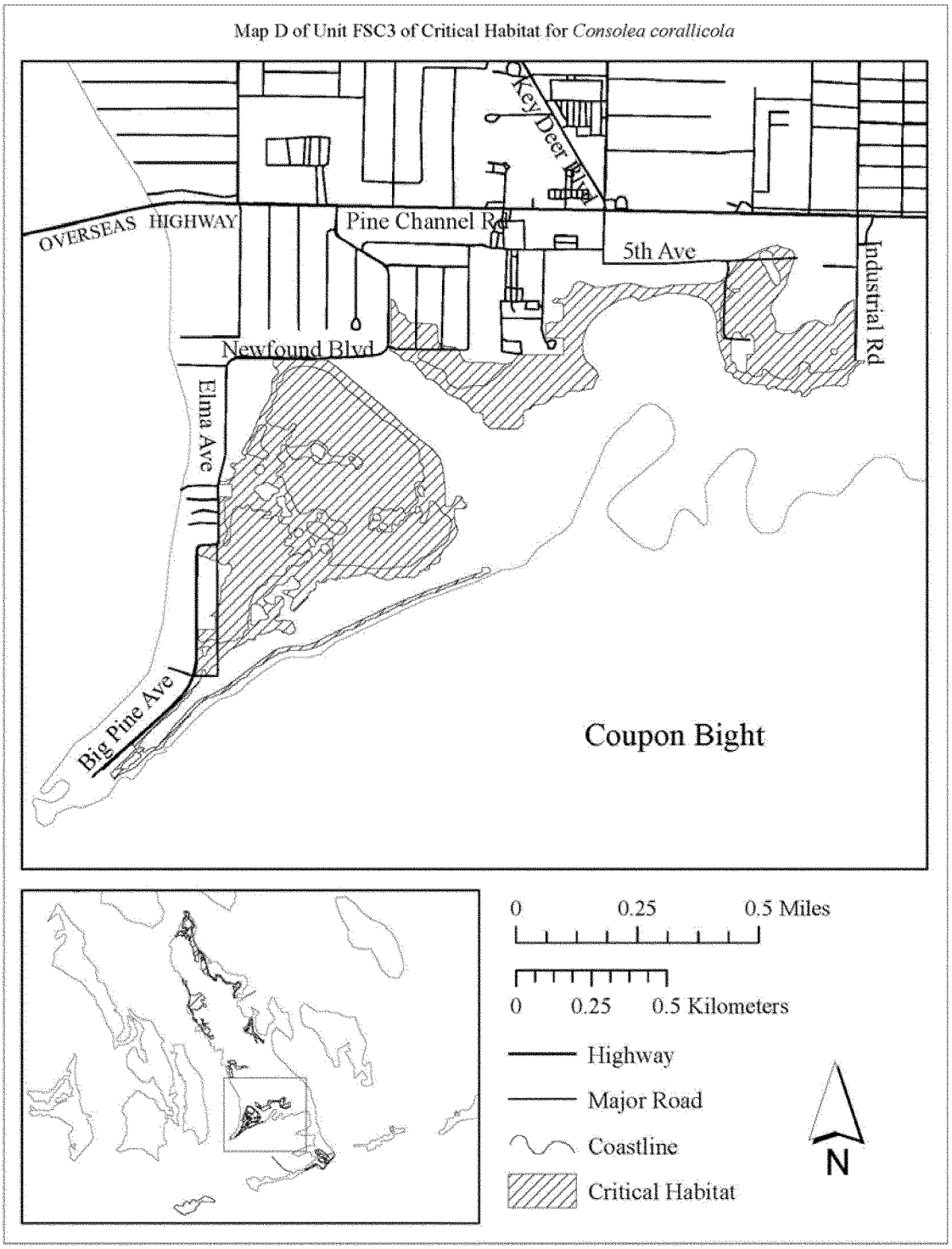
(iv) Map B of Unit FSC3 follows:



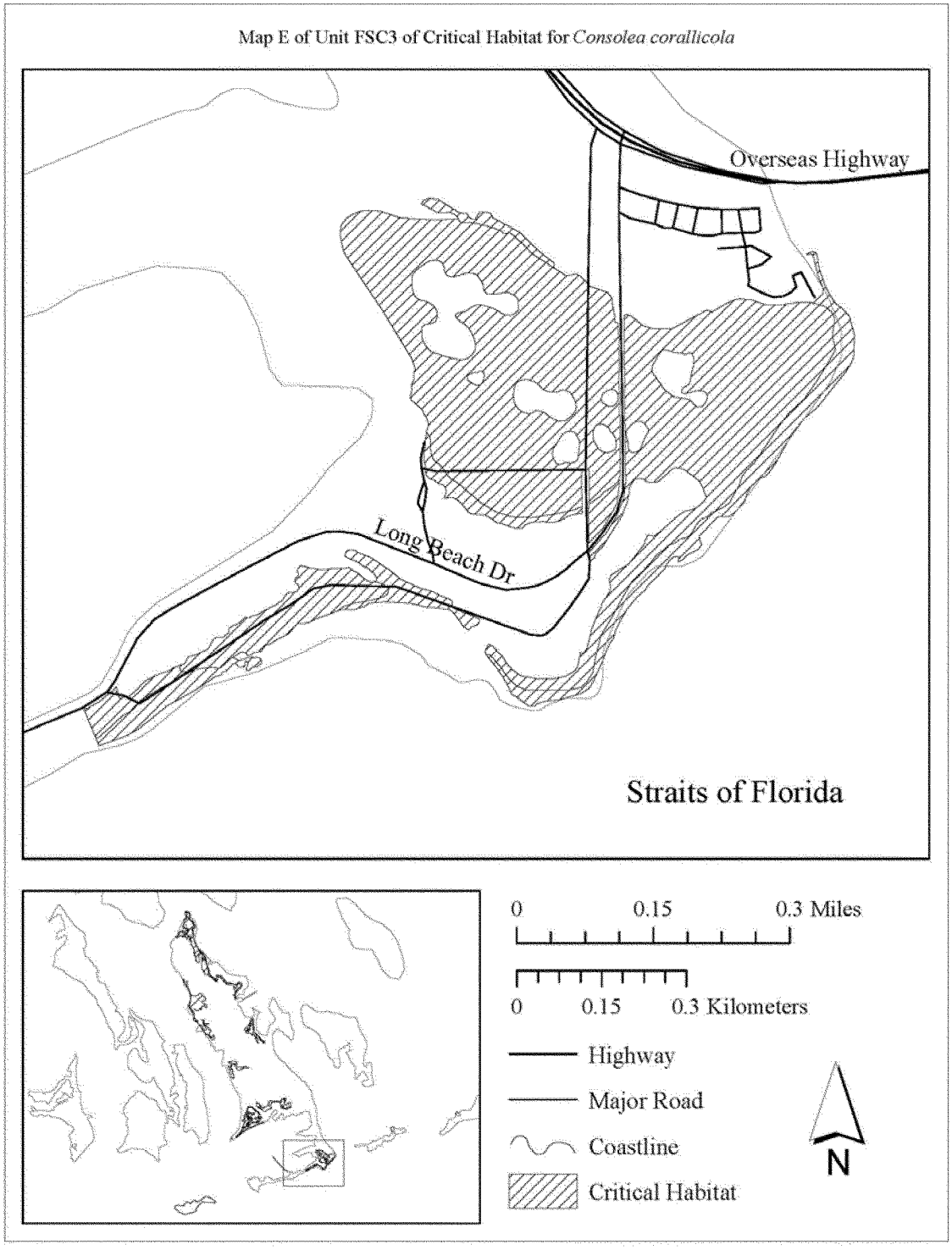
(v) Map C of Unit FSC3 follows:



(vi) Map D of Unit FSC3 follows:



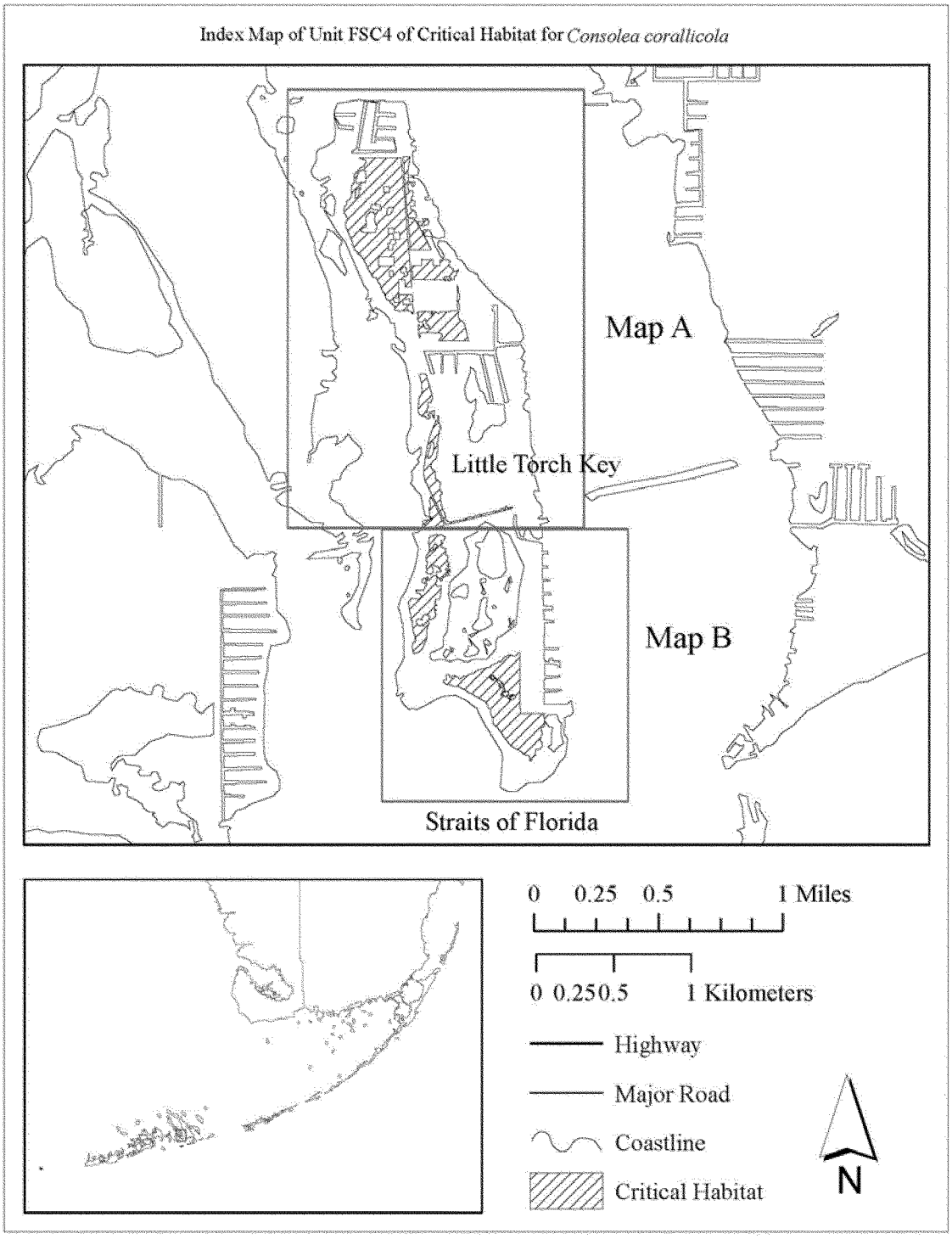
(vii) Map E of Unit FSC3 follows:



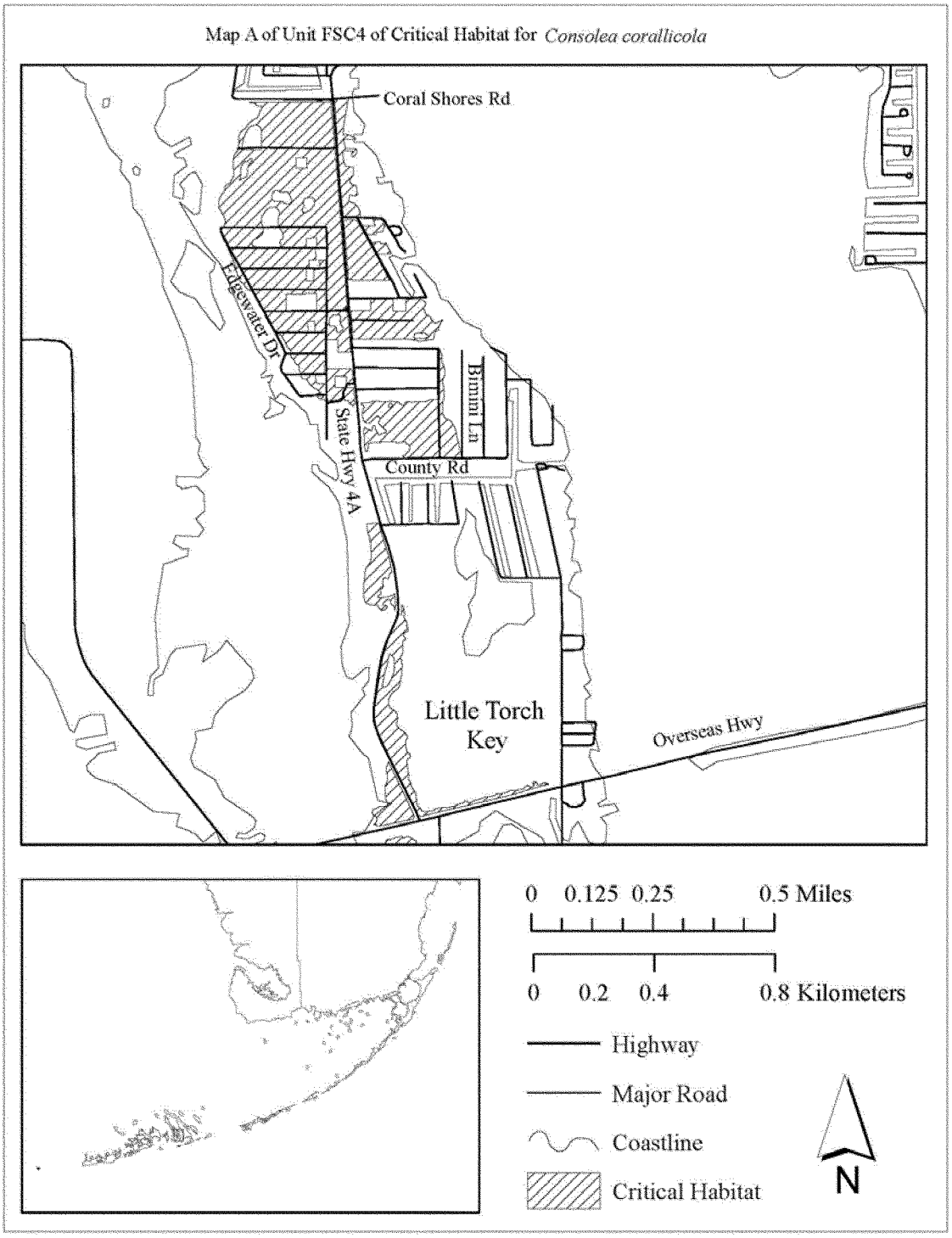
(9) Unit FSC4: Little Torch Key, Monroe County, Florida.

(i) *General Description:* Unit FSC4 consists of 168 ac (68 ha) in Monroe County. This unit is composed of State lands (47 ac (19 ha)), lands owned by Monroe County (10 ac (4 ha)), and parcels in private and other ownership (111 ac (45 ha)). This unit extends along State Highway 4A, from Coral Shores Road, south to County Road, resuming at Linda Street and extending south to the Overseas Highway. South of the Overseas Highway, the unit includes areas west of Kings Cove Road, and an area comprising the southern tip of Little Torch Key that includes portions of the John J. Pescatello Torchwood Hammock Preserve.

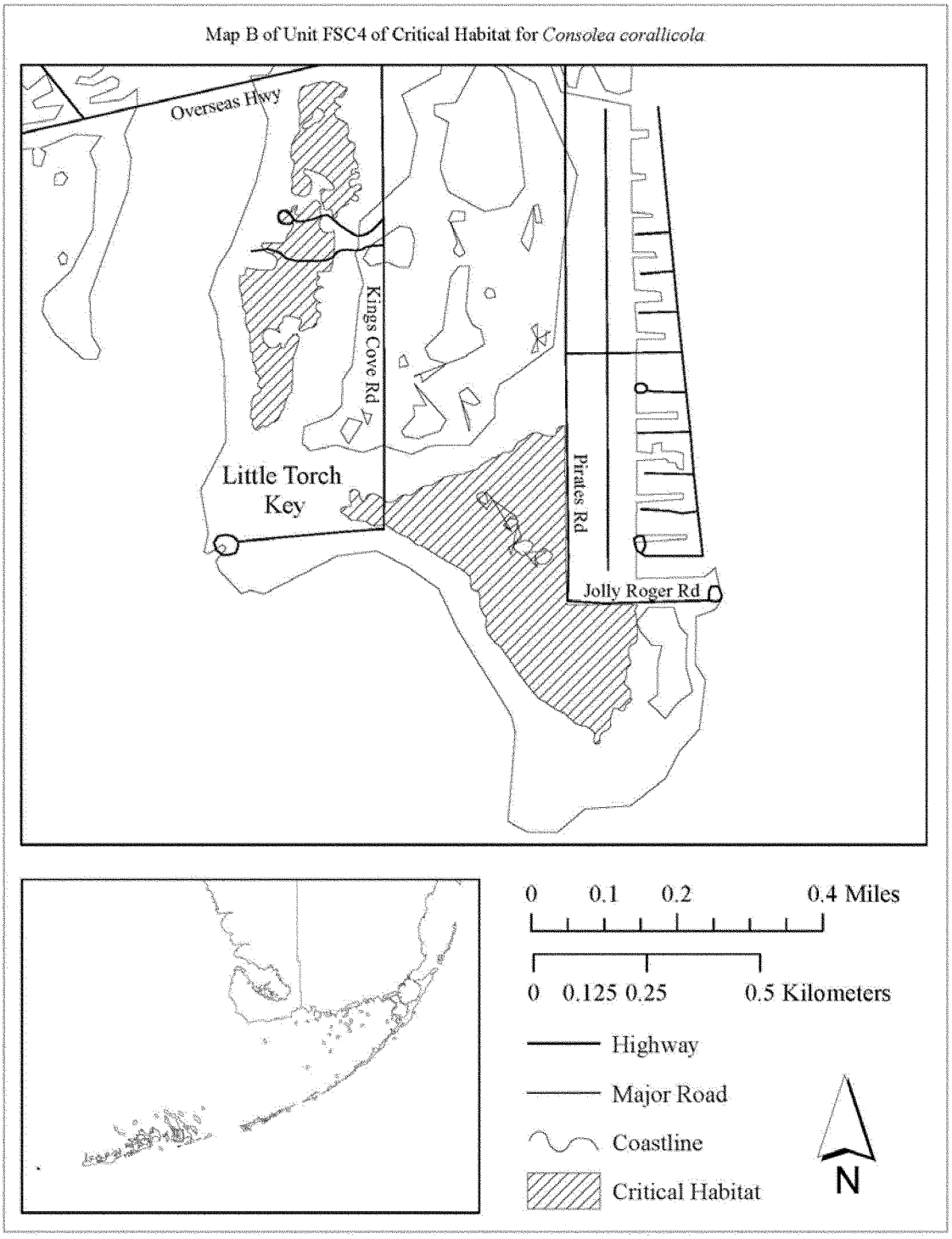
(ii) Index map of Unit FSC4 follows:



(iii) Map A of Unit FSC4 follows:



(iv) Map B of Unit FSC4 follows:



* * * * *

Family Cactaceae: *Harrisia aboriginum* (Aboriginal Prickly-Apple)

(1) Critical habitat units for *Harrisia aboriginum* are depicted for Manatee, Charlotte, Sarasota, and Lee Counties, Florida, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Harrisia aboriginum* are:

(i) Areas of upland habitats consisting of coastal strand, coastal grassland, coastal berm, maritime hammocks, and shell mounds.

(A) Coastal strand habitat that contains:

(*1*) Open to semi-open canopy and understory, and

(*2*) Substrate of sand and shell fragments of stabilized coastal dunes.

(B) Coastal grassland habitat that contains:

(*1*) No canopy and an open understory, and

(*2*) Substrate of sand and shell fragments.

(C) Coastal berm habitat that contains:

(*1*) Open to semi-open canopy, subcanopy, and understory, and

(*2*) Substrate of coarse, calcareous, storm-deposited sediment.

(D) Maritime hammock habitat that contains:

(*1*) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory; and

(*2*) Substrate of calcareous sand and shell fragments.

(E) Shell mound habitat that contains:

(*1*) Open to semi-open canopy and understory, and

(*2*) Substrate of soil derived from calcareous shells deposited by Native Americans during prehistoric times.

(ii) A plant community of predominately native vegetation with no invasive, nonnative animal or plant species or such species in quantities low enough to have minimal effect on survival of *Harrisia aboriginum.*

(iii) Canopy openings in coastal strand, coastal grassland, coastal berm, maritime hammock, and shell mound habitats that are created by the effects of strong winds or saltwater inundation from storm surge or infrequent tidal inundation.

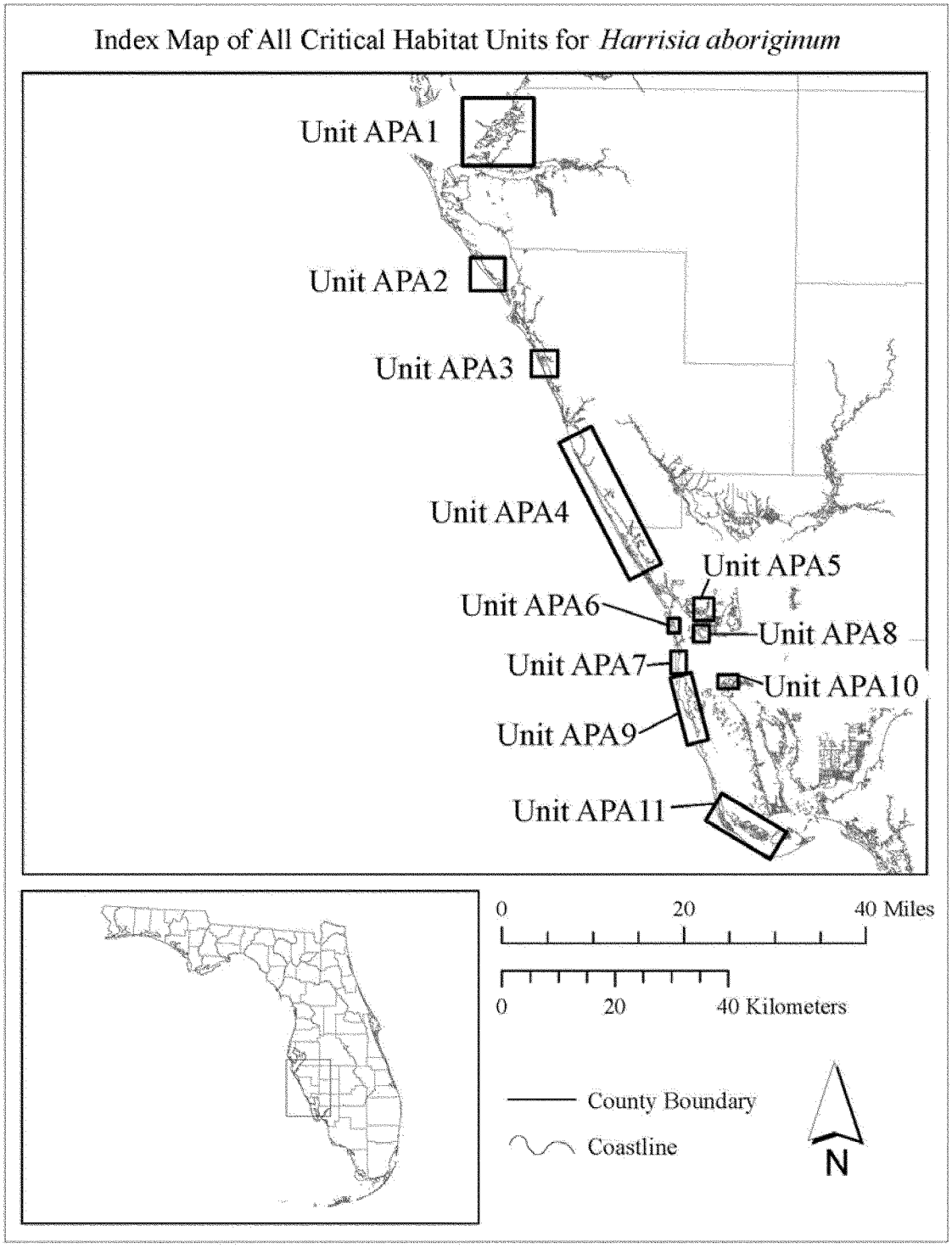
(iv) Habitats that are connected and of sufficient size to sustain viable populations in coastal strand, coastal grassland, coastal berm, maritime hammock, and shell mound habitats.

(v) Habitats that provide populations of the generalist pollinators that visit the flowers of *Harrisia aboriginum.*

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located that exists within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Unit maps were developed using ESRI ArcGIS mapping software along with various spatial data layers. ArcGIS was also used to calculate area. The projection used in mapping and calculating distances and locations within the units was North American Albers Equal Area Conic, NAD 83. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site at *http://www.fws.gov/verobeach/,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2014–0057, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of all critical habitat units for *Harrisia aboriginum* follows:

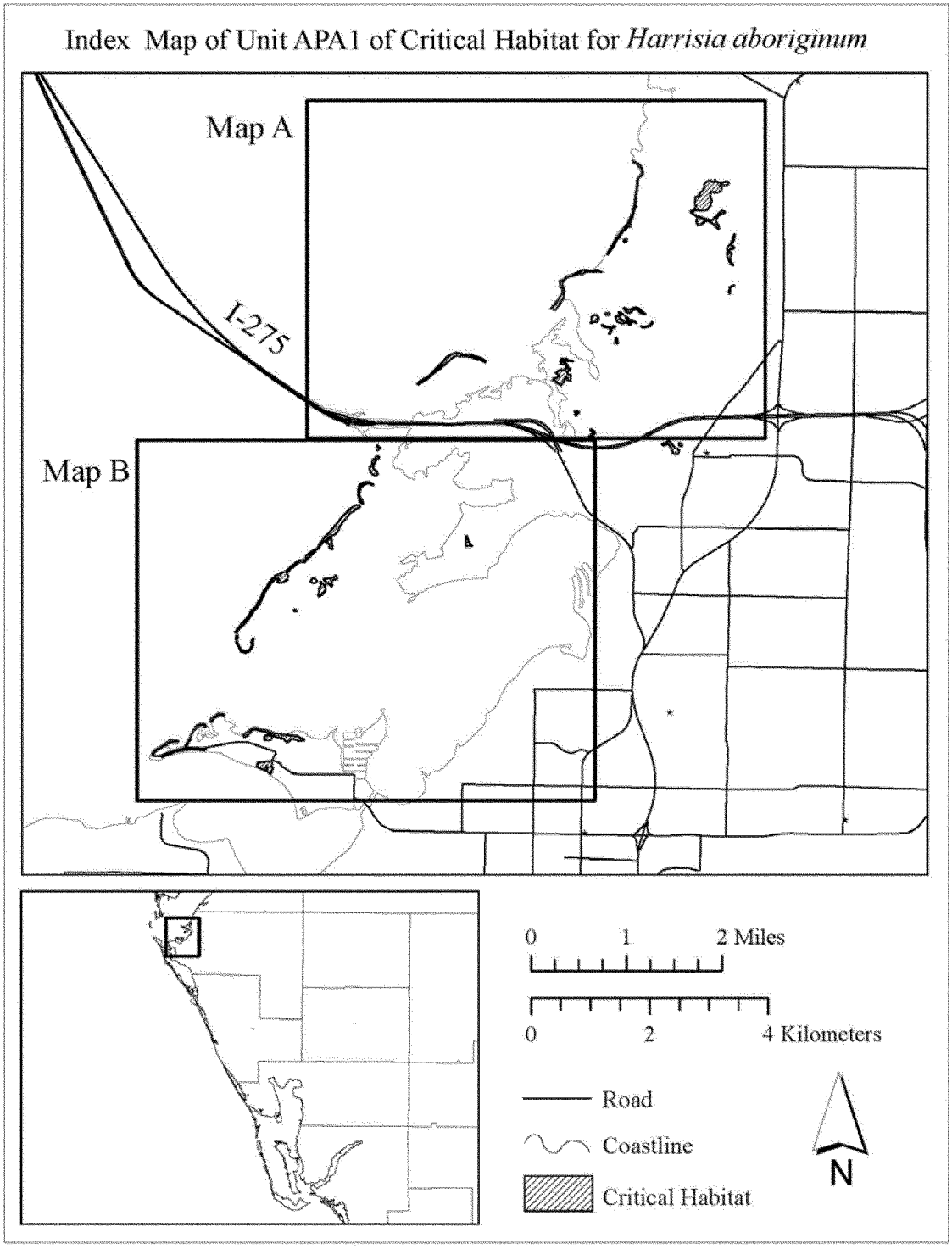


(6) Unit APA1: Terra Ceia, Manatee County, Florida.

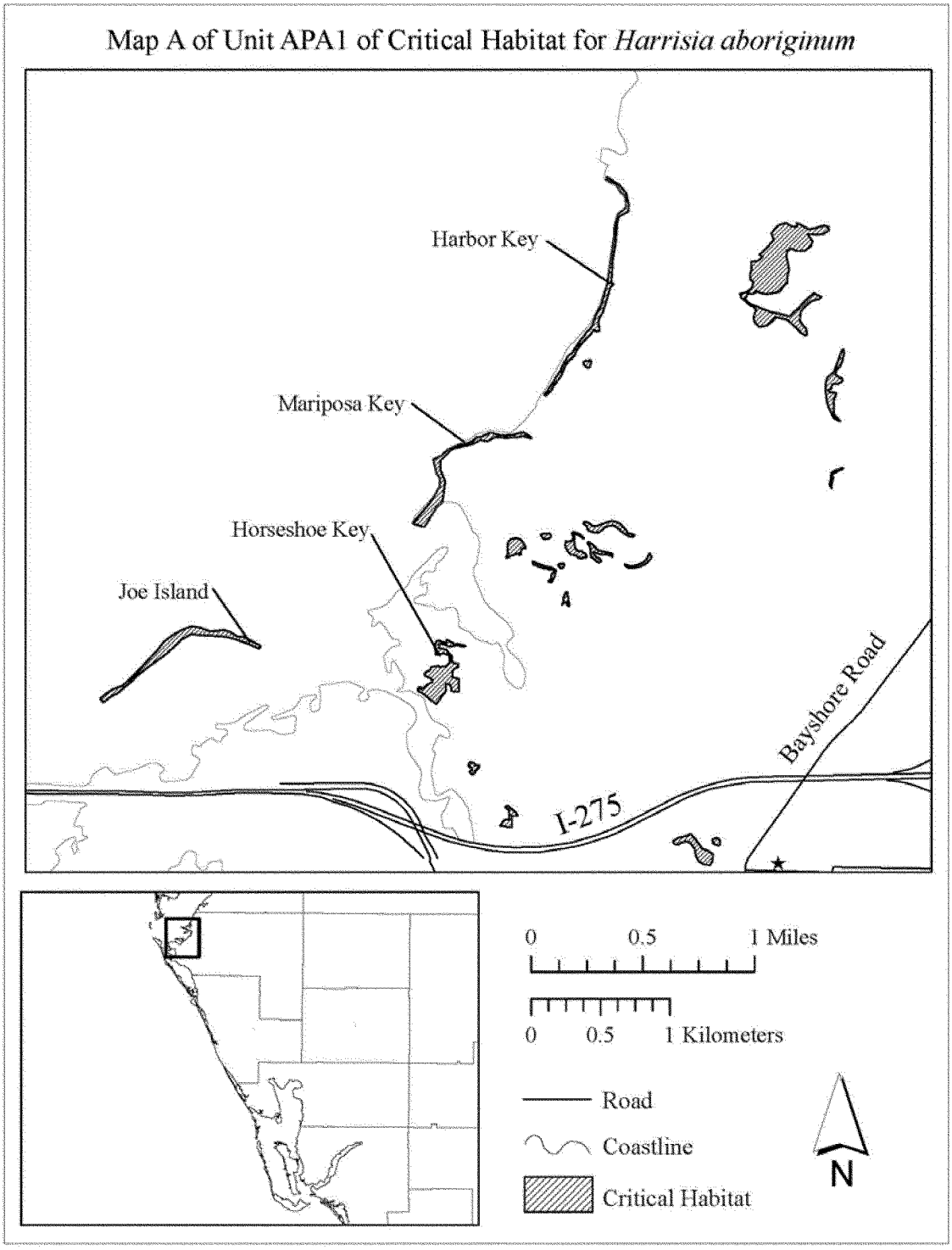
(i) *General Description:* Unit APA1 consists of approximately 222 ac (90 ha) in Manatee County, Florida. This unit is composed of State lands within Madira Bickel Mound State Historical Park, Terra Ceia Preserve State Park, Cockroach Bay State Buffer Preserve, and the Tampa Bay Estuarine System, (66 ac (27 ha)); Manatee County lands at Emerson Point Preserve and parcels owned by the Manatee County Port Authority (70 ac (28 ha)); and parcels in private or other ownership (87 ac (35 ha)). This unit includes lands west of Highway 41 extending from just south of South Dock Street south to Snead Island. The unit also includes areas of Harbor Key, Mariposa Key, Horseshoe

Key, Joe Island, Skeet Key, Paradise Island, Ed's Key, and Rattlesnake Key.

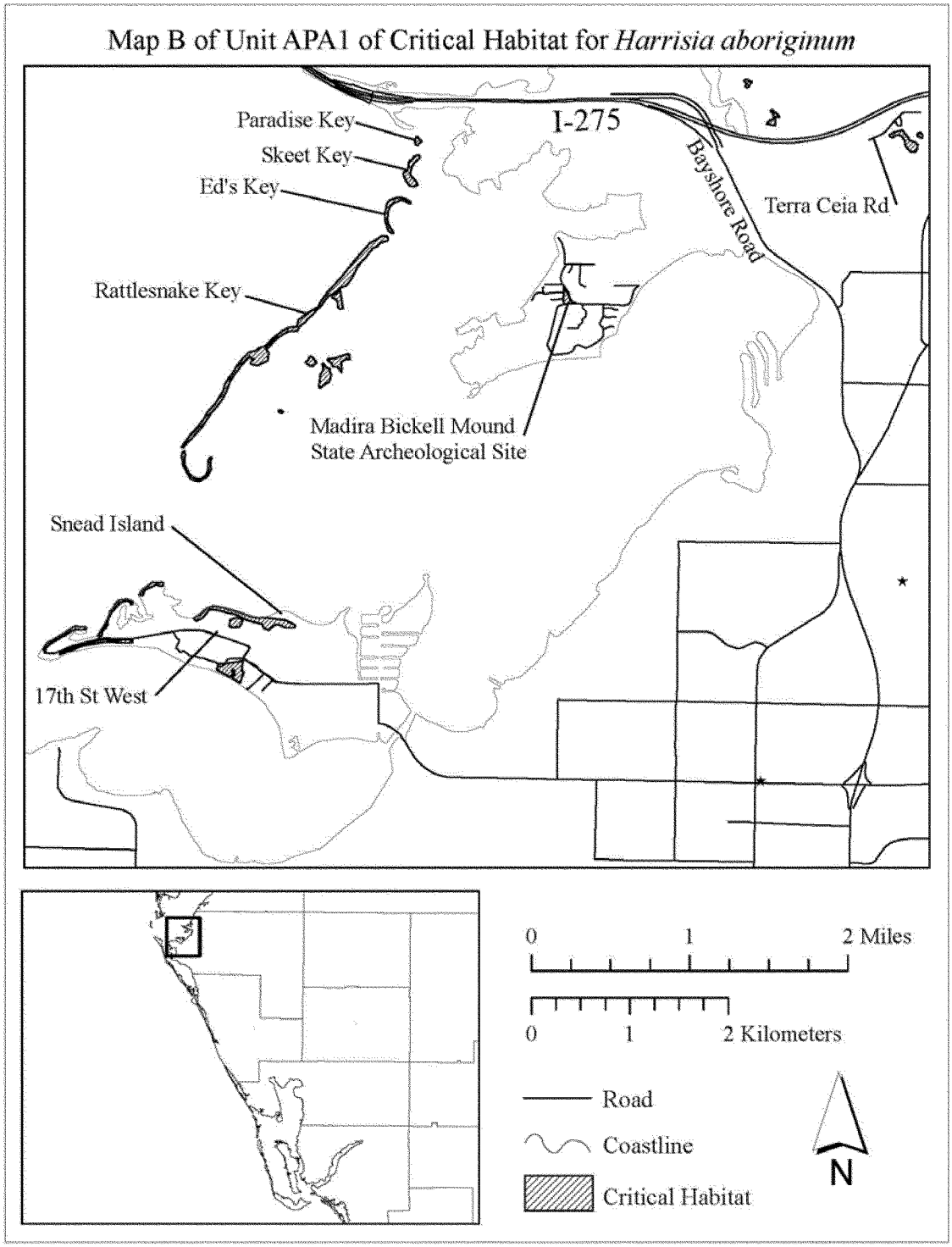
(ii) Index map of Unit APA1 follows:



(iii) Map A of Unit APA1 follows:



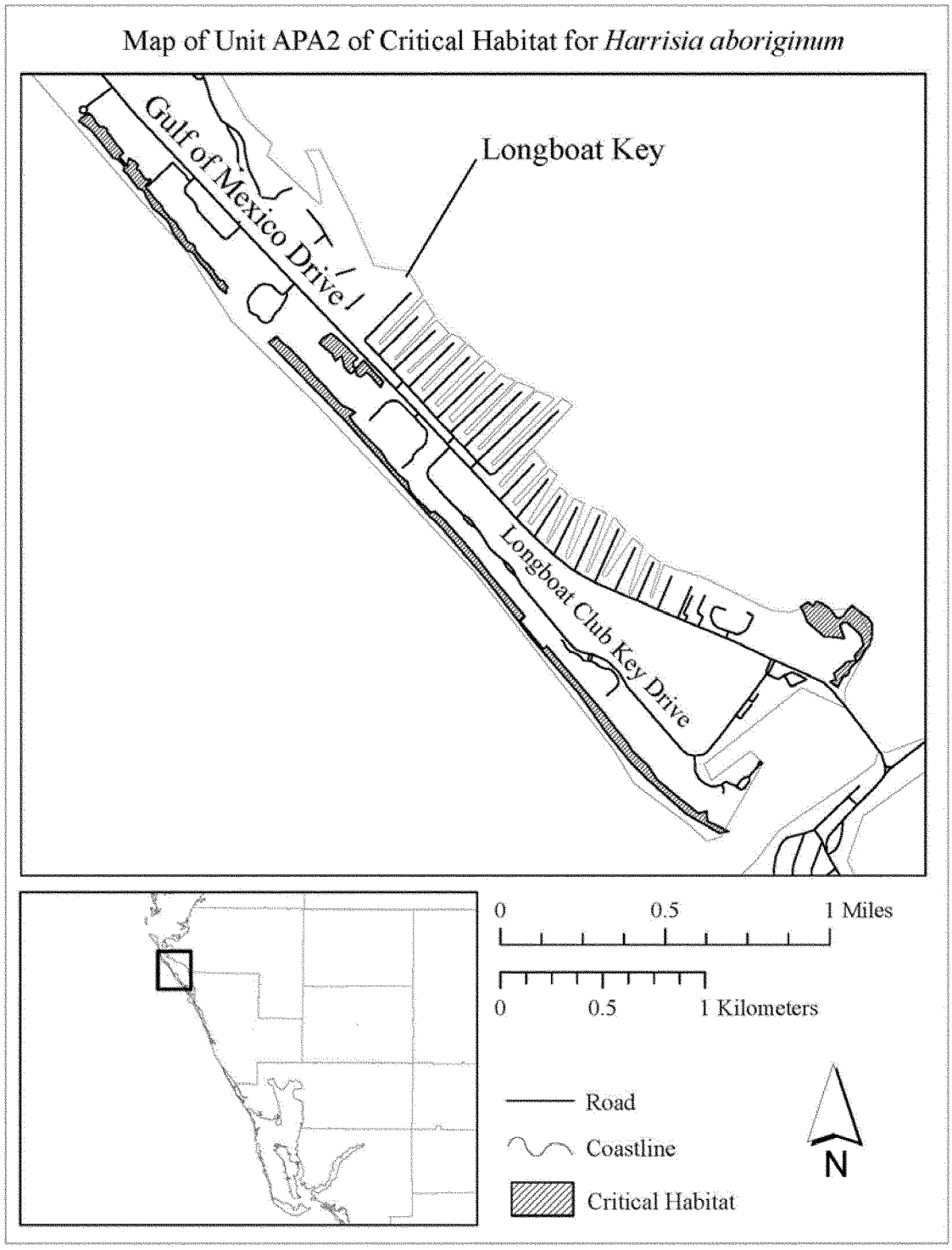
(iv) Map B of Unit APA1 follows:



(7) Unit APA2: Longboat Key, Sarasota County, Florida.

(i) *General description:* Unit APA2 consists of approximately 54 ac (22 ha) in Sarasota County, Florida. This unit is composed entirely of parcels in private or other ownership. This unit includes lands west of Gulf of Mexico Drive, extending from 0.40 mi (0.6 km) south of the intersection of Bay Isles Parkway and Gulf of Mexico Drive, to the southern tip of Longboat Key. It also includes lands on the north side of Gulf of Mexico Drive, east of Longboat Club Key Drive, on the northwest tip of Longboat Key.

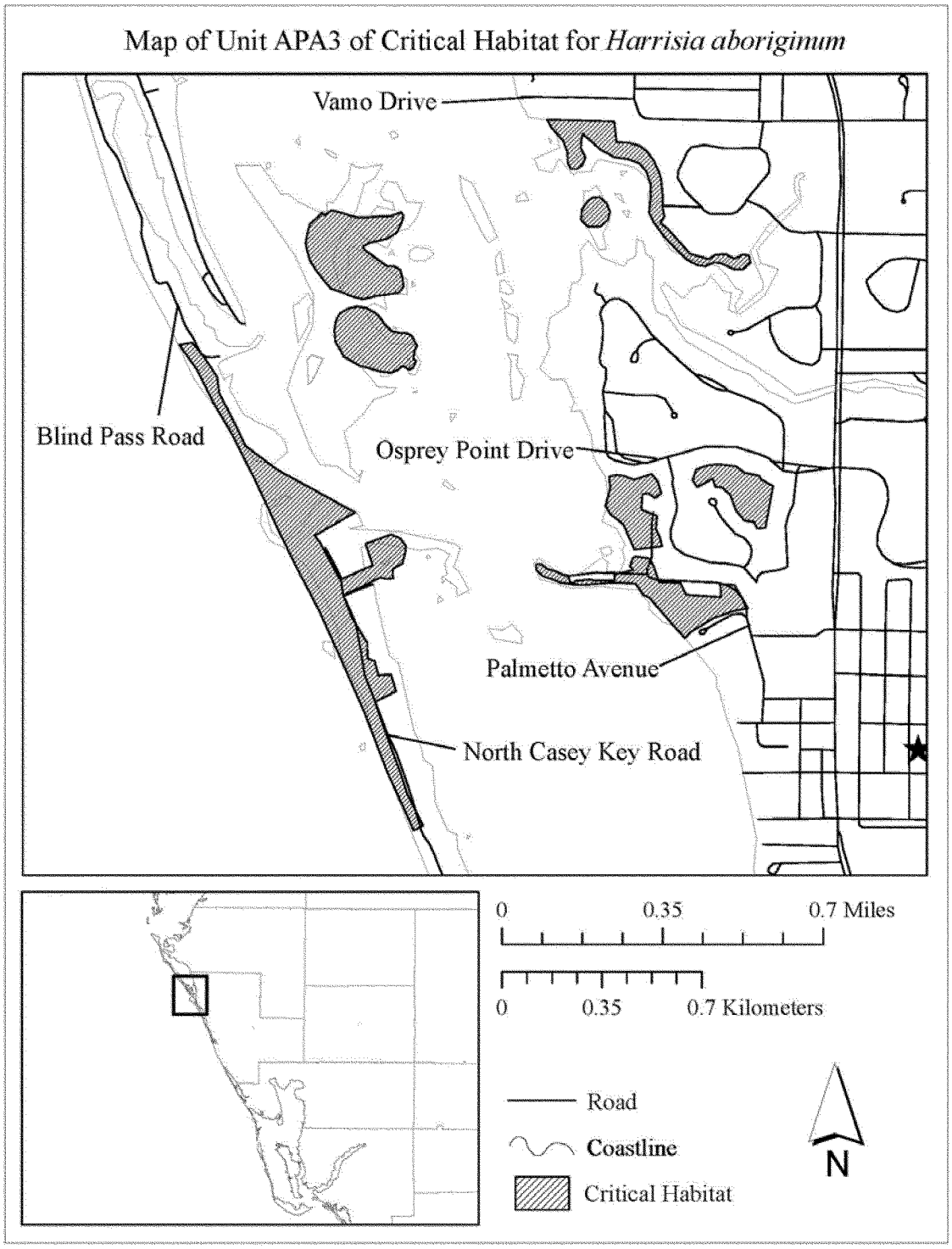
(ii) Map of Unit APA2 follows:



(8) Unit APA3: Osprey, Sarasota County, Florida.

(i) *General Description:* Unit APA3 consists of approximately 116 ac (47 ha) in Sarasota County, Florida. This unit is composed of Sarasota County lands within Palmer Point County Park (50 ac (20 ha)) and parcels in private or other ownership (66 ac (27 ha)). This unit extends along the barrier island (Casey Key) from the south terminus of Blind Pass Road, south for approximately 1.2 mi (1.9 km) along North Casey Key Road. On the mainland, the unit includes lands bordered on the north by Vamo Way, to the east by Highway 41, and to the south by Palmetto Avenue.

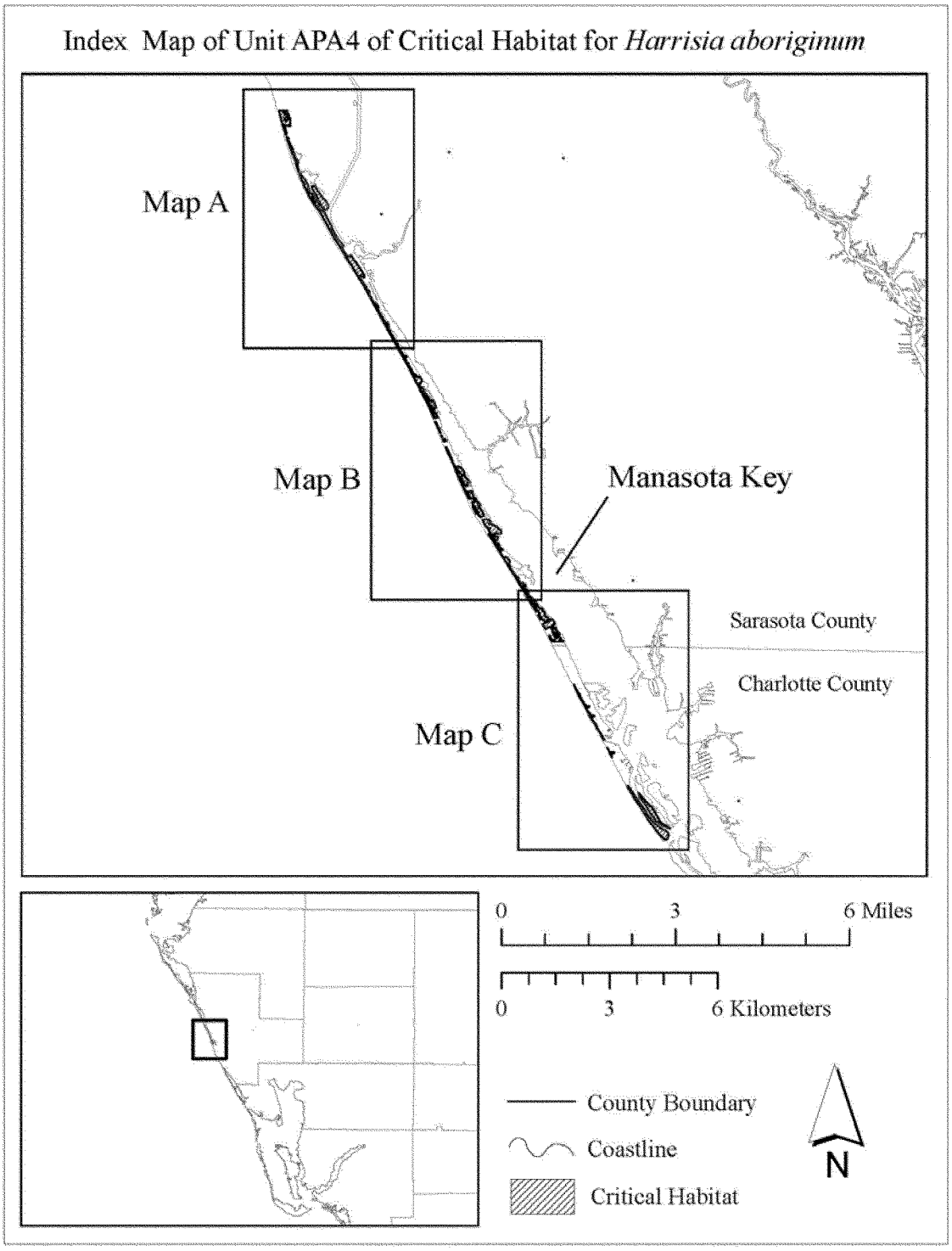
(ii) Map of Unit APA3 follows:



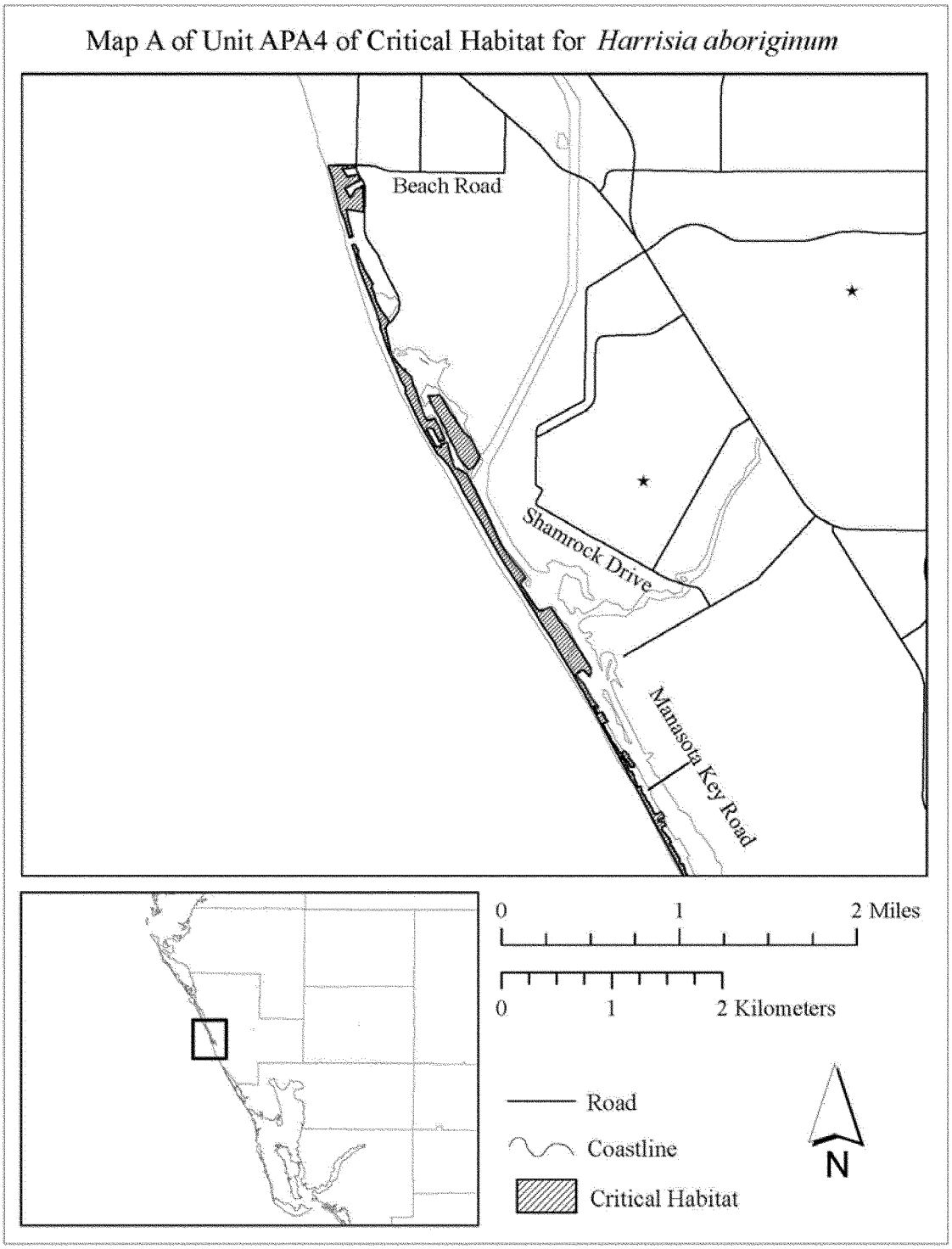
(9) Unit APA4: Manasota Key, Sarasota and Charlotte Counties, Florida.

(i) *General Description:* Unit APA4 consists of approximately 415 ac (168 ha) in Sarasota and Charlotte Counties, Florida. This unit is composed of State lands within Stump Pass Beach State Park (58 ac (23 ha)); County lands within Blind Pass Park, Brohard Beach and Paw Park, Manasota Beach Park, Casperson Beach Park, and Service Club Park (111 ac (45 ha)); and parcels in private or other ownership (245 ac (99 ha)). This unit extends from Beach Road in the City of Venice, south along Manasota Key to the barrier islands southern tip, including a portion of Peterson Island.

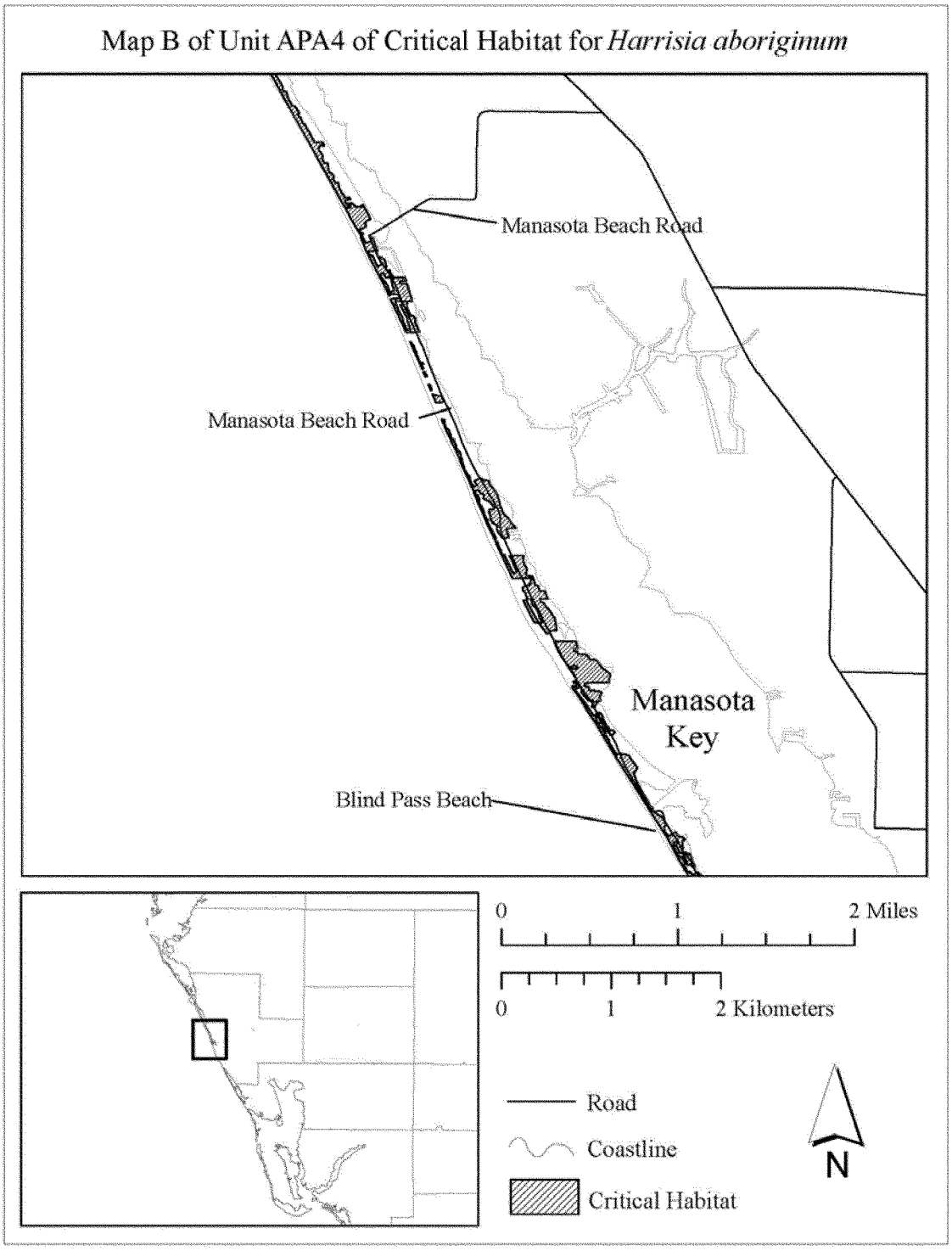
(ii) Index map of Unit APA4 follows:



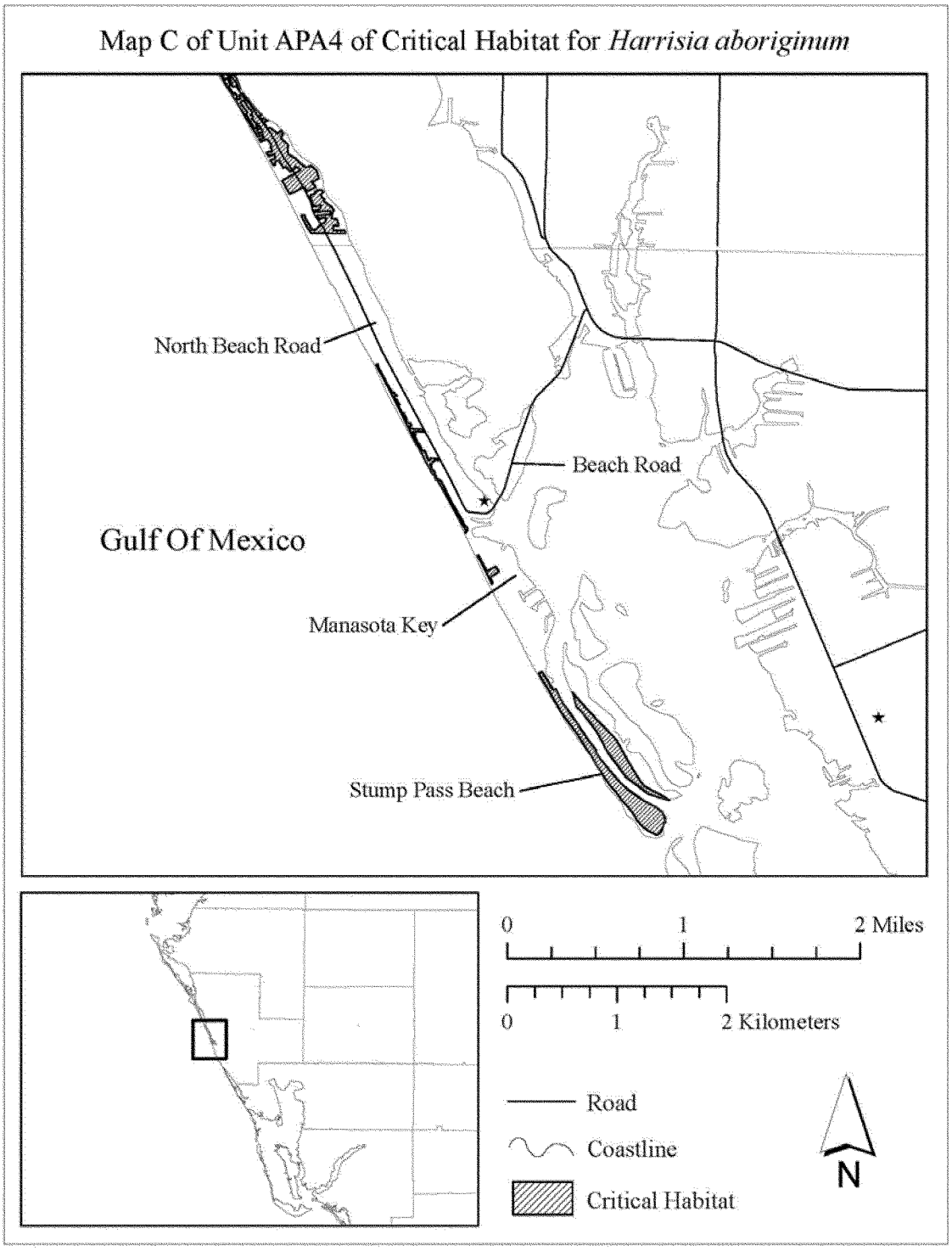
(iii) Map A of Unit APA4 follows:



(iv) Map B of Unit APA4 follows:



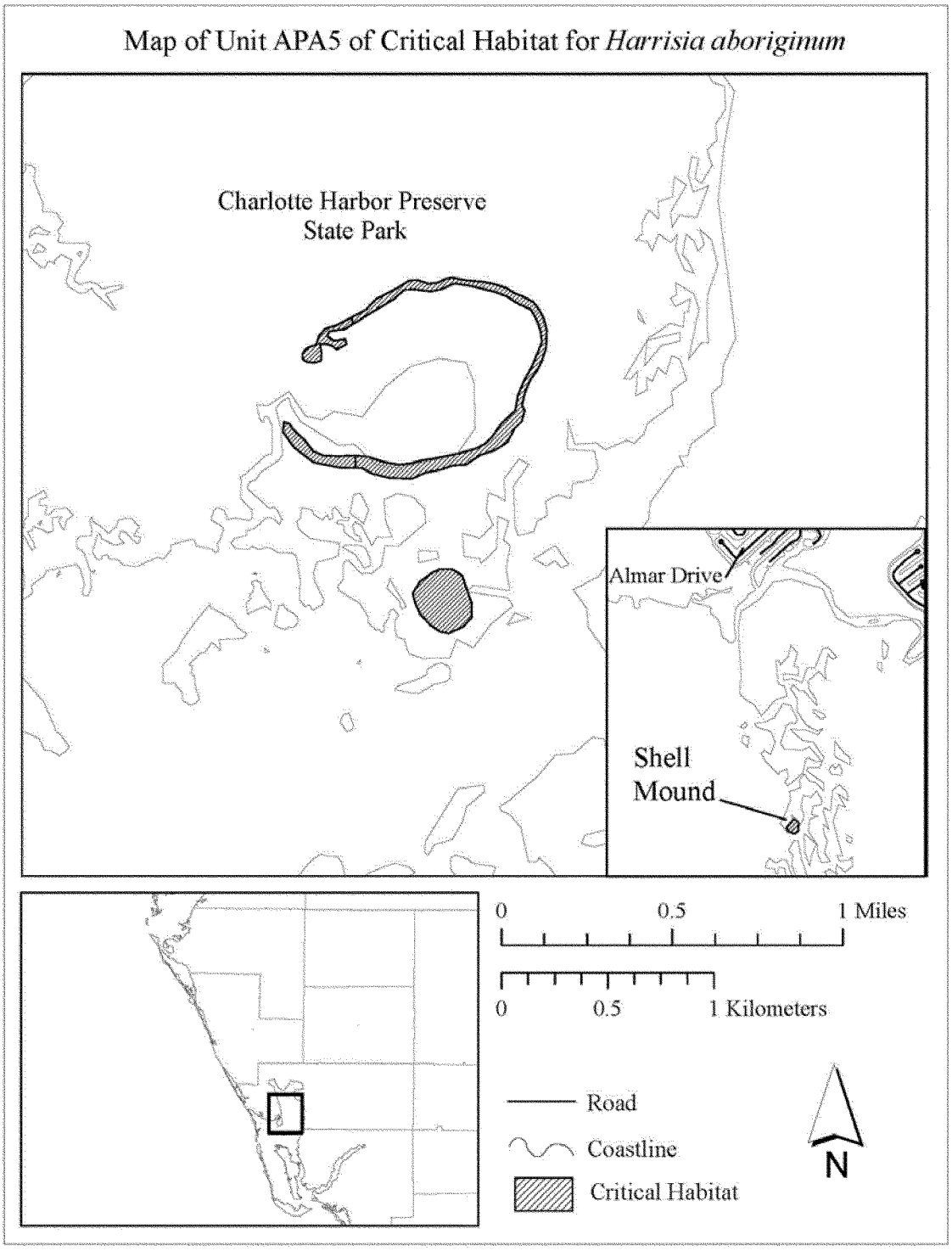
(v) Map C of Unit APA4 follows:



(10) Unit APA5: Charlotte Harbor, Charlotte County, Florida.

(i) *General Description:* Unit APA5 consists of 51 ac (21 ha) in Charlotte County, Florida. This unit is composed entirely of State lands within the Charlotte Harbor Preserve State Park. This unit includes the Big Mound, Boggess Ridge, and a shell mound located on the east side of Charlotte Harbor, south of the City of Charlotte Park.

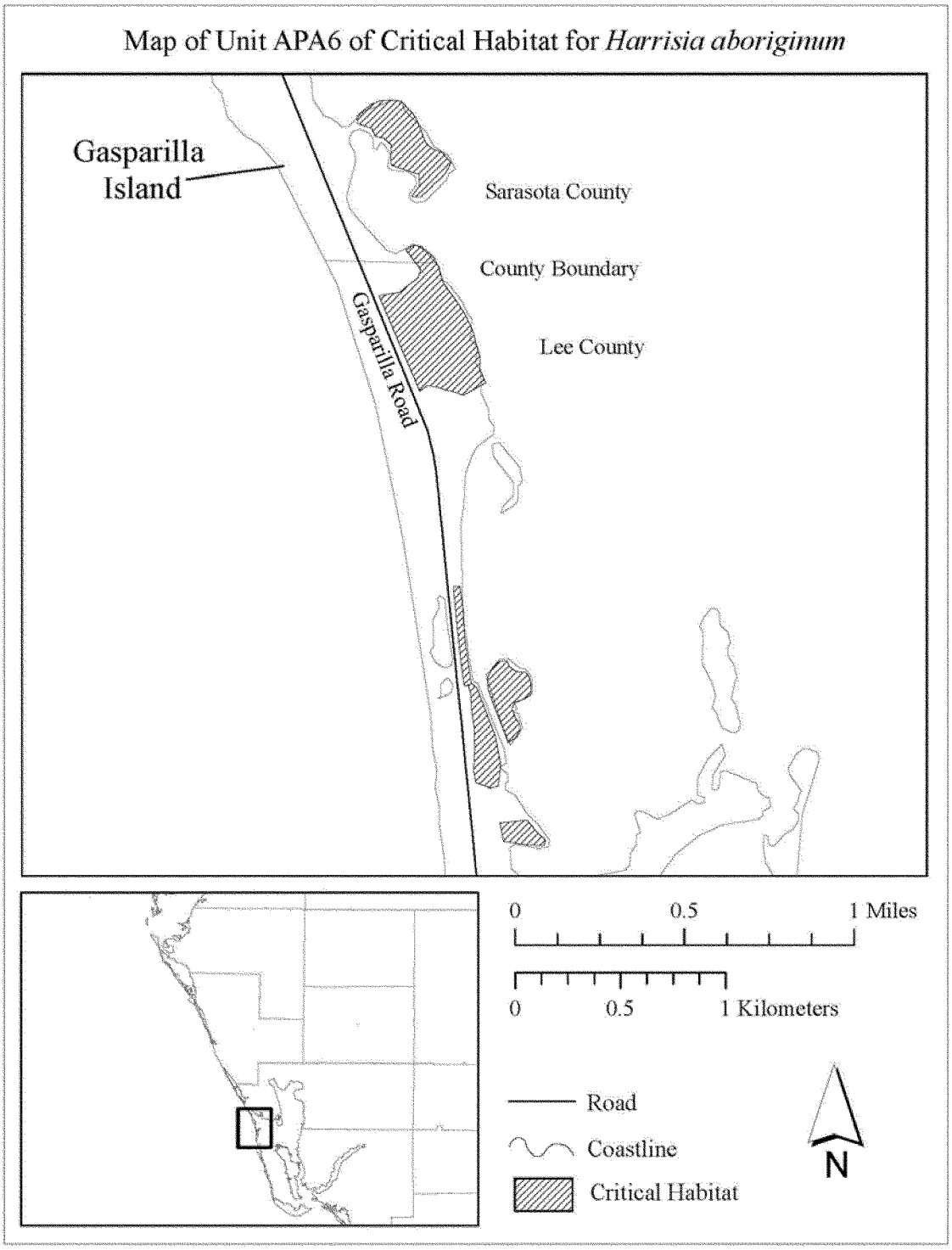
(ii) Map of Unit APA5 follows:



(11) Unit APA6: Gasparilla North, Charlotte and Lee Counties, Florida.

(i) *General Description:* Unit APA6 consists of approximately 98 ac (40 ha) in Charlotte and Lee Counties, Florida. This unit is composed of State land (0.006 ac (0.02 ha)), county land (22 ac (9 ha)), and parcels in private or other ownership (77 ac (31 ha)). This unit includes most of Kitchen Key (Live Oak Key) and the area east of Gasparilla Road, from the intersection of Grouper Hole Road and Grouper Hole Court, south to 0.15 mi (0.24 km) north of Snail Island Court, from approximately 0.10 mi (0.21 km) south of 35th Street to 23rd Street, including the small island separated from Gasparilla Island by a canal; and from 22nd Street to 20th Street.

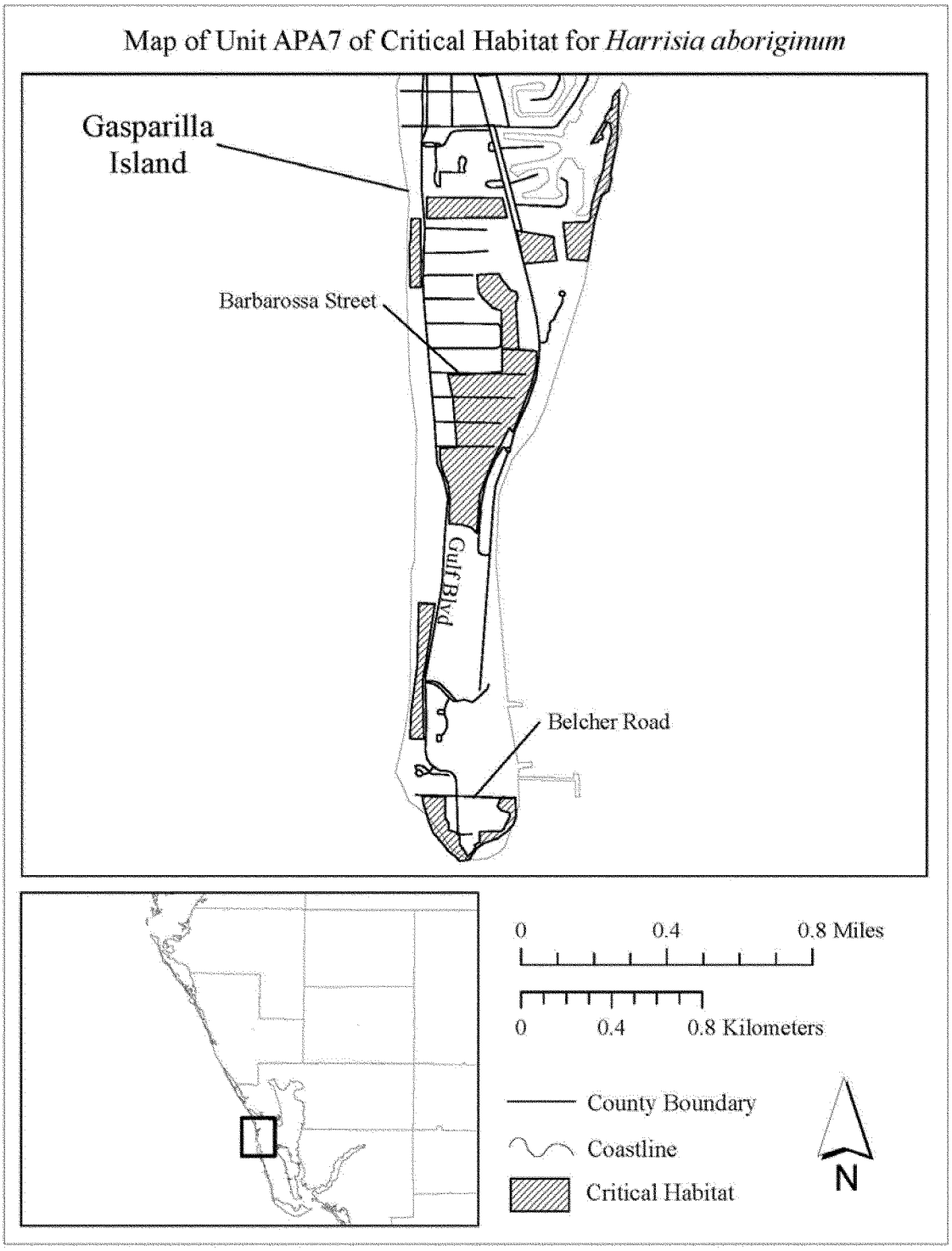
(ii) Map of Unit APA6 follows:



(12) Unit APA7: Gasparilla South, Lee County, Florida.

(i) *General Description:* Unit APA7 consists of approximately 92 ac (37 ha) in Lee County, Florida. This unit is composed of Federal land owned by the Service and Bureau of Land Management (3 ac (1 ha)), State lands within Gasparilla Island State Park (69 ac (28 ha)), Lee County lands (12 ac (5 ha), and parcels in private or other ownership (8 ac (3 ha)). This unit includes lands located from south of 1st Street to the southern tip of Gasparilla Island.

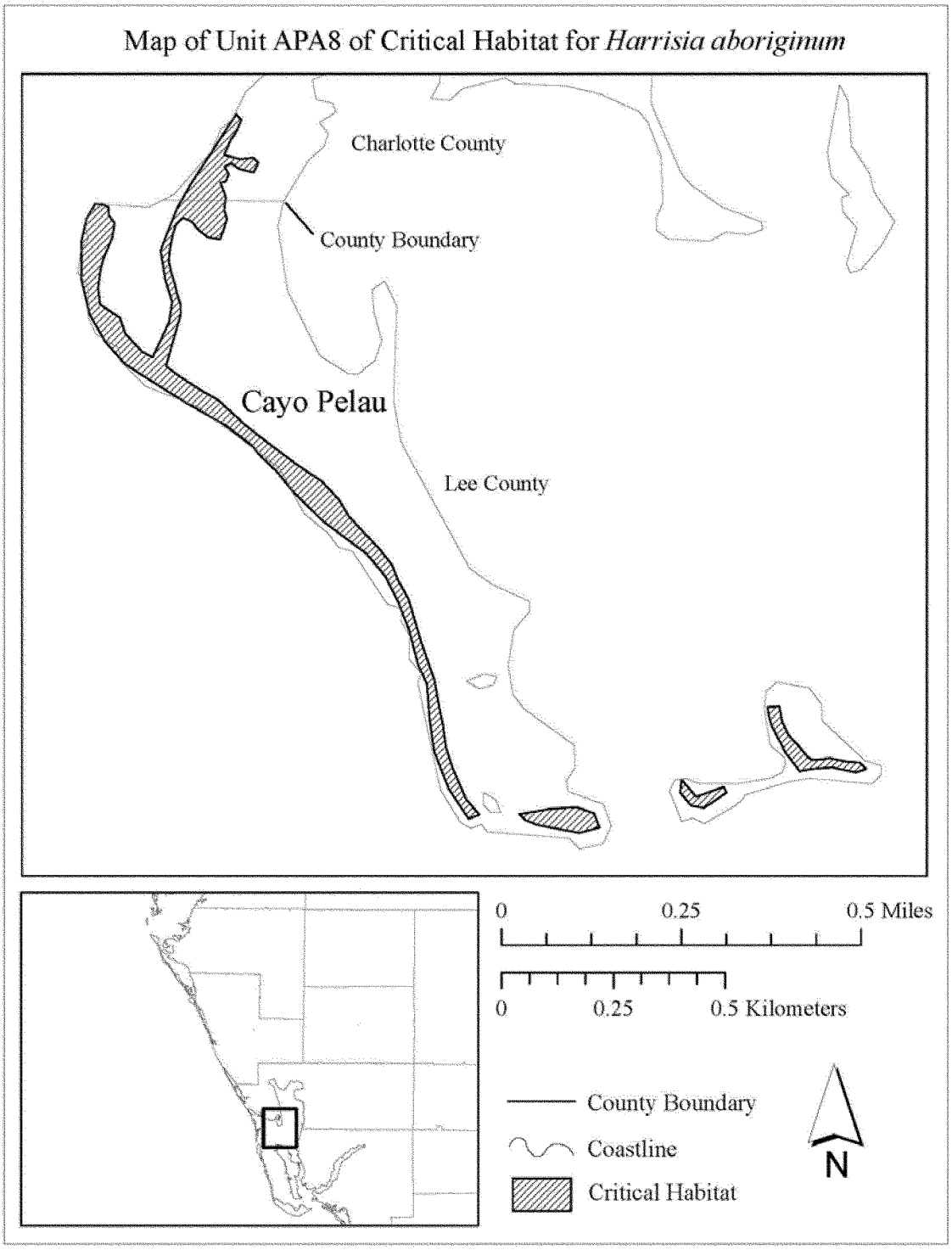
(ii) Map of Unit APA7 follows:



(13) Unit APA8: Cayo Pelau, Lee County, Florida.

(i) *General Description:* Unit APA8 consists of approximately 25 ac (10 ha) in Charlotte and Lee Counties, Florida. This unit is composed of Lee County lands within Cayo Pelau Preserve, and parcels in private or other ownership (0.6 ac (0.2 ha)). This unit includes lands located from 0.13 mi (0.21 km) south of the northern tip of Cayo Pelau, extending south to the southeastern tip of Cayo Pelau.

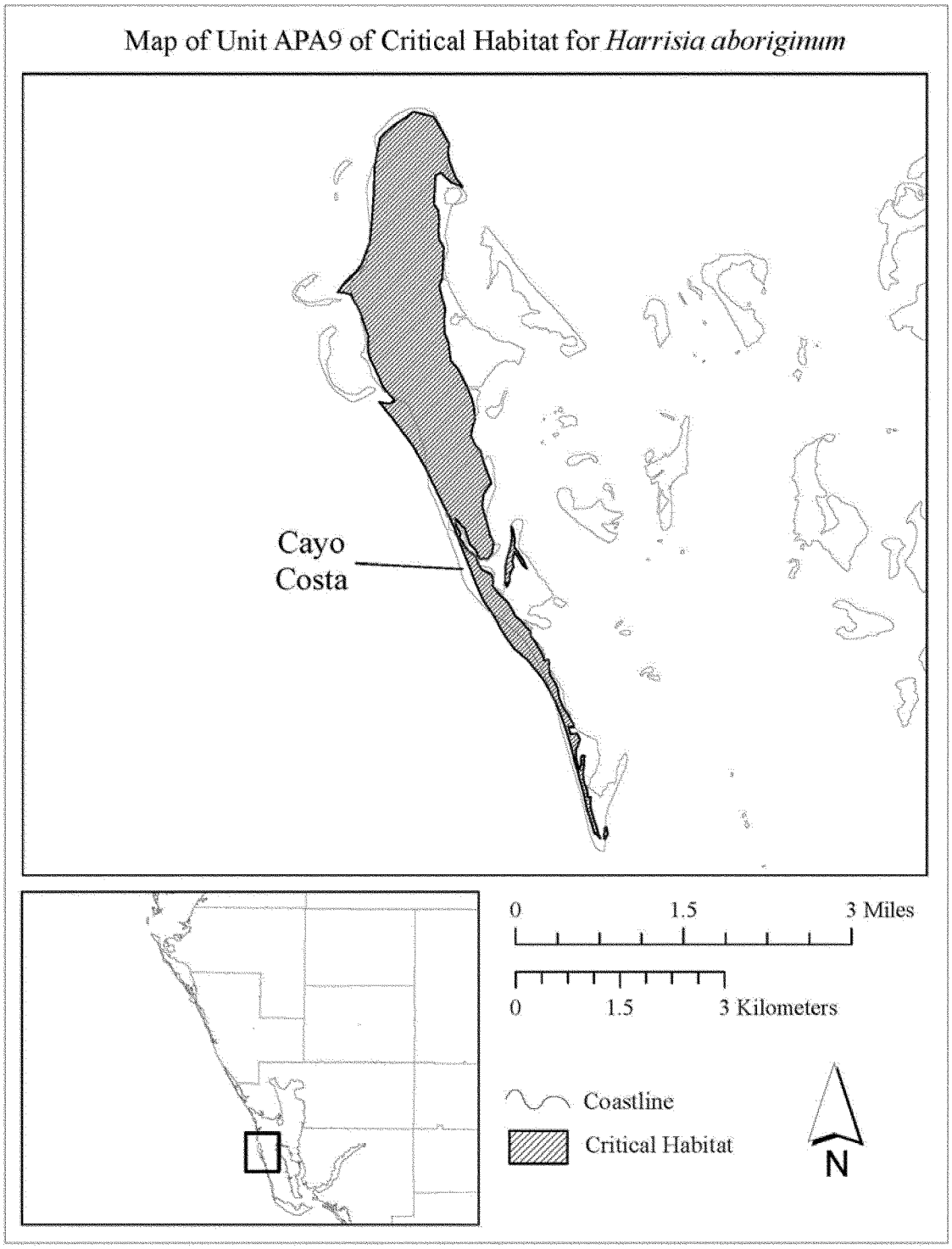
(ii) Map of Unit APA8 follows:



(14) Unit APA9: Cayo Costa, Lee County, Florida.

(i) *General Description:* Unit APA9 consists of approximately 1,702 ac (689 ha) in Lee County, Florida. This unit is composed of State lands within Cayo Costa State Park (1,379 ac (558 ha)), lands owned by Lee County (94 ac (38 ha)), and parcels in private or other ownership (230 ac (93 ha)). This unit includes lands located from the northern tip to the southern tip of Cayo Costa.

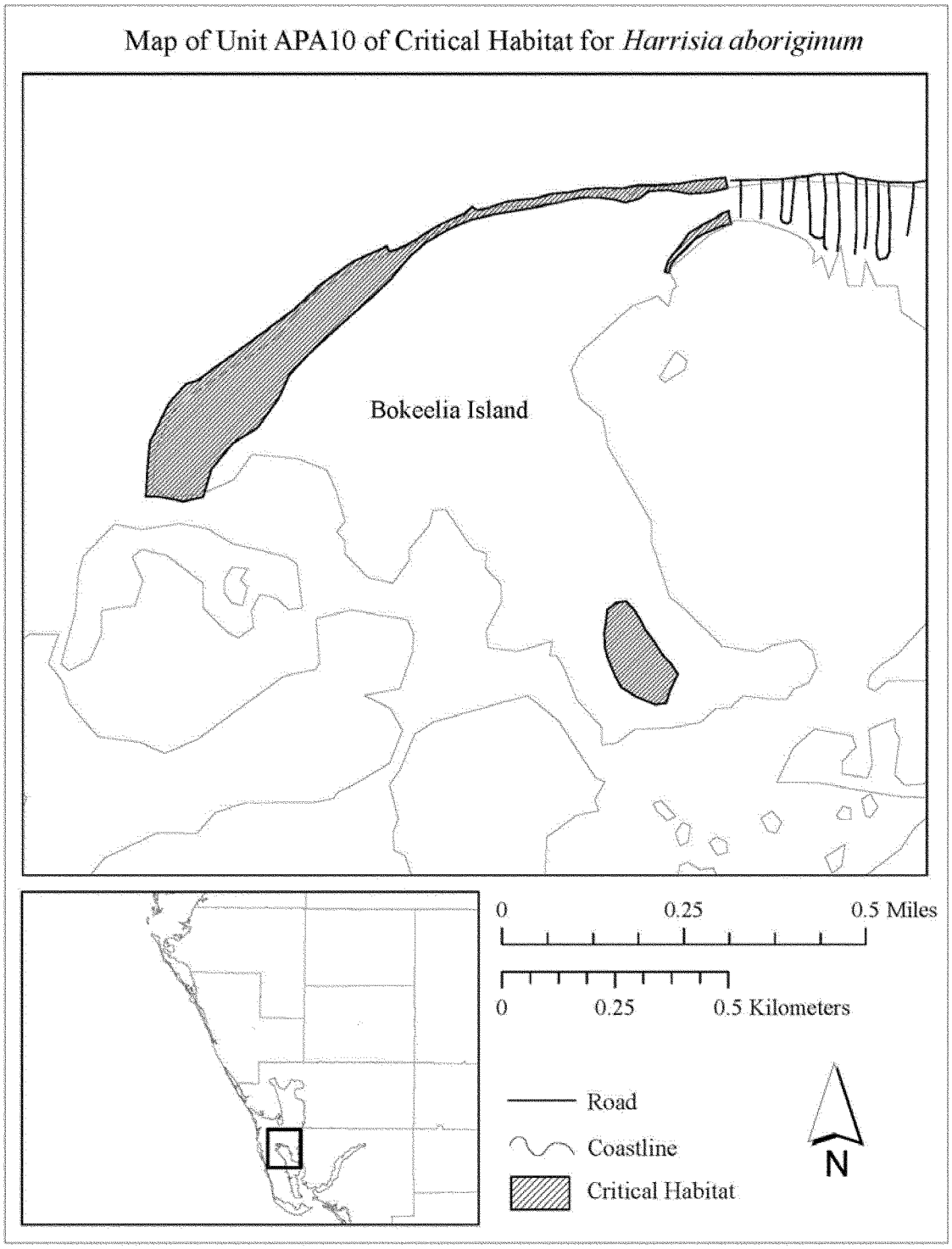
(ii) Map of Unit APA9 follows:



(15) Unit APA10: Bocilla, Lee County, Florida.

(i) *General Description:* Unit APA10 consists of approximately 33 ac (13 ha) in Lee County, Florida. This unit is composed of Lee County lands within the Bocilla Preserve (32 ac (13 ha)) and parcels in private or other ownership (0.7 ac (0.3 ha)). This unit includes lands located on the undeveloped portion of Bokeelia Island from 0.02 mi (0.03 km) west of the terminus of Ebbtide Way, extending south and west to the northwestern and southeastern corners of Bokeelia Island.

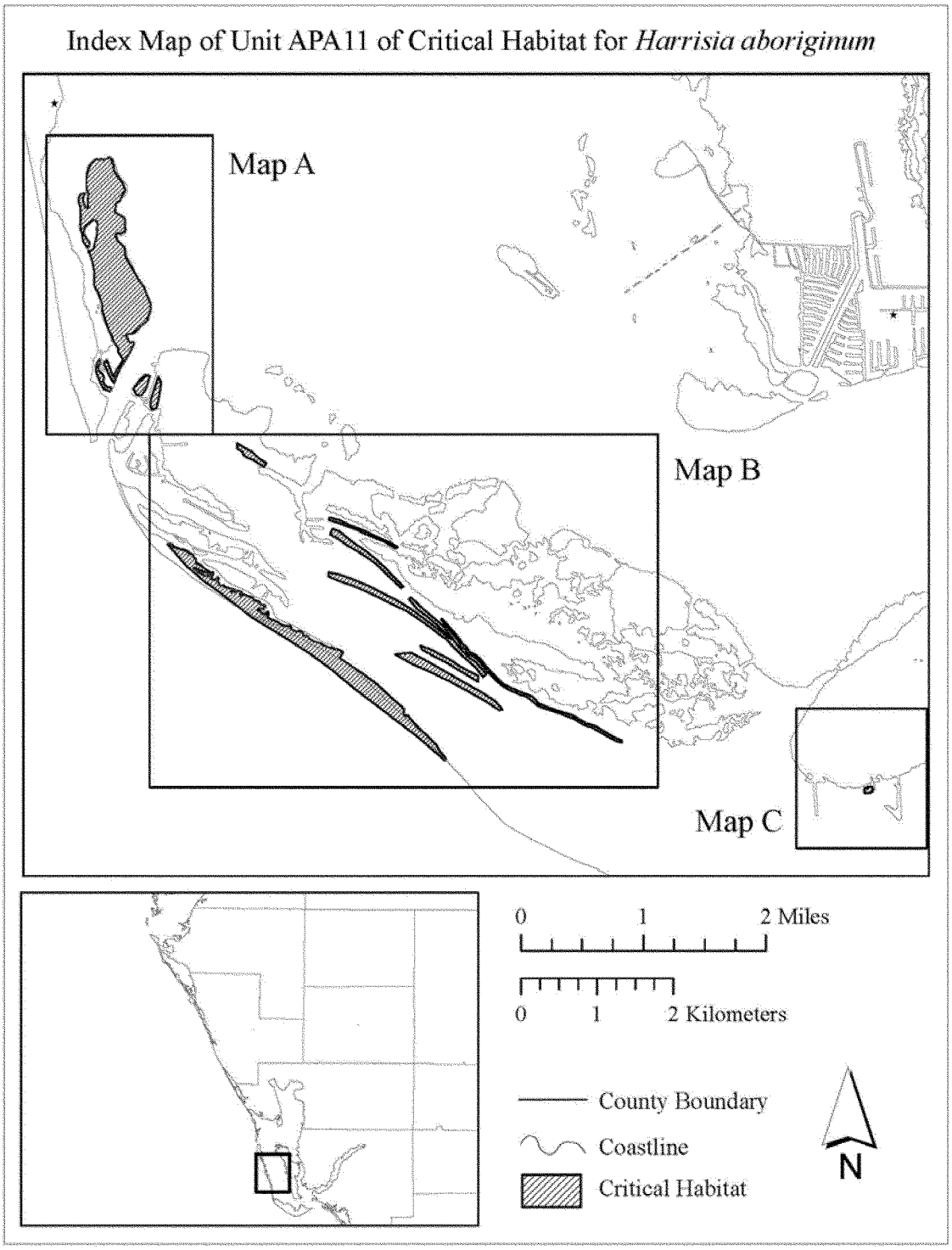
(ii) Map of Unit APA10 follows:



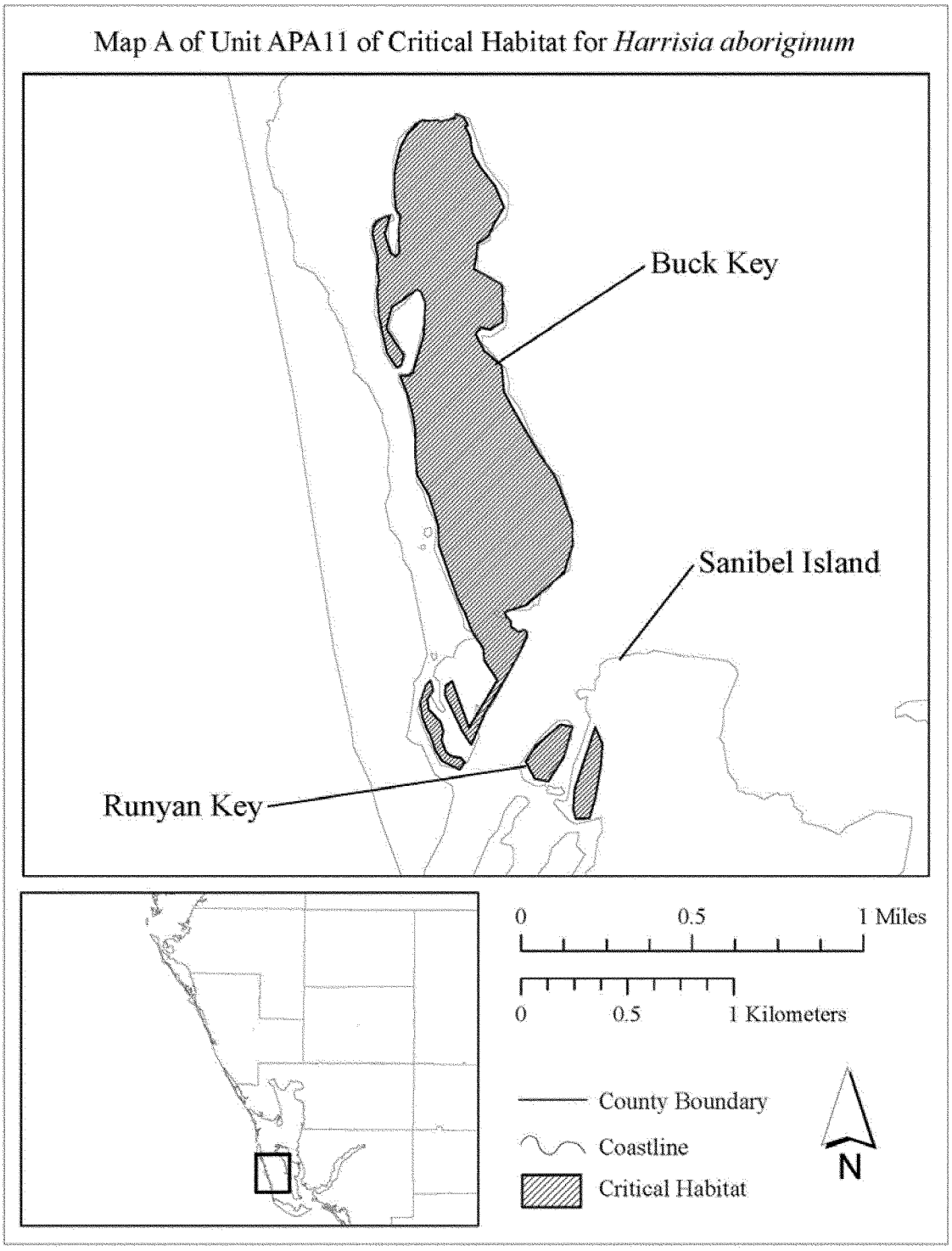
(16) Unit APA11: Sanibel Island and Buck Key, Lee County, Florida.

(i) *General Description:* Unit APA11 consists of approximately 635 ac (257 ha) in Lee County, Florida. This unit is composed of Federal lands owned by the Bureau of Land Management, and Service lands within the J.N. 'Ding' Darling National Wildlife Refuge (NWR) (373 ac (151 ha)), State lands (47 ac (19 ha)), lands owned by Lee County (90 ac (36 ha)), and parcels in private or other ownership (126 ac (51 ha)). This unit includes lands on Buck Key, Runyan Key, and Sanibel Island. On Sanibel Island, the unit includes a portion of Bowman's Beach, from just south of Silver Key to the western terminus of Water's Edge Lane; uplands within J.N. 'Ding' Darling NWR; and a shell mound located near the northern terminus of Tarpon Bay Road.

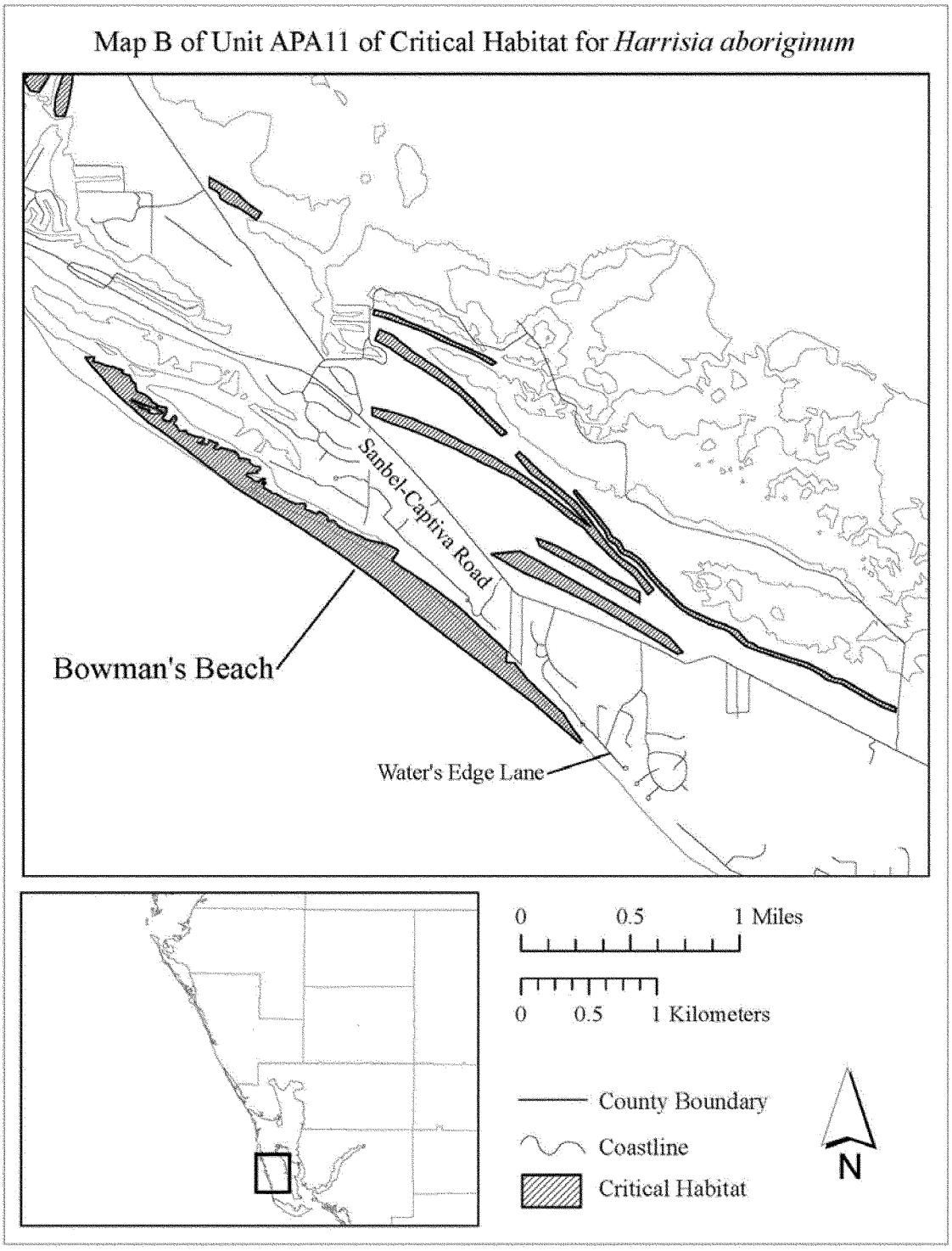
(ii) Index map of Unit APA11 follows:



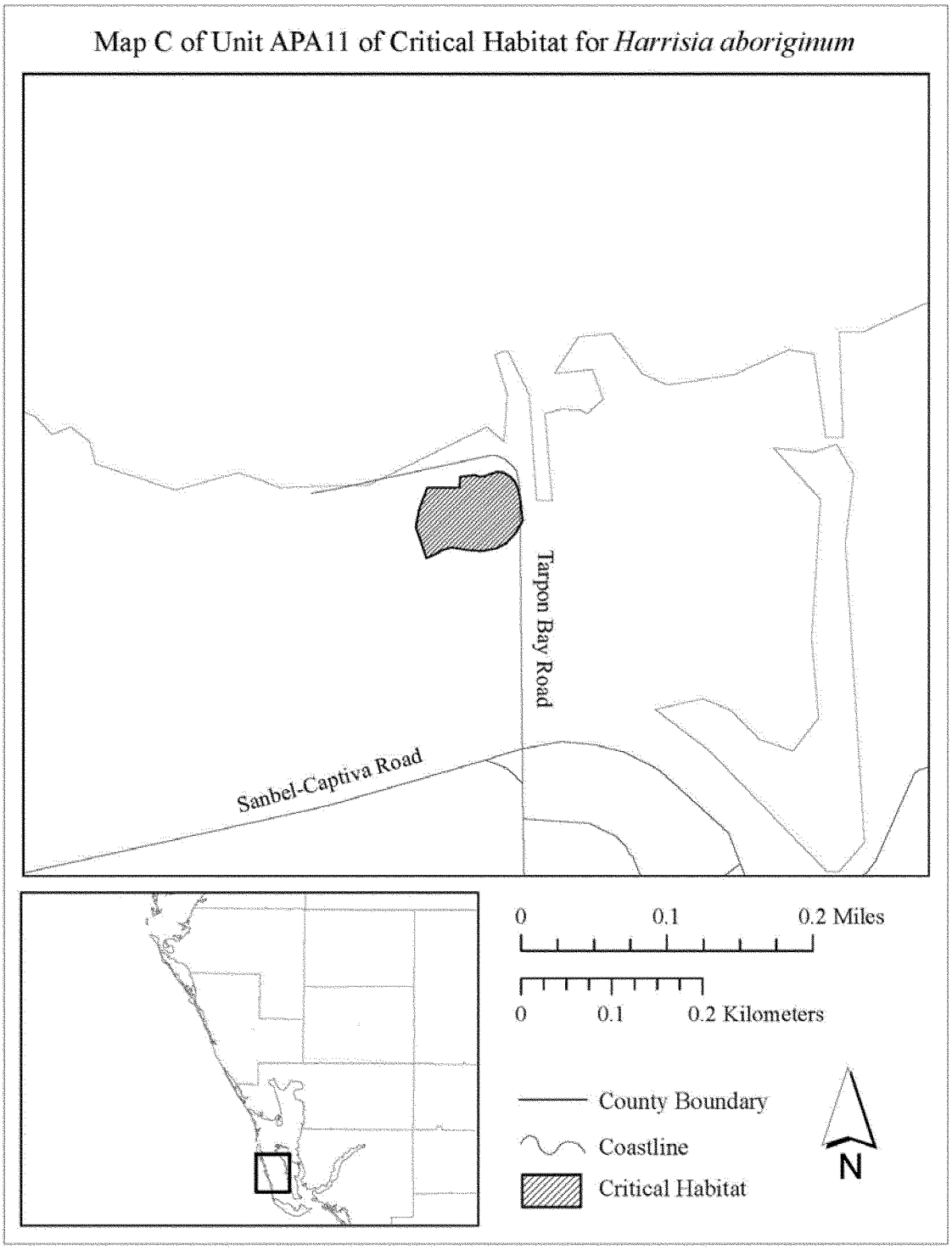
(iii) Map A of Unit APA11 follows:



(iv) Map B of Unit APA11 follows:



(v) Map C of Unit APA11 follows:



* * * * *

Dated: December 18, 2014.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–00344 Filed 1–21–15; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Parts 110 and 300

National Oil and Hazardous Substances Pollution Contingency Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110 and 300

[EPA–HQ–OPA–2006–0090; FRL–9689–9–OSWER]

RIN 2050–AE87

National Oil and Hazardous Substances Pollution Contingency Plan

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) proposes to amend the requirements in Subpart J of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) that govern the use of dispersants, other chemical and biological agents, and other spill mitigating substances when responding to oil discharges into waters of the United States (U.S.). The proposal addresses the efficacy, toxicity, environmental monitoring of dispersants, and other chemical and biological agents, as well as public, state, local, and federal officials' concerns regarding their use. Specifically, the proposal amends the Subpart J regulatory requirements for the NCP Product Schedule (Schedule) by adding new listing criteria, revising the efficacy and toxicity testing protocols, and clarifying the evaluation criteria for removing products from the Schedule. The Agency also proposes amended requirements for the authorities, notifications, monitoring, and data reporting when using chemical or biological agents in response to oil discharges to the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act, activities under the Deepwater Port Act of 1974, or activities that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under the Magnuson Fishery Conservation and Management Act of 1976. These requirements are anticipated to encourage the development of safer and more effective spill mitigating products, and would better target the use of these products to reduce the risks to human health and the environment. Further, the amendments are intended to ensure that On-Scene Coordinators (OSCs), Regional Response Teams (RRTs), and Area Committees have sufficient information to support agent preauthorization or authorization of use decisions.

DATES: Comments must be received on or before April 22, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OPA–2006–0090, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* The mailing address of the docket for this rulemaking is EPA Docket Center (EPA/DC), Docket ID No. EPA–HQ–OPA–2006–0090, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OPA–2006–0090. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov.* The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of the comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Comments and suggestions regarding the scope of any future rulemaking should be clearly differentiated from comments specific to this proposal (*e.g.,* label Suggestions for Future Rulemaking and Comments on Current Proposal).

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744 to make an appointment to view the docket.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at 800–424–9346 or TDD at 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at 703–412–9810 or TDD 703–412–3323. For more detailed information on this proposed rule contact Gregory Wilson at 202–564–7989 (*wilson.gregory@epa.gov*) or Vanessa Principe at 202–564–7913 (*principe.vanessa@epa.gov*). The contacts address is: U.S. Environmental Protection Agency, Office of Emergency Management, Regulations Implementation Division, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, Mail Code 5104A, or visit the Office of Emergency Management Web site at *http://www.epa.gov/oem/.*

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I. General Information

In April 2010, the Deepwater Horizon underwater oil well blowout discharged significant quantities of oil into the Gulf of Mexico. The blowout discharged oil from one mile below the sea surface. Approximately one million gallons of dispersants over a three-month period were deployed on surface slicks over thousands of square miles of the Gulf, and approximately three quarters of a million gallons of dispersants were, for the first time, injected directly into the oil gushing from the well riser. This use of dispersants raised many questions about efficacy, toxicity, environmental trade-offs, and monitoring challenges that EPA seeks to address through the proposed revisions to Subpart J.

The proposed revisions to Subpart J address the use of dispersants and other chemical and biological agents to respond to oil discharges into waters of the U.S. Over the past several years, EPA's Office of Research and Development (ORD) has conducted research on improved laboratory protocols for dispersant and bioremediation efficacy, and revisions to Subpart J to address these new protocols were under consideration. As a result of this research and the Deepwater Horizon event, the new protocols in the proposed revisions, in addition to increasing the overall scientific soundness of the data, take into consideration not only the efficacy but also the toxicity, long-term environmental impacts, endangered species protection, and human health concerns raised during responses to oil discharges, including the Deepwater Horizon blowout. Additionally, area planning requirements for dispersant use authorization, toxicity thresholds and advanced monitoring techniques are also proposed. The proposed amendments are a major component of EPA's effort to inform the use of dispersants and other chemical or biological agents when responding to oil discharges. They incorporate lessons learned from the federal government's experiences in the Gulf, and address recommendations specific to agent testing and use in response to oil discharges from the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling Report to the President.

The proposed amendments would help to ensure that only products that perform effectively in laboratory testing would be listed on the NCP Product Schedule (Schedule) for use in mitigating the effects of oil discharges in the environment. Manufacturers would be required to provide more detailed product application materials, ecological toxicity data, and human health and safety information, including more detailed instructions for product application in the field. Prohibitions on using products in certain areas under certain conditions determined by On-Scene Coordinators (OSCs), Regional Response Teams (RRTs), and EPA would help ensure that first responders are better able to mitigate environmental effects when spills occur. The required submission of additional product toxicity information would aid OSCs and RRTs when evaluating specific product information and when deciding whether and which products to use to mitigate hazards to the environment and human health caused by discharges or threatened discharges of oil.

Specifically in this action, the Agency proposes, for the following areas:

- *Definitions.* Amend definitions for Bioremediation agents, Burning agents, Chemical agents, Dispersants, Sinking agents, Sorbents, and Surface washing agents; add new definitions for Bioaccumulation, Bioconcentration, Biodegradation, Biological agents, Bioremediation, Herding agents, Products, and Solidifiers; and remove definitions for Miscellaneous Oil Spill Control Agents (MOSCA) and Surface collecting agents.
- *General Requirements.* Revise to reflect new and amended regulatory definitions.
- *Authorization of Use.* Revise to clarify planning and preauthorization responsibilities, establish limitations and prohibitions on the use of certain agents, establish requirements for storage and use of agents, clarify authorities for requiring supplemental testing, monitoring and information on agents, establish requirements for agent recovery from the environment, and establish reporting requirements for agent use.
- *Monitoring the Use of Dispersant.* Establish monitoring requirements for dispersant use in response to major discharges and/or certain dispersant use situations.
- *General Product Information for Schedule Listing.* Revise and establish requirements, including designation of and testing for all product categories under which the listing is requested, Safety Data Sheets, sample product labels, shelf life, collection and recovery, persistence in the environment, storage and use conditions, physical and chemical properties, component identities, concentration limits on National Water Quality Criteria and Standards contaminants, laboratory accreditations, submission of all testing data and calculations, production capabilities, and any other data or certification informing the product's performance capabilities or environmental benefits.
- *Dispersant Testing and Listing Requirements.* Revise the efficacy testing methodology using a baffled flask test, establish new developmental and sub-chronic toxicity testing requirements, revise the acute toxicity testing methodologies, revise the listing criteria, and establish use limitations to saltwater environments.
- *Surface Washing Agent Testing and Listing Requirements.* Revise the acute toxicity testing methodology and listing requirements, establish efficacy testing requirements and listing criteria, and establish use limitations based on product testing for salt and/or freshwater environments.
- *Bioremediation Agent Testing and Listing Requirements.* Revise the efficacy and acute toxicity testing methodologies and listing criteria, establish exceptions for specified non-proprietary products, and establish use limitations based on product testing for salt and/or freshwater environments.
- *Solidifier and Herding Agent Testing and Listing Requirements.* Revise the acute toxicity testing methodology and listing criteria, and establish use limitations based on product testing for salt and/or freshwater environments.
- *Sorbent Requirements.* Establish a list of known, non-proprietary sorbents to be made publicly available in lieu of listing sorbents on the Schedule, and requirements for data and information for sorbent products with components other than those specifically identified in the rule.
- *Submissions of Confidential Business Information.* Revise the allowable confidential business information claims and reporting procedures.

• *Addition of a Product to the Schedule.* Revise the submission requirements including the package contents, EPA's review of submission package, request for review of decision, changes to a product listing, and transitioning of listed products from the current Schedule to the new Schedule.

• *Mandatory Product Disclaimer.* Revise the product disclaimer requirements.

• *Removal of a Product from the Schedule.* Revise the basis for removal and appeals process.

• *Appendix C to part 300.* Revise the requirements for product testing protocols and summary test data including new dispersant baffled flask efficacy and toxicity tests; new standard acute toxicity tests for bioremediation agents, surface washing agents, herding agents, and solidifiers; and revised bioremediation agent efficacy test.

• *Appendix E to Part 300—Oil Spill Response.* Remove this appendix from the NCP.

EPA estimates industry may incur total incremental costs of approximately $668,000 to $694,000 annually. The benefits of the Subpart J amendments are assessed qualitatively. Such benefits include, for example, greater clarity of regulatory requirements, as well as less toxic products. This action does not pose significant impacts on a substantial number of small entities. The Regulatory Impact analysis, which can be found in the docket, provides more detail on the cost methodology and benefits of this action.

COST OF THE PROPOSED RULE

	Annualized costs, 20 years	
	Annualized at 3%	Annualized at 7%
Costs	$667,610	$694,343

II. Entities Potentially Affected by This Proposed Rule

Industrial category	NAICS code
Chemical Manufacturing	325
Merchant Wholesalers, Nondurable Goods	424
Professional, Scientific, and Technical Services	541
Waste Management and Remediation Services	562
Oil and Gas Extraction	211

The list of potentially affected entities in the above table includes manufacturers and users of chemical and biological agents, and other oil spill mitigating devices and substances used as countermeasures against oil discharges. The Agency's goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

III. Statutory Authority and Delegation of Authority

Under sections 311(d) and 311(j) of the Clean Water Act (CWA), as amended by section 4201 of the Oil Pollution Act of 1990 (OPA), Public Law 101–380, the President is directed to prepare and publish the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) for removal of oil and hazardous substances. Specifically, section 311(d)(2)(G) requires the President to include a schedule identifying ''dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out'' the NCP. The authority of the President to implement this portion of the CWA is currently delegated to EPA in Executive Order 12777 (56 FR 54757, October 22, 1991). Subpart J of the NCP governs the use of dispersants, and any other chemical or biological agent to respond to oil discharges (40 CFR part 300 series 900).

IV. Background

A. Historical Background

The Council on Environmental Quality (CEQ) first published the National Oil and Hazardous Materials Pollution Contingency Plan in 1970 (35 FR 8508). Among its elements was Annex X—Schedule of Dispersants and other Chemicals to Treat Oil Spills. Annex X provided a basic regulatory framework that included authorization of use, restrictions, and information requirements to be submitted to the Federal Water Quality Administration (FWQA). This initial schedule advocated mechanical and other control methods, and the removal and proper disposal of oil from the environment. It also specified that dispersants might be used in accordance with the schedule if other control methods are judged to be inadequate or infeasible, and if certain information requirements and usage requirements were met. As a listing requirement, manufacturers had to provide the FWQA with methods for analyzing the chemical components in fresh and salt water, or reasons why such analytical methods could not be provided. Except to prevent or substantially reduce the hazard to human life or limb, or substantial hazard of fire to property, dispersants were restricted from use on or in any: Distillate fuel oil; spill of oil less than 200 barrels in quantity; shoreline; waters less than 100 feet deep; waters containing major populations or breeding or passage for species of fish or marine life which may be damaged or rendered commercially less marketable by exposure to the dispersant or dispersed oil; waters where the winds and/or currents are of such velocity and direction that the dispersed oil mixtures would likely, in the judgment of the FWQA, be carried to shore areas within 24 hours; and waters where such use may affect surface water supplies. The CEQ revised the National Oil and Hazardous Materials Pollution Contingency Plan, renaming it the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) in 1971 (36 FR 16215). The NCP was amended again in 1971 (36 FR 18411) and 1972 (37 FR 28208), with no substantive changes to Annex X.

As a result of the Federal Water Pollution Control Act (Pub. L. 92–500) of 1972, CEQ again revised the NCP, including revisions to Annex X (38 FR 21887, August 13, 1973). The title of Annex X changed to the ''*Schedule of Chemicals to Remove Oil & Hazardous Substances Discharges.*'' While the Schedule still advocated mechanical and other control methods, and the removal and proper disposal of oil from the environment, it broadened its applicability to chemical agents, including dispersants. It also recognized separate authorizations of use for chemical agents on minor, medium and major discharges. In addition, the revised schedule required an official report from a recognized laboratory with a description of the analytical methods employed and results obtained in determining the chemical and biological characteristics of the chemical agent, but no longer required the submission of those analytical methods. Biological and burning agents were not part of the Schedule, which expressed caution on their use.

In 1975 CEQ again revised the NCP, including Annex X (40 FR 6282). Annex X was now the ''*Schedule of Chemicals and Other Additives to Remove Oil & Hazardous Substances Discharges,*'' and it was ''. . . revised and expanded to provide more precise and definitive information, concerning substances which may be employed to remove discharges.'' Additionally, Executive Order 11735 (38 FR 21243, August 3, 1973) made EPA responsible for Annex X. Chemical agents or any other substance not specifically defined in the

Schedule were to be considered for use on a case-by-case basis. The Schedule advocated the development and utilization of mechanical control methods to remove or mitigate oil, and to remove, mitigate, or neutralize hazardous substances discharges from the environment, with subsequent proper disposal. The Schedule intended that no harmful quantities of any substance were to be applied to waters to remove or mitigate the effects of oil or hazardous substances discharges. The Schedule also provided procedures for authorization of use for different agent categories, and separate regulatory authorization of use for dispersants or other chemical agents was established for minor, medium, and major discharges. Product shelf life, toxicity and effectiveness, and analytical methods needed to obtain such data were among the technical data requirements. Similar provisions were tailored to surface collecting agents and biological additives.

In 1982, EPA amended the NCP; the revision included rewriting of Annex X as Subpart H of 40 CFR part 300 of the revised Plan (47 FR 31180). The Agency allowed OSCs to authorize the use of dispersants or other chemicals to treat discharges of oil, provided they were listed in the previous Annex X, with the following limitations:

- Authorization applies only to discharges of oil, not to releases of hazardous substances.
- OSCs may only authorize the use of dispersant or other chemicals on EPA's Acceptance list, which included the twenty-eight products tested and found acceptable for their intended purpose in the previous Annex X.
- State consultation provisions regarding the use of any dispersant or other chemicals in its waters required the OSC to obtain concurrence from the EPA representative to the RRT.

The new Subpart H of 40 CFR part 300 also provided for a case-by-case authorization by the EPA Administrator (''Administrator'') or designee of the use of dispersants or other chemicals not on EPA's Acceptance list in treating oil discharges or hazardous substances releases. However, EPA did not include testing procedures or a process for designation of dispersants or other chemicals as acceptable for use.

In 1984, EPA published amendments to Subpart H, including adding Appendix C (49 FR 29192). The amendments specified testing and data requirements for listing of dispersants, surface collecting agents, or biological additives on the Schedule to ensure sufficient data was available for the OSC. Standardized testing procedures generated comparable data regarding the products' effectiveness and toxicity. Appendix C detailed the methods and types of apparatus to be used in carrying out the revised standard dispersant effectiveness and toxicity tests, as well as the format required for summary presentation of product test data. Listing of a product on the Schedule was neither a recommendation nor authorization for use on an oil discharge, but rather a confirmation that data submission requirements had been satisfied. EPA's listing on the Schedule did not confirm its safety or effectiveness or constitute an endorsement; in fact, a new requirement was established that either a written disclaimer to this effect or EPA's written disclaimer be included in all product technical literature or advertisements. Products previously listed under Annex X were included on the new Schedule as the previous data requirements were sufficient to permit OSCs to make informed decisions about product use.

The amendments also provided for OSC authorization for use of burning agents on a case-by-case basis with the concurrence of the EPA RRT representative and the States, and prohibited the use of sinking agents in waters of the United States. They encouraged advance planning by allowing the OSC to act without the concurrence of the RRT and affected States if these parties have approved a plan identifying the products that may be used in specific contexts. The amendments also allowed the OSC to authorize the use of any product (including products not on the Schedule) without obtaining the concurrence of the EPA representative to the RRT or the affected States if the use of a dispersant, surface collecting agent, or biological additive is necessary to prevent or substantially reduce hazard to human life, and there is not sufficient time to obtain concurrence. However, the OSC was to inform the EPA RRT representative and the affected States of the use of a product as soon as possible, and obtain their concurrences for the product's continued use in the situation once the threat to human life had subsided. These provisions were designed to eliminate delays in life threatening situations, such as spills of highly flammable petroleum products in harbors or near inhabited areas. Subpart H was re-designated as Subpart J with minor changes in 1990 (55 FR 8666), with those definitions present in Subpart H moved to Subpart A, and a new definition and data requirements for miscellaneous spill control agents added.

In 1994, EPA revised the NCP in response to the passage of the Oil Pollution Act in 1990 (59 FR 47384). The final rule significantly revised Subpart J to its current regulatory requirements with respect to authorization of use, data requirements, dispersant effectiveness and toxicity testing protocols, surface washing agent toxicity testing protocol, bioremediation agent effectiveness testing protocol, and requirements for adding products to the Schedule. As a result, several dispersants were re-classified as surface washing agents because they did not pass the dispersant efficacy test threshold, but were effective in removing oil from solid surfaces.

B. Current Statute and Regulation

Section 300.910 of Subpart J addresses the authorization of the use of products on the Schedule and specifies the conditions under which OSCs may authorize the use of dispersants, other chemicals, and other spill mitigating substances. Sections 300.915 and 300.920 describe the data requirements and the process for adding products to the Schedule. To list a product on the Schedule, Subpart J currently requires the submission of technical data on the product to EPA. Data on dispersants, surface collecting agents, surface washing agents, and miscellaneous oil spill control agents must include the results of the toxicity test set for these products in Appendix C of the NCP. Data on dispersants must also include the results of the dispersant effectiveness test, while bioremediation agents must include results of the bioremediation effectiveness test, also set forth in Appendix C. These tests are conducted at the expense of the product manufacturers and must be performed by laboratories experienced with Appendix C protocols.

The raw data and a summary of the results from these tests are then submitted to EPA, where they are reviewed to confirm that the data are complete and that the specified procedures were followed. The data requirements for placement of a product on the Schedule are designed to provide sufficient data for the OSCs to judge whether and in what quantities a product may be used to control a particular discharge. Inclusion of a product on the Schedule means only that the data submission requirements have been satisfied. The listing of a product on the Schedule does not mean that the product is recommended or authorized for use on any specific oil discharge nor does it imply that EPA has in any other way endorsed the product for the use listed or for other

uses. The standardized testing procedures set forth in Appendix C provide OSCs comparable data regarding the toxicity, effectiveness, and other characteristics of different products.

C. Advanced Response Planning

Under the current 300.910(a) regulation, RRTs and the Area Committees (ACs) are required to address, as part of their planning activities, the desirability of using appropriate dispersants, and other chemical or biological agents. The RRTs and ACs generally develop ''preauthorization plans'' which address the specific context in which products can be used under OSC direction. Preauthorization plans are approved with concurrences from EPA, Department of Interior (DOI) and Department of Commerce (DOC) natural resource trustees, and the state(s) with jurisdiction over the water to the area, which they apply. When a preauthorization plan approves in advance the use of certain products under specified circumstances, the OSC may authorize the use of the products without obtaining the specific concurrences described elsewhere in that section of the regulation. The use of chemical or biological agents is only one approach of many available, such as mechanical collection or *in-situ* burning, and decisions about their use should be weighed to achieve greater overall environmental protection.

To facilitate the best possible response, it is important that the regional-level and area-level contingency planning efforts of the RRTs and ACs, respectively, are coordinated closely with each other and are consistent. Section 300.910(a) authorizes the RRTs to review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees that addresses dispersants or other spill mitigating substances. This advanced planning has allowed the OSC to authorize the use of products without obtaining the specific concurrences, if the RRT representatives from EPA and the states with jurisdiction over waters to which a preauthorization plan applies, and DOC and DOI natural resource trustees approve their use in advance. The OSC primarily uses the Schedule to confirm if a product is listed, analyze toxicity and efficacy data, note worker health and safety precautions, understand proper product application, and compare one product to another in order to make the most informed decision on how to mitigate an oil discharge.

AC responsibilities include enhancing contingency planning; ensuring preplanning of joint federal, state, and local response efforts; and expediting decisions on the use of dispersants and other spill mitigating devices and substances. The Area Contingency Plan (ACP) must list the equipment, dispersants or other spill mitigating substances, and personnel available to ensure effective and immediate removal of a discharge. ACPs must also ensure the mitigation or prevention of a substantial threat of a discharge; provide a description of the procedures to be followed for obtaining an expedited decision regarding the use of dispersants (which may be addressed in applicable preauthorization plans); and identify the means to monitor use of chemical countermeasures. Many coastal ACPs include some type of preauthorization zones for dispersants, while most Regional Contingency Plans (RCPs) address other product categories, such as bioremediation and surface washing agents. RRTs, in cooperation with the states and federal agencies, have addressed the requirements for the conduct of in-situ burns (ISB) of oil discharges in their RCPs.

This planning has allowed consideration of chemical agent use on oil discharges as a viable response tool in combination with other mitigation measures. These agents have increasingly been considered and used in the field, as evidenced by research and case studies presented at national and international oil spill conferences, research and development funding from private and government stakeholders, RRT efforts to plan for their use, requests for EPA and other federal experts to advise field personnel on the use of such products, and by the response to the Deepwater Horizon oil spill. While many research efforts have helped to clarify issues and added information on the toxicity, efficacy, proper use, and human health impacts of these response technologies, uncertainties still arise. The Agency has an interest in resolving the issues that arise from the use of chemical and biological agents in spill responses, as its representatives are asked to concur with chemical and biological agent use for marine and freshwater spills.

The use of non-mechanical oil spill mitigating technologies, such as dispersants, surface washing agents, sorbents, solidifiers, bioremediation agents, and others are among the available oil response options that responders may consider in the United States and the world. The National Academies' National Research Council report titled ''Oil Spill Dispersants: Efficacy and Effects'' (2005), recommends that steps be taken to better support policymakers and spill responders faced with making choices regarding the use of dispersants as part of spill contingency planning efforts or during actual spills. The United States Coast Guard has promulgated new requirements for certain vessels to have only Schedule listed dispersant response capabilities while operating in designated dispersant preauthorization zones (74 FR 45004, August 31, 2009).

The proposed amendments are aimed at ensuring that chemical and biological agents have met efficacy and toxicity requirements, that product manufacturers provide important use and safety information, and that the planning and response community is equipped with the proper information to authorize and use the products in a judicious and effective manner.

V. This Action

This proposal addresses the efficacy, toxicity, environmental monitoring of dispersants, other chemical and biological agents, and other spill mitigating substances, as well as public, state, local, and federal officials concerns on their authorization and use. The sections below explain the proposed requirements and revisions, and EPA is requesting comments by section. Alternatives offered should include rationale and supporting information in order for the Agency to include the alternative in any final rule.

A. Discharge of Oil

The Agency is proposing revisions to harmonize 40 CFR part 110.4 with the definitions for chemical and biological agents proposed for Subpart J. The current language in § 110.4 is specific to dispersants and emulsifiers. The proposal replaces the terms ''dispersants and emulsifiers'' with the broader terms of ''chemical agent'' and ''biological agent'' as proposed to be amended in § 300.5. The proposed definition for chemical agents includes elements, compounds, or mixtures designed to facilitate the removal of oil from a contaminated environment and mitigate any deleterious effects. The proposed definition for biological agents includes microorganisms (typically bacteria, fungi, or algae) or biological catalysts, such as enzymes, able to enhance the biodegradation of a contaminated environment. Chemical and biological agents would include both the dispersants and emulsifiers cited in § 110.4. By revising 40 CFR part 110, the Agency is clarifying that any chemical or biological agent added to a discharge of oil with the intent to circumvent any

provision of 40 CFR part 110 is prohibited. To further reflect the proposed revisions, the Agency is proposing to also amend the section title to ''Chemical or biological agents.'' EPA believes the proposed amendment is consistent with U.S. Coast Guard (USCG) regulations, which prohibit the discharge of chemicals or other substances into the sea that circumvent discharge conditions specified in their regulation (33 CFR 151.10(g)). EPA requests comment on these revisions.

B. Subpart A—Introduction

1. Definitions

The Agency is proposing revisions to § 300.5 that amend the definitions for Bioremediation agents, Burning agents, Chemical agents, Dispersants, Sinking agents, and Sorbents. The Agency proposes to revise the term Surface washing agent and amend its definition. Additionally, the proposal includes new definitions for Bioaccumulation, Bioconcentration, Biodegradation, Biological agents, Bioremediation, Herding agents, Products, and Solidifiers. Finally, the Agency is removing the definitions for Miscellaneous Oil Spill Control Agent (MOSCA) and Surface collecting agents.

(a) Revised Definitions

Bioremediation agent—The Agency is proposing to revise the definition of bioremediation agents to identify as such biological agents and/or nutrient additives. These agents would be deliberately introduced into a contaminated environment to increase the rate of biodegradation, which in turn would assist in mitigating deleterious effects caused by contaminants. The proposed definition identifies as bioremediation agents microorganisms and enzymes. It also identifies nutrient additives such as fertilizers containing bio-available forms of nitrogen, phosphorus, and potassium. The proposed definition clarifies the current definition and adds specific examples of bioremediation agents. This clarification will help manufacturers of products in identifying the type of product, and hence, what testing requirements they will need to comply with to have a product listed on the Schedule.

Burning agents—The Agency proposes to revise the definition of burning agents to identify as such those additives that improve the combustibility of the materials to which they are applied. This could be achieved through either physical or chemical means. Burning agents include inorganic compounds in the form of gelling agents, such as aluminum soap. For example, the fuel used in helitorch systems is a mixture of powdered gelling agents with either gasoline, jet fuel, or a diesel/gas mixture, which are organic compounds.[1] The Agency believes both the inorganic gelling agent and the organic fuel (*e.g.,* gasoline) meet the burning agent definition by improving the combustibility of the materials to which they are applied through physical or chemical means. The Agency considered including ignition devices in the definition of burning agent because improving the combustibility of oil and igniting that oil could be considered one and the same. The intent would be to clarify the potential that not only substances, but also the devices holding those substances, be considered in the case-by-case authorization of use of such agents. The Agency rejected this approach since many devices either deliver the agent to the oil to be burned and do not enter the water, or are consumed in the burn along with the agent. The Agency requests comment on whether it should add ignition devices to the definition of a burning agent.

Chemical agents—The Agency proposes to revise the definition of chemical agents to identify as such those elements, compounds, or mixtures that are designed to facilitate the removal of oil. These agents may be used to mitigate deleterious effects of the oil on a contaminated environment. The proposed definition would include under the chemical agent category burning agents, dispersants, herding agents, sinking agents, solidifiers, surface washing agents, and those bioremediation agents that consist of nutrient additives. The proposed language reflects the distinction the Agency is now making between chemical and biological agents, allowing product manufacturers to better target the testing requirements and OSCs to better inform their authorization of agent use in specific situations. The proposal also removes from the definition agent categories that are either being eliminated, prohibited or amended to conform to the changes, as discussed below.

Dispersants—The Agency is proposing to revise the definition of dispersants to identify them as those agents that promote the formation of small droplets of oil in the water column by reducing the oil-water interfacial tension. Dispersants are proposed to be defined as typically mixtures of solvents, surfactants (including biosurfactants), and additives. The proposed definition specifically addresses the process through which these agents assist in mitigating the consequences of a discharge, clarifying for manufacturers which testing requirements they will be subject to when seeking to list a product on the Schedule.

Sinking agents—The Agency is proposing to revise the definition of sinking agents to identify them as those substances deliberately introduced into an oil discharge to submerge the oil to the bottom of a water body. The current definition is ambiguous in regards to how much sinking below the water surface would qualify as a sinking agent, as some submersion below the surface but generally not to the bottom of the water body can also be associated with other agents, such as dispersants. The proposed definition specifies these agents purposely sink the oil to the bottom of a water body. The Agency is prohibiting the use of sinking agents in the remediation of oil discharges in water because of their potential for causing adverse effects on benthic organisms vital to the food chain of the aquatic environment.

Sorbents—The Agency is proposing to revise the definition of sorbents to identify them as inert, insoluble substances that readily absorb and/or adsorb oil or hazardous substances. The proposed definition specifies that sorbents are not combined with or act as any other chemical or biological agent. The proposed definition also specifies that sorbents are generally collected and recovered from the environment and that they may be used in their natural bulk form, or as manufactured products in particulate form, sheets, rolls, pillows, or booms. The proposed definition identifies sorbents as substances consisting of: (1) Natural organic substances (*e.g.,* feathers, cork, peat moss, and cellulose fibers such as bagasse, corncobs, and straw); (2) inorganic/mineral compounds (*e.g.,* volcanic ash, perlite, vermiculite, zeolite, clay); and (3) synthetic compounds (*e.g.,* polypropylene, polyethylene, polyurethane, polyester). The proposed changes simplify the definition by removing the definitions of absorption and adsorption that are embedded in the current definition of sorbents. The Agency believes this is appropriate given these are generally recognized scientific terms and the proposal does not distinguish sorbents or in any way restrict their use based on whether they absorb or adsorb the oil. The definition also adds the ''natural'' qualifier to organic substances, indicating that organic substances that

[1] Fingas, Mervin, (Ed) (2011), Oil Spill Science and Technology, Gulf Professional Publishing, pp. 836, ISBN: 978–1–85617–943–0.

have been treated with other substances would not necessarily fall under this category of agents and should not immediately be considered a sorbent. It also expands on and simplifies the examples by removing the references to the type of birds that feathers could come from, by adding bagasse to the examples for natural organic substances, and by adding clay to the examples for inorganic/mineral compounds. The Agency requests comments on whether the definition is appropriate or if there are other materials that should also be included.

Additionally, the Agency requests comments on particulate materials (*e.g.,* clay) as sorbents. There is concern that particulate materials with densities greater than the seawater (or freshwater depending on where they may be used) have the potential to become sinking agents, settling to the seabed and posing potential risks to benthic organisms. This question is also relevant when considering emerging response technologies such as the use of particulate materials to form oil-mineral aggregates (OMAs) to promote dispersion. OMAs are stable microscopic entities formed when particulate materials interact with the oil droplets resulting in distinct oil and mineral phases. These fine mineral particles could be intentionally introduced by themselves to promote physical dispersion by preventing the oil to re-coalesce, or can also be used in conjunction with dispersants to enhance chemical dispersion. However, any particulate material that by itself, or when combined with oil (*e.g.,* OMA), results in overall densities less than the waters where it may be used, would not be prohibited as a sinking agent. The Agency requests comment on whether the use of sorbent materials in particulate form should be specified for use only in booms or other contained manufactured products, and whether there should be limitations on the authorization of use on water for sorbents in loose particulate form. Alternatively, the Agency also requests comment and supporting rationale on other approaches, including whether particulate materials in loose form, or specifically OMA technologies, should be excluded from the regulatory definition of sorbents.

Finally, EPA also requests comments on the qualifier phrase ''that are generally collected and recovered from the environment.'' For example, a natural organic and biodegradable sorbent (*e.g.,* bagasse) may not necessarily need to be removed after it has absorbed/adsorbed the oil when used in a wetland or salt marsh. Such removal may cause more harm than the oil itself due to trampling in the wetland or salt marsh. Once the oil is brought to the surface by the sorbent, biodegradation of both the oil and the sorbent can take place, especially if nutrients are added to enhance biodegradation. Another example would be the use of OMA technology to promote dispersion, which might not lend itself to collect or remove the aggregates from the environment. Thus, the Agency is requesting comment on whether testing and/or authorization of use requirements should be considered for particulate materials in loose form or OMA technologies that may be used in discharge situations where they would not be collected and recovered from the environment.

Surface washing agents—The Agency is proposing to revise the term surface washing agent and the definition for surface washing agents. The proposed definition would identify surface washing agents as those substances that separate oil from solid surfaces (*e.g.,* beaches, rocks, metals, or concrete) through a detergency mechanism. This detergency mechanism would lift and float the oil for collection and recovery from the environment. The use of these agents results in minimal dissolution, dispersion, or transfer of oil into the water column. The proposed changes revise the term from singular to plural to be consistent with the other agent definitions and clarifies that these agents are to be recovered from the environment along with the oil being treated.

(b) New Definitions

The Agency is proposing to add several new definitions that serve as the foundation for the new proposed biological agent classification: Bioaccumulation, Bioconcentration, Biodegradation, Biological agents, and Bioremediation. The proposed definitions include basic terminology and are consistent with definitions of these terms generally understood by the scientific community.

The Agency is also proposing new definitions for the terms herding agents and solidifiers. The proposed definitions address types of agents originally captured under the surface collecting agent or the miscellaneous oil spill control agent categories respectively, and are terms that are more commonly used in industry. The definitions more specifically describe the specific process through which the product affects the oil for the categories and are consistent with definitions of these terms generally understood by the scientific community.

Finally, the Agency is proposing a new definition for the term product to clarify the difference between a specific product and an agent type or category. All of the proposed new definitions can be found in the § 300.5 of this action.

(c) Removed Definitions

The Agency is proposing to remove the definitions for surface collecting agent and for miscellaneous oil spill control agent (MOSCA). The surface collecting agent definition is being removed and replaced with a new herding agent definition to better reflect the common terminology used in industry for these agents. The MOSCA definition is being removed and replaced with a number of new and/or revised definitions for types of agents. The original MOSCA category was used as a catchall for all types of products that did not meet other agent definitions. As the Agency adds new, more stringent testing requirements for listing products on the Schedule, there is a need for more specific category definitions to assist manufacturers in determining which of those testing requirements apply to their products. The Agency believes it has identified categories that capture all products to be listed on the Schedule; we request comment on whether the MOSCA category should be retained, and whether the proposed categories are appropriate, including sufficient information and rationale to support the addition of any new categories.

C. Subpart J—Use of Dispersants, and Other Chemical and Biological Agents

1. General

EPA is proposing to amend § 300.900 by revising paragraphs (a) and (c), and by adding paragraph (d) to reserve for ''Releases of Hazardous Substances''. The proposed revisions clarify that Subpart J addresses not only chemical agents, but also those agents that now fall under the newly proposed biological agent category. The revisions reaffirms the notion that Subpart J is not only comprised of a Schedule of chemical and biological agents, but also includes testing requirements and authorization of use procedures. Consistent with current Subpart J regulatory requirements the Agency is proposing to reserve a section for ''Releases of Hazardous Substances'' to take place of the current placeholder in § 300.905, which is proposed to be removed. Based on all relevant circumstances, testing data and information, and in accordance with the authorization of use procedures (including the appropriate concurrences and consultations), the waters and

quantities in which a dispersant, or other chemical or biological agents may be safely used are to be determined in each case by the OSC. When taken together, these testing requirements, listing of agents and authorization of use procedures address the types of waters and the quantities of listed agents that may be used in response to discharges of oil or hazardous substances. The wide variability in waters, weather conditions, organisms living in the waters, and types of oil that might be discharged requires this approach.

2. Authorization of Use

Section 300.910 sets forth the provisions for the authorization of use of products on the Schedule in response to oil discharges. Subpart J does not state or imply that chemical or biological agents are preferred over other response options such as mechanical recovery devices. EPA believes that the circumstances surrounding oil discharges and the factors influencing the choice of response methods are many. During the DWH response, a priority countermeasures scheme was established to first use mechanical recovery via skimming/booming or in-situ burning followed by subsea dispersant and lastly surface dispersant use. Following DWH, EPA and the NRT issued Interim Actions regarding the use of dispersants on oil spills to NRT members and RRT co-chairs [2] and to EPA Regional Administrators [3] for consideration during response planning. While response actions are incident specific, the availability of response methods that address the specific discharge situation depends largely on contingency planning activities and on how these requirements are implemented through the RCPs, ACPs and vessel and facility response plans. In order for a response to be effective, the NCP requires coordination between the regulatory and planning entities responsible for all these response plans. The Agency believes that preauthorization or expedited decision making plans are critical elements of contingency planning activities. Regularly reviewing or revising preauthorization or expedited decision making plans provides those agencies in charge of preparedness planning the opportunity to identify and resolve concerns in advance, leading to quick and effective operations during removal actions. The Agency believes these proposed revisions to the authorization of use provisions will assist OSCs, RRTs, and ACs in their advanced planning activities as they consider response methods that result in the greatest environmental protection. The goal is to ensure that preauthorization or expedited decision making plans are developed and maintained to effectively support decisions by OSCs during removal actions. In carrying out advanced planning activities, the Agency believes the NRT can assist RRTs by providing guidance on national level issues that may arise during planning activities.

EPA is amending § 300.910 by revising paragraphs (a) through (f); and by adding paragraphs (g), (h) and (i). EPA is not proposing major changes to the current authorities granted to OSCs, RRT representatives to the RRTs, States, DOC, DOI, or other National Response Team decision makers with regards to the authorization and application of chemical or biological agents. However, EPA recognizes that the planning for and prolonged use and monitoring of chemical agents, especially dispersants, may require additional planning activities and monitoring requirements. Thus, the Agency is proposing to reorganize this section; to add titles to the paragraphs for ease of use; to add several requirements addressing the storage and use of agents, notification of agent use and recovery from the environment; and to revise language to clarify established EPA policy. The proposed revisions and clarifications are highlighted for each paragraph under § 300.910.

EPA is also confirming, consistent with the intent of the NCP, that use of chemical or biological agents in response to oil discharges to waters of the U.S. or its adjoining shorelines must be authorized by an OSC in accordance with Subpart J. The unauthorized use can result in violations of section 301 and 311 of the CWA. Section 301(a) makes unlawful ''the discharge of any pollutant by any person,'' except in compliance with certain provisions of the CWA. In addition, section 311(b) establishes penalties for persons who fail or refuse to comply with any regulation issued under section 311(j) of the CWA.

(a) Use of Agents Identified on the Schedule on Oil Discharges Addressed by a Preauthorization Plan

The Agency is proposing revisions to § 300.910(a) of Subpart J to address the preauthorized use of chemical and biological agents identified on the Schedule. The proposed revisions clarify the process for preauthorization, the responsibilities of all involved parties, and the factors to consider during the preauthorization process, including the authorization for the use of agents by the OSC at the time of a discharge. EPA is also proposing to reorganize paragraph (a) to provide greater clarity by making the regulatory text easier to read and follow. The Agency believes that the proposed revisions do not change its fundamental policies regarding roles of Federal, state and local representatives involved in planning for and responding to an oil discharge, but rather clarify the current requirements and further explain the responsibilities for each party. The Agency is also proposing added procedures and review requirements intended to ensure preauthorization plans are up-to-date so they are most effective when implemented in case of a discharge.

EPA believes RRTs and ACs must work together in order to effectively and successfully manage contingency planning. Thus, the proposed revisions continue to require that, as part of their planning activities, RRTs and ACs address in the preauthorization plan whether the use of chemical and biological agents listed on the Schedule on certain oil discharges is appropriate. The Agency believes that the proposed revision clarifies the meaning of the desirability of using appropriate chemical or biological agents. The Agency is removing ''. . . the desirability of using appropriate burning agents.'' from paragraph (a) and addressing the use of burning agents under paragraph (c) to provide greater flexibility to OSCs for authorization of use.

Under the current paragraph (a), ACs are responsible for developing preauthorization plans. ACs are also responsible for developing ACPs, providing a forum to evaluate the environments within a jurisdiction and establishing protection priorities. The information gathered during the ACP development process should inform the development of preauthorization plans. Identified representatives from the RRTs are responsible for approving or requesting modifications of preauthorization plans developed by the ACs. ACs can advocate for local

[2] Tulis, Dana S., EPA Chair and Caplis, Captain John, USCG Vice-Chair, National Response Team, ''Use of Dispersants on Oil Spills—Interim Actions;'' Memorandum to NRT Members and RRT Co-Chairs; December 16, 2010.

[3] Stanislaus, Mathy; Assistant Administrator, OSWER EPA; ''Revision of Area Contingency Plans/Regional Contingency Plans Regarding Use of Dispersants on Oil Spills—Interim Actions;'' Memorandum to EPA Regional Administrators, November 2, 2010.

concerns to be reflected in the preauthorization plans they develop, and the RRTs will decide if the plans are adequate and address region-wide and cross-regional issues. Since the RRTs should be in a position to provide guidance to ACs on common attributes within a region, EPA continues to believe RRTs and ACs should work together to develop preauthorization plans, particularly when identifying discharge situations where chemical or biological agents may be used. There may be circumstances where it is appropriate to allow either the RRTs and/or ACs to develop preauthorization plans. Preauthorization plans developed by an RRT would allow for these plans to better reflect overarching regional circumstances. Therefore, the Agency is proposing to include RRTs as another planning entity with responsibility for developing preauthorization plans, and is requesting comment on this change, and on the advantages or disadvantages of keeping the development of these plans at the AC level.

ACPs generally describe discharge situations for the geographical area for which they apply. Discharge situations developed as part of area contingency planning activities may consider likely scenarios from vessels, and onshore or offshore facilities. While RRTs and ACs should consider the discharge scenarios described in ACPs when identifying discharge situations in developing preauthorization plans, the Agency believes they should also have the flexibility to consider other discharge scenarios. The proposed language states preauthorization plans must specify limits for the quantities and duration of use, and use parameters for water depth, distance to shoreline, and proximity to populated areas for discharge situations identified in which agents may be used. The Agency believes that clearly stating the use parameters in a preauthorization plan will make it easier for planners to address concerns of preauthorizing agent use and in turn for responders to authorize their use.

In meeting these provisions, the preauthorization plans should document how both regional and logistical factors were addressed when establishing dispersant use limits and parameters. Regional factors include the likely sources and types of oil that might be discharged, various discharge scenarios, and the existence and location of environmentally sensitive resources or restricted areas that might be impacted by discharged oil. Logistical factors include inventory, storage locations and manufacturing capability of available agents, availability of equipment needed for agent use, availability of adequately trained operators, and the availability of appropriate means to monitor agent use. While the proposed revisions simplify the language and clarify the requirements, the Agency believes it is necessary to keep in place the fundamental elements that should be considered. The proposed factors generally parallel those under the current 300.910(a) regulation. Several revisions include identifying some factors as ''regional'' and others ''logistical.'' The Agency is identifying ''logistical'' factors to ensure the availability of chemical and biological agents to address discharge situations identified in the preauthorization plan. The Agency added ''various discharge scenarios'' as a regional factor to be considered because preauthorization plans may cover more than one ACP with multiple discharge scenarios that RRTs and/or ACs may want to consider. The Agency also added the existence and location of ''restricted areas'' along with ''environmentally sensitive resources'' as a factor to consider. Environmentally sensitive resources would include fish, wildlife and their habitats, and other special areas of ecological sensitivity that may be adversely affected by a discharge. While ''restricted areas'' may include ''environmentally sensitive resources'' some areas may be restricted from certain activities because of biologically sensitive topographic features or critical habitats, such as submerged rock formations colonized by species (*e.g.,* coral) and the organisms they interact with and support. NOAA's Environmental Sensitivity Index maps, the Fish and Wildlife and Sensitive (FWS) Environments Plan in ACPs, or environmental impact statements, may contain relevant information on ''environmentally sensitive resources'' for the RRTs and ACs to consider.

The proposal revises the phrase ''potential sources and types of oil that might be spilled'' to ''likely sources and types of oil that might be discharged.'' EPA believes the phrase ''likely sources and types of oil'' better focuses on the sources and types of oil specific to the preauthorization plan for which agents may be used. In addition, the proposal revises ''spill'' to ''discharge'' to be consistent with terminology in the NCP. The proposal also revises the phrase ''the available means to monitor product application and effectiveness'' to ''means to monitor agent use in the environment'' as the Agency believes it provides for additional flexibility for the RRTs and/or the ACs to consider the scope of the monitoring, and to include other endpoints beyond product application and effectiveness. The Agency is proposing to eliminate the ''available'' qualifier, as it believes it is unnecessary. Likewise, the Agency proposes to eliminate the ''available'' qualifier before ''product and storage locations'' and revise the phrase ''product and storage location'' to the broader ''inventory, storage locations and manufacturing capability of available agents'' to address lessons learned from the Deepwater Horizon incident, including the challenges posed by the potential sustained use of dispersants.

When developing preauthorization plans, RRTs and ACs should use the best available scientific information to assess environmental trade-offs, including those identified by conducting an ecological risk assessment. Environmental trade-offs should be considered in determining response options that provide the greatest environmental protection. The RRTs and ACs should identify the affected biological resources and their habitats likely to be negatively impacted, as well as those that are expected to benefit. The natural resource trustees are critical partners that can assist in conducting these analyses.

As previously stated, all members of the RRT are afforded an opportunity to review and provide input on a draft preauthorization plan. However, only the RRT representatives from EPA and the state(s) with jurisdiction over the waters and adjoining shorelines within the preauthorization plan area and the DOC and DOI natural resource trustees may approve, disapprove, or approve with modification the draft preauthorization plan. The Agency believes this remains the correct approach. Given preauthorization plans are developed during the contingency planning phase, the Agency believes that DOC and DOI natural resource trustee concurrence is preferred over just consultation because it provides for sufficient time to identify and resolve natural resource concerns. As noted in the 1994 NCP final rule, the requirement for concurrence during the advanced planning phase ensures trustee involvement in decision-making (59 FR 47398). Addressing in advance concerns that might otherwise slow the action ensures that operations during a removal action can be carried out quickly and effectively. EPA believes natural resource trustee concurrence with preauthorization plans satisfies the consultation obligation since the preauthorization plans specify the use parameters for chemical or biological

agents. Thus, the Agency is retaining this concurrence requirement for preauthorization plans.

The Agency is proposing to revise the ''Approved preauthorization plans shall be included in the appropriate RCPs and ACPs'' in the current § 300.910(a) regulation to ''RRTs and ACs shall, as appropriate, include applicable approved preauthorization plans in RCPs and ACPs.'' The Agency is proposing to modify the qualifier ''approved'' with ''applicable'' to clarify that RRTs and ACs need to include the preauthorization plans only in those RCPs and ACPs to which they apply, and remains consistent with current requirements.

The Agency considered adding specifically the EPA Administrator and the senior EPA representative to the NRT (*e.g.* NRT Chair) to § 300.910(a) and other paragraphs to make clear the EPA Administrator's and senior EPA NRT representative's existing authority under section 311(d)(2)(G) of FWPCA and Executive Order 12777, along with the OSC to authorize any chemical or biological agent use. The Agency is clarifying that if the preauthorization plan is approved in advance for chemical or biological agent use under specified discharge circumstances, then the OSC may authorize the use of the agents on the Schedule for their intended purpose without the incident specific concurrences and consultations described in paragraphs (b) of this section unless otherwise directed by the Administrator in accordance with current concurrence authority. The Agency believes this clarification would not impede rapid decision-making on the part of the OSC, and that for the majority of discharge situations, the OSC will remain as the sole authorizing entity for discharge situations covered by preauthorization plans. Note that in situations like a spill of national significance (SONS) or an event of extended duration, the Administrator already has the authority for, and is likely to have a more direct role in chemical or biological agent use decisions. The authority, jurisdiction, and implementation provisions in the NCP flow from section 311 of the Clean Water Act and are reflected in Executive Order 12777. All authorities under CWA 311 are delegated either directly to the Administrator by Congress, or by Executive Order 12777 from the President to the Administrator. While the Administrator's authority may be further delegated through senior management on down to the RRT representative, the Administrator (and other delegatees) retain the authority to act. The mere delegation of authority does not prohibit the delegator from exercising said authority. However, given these situations are rare and that this is an existing authority, the Agency is not proposing a regulatory amendment to clarify the Administrator's authority at this time. We request comment on this issue.

The Agency is clarifying that chemical or biological agents may only be used for their intended use, given the different listing requirements proposed for the various categories of chemical or biological agents. For example, a chemical agent that is listed on the Schedule solely as a surface washing agent cannot be authorized for use as a dispersant, nor can a chemical agent that is listed on the Schedule solely as a dispersant for use under saltwater conditions be used in freshwater.

The Agency is proposing specific procedures for concurrence withdrawals, allowing agencies to do so if they believe the preauthorization plan no longer addresses or reflects existing situations if it were to be implemented. While an agency with concurrence authority may now decide to withdraw concurrence from an approved preauthorization plan, there are currently no set procedures to promptly address those situations. The proposal would require the RRT and the ACs to address the withdrawal of approval of the preauthorization plan within 30 days of the withdrawal, allowing an opportunity to address the concerns. The proposal also calls for the RRT to notify the NRT of the final status of the preauthorization plan within 30 days from the withdrawal. The Agency requests comments on whether this 30 day notification requirement should also include notification to the public. In the event of an Agency withdrawing its concurrence from an approved preauthorization plan, EPA believes the advanced planning process should continue with consideration for all the elements specified in paragraph (a) of this section. While the absence of a preauthorization plan requires that authorizations for agent use be conducted according to paragraph (b) of this section, the Agency continues to believe that preauthorization plans serve as a valuable advanced planning tool that provides a strong foundation to support decision-making and strongly encourages the resolution of any withdrawal.

Finally, EPA proposes a new requirement for RRTs and/or ACs to review, and revise as needed, preauthorization plans: (a) At least every 5 years to address revisions of the Schedule; (b) after a major discharge or a spill of national significance (SONS); (c) to reflect new listings of threatened and/or endangered species or; (d) after any other change such as a new or revised worst case discharge estimate that may impact the conditions under which the use of chemical and biological agents is preauthorized. A 5-year review cycle is consistent with facility response planning requirements; as those plans are revised and updated, it seems reasonable that preauthorization plans should be reviewed and revised accordingly. The Agency recognizes that development of preauthorization plans can be resource intensive; however, once developed, a periodic review and revision as needed should require much less effort. EPA welcomes comment on this timeframe and suggestions with supporting information for alternatives.

This review requirement is intended to ensure that preauthorization plans are actively maintained and updated to reflect revisions to the Schedule. Preauthorization plans, as well as the facility and vessel response plans reflected in them, may include information on products listed on the Schedule. A review at least every 5 years is expected to provide greater consistency not only between any Schedule revisions, but also between any ACPs, facility, and vessel response plans. For example, an ACP revision that results in a change in the worst-case discharge scenario could trigger a preauthorization plan review. Additionally, the requirement specifically includes plan review and revision requirements as appropriate to reflect new listings of threatened and/or endangered species that may occur. The EPA RRT representative, the DOC and DOI natural resource trustees, and, as appropriate, the RRT representative from the state(s) with jurisdiction over the waters of the area to which a preauthorization plan applies must review and either approve, approve with modification, or disapprove any revisions to the preauthorization plans. This review and approval is intended to focus on any revisions, and is not intended as a requirement for review and approval for those portions that do not require modifications.

(b) Use of Agents Identified on the Schedule on Oil Discharges Not Addressed by a Preauthorization Plan

The Agency is proposing revisions to § 300.910(b) of Subpart J to address use of chemical or biological agents identified on the Schedule for discharge situations that have not been addressed in preauthorization plans. The proposed revisions clarify the authorities and responsibilities of all involved parties,

and the factors to consider when authorizing the use of listed chemical or biological agents in these situations. The Agency believes the proposed revisions do not change its fundamental policies regarding the roles of Federal, state and local representatives involved in an oil discharge response.

The proposed revisions maintain, with the appropriate concurrences and consultations, the OSC's authority to authorize the use of chemical or biological agents on the oil discharge, provided that the agents are listed on the NCP Product Schedule. The concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the waters and adjoining shorelines threatened by the release or discharge is maintained. The requirement for consultation with the DOC and DOI natural resource trustees is also maintained. However, the language is amended by removing ''when practicable'' with respect to consultation with the DOC and DOI natural resource trustees. The Agency believes that the case-by-case decision making should include consultations with natural resource trustees since these discharge situations may present unique challenges when selecting a response option that involves chemical or biological agents. While the Agency recognizes the time-critical nature of decision making during a response, advances in communication technology (*e.g.,* smart phones, email) provide OSCs with increased capabilities to communicate quickly. Therefore, the Agency believes it is reasonable to expect an OSC to be able to notify and explain the circumstances requiring use of the certain agents to natural resource trustees in a timely manner. Of note, while consultation with the trustees on removal actions as required by OPA does not equate to a concurrence requirement, the Agency believes that such concurrence is highly desirable. The Agency is also proposing to revise the term ''navigable waters threatened'' to ''waters and adjoining shorelines threatened'' to be consistent with the provisions in paragraph (a) of this section.

The preauthorization plan requirements in paragraph (a) proposes to remove the term ''specific context'' currently used and instead clearly establish what the term refers to. The proposal specifically identifies the parameters that must be considered by the OSC for authorizing agent use. Similar requirements are proposed under paragraph (b). Thus, in meeting the provisions of § 300.910(b), the OSC must consider and document the parameters for the use of agents including, but not limited to, quantities to be used, the duration of use, the depth of water, the distance to shoreline and proximity to populated areas, and should address factors such as environmentally sensitive resources or restricted areas that might be impacted, agent inventory and storage locations, agent manufacturing capability, availability of equipment needed for agent use, availability of adequately trained operators and appropriate means to monitor agent use in the environment. These considerations are parallel to those proposed under paragraph (a) for preauthorization and planning purposes. While the Agency is not including other factors that may inform preauthorization planning development, such as various discharge scenarios, this does not mean these factors cannot or should not be considered if RRTs and/or ACs choose to develop expedited decision making plans. The Agency believes these are fundamental elements that would inform an assessment of the overall ecological risks for the OSC to consider when authorizing the use of chemical or biological agents.

Finally, while not required, EPA strongly recommends advanced planning for expedited decision making for cases where the discharge situation is not addressed in the preauthorization plans. Some RRTs have developed expedited approval guidelines that are not part of the preauthorization plans, but that offer an opportunity for advanced contingency planning by gathering information on the key parameters discussed above. Because discharge situations not covered by preauthorization plans need incident specific (*i.e.,* case-by-case) authorization concurrence,[4] expedited approval guidelines can be used to support expedited incident specific authorizations. For chemical or biological agents listed on the Schedule that are not authorized for use under a preauthorization plan, the ACs and RRTs should work together to outline the process for expedited authorization decisions regarding their use. It is important to note that while the NCP requires that the ACPs include procedures for expedited decisions, these procedures can include disapproving the use of agents, or approving the use of agents with certain operational conditions. For example, areas may be designated in which the use of certain agents or other discharge mitigating devices is prohibited, situations where limits are placed on the quantities of agents used, or situations that require certain monitoring requirements be in place.

(c) Burning Agents

The Agency is proposing to replace the current authorization of use for burning agents in § 300.910(c) with a provision that provides greater flexibility to OSCs for authorizing the use of burning agents. Specifically, the Agency proposes that OSCs may authorize the use of burning agents for authorized in-situ burns. The proposed amendments recognize that relatively small quantities of burning agents are ignited prior to or immediately after they are introduced to an oil discharge. Furthermore, they are composed of substances that are expected to rapidly burn off during use, which serves to remove them from the water. The Agency also recognizes that ISB has become an important response option that is used more frequently and the proposed revisions would allow OSCs to authorize the use of burning agents for authorized burns. For example, a significant number of ISBs were conducted during the Deepwater Horizon oil spill,[5] and ISBs appear to be gaining a more prominent role as a response option in federal waters in remote locations, such as the Arctic. Therefore the Agency believes the proposed revisions better address OSC authorities for these situations, without compromising environmental concerns. Further, because of the nature of burning agents and the proposed revisions to the authorization of use for these products, the Agency continues to believe it is not necessary to require product submissions for burning agents. Thus, the proposal removes the provisions for burning agents under the current data requirements. The Agency requests comments on this approach.

(d) Exceptions

The proposed rule maintains the provision allowing OSCs to authorize the use of any agent, including products not on the Schedule, when it is determined that the use of the agent is necessary to prevent or substantially reduce a threat to human life. The proposed revisions do not change previous policy, but rather clarify the intent of the exception. The Agency believes that the protection of human life is the primary consideration in responding to an oil discharge. Life-

[4] *http://www.epaosc.org/sites/5083/files/rrt6_nearshore_dispersant_eap_031605.pdf.*

[5] *http://www.restorethegulf.gov/release/2011/08/19/operations-and-ongoing-response-august-17-2011.*

threatening oil discharges (*e.g.,* spills of highly flammable petroleum products in harbors or near inhabited areas) may occur at locations where chemical agents on the Schedule are not immediately available. The Agency believes that in such cases, an OSC must have the ability to use agents that, in his professional judgment, would effectively and expeditiously mitigate the threat to human life. Allowing this authorization to occur without the required concurrences for preauthorization or authorization of use for products on the Schedule under paragraphs (a) and (b) respectively, eliminates delays in responding to potentially life-threatening situations. The Agency is proposing to include ''without obtaining the immediate concurrence'' to clarify the scope of the exception. The proposed revisions are consistent with the intent of the current regulation which recognizes that once the threat to human life has subsided, the continued use of a product shall be in accordance with authorization of use paragraphs (a) and (b) of the section. In addition, this exception is intended for those extraordinary situations in which time is of the essence to mitigate the threat to human life; revising the language to replace ''hazard'' with ''threat'' clearly establishes this. The Agency emphasizes this authority is not intended to circumvent the authorization of use provisions in paragraphs (a) and (b) of this section, which serve to address all other situations.

The proposed revisions also specify that the OSC immediately notify, and document the reasons for the use of an agent to the EPA RRT representative and the affected states as soon as possible, and must obtain their concurrences where continued use of chemical or biological agents extends beyond 48 hours. The Agency believes that advances in communication technologies (*e.g.,* smart phones, email) provide OSCs the increased capabilities to communicate quickly. Therefore, it is reasonable to expect that the OSC notify and explain the circumstances requiring use of the agent to the designated EPA RRT representative and, as appropriate, the RRT representatives from the affected states and the DOC/DOI natural resources trustees within 48 hours. The Agency is requesting comments on these revisions, and specifically on the 48 hour timeframe within which the OSC shall be operating in accordance with authorization of use paragraphs (a) and (b) of the section.

(e) Prohibited Agents

The Agency is maintaining the current prohibition for the authorization of use of sinking agents, and is clarifying that this prohibition also applies to any other chemical agent, biological agent, or any substance that acts as a sinking agent when mixed with oil. While certain chemical and biological agents may submerge oil below the water surface (*e.g.* dispersants are designed to break up oil into small, near neutrally buoyant particles that are entrained in the water column between the surface and the bottom), they would not be considered ''sinking agents'' for purposes of the proposed definition and this prohibition, given that they do not completely submerge oil to the bottom of the water body when applied to an oil discharge. Sinking agents, when applied to oil discharges, function by sinking floating oil to the bottom of any body of water where used, potentially causing adverse effects on benthic organisms vital to the food chain of the aquatic environment. Additionally, the oil and these agents are very difficult to remove. The Agency has similar concerns regarding substances that could directly cause the oil to submerge to the bottom of the water body when used in an oil spill response, and thus it is specifically proposing to exclude their use.

The Agency is also proposing to add a prohibition from listing on the Schedule and from authorizing use of any chemical or biological agents that contain nonylphenol (NP) or nonylphenol ethoxylates (NPEs) as components. This prohibition reflects the Agency's concern for these substances, as presented in the *EPA Nonylphenol and Nonylphenol Ethoxylates Action Plan,* released August 18, 2010. The Action Plan specifically addresses nonylphenol (NP) and nonylphenol ethoxylates (NPEs). NP and NPEs are produced in large volumes, with uses that currently lead to widespread release to the aquatic environment. NP is persistent in the aquatic environment, moderately bioaccumulative, and extremely toxic to aquatic organisms. NP's main use is in the manufacture of NPEs. NPEs are nonionic surfactants that are used in a wide variety of industrial applications and consumer products. Many of these, such as laundry detergents, are ''down-the-drain'' applications. Some others, such as dust-control agents and deicers, lead to direct release to the environment. NPEs, though less toxic and persistent than NP, are also highly toxic to aquatic organisms, and, in the environment, degrade into NP. Both NP and NPEs have been found in environmental samples taken from freshwater, saltwater, groundwater, sediment, soil and aquatic biota. NP has also been detected in human breast milk, blood, and urine and is associated with reproductive and developmental effects in rodents. EPA has encouraged the ongoing voluntary phase-out of NPEs in industrial laundry detergents, and intends to evaluate how releases and exposures are mitigated through the phase-out action prior to taking any final regulatory action under the Toxic Substances Control Act.[6] The Agency believes this prohibition would not adversely affect product manufacturers given there are viable alternatives to the use of NP and NPEs in product formulations. However, we are requesting comment on the potential impacts of modifying existing products to meet this new requirement, including cost.

Alternatively, EPA considered a broader prohibition from listing and from authorizing the use of chemical or biological agents formulated with any endocrine disrupting compounds (EDC). EDCs impact exposed organisms by altering the hormonal and homeostatic systems that allow them to interact with and respond to their environment. The group of molecules identified as potential endocrine disruptors is highly varied and may be present in chemicals used as industrial solvents or surfactants that can be found in dispersants and surface washing agents. Because of the common properties of these compounds and the similarities of the receptors and enzymes involved in the synthesis, release, and degradation of hormones, no endocrine system is immune to endocrine disrupting compounds.[7]

The 1996 Food Quality Protection Act directed EPA to develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans; the 1996 amendments to the Safe Drinking Water Act authorized EPA to screen substances that may be found in sources of drinking water for endocrine disruption potential. In response to these mandates, the Agency's Endocrine Disruptor Screening Program is developing requirements for the screening and testing of pesticides, commercial chemicals, and

[6] For more information, refer to *http://www.epa.gov/oppt/existingchemicals/pubs/actionplans/np-npe.html.*

[7] For more background information on endocrine disrupting compounds and their human health and environmental effects, please see *http://www.epa.gov/endo/pubs/edspoverview/index.htm.*

environmental contaminants for their potential to disrupt the endocrine system.[8] The science related to measuring and demonstrating endocrine disruption is relatively new and validated testing methods are still being developed. When complete, EPA will use these validated methods or assays to identify and characterize the endocrine activity of pesticides, commercial chemicals, and environmental contaminants, specifically in relation to estrogen, androgen, and thyroid hormones. EPA plans to use the assays in a two-tiered screening and testing process: Tier 1 will serve to identify chemicals that have the potential to interact with the endocrine system; and Tier 2 will determine the endocrine-related effects caused by each chemical and obtain information about effects at various doses. With this two-tiered approach, the Agency will gather information needed to identify endocrine-active substances and take appropriate action, as mandated by Congress. To date, EPA has developed and validated 11 assays that comprise the Tier 1 Screening Battery. EPA's validation effort continues with the current focus on Tier 2 tests and potential replacement assays for Tier 1.[9] When all tests are finalized and chemical information begins to be collected, EPA may further consider how to incorporate that information into the Subpart J NCP requirements, including additional testing and listing requirements. Because validated testing methods are still being developed, the agency is not proposing any test requirements with respect to endocrine disruption for products to be listed on the Schedule.

However, because NP and the NPE are extremely or highly toxic to aquatic organisms, the Agency is proposing a prohibition specific to Subpart J products containing NP and NPE as components. The Agency is not proposing to include a broad prohibition on Subpart J products that contain substances in which at least part of the toxic mode of action may include disruption of the organism's endocrine system, but is requesting comments on prohibiting similar substances that may be found in products/agents that could be listed on the Schedule, or to what the criteria should be in order to make that determination. As an alternative, the Agency could require that all product components be tested for a toxic mode of action that includes disruption of the organism's endocrine system and is requesting comment on this approach as well.

The Agency believes the proposed prohibitions are appropriate in all cases, notwithstanding the proposed provisions for case-by-case use authorization of burning agents under § 300.910(c), or for authorization of use of any chemical or biological agent when it is necessary to prevent or substantially reduce an immediate threat to human life under § 300.910(d). There are chemical and biological agent alternatives to sinking agents and to agents containing NP or NPE, as well as mechanical methods for responding to oil discharges, including those situations that pose extreme threats or are time critical.

(f) Storage and Use of Agents

Section 300.915 currently requires that information be provided on recommended conditions of storage and use for each product at the time an application for listing a product under Subpart J is submitted to the Agency. This information is summarized in EPA's *NCP Product Schedule Technical Notebook.* Specifically, this information includes: Special handling and worker precautions for storage and field application; maximum and minimum storage temperatures (optimum ranges and temperatures that will cause phase separations, chemical changes, or other alterations to product efficacy); shelf life of the product; recommended application rates and procedures, concentrations and conditions (considering water temperatures, salinity, types and ages of the oil); and any other application restrictions.

The Agency proposes to add a new paragraph (f) to this section that complements the existing information requirements for the person or entity submitting a product for listing (''submitter''). The proposed requirements focus on the use of this information by the responder and the OSC. Specifically, the revised provisions require the OSC to only authorize for use those products that are stored under the conditions specified by the submitter of the product for listing, including the maximum, minimum and optimum temperatures, humidity and any other relevant conditions. Additionally, the Agency proposes to require that the OSC only authorize for use those products whose date of use does not exceed the expiration date listed on the container's label at the time of an incident, unless the responsible party[10] provides the OSC documentation, developed in consultation with the submitter of the product for listing, prior to product use, affirming the product has maintained its integrity, including no changes in the composition, storage conditions, efficacy, and toxicity of any product. In such cases where the product expiration date has passed but the owner or operator of the facility/vessel storing the product still wants to be able to use the product inventory, EPA proposes that samples of the expired product lot representative of all storage conditions at any end user location be tested following the applicable testing protocols in Appendix C. The testing documentation is to include laboratory information (*i.e.,* contacts, accreditations) and all test data and calculations (*i.e.,* raw data and replicates, notes and observations, calculated means and standard deviations, stock solution preparations, source and preparations of test organisms, test conditions, chain of custody forms, and summary reports). Only if the owner or operator can demonstrate that the product has maintained its integrity is the OSC allowed to authorize the use of that product inventory. The owner or operator of the facility/vessel, or their representative, must re-label the tested product lots and maintain documentation of the test results until those lots are used or discarded, and must retest the expired product lot representative of the product at least once every 5 years to ensure efficacy and to allow an OSC to authorize the product for use. The intent of these proposed revisions is to ensure that products being authorized and used have maintained their efficacy, even though storage beyond the products' original shelf life may have occurred. The Agency believes it is the owner or operator's responsibility to ensure that any product it stockpiles for future use has maintained its efficacy and has not changed from its listed composition, including the possibility of degrading into more toxic byproducts, once the manufacturer's expiration date has passed. This retesting provision is supported by the proposed requirements that the submitter of the product for listing provide not only the recommended storage conditions, but the anticipated shelf life of a product at those conditions, and that the product label include both the manufacture and expiration dates, and conditions for storage. The flexibility in this proposed

[8] *http://www.epa.gov/endo/pubs/edspoverview/background.htm.*

[9] *http://www.epa.gov/endo/pubs/assayvalidation/index.htm.*

[10] Responsible party is defined in the NCP under 40 CFR 300.5.

revision allows for the use of available product inventory that may still be viable. To alleviate concerns that applications are submitted that establish an extended or indefinite shelf life for a product, the Agency is requesting comments on whether any additional data or information requirements should be included for product listing determinations specific to a product's shelf life, or whether alternative approaches, such as limiting the shelf life for product categories to a given timeframe, should be considered.

(g) Supplemental Testing, Monitoring, and Information

This proposal maintains RRT authority in that they may require supplementary toxicity and efficacy testing, or available data or information that addresses site, area, or ecosystem specific concerns relative to the use of a product for both planning and authorization of use. While parallel to the current provisions, the proposed revisions provide added flexibility. The current provisions allow RRTs to require supplementary toxicity and efficacy testing of products, in addition to those specified as technical requirements following the test methods described in Appendix C to part 300, due to existing site-specific or area-specific concerns when developing preauthorization plans. EPA proposes to remove the qualifier ''When developing preauthorization plans'' to provide greater flexibility for RRTs to require supplementary toxicity and efficacy testing, or available data or information that addresses site, area, or ecosystem specific concerns relative to the use of a product for situations even when preauthorization plans are not being developed. For example, RRTs may need additional testing or information for situations that fall under paragraph (b) of this section, including when developing an expedited decision making plan. The proposed revision also allows for RRTs to require supplementary product toxicity and efficacy testing, or available data or information for both planning and authorization of use situations, and based on that information may consider establishing limitations for the use of products in certain areas. The Agency is including ''available data and information'' to compliment the supplementary toxicity and efficacy testing provision recognizing that existing data or information that addresses site, area, or ecosystem specific concerns relative to the use of a product may be available. The Agency is also proposing to include ''ecosystem'' with area and site specific concerns, as RRTs may want to gather additional information on the use of certain products when assessing the use of a product relative to the biological communities specific to their area. The proposal removes ''in addition to the test methods specified in § 300.915 and described in appendix C to part 300.'' While RRTs may want to use the efficacy and toxicity testing protocols specified in Appendix C of the NCP for comparative purposes, the proposed revisions clearly establish the RRTs authority to require tests using parameters beyond those specified in Appendix C. Furthermore, there may be supplementary toxicity and efficacy testing information based on recognized standard testing methods already available that RRTs may want to consider when addressing site, area, or ecosystem specific concerns.

This proposal also provides the RRT authority to request that the OSC require a responsible party to conduct additional monitoring associated with the use of a product during a discharge incident. The proposed revision compliments the proposed monitoring requirements for dispersant use, but also including other chemical or biological agents, or other testing endpoints. The Agency believes the RRT must be afforded the ability to request that the OSC direct the responsible party to conduct additional monitoring under Subpart J for the use of a product in the environment. The RRT may request that the OSC consider additional monitoring during an oil discharge response to support operational decisions on dispersant use. For example, the RRT may want to monitor the exposure of marine mammals to oil constituents, including dispersed oil, or to monitor toxicity in the water column using biological assays. The Agency requests comments on these proposed revisions.

(h) Recovery of Agents From the Environment

The proposal identifies certain agent categories and substances intended to be removed from the environment following their use: Solidifiers, sorbents and surface washing agents. For those categories, the Agency expects the agents to be recovered from the environment to minimize any potential adverse impact. The proposal adds a new requirement that charges the responsible party, under OSC oversight, to recover these products from the environment. Recovery activities after the use of these agents would include containment of the agents in the water, collection of the agents mixed with oil or any residual agent, storage of the oil-agent waste prior to disposal, and disposal of that oil-agent waste. The Agency also recognizes there may be situations where the safety of response personnel is threatened, or where additional harm to the environment could occur during recovery operations. Consequently, we are proposing these factors be considered when initiating recovery actions. While it is appropriate to have the OSC ensure these activities take place, it is ultimately the responsibility of the responsible party to conduct these activities and ensure that the agents are recovered from the environment. The Agency requests comments on this proposed requirement.

(i) Reporting of Agent Use

The proposal includes a new requirement for the OSC to provide to the RRT certain information after the use of a chemical or biological agent within 30 days of completion of agent operations. The information required in this report includes the information on any chemical or biological agent used, including product name, the quantity and concentration of the agent used during the response, the duration of use, the locations where the agent was used, and any data collected and analysis of efficacy or environmental effects. The proposal allows this information to be provided in the OSC report to the NRT or RRT as required under section 300.165 of the NCP, if such a report has been requested. While other existing notification requirements serve to activate an immediate response to an event, the proposed requirement gathers information that will be useful in specifically evaluating the use of chemical or biological agents in the response. It will also inform the review of preauthorization plans and provide a basis for any necessary changes to improve environmental protection. Given that response and removal actions can greatly vary depending on the discharge situation, the Agency requests comments on whether it would be appropriate to allow the timeframe for submitting the report to be agreed upon by the RRT, rather than establishing a set timeframe. The Agency is requesting comments on this proposed new requirement, including on the proposed timeframe.

3. Monitoring the Use of Dispersants

The goal of establishing a Schedule under the NCP is to protect the environment from possible damage related to spill mitigating products used in response to oil discharges. The proposal establishes a regulatory approach under Subpart J that includes test data and information requirements

for certain chemical and biological agents, procedures for authorizing the use of those agents, and monitoring requirements for certain discharge situations.

Each oil discharge represents a unique situation with distinct conditions, which may require various response methods. When dispersants are applied to an oil discharge, field monitoring can be used to inform operational decisions by gathering site-specific information on the overall effectiveness, including the transport and environmental effects of the dispersant and the dispersed oil. The revisions to product test data and information requirements are intended to provide OSCs, RRTs, and ACs with the best information available when selecting products for use on an oil discharge. While laboratory test protocols allow for comparison between different products under standardized laboratory conditions and may be useful during the monitoring and assessment of a discharge event and/or for selection of the agents used in the response, they do not necessarily reflect field conditions. Monitoring of agents in the field informs the OSC and other agencies on the overall effectiveness of dispersant use, including the environmental effects and transport of dispersed oil.

The Agency believes that comprehensive monitoring in certain discharge situations is necessary to determine the overall effectiveness of dispersants and should transcend from the initial dispersant application to include the transport and environmental effects of the dispersant and dispersed oil in the water column. Monitoring the overall effectiveness of dispersant use in the field provides those Agencies with responsibility for authorizing the use of dispersant product information for decision-making during subsurface or prolonged surface dispersant applications. Adverse effects on ecological receptors from exposures to dispersed oil depend on the length of time and concentration of the exposure, which in turn is dependent on the transport of dispersed oil. Because these exposures may vary depending on the discharge situation, the Agency believes comprehensive monitoring is important for certain discharge situations. This monitoring data will enhance the information needed for an effective response without delaying the use of agents under these conditions.

Equipment is being contemplated to inject dispersants subsurface, directly into the oil near the source of the discharge.[11] This type of application is intended to minimize dispersant dilution in the water before the dispersant has had an opportunity to interact with the oil.[12] This application approach that is closer to the source is expected to reduce potential adverse environmental consequences from the use of excessive quantities of dispersants.[13] However, applying dispersant to an oil discharge does not result in the physical recovery of oil from the environment. Instead, dispersing oil increases the potential exposure of aquatic organisms to the dispersant-oil mixture, at least transiently, and subsurface application has the potential to more immediately and effectively increase these exposures near the discharge. The Agency believes this new subsurface application approach requires new environmental monitoring capabilities to support operational decision-making. These new monitoring capabilities must be able to meet the operational conditions (*e.g.,* water depths, temperatures) and be supported by knowledgeable personnel familiar with them.

The proposed rule adds § 300.913 establishing requirements for the responsible party to monitor any subsurface use of dispersant in response to an oil discharge, surface use of dispersants in response to oil discharges of more than 100,000 U.S. gallons occurring within 24 hours, and surface use of dispersants for more than 96 hours in response to an oil discharge, as directed by the OSC. The purpose of monitoring subsurface application is to characterize the dispersed oil, follow the plume integrity and transport with the underwater current, and identify and assess the potential adverse effects from the dispersed oil. The proposal requires the responsible party to implement monitoring for any subsurface dispersant use in response to an oil discharge upon initiation and for the duration of subsurface dispersant use. The Agency believes monitoring subsurface use of dispersants is critical to inform response actions to minimize potential environmental effects.

While surface application of dispersants is not a new approach and understood for small, short duration discharges, the Agency believes it is appropriate to require comprehensive monitoring for situations where dispersants are used for an extended period of time or in cases of major oil discharges. The Agency chose 100,000 U.S. gallons as a threshold criterion for a major oil discharge because the NCP classifies a discharge of more than this quantity to coastal waters as major. In addition, EPA is proposing to this quantity monitoring of dispersant use in response to major oil discharges occurring within 24 hours since a larger quantity of dispersant may be required in a short time frame for an incident of this scale. The Agency also believes comprehensive monitoring should be required when surface dispersant is used for more than 96 hours because of potentially longer exposures of biological aquatic resources to dispersant and dispersed oil. Further, many acute toxicity studies use 96-hour exposure durations, including the acute toxicity tests using *Menidia beryllina* described in this proposal. While other toxicity tests have shorter exposure durations (*e.g.,* 24, 48, or 72 hours), the Agency believes 96 hours is a reasonable threshold given its commonality of use in the toxicology field. Therefore, the proposal requires a responsible party to implement monitoring for surface dispersant use in response to an oil discharge under these discharge conditions and for the duration of dispersant use. The proposal also requires the submission of a Quality Assurance Project Plan for approval to the OSC covering the collection of all environmental data to ensure and maximize its quality, objectivity, utility, and integrity. The Agency welcomes comments on the proposed monitoring requirements, including the thresholds. Specifically, the Agency requests comments on whether it should also consider a threshold for surface use of dispersants that is based on the quantity of dispersant used within a given timeframe. Alternative thresholds must include a rationale in order for the EPA to consider them for final action.

(a) Dispersant Application

The proposal requires the responsible party to document the characteristics of the source oil; best estimate of the oil discharge flow rate, periodically reevaluated as conditions dictate, including a description of the method, associated uncertainties, and materials; dispersant(s) product used, rationale for dispersant choice(s), including the results of any efficacy and toxicity tests, recommended dispersant-to-oil ratio; and the application method and procedures, including a description of the equipment to be used, hourly application rates, capacities, and total amount of dispersant needed. For subsurface discharges, the proposal also

[11] *http://marinewellcontainment.com/expanded_system.php.*

[12] NRC, (2005), Oil Spill Dispersants: Efficacy and Effects, The National Academies Press, pp. 138, *http://www.nap.edu/catalog.php?record_id=11283.*

[13] Ibid.

requires the responsible party to document the best estimate of the discharge flow rate of any associated volatile petroleum hydrocarbons, periodically reevaluated as conditions dictate, including as description of the method, associated uncertainties, and materials. This would provide the OSC with the necessary information for operational decision-making and coordination of the dispersant application monitoring.

Because of the many factors that influence the selection of a dispersant product (*e.g.,* its availability, the type of oil it will be used on, the prevalent weather conditions, and the particular discharge situations) the Agency proposes that the responsible party document its product choice and selection rationale. Documenting the characteristics of the source oil provides specific chemical data to identify the oil associated with discharge and to inform decisions on dispersant use. Documenting application methods and procedures ensures that dispersant use is consistent with the dispersant manufacturer's recommended concentrations, and conditions provided as part of the data requirements for listing the product on the Schedule. Documenting results of any additional efficacy and toxicity testing, or available data or information specific to the area or site conditions will assist the OSC in establishing the appropriateness of the dispersant choice. Documentation and clear understanding of the estimated daily oil discharge flow rate and the recommended dispersant-to-oil ratio (DOR) allows a dispersant rate to be established that would aid the OSC in determining the adequate dispersant usage. The OSC can compare the recommended DOR to the manufacturer's recommended application concentration to ensure it is within the recommended range or to provide an opportunity for the responsible party to explain any deviations that may arise due to operational considerations.

The biodegradation of petroleum constituents may result in a reduction in the dissolved oxygen concentration in the water column that could lead to hypoxia, which could be detrimental to marine organisms. The best estimate of the oil discharge flow rate, periodically reevaluated as conditions dictate, is an important consideration for monitoring dispersant use since the estimated amount of oil discharged may be used to provide insight into the potential oxygen demand exerted on the water column and to characterize the potential oil distribution. The proposal would also require the responsible party to document the best estimate of the discharge flow rate of any associated volatile petroleum hydrocarbons for subsurface applications. Volatile petroleum hydrocarbons (*e.g.,* methane, and low molecular weight alkanes such as ethane, propane, and butane) associated with the discharge could contribute to a reduction in dissolved oxygen as a result of microbial degradation. The Agency is not proposing this requirement for surface applications given these compounds are expected to readily evaporate, making it unlikely they would be incorporated into the water column in quantities that would result in hypoxia.

The proposal requires the documentation of the dispersant application method and procedures to include a description of the equipment to be used, including hourly application rates, capacities, and total amount of dispersant needed. Dispersant and equipment should be available to maintain the hourly dispersant application rate without significant deviation from the set rate. The Agency believes this information will assist in ensuring a consistent dispersant application rate. Dispersant application rates outside of established parameters may result in their over or under use, altering their effectiveness. Significant fluctuations in dispersant application rates could also indicate equipment malfunctions, requiring a reassessment of the response technique. EPA welcomes comment on the proposed requirements for dispersant application. Alternatives must include a rationale in order for the Agency to consider them for final action.

(b) Water Column Sampling

The proposal requires the responsible party to collect representative background samples from the water column at the closest safe distance determined by the OSC from the discharge, and in any direction of likely transport. The sampling should consider surface and subsurface currents and oil properties. Establishing background information prior to oil contamination from the discharge source provides reference data to compare against the results from water samples taken during the response. In establishing the background information, the responsible party should consider other potential sources of petroleum hydrocarbons (*e.g.,* natural seeps) in the water column. The background samples would be collected in areas not affected by the discharge of oil throughout the water column upon initiation of dispersant use, at the closest safe distance as determined by the OSC from the oil discharge. Sampling would be conducted in any direction of likely transport considering surface and subsurface currents and the oil properties in those areas. The responsible party should consider using trajectory models that incorporate relevant factors such as oil type to determine the likely direction of the dispersed oil to inform where the water samples should be collected.

The Agency is requiring that sample collection follow established standard operating and quality assurance procedures that are reliable and defensible. An accurate assessment of environmental data depends on the reliability, timeliness, and integrity of the data collected. Standard operating procedures should describe the appropriateness of the sampling method; the equipment needed for sample collection; a description of potential interferences, problems that may be encountered and corrective actions that would be taken; the sample collection procedure, including the preparation steps, representative sampling considerations, and sampling steps for each sampling device used; sample preservation, containers, handling, and storage; decontamination of sampling equipment; and record keeping and quality control procedures. These elements are generally described in various guidance documents on standard operating and quality assurance procedures for environmental sampling.[14] [15]

In addition to the background water sample collection, the proposal requires the responsible party to collect water column samples daily in the dispersed oil plume at such depths and locations where dispersed oil is likely to be present. EPA believes the dispersed oil plume captures the presence of oil from either the subsurface or the surface application of dispersant, including where oil could be rising to the surface from a subsurface discharge or the dispersed oil plume at the water surface as a result of surface dispersant application. The responsible party also would need to analyze for:

- *In-situ* oil droplet size distribution analysis, including the mass or volume mean diameters between droplet sizes ranging from 2.5 to 2000 μm, with the majority of data collected between the 2.5 and 100 μm sizes. Droplet size distribution, which is an important component to understanding the chemical and hydrodynamic effectiveness of dispersants, can be measured with devices such as the Laser

[14] *http://www.epa.gov/quality/qa_docs.html.*

[15] *http://www2.epa.gov/region8/environmental-sampling.*

In-Situ Scattering and Transmissometry (LISST) instrument or other similar instruments. Small oil droplets (*e.g.,* diameters in the tens of μm range) have such low rise velocities that they tend to remain suspended in the water column (neutrally buoyant), where they can become widely dispersed by advective forces, turbulent motion, and to a lesser extent diffusion. These small droplets are more readily amenable to biodegradation due to their higher surface area to volume ratio. In contrast, large oil droplets (*e.g.,* diameters >100 μm) will tend to recoalesce and rise faster to the surface.[16] Effective application of dispersants is expected to generate a larger number of small droplets, reducing the average droplet size.[17] This will change the trajectory of rising oil that is subjected to stratified horizontal subsurface currents. Near the water surface, hydrodynamic and other environmental factors also influence the oil droplet size distribution. Mixing energy, especially from breaking waves, dictates the breakup of large oil droplets into smaller droplets and the depth of submergence of the droplets. Plunging breaking waves under experimental conditions produced the smallest oil droplets.[13] [14] Additionally, studies indicate that the type of chemical dispersant used is an important factor in controlling the dispersed oil droplet size distributions. Further, wave tank studies have shown that the chemically dispersed oil may result in a droplet size distribution that has not been observed without the use of dispersants (*i.e.,* physically dispersed oil), both in terms of a smaller volumetric mean diameter and a bimodal distribution for droplet size diameters below 100 μm.[18] EPA recognizes that the aforementioned studies were conducted under conditions characteristic of surface waters. However, the effect of the high velocities of oil that may occur from a discharge from a subsurface oil well on the oil droplet size distribution requires further scientific investigation to understand the contribution of physically dispersed oil relative to chemically dispersed oil. In either event, it is clear droplet size distribution analysis provides important data useful in optimizing operational guidelines and decision making, modeling transport and fate, and potentially evaluating biological effects of chemically dispersed oil. The proposal also includes larger oil droplet sizes of up to 2000 μm, intended to provide information that can inform the oil distribution using trajectory modeling analysis.

- *In-situ* fluorometry. When exposed to ultraviolet (UV) light, certain compounds absorb energy that can elevate electrons into an excited higher energy level. The wavelength that excites electrons into a higher energy state is typically referred to as the excitation wavelength. Electrons unstable at the higher energy state return to a lower energy state, emitting energy at longer emission wavelengths resulting in fluorescence.[19] Many organic compounds fluoresce at specific excitation and emission wavelengths that allow for identifying many of the components of dissolved organic matter and other compounds (*e.g.,* crude oil) in seawater.[20] For crude petroleum oils, the aromatic fraction is responsible for the fluorescence property of petroleum, and these compounds are used to determine the specific excitation and emission wavelengths for monitoring. When subject to excitation at certain wavelengths in the near ultraviolet spectrum, polycyclic aromatic hydrocarbons (PAH) fluoresce over a range of higher wavelengths, depending on the number of aromatic rings in the structure.[21] Fluorometers can be targeted to the type of oil discharged, and the excitation and emission wavelengths chosen should match the aromatic properties of the oil discharged. Although this measure does not include all oil constituents, fluorescence is a valuable screening tool deployed during a response,[22] providing a rapid indication of potential dispersed oil in the water column, as well as an indicator of dispersion effectiveness as discussed in the following section. The Agency request comments on alternative spectroscopy techniques such as absorption measurements that may be used to rapidly estimate oil concentrations in the water during a discharge event.
- Fluorescence signatures. In addition to *in-situ* fluorometry, the proposal requires the responsible party to conduct a fluorescence intensity analyses on water samples collected to determine fluorescence signatures of the dispersed oil. EPA proposes to use fluorescence signatures as a relatively simple and rapid means to assess dispersion effectiveness. This includes but is not limited to, identifying the peak wavelength position, magnitude and ratios of fluorescence intensity of the dispersed oil. For example, measuring the reduction in an intensity ratio after applying dispersant to the oil in seawater may provide an estimate of the effect of chemical dispersion.[23] [24] Ratios of fluorescence intensity are derived from the three dimensional excitation/emission matrix spectra (EEMS) acquired by combining multiple emission spectra obtained from oil exposed to individual excitation wavelengths typically using a scanning spectrofluorometer. If the optimal excitation and emission bands are known, then these ratios may be derived from measuring the fluorescence intensity at two different fixed emission wavelengths at a single fixed excitation wavelength. The ratios are calculated by dividing the fluorescence intensity of the shorter emission band by the fluorescence intensity of the longer band. Studies have shown that adding dispersants to crude petroleum oil increases the fluorescence intensity of the longer emission band, driving down the value of the ratio. Although individual petroleum oils may have common spectral characteristics, the ideal three-dimensional EEMS for the discharged oil should be obtained from scanning the source oil. Therefore, the monitoring should include procedures to obtain the EEMS using the source oil to determine the optimal excitation-emission wavelengths. The Agency

[16] Li, M. and Garrett, C., (1998) The Relationship Between Oil Droplet Size and Upper Ocean Turbulence, Mar. Poll. Bull., Vol. 36, pp. 961–970.

[17] Li, Z., Lee, K., King, T., Boufadel, M.C., Venosa, A.D., (2008) Assessment of Chemical Dispersant Effectiveness in a Wave Tank under Regular Non-Breaking and Breaking Wave Conditions, Mar Pollut Bull, Vol. 56, pp. 903–912.

[18] Li, Z., Lee, K., King, T., Boufadel, M.C., Venosa, A.D., (2009) Evaluating Chemical Dispersant Efficacy in an Experimental Wave Tank: 2—Significant Factors Determining In Situ Oil Droplet Size Distribution, Env Eng Scien, Vol. 26, pp 1407–1418.

[19] Henry, C.B., Roberts, P.O., Overton, E.B., A Primer on In Situ Fluorometry to Monitor Dispersed Oil, IOSC 1999;246.

[20] Coble, P.G., (2007) Marine Optical Biogeochemistry: The Chemistry of Ocean Color, Chem. Rev., Vol. 107, pp. 402–418.

[21] Bugden, J.B.C., Yeung, C.W., Kepkay, P.E., Lee, K. (2008) Application of Ultraviolet Fluorometry and Excitation-Emission Matrix Spectroscopy (EEMS) to Fingerprint Oil and Chemically Dispersed Oil in Seawater, Mar Pollut Bull, Vol. 56, pp. 677–685.

[22] Conmy, R.N., Coble, P.G., Farr, J., Wood, A.M., Lee, K., Pegau, W.S, Walsh, I.D., Koch, C.R., Abercrombie, M.I., Miles, M.S, Lewis, M.R., Ryan, S.A., Robinson, B.J., King, T.L., Kelble, C.R., and Lacoste, J. (2014) Submersible Optical Sensors Exposed to Chemically Dispersed Crude Oil: Wave Tank Simulations for Improved Oil Spill Monitoring, Environ Sci Technol, Vol. 48, pp. 1803–1810.

[23] Bugden, J.B.C., Yeung, C.W., Kepkay, P.E., Lee, K. (2008) Application of Ultraviolet Fluorometry and Excitation-Emission Matrix Spectroscopy (EEMS) to Fingerprint Oil and Chemically Dispersed Oil in Seawater, Mar Pollut Bull, Vol. 56, pp. 677–685.

[24] Kepkay, P.E., Yeung, C.W., Bugden, J.C.B., Li, Z., and Lee, K. (2008) Ultraviolet Fluorescence Spectroscopy (UVFS): A New Means of Determining the Effect of Chemical Dispersants on Oil Spills, IOSC, pp. 639–644. *http://ioscproceedings.org/doi/abs/10.7901/2169-3358-2008-1-639.*

request comments on alternative techniques or measurements that may be used to rapidly assess dispersion effectiveness during a discharge event.

• Dissolved oxygen (DO). Dissolved oxygen is an important variable to monitor in the application of dispersants, particularity in subsurface waters that may inform operational decisions. For surface dispersant application, dissolved oxygen is expected to be higher in the mixed layer in the surface water. Dissolved and/or dispersed oil represents a readily available carbon source for microbial oxidation, and this metabolic activity can lead to a decrease in the DO content in the water column. The oil degrading community in the water is an important DO sink for the mass transfer of hydrocarbons in the subsurface, and advantage can be taken of this fact during a response. The decline in DO due to hydrocarbon biodegradation could approach or exceed levels of concern (*i.e.,* hypoxia) and thus be detrimental to surrounding organisms (*e.g.,* invertebrates and vertebrates). Dissolved oxygen, which relies on the diffusion of molecular oxygen through a membrane in the sensor, is commonly measured during oceanographic survey cruises using an *in-situ* DO instrument that provides real-time results. However, a DO sensor instrument that passes through a dissolved and/or dispersed oil layer is subject to contamination by the oil and could lead to questionable measurements if such fouling of the electrodes occurs, particularly at depths where the dissolved and/or dispersed plume depth are expected to coincide with depressions in dissolved oxygen. Therefore, the Agency is concerned that relying solely on measurements from *in-situ* oxygen instruments may lead to an erroneous interpretation of oxygen data. Thus, the Agency believes that *ex-situ* confirmatory DO measurements should also be conducted using Winkler titrations to confirm *in-situ* dissolved oxygen measurements.

• Total petroleum hydrocarbons, individual resolvable constituents, including volatile organic compounds, aliphatic hydrocarbons, monocyclic, polycyclic, and other aromatic hydrocarbons, including alkylated homologs, and hopane and sterane biomarker compounds. The Agency is proposing that the responsible party analyze each water sample collected for total petroleum hydrocarbons (TPHs), individual resolvable constituents, including volatile petroleum hydrocarbons, and branched and normal aliphatic hydrocarbons. The analysis would also include monocyclic, polycyclic and other aromatic hydrocarbons (*e.g.,* heterocyclic aromatic hydrocarbons), including their alkylated homologs, and hopanes and steranes biomarker compounds. TPHs are best measured using gas chromatograph (GC) equipped with a flame ionization detector (FID). TPH analysis measures total alkanes and aromatics, can be obtained relatively quickly, and provides a good measurement for initial screening. Given that PAHs and biomarkers are typically measured using GC/MS, the proposal includes GC/MS analysis to provide the alkanes, PAHs, and biomarker (*e.g.,* hopane) specificity important in identifying certain oil constituents that may be present in the oil discharge. Identifying the concentrations of PAHs and biomarkers assists responders in making informed operational decisions regarding the dispersant application because these compounds can be compared against the composition of the source oil, which serves as a reference to determine the degree of weathering for oil.

• Carbon Dioxide (subsurface only). The aerobic biodegradation of oil constituents not only consumes dissolved oxygen, but would also produce carbon dioxide. Increases in the concentration of carbon dioxide that coincide with decreases in the concentration of dissolved oxygen would provide credible evidence that biodegradation of oil is occurring. Thus, the Agency believes that measuring the *in-situ* carbon dioxide for subsurface dispersant applications would be a good indicator of microbial oxidation and inform the OSC on the potential fate.

• Methane if present (subsurface only). The microbial degradation of methane may contribute to a reduction in dissolved oxygen. Thus, the Agency believes that, when present, subsurface *in-situ* methane measurements are an important factor to consider in evaluating dissolved oxygen levels.

• Heavy metals analysis, including nickel and vanadium. Crude petroleum oil may contain certain heavy metals, including nickel and vanadium.[25] [26] [27] Dispersing oil may increase the bioavailability of certain associated heavy metals to marine organisms. Therefore, the Agency is proposing to include heavy metal analysis as part of the sampling analyses to be conducted.

• Turbidity. Turbidity is a general measure of water clarity. Turbidity is determined by measuring how much material suspended in water decreases the passage of light through the water.[28] Suspended materials may include soil particles (clay, silt, and sand), algae, plankton, microbes, and other substances. This measure provides a quick assessment of suspended materials in receiving waters from other water bodies and is useful in determining the presence of materials that could interfere with oil particle size determinations. Alternatively, the Agency is requesting comments on whether there are other physical measurements in the water that would provide similar timely information, or that can serve as validation for turbidity values collected in situ.

• Water temperature. Water temperature typically is measured using an electronic thermometer on the conductivity-temperature-depth (CTD) instrument. When combined with salinity and pressure, temperature measurements are used to calculate water density, which may change along the vertical profile. Along with the horizontal subsurface currents and the rise velocity of the dispersed oil, the ambient density gradient is an important factor in determining the behavior of dispersed oil in the water column. Water temperature is also an important variable that may influence the effectiveness of dispersant applications. For example, cold temperatures may, among other environmental factors, impact the effectiveness of dispersants as it affects certain oil properties (*e.g.,* viscosity). Colder temperatures also may affect the degree of oil weathering (*e.g.,* evaporation), and the amount of dispersant/oil mixing energy (wave action) needed to effectively disperse oil relative to warmer temperatures.

• pH. The pH is a simple standard measurement used to analyze water quality that can affect chemical or biological processes in water. pH also determines the solubility and biological availability of chemical constituents such as heavy metals.

• Conductivity. Conductivity is measured by passing a current through the water in a CTD instrument, which is then compared against known salinities to obtain the water salinity. When combined with temperature, and pressure, salinity measurements are

[25] Barwise, A. J. G. and Whitehead, E. V. (1980). Separation and Structure of Petroporphyrins. In: *Advances in Organic Geochemistry 1979.* (A. G. Douglas and J. R. Maxwell, eds.), Pergamon, New York, pp. 181–92.

[26] Barwise, A. J. G. (1990). Role of Nickel and Vanadium in Petroleum Classification. *Energy & Fuels,* 4, 647–52.

[27] All, M.F., Bukharl, A., and Saleem, M., (1983) Trace Metals in Crude Oils from Saudi Arabia, Ind. Eng. Chem. Prod. Res. Dev. 1983, Vol 22, pp. 691–694.

[28] *http://water.epa.gov/type/rsl/monitoring/vms55.cfm.*

used to calculate water density, which may change significantly along the vertical profile. Along with the horizontal subsurface currents and the rise velocity of the dispersed oil, the ambient density gradient is an important factor in determining the behavior of dispersed oil in the water column.

The Agency requests comment on the proposed approach to water column sampling. Alternatives must include a rationale in order for the Agency to consider them for final action.

(c) Oil Distribution Analyses

The proposal requires that the responsible party, in consultation with the OSC and using best available technologies, characterize the dispersant effectiveness and oil distribution, considering the condition of the oil, dispersant, and dispersed oil components from the discharge location. EPA believes this is necessary to inform sampling locations by assessing the horizontal and vertical boundaries of the dispersed oil plume and the direction of likely transport. The majority of the sampling can then be focused on known or suspected locations and depths of the dispersed oil. Based on the initial water sampling results to characterize the boundaries of the dispersed oil, the sampling design can be tailored to optimize sampling. The Agency proposes that the responsible party characterize the dispersant effectiveness to determine the changes in the condition of the oil due to weathering, which can include changes in oil viscosity due to water uptake (*e.g.,* mousse). Weathered oil that mixes with water may result in significant emulsification (*e.g.,* water-in-oil emulsions), which in turn may decrease the dispersant's chemical effectiveness and diminish biodegradability. Therefore, the characterization of dispersant effectiveness should provide a reasonable estimate to the extent (*e.g.,* distance from the discharge source) in which the dispersant can be applied to the oil and still be effective. The Agency believes this will result in better dispersant applications and minimize excessive dispersant use. The Agency requests comment on this approach. Alternatives posed must include a rationale for the Agency to consider them for final action.

(d) Ecological Characterization

The Agency proposes that the responsible party characterize the ecological receptors (*e.g.* aquatic species, wildlife, and/or other biological resources), their habitats, and exposure pathways that may be present in the discharge area, in consultation with the OSC. Exposure pathways, such as ingestion, refer to the way in which ecological receptors may come into contact with discharged oil and result in exposure that would be detrimental to ecological receptors. The Agency believes that the ecological characterization should include those species that may be in sensitive life stages, transient or migratory species, breeding or breeding-related activities (*e.g.,* embryo and larvae development), and threatened and/or endangered species that may be exposed to oil, dispersed oil, and dispersant, which in turn will assist the OSC in managing response actions, including those actions that were determined not to be needed. In developing the characterization of ecological receptors, the responsible party may refer to relevant sources of information such as applicable expedited decision-making plans, environmental assessments or statements, Federal and state environmental databases (*e.g.,* ACP—Fish and Wildlife and Sensitive Environments Annex; NOAA—Environmental Sensitivity Indices; NOAA—NMFS Southeast Area Monitoring and Assessment Program; EPA—National Coastal Assessment [29]) or through studies conducted by universities or other research-oriented institutions.

The proposal requires the responsible party to consult with the OSC to determine an acute toxicity level of concern for the dispersed oil using available dose/response information relevant to potentially exposed species. The envisioned approach would be to monitor acute toxicity in the water column concurrently with dispersed oil sampling for fluorometry, particle size, and water quality (*e.g.,* dissolved oxygen). The TPH concentrations in water samples taken throughout the water column could then be compared to TPH-based ecotoxicity benchmarks (EBs). Water samples collected for comparison of aqueous TPH concentrations to EBs would be analyzed and reported within the timeframe necessary to make operational decisions (*e.g.,* within 24 hours of collection). Sampling could also be performed in areas without dispersant application to distinguish toxicity associated with physically dispersed oil from that of chemically dispersed oil.

While EBs may have already been established during the development of contingency plans, they can also be derived at the time of an incident. One approach is to use a species sensitivity distribution (SSD),[30] which allows for species relevant to the location of the discharge to be considered. An SSD is a probability distribution of the sensitivity of a group of species to a toxicant.[31] SSDs could be developed for representative oils (*e.g.,* crude oils) using existing acute toxicity values for mortality or immobility (*e.g.,* 48 and 96 hr LC_{50}) where sufficient species diversity are available (*e.g.,* toxicity data for 10 or more species). For example, the EBs could be computed from the fifth percentile of the SSD as the hazard concentration 5 percent (HC5), as they are considered protective of 95% of species, have been used by EPA for developing ambient water quality criteria, and are generally accepted by the international community.[32] Chronic toxicity benchmarks may be derived applying safety factors to the acute toxicity EBs. The Agency requests comments on the proposed approach to ecotoxicity assessment, and whether it should consider making SSDs a requirement for deriving EBs. If alternative approaches are suggested, the commenter must include an appropriate rationale in order for the Agency to consider them for final action.

(e) Immediate Reporting

The proposal requires the responsible party to immediately report to the OSC any deviation of more than 10 percent of the mean hourly subsurface dispersant use rate for the total dispersant volume authorized for that 24 hour use, and the reason for the deviation (*e.g.,* equipment malfunction). The Agency believes that inconsistent dispersant application rates confound data sampling interpretation due to variations in the DOR. The proposal, however, provides a margin for variation within 10 percent of the mean hourly subsurface dispersant application rate to account for equipment performance. The Agency believes this margin to adequately account for variations in dispersant

[29] *http://www.epa.gov/emap/nca/.*

[30] Barron, M.G., Hemmer, M.J., and Jackson, C.R., (2013) Development of Aquatic Toxicity Benchmarks for Oil Products Using Species Sensitivity Distributions, Integr Environ Assess Manag, Vol. 9, pp. 610–615.

[31] Aldenberg, T. and Jaworska, J.S., (2002) Uncertainty of the Hazardous Concentration and Fraction Affected for Normal Species Sensitivity Distributions, Ecotox and Environ Safety, Vol. 46, pp. 1–18.

[32] Barron, M.G., and Wharton, S., (2005) Survey of Methodologies for Developing Media Screening Values for Ecological Risk Assessment, Integrated Environmental Assessment and Management, Vol. 1, pp. 320–332.

injection equipment without being overly restrictive. EPA requests comments on whether it should consider a similar requirement for dispersant surface application.

The Agency also is proposing to require the immediate reporting of ecological receptors, including any threatened or endangered species that may be exposed to dispersed oil based on trajectory modeling and the estimated acute toxicity level of concern. Results from daily sampling (*e.g.,* droplet size distribution, TPH) would provide input data to refine predictions of the likely dispersed oil direction using trajectory modeling. Further, results may also inform decisions to alter dispersant application in order to minimize effects on biological resources.

(f) Daily Reporting

The proposal requires daily reporting of sampling and data analyses collected within the timeframe necessary to make operational decisions (*e.g.,* within 24 hours of collection), including documented observations, photographs, video, and any other information related to dispersant use, unless an alternate timeframe is authorized by the OSC. Daily reporting would also include the total amount of dispersant used for the previous reporting period. Additionally, the proposal would require a schedule for any data analyses that require time beyond 24 hours due to analytical methods; this schedule is not to exceed 120 hours (*i.e.,* 5 days) unless authorized by the OSC. Timely sample analyses afford the OSC and other responders with multiple relevant data that can be analyzed together to inform situational awareness of dispersant operations and adjust dispersant application if necessary. The Agency believes that a 120-hour window for analyses requiring additional time provides an adequate opportunity to conduct all requested analyses in a timely manner without being overly restrictive. Finally, the proposal requires the responsible party to report the estimated daily transport of dispersed and non-dispersed oil, and associated volatile petroleum hydrocarbons if applicable, and dispersants, using the best available trajectory modeling. This information is intended to assist response planners to coordinate response activities and to schedule monitoring activities based on the expected transport of oil and dispersed oil.

4. Data and Information Requirements for Product Schedule Listing

The Agency is proposing to revise the data and information requirements for listing products on the Schedule in § 300.915 of Subpart J. The proposed amendments revise the efficacy and toxicity testing protocols and listing criteria for all chemical and biological agents on the Schedule. Additionally, the Agency proposes revisions to the requirements for general product information, Confidential Business Information (CBI) claims, submission package contents, EPA review and listing procedures, requests for decision review, changes to products, transitioning products from the current Schedule to the new Schedule, mandatory product disclaimer, and removal of products from the Schedule.

(a) General Product Information

The Agency is proposing to consolidate the general submission requirements applicable to all types of agents that may be listed on the Schedule in paragraph (a) of § 300.915. Subsequent regulatory paragraphs in this section are proposed to include requirements specific to each product category. Additionally, the Agency is proposing to require some additional information, as applicable, regarding products that are submitted for Schedule listing consideration. The proposed general information requirements for all products are proposed to be revised as follow:

- Submitter: Name, physical address, email, telephone number, identity of submitter (*i.e.,* manufacturer, vendor, importer, distributor, designated agent for the manufacturer), and documentation of such identity.
- General Product: All name(s), brand(s), and/or trademark(s) under which the product is to be sold; Safety Data Sheet (SDS); sample product labels for all name(s), brand(s), and/or trademark(s); chemical or biological agent categories under which the product is submitted for listing, including information on the specific process(es) through which the product affects the oil, and the specific environment (waters and/or adjoining shorelines) on which it is intended to be used.
- Supplier: Names, physical addresses, emails and telephone numbers of the primary distributors, vendors, importers, and/or designated agent acting on behalf of the manufacturer.
- Product Storage: Maximum, minimum and optimum temperature, humidity and other relevant conditions for product storage; impact on product performance if the product is not stored within recommended limits; and anticipated shelf life at the recommended storage conditions.
- Product Use: Recommended procedures, including product concentrations, application ratios, types of application equipment, conditions for use, and any application restrictions. The procedures must address variables such as weather, water salinity, water temperature, types and weathering states of oils or other pollutants, and product and oil containment, collection, recovery and disposal, and include supporting documentation and standard methods used to determine them.
- Environmental Fate: Known measured data and supporting documentation on the persistence, bioconcentration factor, bioaccumulation factor, and biodegradability of the product and all of its components.
- Physical/Chemical Properties and Formulation: Physical state and appearance; vapor pressure; flash point; pour point; viscosity; specific gravity; particle size for solid components; pH; citation of standard methods used to determine the physical/chemical properties; identity of all components in the product, including each specific component name; corresponding Chemical Abstract Service (CAS) Registry Number; the maximum, minimum, and average weight percent of each product component; and the intended function of each component (*e.g.,* solvent, surfactant).
- For products that contain microorganisms, enzymes and/or nutrients: All microorganisms and weight percent by current genus and species, including any reclassifications; all enzymes and their International Union of Biochemistry (I.U.B.) number(s); Enzyme Classification (EC) code numbers; the source of each enzyme, units, and specific oil-degrading activity; name(s) and maximum, minimum, and average weight percent of the nutrients contained in the product; citation or description of the methodology used to determine product components; certification, including data, methodology, and supporting documentation, indicating that the product does not contain levels that exceed the National Ambient Water Quality Criteria lowest density value for the following: Bacterial, fungal, or viral pathogens or opportunistic pathogens, including, but not limited to, enteric bacteria such as Salmonella, fecal coliforms, Shigella, Coagulase positive

Staphylococci, and Beta Hemolytic Streptococci or enterococci.

• National Water Quality Standard Contaminants: Certification, including data, methodology, and supporting documentation, indicating that the product does not contain levels that exceed the National Water Quality Standards lowest aquatic life acute value for the following contaminants: Metals reasonably expected to be in the product including arsenic, cadmium, chromium, copper, lead, mercury, nickel, vanadium, zinc; cyanide; chlorinated hydrocarbons; pesticides; polychlorinated biphenyls (PCBs); and polynuclear aromatic hydrocarbons (PAHs).

• Certification, including data, methodology, and supporting documentation, indicating that the product does not contain prohibited agents (sinking agents, nonylphenol, or nonylphenol ethoxylates).

• Testing Laboratory Information: Name, address, contact name, email, phone number; national or international accreditations.

• Laboratory Testing Data and Reports: All applicable information, data and analysis specified in the testing protocols, including raw test data and replicates, notes and observations, calculated mean values and standard deviations, summary of stock solution preparation, source and preparation of test organisms, test conditions, and chain of custody forms.

• Production capacity: Estimated annual production volume; average and maximum volume per day; time needed to reach that maximum production rate (days).

• Performance Capabilities/Benefits: Recognition received from, if applicable; national and/or international product testing or use data, recognitions (*e.g.,* EPA's Design for the Environment), and/or certifications, informing the performance capabilities or environmental benefits of the product.

The proposed revisions group together and simplify the general submission requirements applicable to all product types. EPA believes reorganizing the general requirements in a central location will clarify which requirements are applicable to all submissions, and which are specific to each product type by including them in separate sections. While most of the information listed above is currently required to be submitted under Subpart J, the Agency is proposing revisions to several of the existing general requirements and several new data and information requirements. The Agency believes the proposed revisions and added new requirements will better characterize the nature of the product and will assist EPA in product listing decisions. The information will also assist the RRTs in their area planning activities, and the OSCs in authorizing the appropriate use of chemical and biological agents. Details on the proposed additions and revisions are as follow:

(1) *Identification and documentation by the submitter of its status in relationship to the product as the manufacturer, vendor, importer, distributor, or other designated agent of the manufacturer.* This proposed requirement is intended to clearly establish the point of contact responsible for the submission, and to avoid any conflicts or claims from unauthorized entities on products listed or submitted for consideration.

(2) *Chemical or biological agent categories under which the product is submitted for listing, including information on the specific process(es) through which the product affects the oil, and the specific environment(s) (water and/or adjoining shorelines) on which it is intended to be used.* Currently, when a product meets the definitions of two or more product categories, a submitter must provide technical product data for each of those product categories. After review of the submitted technical product data, EPA makes a determination on whether and under which category the ''mixed product'' should be listed on the Schedule. It has been Agency policy to list products only under one category to avoid confusion in the field during a response, and because the process(es) through which the products affect the oil for different product categories do not generally overlap or allow for multiple uses of one product. However, EPA has received comments from responders, vendors, and manufacturers who believe that it is appropriate for certain products to be listed under more than one category. The Agency is proposing to revise the current limitations for mixed products. The proposal allows for products to be considered under multiple categories provided they meet all of the listing requirements for each. To this end, the Agency is also requiring that information be provided identifying which environments the product is intended to be used for, in the water and/or on the shoreline. EPA is soliciting comments on the issue of multiple category product listing.

(3) *Copy of the Safety Data Sheet (SDS) required by the Occupational Safety and Health Administration (OSHA) under their Hazard Communication Standard (HAZCOM) for the product.* EPA recognizes that chemical and biological agents may contain substances that could cause harm to oil spill responders who, if unaware of the product's formula, may not wear the proper personal protective equipment. SDSs describe the hazards that may be involved with the product and recommend safety measures that would minimize or avoid adverse consequences that may result from exposures. The Agency believes SDS information will be useful to both OSCs and responders when authorizing and using the product respectively, and that adding this new requirement for a product SDS is appropriate. While the Agency believes that the relevant SDS information should be that of the product, we request comment on the value for responders of requiring an SDS for each individual component. The Agency requests comments on this new requirement, as well as whether the submitter should provide any additional information on potential adverse human health effects based on the product's formula and application methods not captured in the SDS, and how to best communicate this information to product end users.

(4) *Sample product label for all names, brands, or trademarked versions of the product that include the manufacture and expiration dates of the product, as well as the conditions for storage.* The Agency would be allowing flexibility in complying with this requirement by specifying that the submitter does not need to affix new labels to comply with this section if existing labels already convey the required information. This proposed requirement is not intended in any way to supersede any other federal labeling requirement in place (*e.g.,* OSHA's HAZCOM). The proposed requirement is intended to assist the OSC in ensuring that the product used to respond to an incident is still viable and effective, and the oil spill response organizations (OSROs) or any other responder that is storing the product to ensure that their stockpile is viable and available to be authorized for use.

(5) *Recommended product use procedures.* The Agency is proposing to revise the requirement for providing information on the recommended application procedures. While the proposal is maintaining the specific elements included in the current requirement, the supporting documentation and information on the standard methods the product manufacturer used to establish the procedures is requested. EPA believes that providing detailed information on the recommended product use

procedures is necessary to inform the OSC when authorizing these products. This supporting documentation and specific information on the methods and standards used to establish them will inform OSCs and other response personnel in selecting products that can be effectively used under the operating conditions encountered for any given incident. The Agency requests comment on the revised data requirement, and whether there are other elements that should also be included to ensure the proper use and application of the products.

(6) *Environmental fate information.* The Agency is proposing to request any known and available measured data and supporting documentation on the persistence, bioconcentration factor, bioaccumulation factor, and biodegradability of the product and all of its components. The Agency currently has no restriction on use of persistent bio-accumulative products. The Agency considered requirements using existing testing protocols and modeling approaches to establish thresholds for listing based on bioconcentration factors (BCF) or bioaccumulation factors (BAF). These factors offer ratios of the concentration of a particular chemical in a biological tissue per concentration of that chemical in water surrounding that tissue, or in the environment respectively. The Agency considered a tiered testing approach, where the submitter would provide known BCF/BAF information for listing purposes, but would also be required to provide testing based on application rates authorized for use. That is, the lower application rates would only require existing information or the use of existing EPA models, while higher rates would require additional testing of fish, bivalves, and earthworms, as needed.

Similarly, there are no restrictions on the use of environmentally persistent products. The Agency considered requiring the submitter to use estimation techniques/models, such as the EPA model EPI Suite™, which estimates environmental fate properties (breakdown in water or air, etc.) that can indicate where a chemical will go in the environment and how long it will stay there. A tiered testing approach for larger quantity/duration spills as discussed above for bioconcentration and bioaccumulation was also considered.

EPA believes environmental fate information is necessary to inform the OSCs when authorizing these products for use, given the potential for their extended use in significant quantities. However, given that the Agency can estimate these factors, it is only proposing to require that available information or data be submitted on the product rather than specific product testing, as specific product testing for these factors can add significantly to the testing cost for each product. The Agency requests comment on whether testing for products' bioconcentration, bioaccumulation and biodegradation should be required for listing purposes. Additionally, the Agency requests comment on whether thresholds for BCF and BAF should be established for listing a product on the Schedule.

(7) *New physical/chemical properties and removal of the incorporation by reference of the measurement standards.* The Agency is proposing to add three new elements to the physical/chemical property requirements: Physical state and appearance; vapor pressure; and particle size for solid components. The Agency believes these basic data requirements will provide added context when evaluating the products for listing determinations. These, in combination with the other general product information requirements, will assist the Agency in evaluating the expected product behavior, and the process through which it would affect the oil when used in the intended water and/or shoreline environment. Additionally, the Agency is proposing to remove the current incorporation by reference of specific standards to determine physical/chemical properties, and replacing this with a requirement for a citation of the standard methodology used to determine these values. EPA believes that citing the standard methodology used to determine the required values is sufficient in lieu of specifying commonly recognized standard methodologies. The Agency believes it is appropriate to make this change given the new requirements for accredited laboratories to conduct testing.

(8) *Chemical Abstract Service (CAS) Registry Numbers for each component in a product.* The CAS Registry is a collection of information covering a wide variety of substances identified from the scientific literature since 1957. CAS Numbers serve as an international resource for substance identifiers and are used by scientists, industry, and regulatory bodies because it can be validated quickly and reliably. This will assist the Agency in better characterizing a product's components and assessing its specific process for affecting the oil prior to listing on the Schedule.

(9) *Certification that bioremediation agents do not contain, at levels that exceed the National Ambient Water Quality Criteria lowest density value, bacterial, fungal, viral or opportunistic pathogens.* While providing information on these product contaminants is currently required for bioremediation agents, there are no threshold levels for product listing; a positive result for any of the above pathogens may raise concern, but would not prevent the product from being listed on the Schedule. The proposed requirement that these contaminants not exceed the National Ambient Water Quality Criteria lowest density value is intended to provide information for listing decisions that ensure the use of bioremediation agents that will not result in exceeding established water safety levels. The Agency believes that this information is necessary to determine if a product is suitable for listing, particularly for bioremediation agents, which could potentially be used at recreational beaches. The Agency requests comments on whether it should establish listing thresholds for products based on this criteria, and whether the levels selected for certification are appropriate for this application.

(10) *Certification that the product does not contain levels that exceed the National Water Quality Standards lowest acute value for aquatic life of the following contaminants: Arsenic, cadmium, chromium, copper, lead, mercury, nickel, zinc, or any other heavy metal reasonably expected to be in the product; cyanide; chlorinated hydrocarbons; pesticides; polychlorinated biphenyls (PCBs); and polynuclear aromatic hydrocarbons (PAHs).* Providing information (*i.e.,* upper limit/concentration, detailed analytical methods, and sample preparation) on most of these contaminants is currently required for all products, with no established threshold levels for product listing. The Agency will continue to require information on the methodology and the data and supporting documentation used to determine the levels of these contaminants in a product. The Agency, however, will not specify what analytical testing method the submitter should use to make these determinations, as it currently does for chlorinated hydrocarbons, allowing the submitter flexibility in testing their product. Additionally, the Agency is proposing to require data on several new contaminants: Pesticides, PCBs, and PAHs. The Agency's concern with pesticides as contaminants is mostly due to their potential use on organic sorbents (*e.g.,* peat moss, corn cobs, and cellulose fibers). The concern for PCBs is for their toxicity and classification as

persistent organic pollutants, having toxic effects such as endocrine disruption. PAHs are potent atmospheric pollutants, of concern because some compounds have been identified as carcinogenic, mutagenic, and teratogenic. The proposed threshold requirements for all of these contaminants is intended to provide information for listing decisions that ensure the use of any product will not result in exceeding established water safety levels. The Agency requests comments on whether it should establish a listing threshold for products based on these criteria, and whether the levels selected for certification are the appropriate levels for this application. The Agency also requests comments on whether there are any other contaminants that should be included for evaluation of a product prior to listing.

(11) *Removal of the requirement for laboratories performing the efficacy and toxicity testing for products to have prior experience specific to the required methodology in lieu of recognized national or international accreditations.* Currently, laboratories performing testing for products to be submitted for listing consideration are required to document previous experience with the specific testing methodologies in Appendix C to part 300. The Agency believes it is more appropriate to require that laboratories be nationally or internationally accredited. Accredited laboratories are expected to be capable of following a prescribed testing protocol and good general practices, providing assurance that the test results will be reliable. Therefore, the Agency is proposing to remove the requirement for laboratories to have previous experience specific to the methodologies in Appendix C, and instead require that the laboratories hold accreditations from recognized national or international organizations. National and international accreditation organizations include, for example, the International Organization for Standardization (ISO), and the Laboratory Accreditation Bureau (recognized in the US through the National Cooperation for Laboratory Accreditation (NACLA) and the International Laboratory Accreditation Cooperation (ILAC)). The ISO 17025, Laboratory Competence standard, identifies high technical competence and management system requirements to guarantee laboratory test results and calibrations are consistently accurate. NACLA is a national voluntary organization of regulators, accreditation bodies and laboratories cooperatively working towards standardization of laboratory accreditations throughout the industry; ILAC is the international counterpart collaboration of laboratory and inspection accreditation bodies. Established to ensure that laboratories are subject to oversight by an authoritative body, accreditation organizations have been evaluated by peers as competent and have signed arrangements to enhance the acceptance of products and services. Because interested parties can have confidence in the test results and certifications provided by accredited laboratories, the Agency is proposing to amend the laboratory requirement and believes that having no prior experience with a specific methodology should not disqualify a laboratory that has been accredited by an appropriate authoritative body. However, the Agency reserves the right to not accept particular lab data should EPA find cause to doubt the quality and integrity of the work. EPA also reserves the right to conduct its own testing of any product.

(12) *Estimated annual product production volume, average and maximum amounts that could be produced per day, and time frame needed to reach maximum production rate (days).* While there is currently no requirement for production capability information, the Agency believes it is important for the OSCs and responders to have this information. The availability of a product may impact decisions of authorization of use, depending on inventory or production capabilities. This would prove to be of key importance, for example, in the event of a major environmental disaster (*e.g.,* a SONS event).

(13) *Recognition received from EPA's Design for the Environment (DfE).* EPA's Design for the Environment (DfE) [33] works in partnership with industry, environmental groups, and academia to reduce risk to people and the environment by finding ways to prevent pollution. DfE evaluates human health and environmental concerns associated with traditional and alternative chemicals and processes in a range of industries in order to select safer chemicals and technologies. DfE focuses its review of formulation ingredients on key environmental and human health characteristics of concern within functional classes. This allows formulators to use those ingredients with the lowest hazard in their functional class, while still formulating high-performing products. The DfE label means that EPA scientists have evaluated every ingredient in the product to ensure it meets DfE's stringent criteria. Products that meet the DfE criteria are safer chemical choices. In an effort to encourage the development and use of safer technologies, the Agency is proposing a requirement for the submitter to identify products that have met and can be labeled DfE certified as part of the general information, and would include this information in the NCP Product Schedule Technical Notebook.[34] This Technical Notebook presents manufacturer's summary information on the conditions under which each product is recommended to be used, and is a source of information for the OSC in the event of a response.

(14) *International product certifications, testing or use data informing the performance capabilities or environmental benefits of the product.* The Agency believes that any additional data available from other countries may help identify the benefits or concerns for the listing and/or the authorization of use of a product. The Agency, however, is not proposing any specific listing criterion or threshold associated with this broad information request, as some products (particularly new formulations) may not have any of this additional data available.

(b) Dispersant Testing and Listing Requirements

The Agency is proposing revisions to the efficacy and toxicity testing protocols, as well as establishing new thresholds for listing dispersants on the Schedule in § 300.915(b). The Agency proposes to define dispersants as typically mixtures of solvents, surfactants, and additives that promote the formation of small droplets of oil in the water column by reducing the oil-water interfacial tension. These droplets are driven into the water column by wave action. Emergency response personnel need to know whether a dispersant or any other type of chemical or biological agent on the Schedule could have negative environmental impacts relative to the oil before decisions are made about its use in a particular oil discharge situation. Consequently, it is essential to consider comparative information about the efficacy and the toxicity of these products. The proposed revisions are in response to concerns not only for an increase in the frequency of planning for the use of these agents, but also for their potential use in large quantities, such as when responding to oil discharges from

[33] *http://www.epa.gov/dfe/.*

[34] *http://www.epa.gov/oem/docs/oil/ncp/notebook.pdf.*

oil tanker accidents and offshore well blowouts, as evidenced during the Deepwater Horizon incident in 2010.

(1) Dispersant Efficacy

Current Requirements: The current NCP Subpart J requires dispersants to be tested for saltwater efficacy in order to determine listing eligibility on the Schedule. Dispersant efficacy is tested following the Swirling Flask Test (SFT) listed in Appendix C to part 300 of the NCP. This protocol was developed by Environment Canada to provide a relatively rapid and simple testing procedure for evaluating dispersant efficacy (*i.e.,* the percentage of oil that is dispersed). The procedure places seawater, oil, and a dispersant into an Erlenmeyer flask, which is then placed on a shaker table for a specified period of time. The flask is modified by the addition of a side spout attached to the bottom of the flask, which allows the analyst to pour off dispersed oil from the bottom into a collection vessel for extraction and measurement. After 20 minutes, a sample of water is poured off and chemically analyzed for dispersed oil. For products to be listed, they must attain an efficacy value of 45 percent or greater average dispersion efficacy of two different crude oils (South Louisiana Crude (SLC) and Prudhoe Bay Crude (PBC)) at room temperature (20–23 degrees Celsius (°C)).

Proposed Revisions: The Agency proposes to change the testing protocol for measuring efficacy and adopt the Baffled Flask Test (BFT) as the testing protocol for dispersant efficacy. The new BFT procedure incorporates a redesign of the testing flask by eliminating the side arm, incorporating baffles in the wall of the flask, and adding a stopcock at the bottom, which improves reproducibility in the hands of different operators. This protocol has undergone extensive peer review [35] and has been tested in several laboratories, providing reproducible and repeatable results. The Agency also proposes revisions to the efficacy listing criteria for dispersants to be listed. Specifically, the dispersant must demonstrate that the lower 95% confidence level (LCL_{95}) of six replicate flasks meets the new proposed efficacy listing criteria at two test temperatures. New test oils representing a wider range of characteristics are also proposed for this protocol: Alaska North Slope (ANS) and Intermediate Fuel Oil (IFO–120) were tested for this proposal. Both oils are to be tested at two temperatures: 5 °C and 25 °C. Finally, based on the ANS and IFO–120 testing, the Agency proposes that dispersants considered for listing must demonstrate that they attain all of the following dispersant effectiveness (DE) values:

- ANS at 5 °C: $DE_{LCL95} \geq 70\%$.
- ANS at 25 °C: $DE_{LCL95} \geq 75\%$.
- IFO–120 at 5 °C: $DE_{LCL95} \geq 55\%$.
- IFO–120 at 25 °C: $DE_{LCL95} \geq 65\%$.

The Agency tested eight of the dispersants currently listed on the Schedule. Three of the eight dispersants clearly differentiated themselves from the other five dispersants for having the best DE_{LCL95} efficacy results; they would meet all the proposed thresholds. For the next best dispersant tested, the results were substantially lower than those in the top group and would not meet all the thresholds proposed today. This natural break in the results provided the Agency with the basis for the proposed threshold criteria. The Agency is also proposing to replace the SLC and PBC test oils currently used for efficacy testing with two other oils that represent a wider range of characteristics. The proposal is based on the results of tests using ANS and IFO–120 oils with the new protocol. In proposing two new oils for efficacy testing, the Agency is seeking to ensure that the efficacy testing uses oils that represent a wider range of oil gravities throughout the different geographic locations in the country where dispersants might be used. The oils selected should exhibit sufficiently different characteristics to produce results that have statistically significant variation between them. The proposal is to replace the SLC and PBC oils, both of which were light oils, with a range of light-to-medium, and heavier oils. The light-to-medium gravity ANS pipeline blend and the heavier refined product, IFO–120 were selected for testing the protocol in this proposal. The current protocol, testing 4 replicates of both the SLC and the PBC oils and combining their results, provided one threshold criterion after determining that each of the oils produced statistically similar results. In contrast, the efficacy test results between the ANS and the IFO–120 showed statistically significant differences at each temperature. The Agency believes the use of ANS and IFO–120, or similar oils that represent a wider range of oil gravities, will provide better information on the efficacy of the products when used on different types of oils.

Additionally, the Agency is proposing that efficacy testing be conducted at two different temperatures, 5 °C and 25 °C, rather than at an ambient temperature range of 20–23 °C as currently required. The Agency recognizes the current and future interest in arctic and deepwater drilling, and the continued oil production in the southern, more tropical areas of the country. Given the potential range of locations where dispersants may be used, the Agency believes it is appropriate to have products tested at temperatures that would reflect that range. These temperatures are intended to capture dispersant use scenarios in a wide range of geographic locations and under different temperatures that may occur in the same geographical location (such as, for example, the deep sea and surface water in the Gulf of Mexico, where the temperatures are typically 5 and 25 °C, respectively).

The Agency is also proposing to replace the current SFT with the BFT, which is designed to be more representative of moderately turbulent sea conditions where dispersants are more likely to be successful when used. The revised testing protocol improves test repeatability and reproducibility within and between laboratories, as well as greatly reduces both the inherent error of the method and the human error associated with the current SFT, as discussed below. In addition, reporting the test results in terms of the product's LCL_{95} accounts for between- and within-laboratory error variability and the inherent error of the method. Only one number is reported compared to a mean and standard deviation, as the variation has already been subtracted in the reported number. Specifically:

- The new baffled trypsinizing flask design, fitted with a glass stopcock positioned at the bottom side, promotes less manipulation that could result in erroneous re-suspension of non-dispersed oil, as in the SFT. The re-suspension of oil when using the SFT test protocol was a major source of error. In the SFT, the flask has a side arm spout, requiring the analyst to pick up the flask and pour the contents out manually. Through that action, re-suspension of the dispersed oil can easily take place, leading to potentially erroneous results. In contrast, in the BFT, the flask contains a stopcock at the bottom, so the analyst need only open the stopcock to drain the contents from the flask without the potential of remixing or re-suspending the dispersed oil.
- The BFT provides more turbulent mixing and better enables more reproducible and repeatable dispersant

[35] Venosa, Albert D., National Risk Management Research Laboratory, US EPA; Sorial, George A., Department of Civil & Environmental Engineering, University of Cincinnati; King, Dennis W., Statking Consulting; *Round-Robin Testing of a New EPA Dispersant Effectiveness Protocol,* International Oil Spill Conference, 2001.

action than the SFT. The mixing energy within the flask is higher and, as a result of this increased mixing energy, better dispersion is possible. Turbulence is needed for the proper mixing of dispersant and oil and for producing the sheer forces needed to create the small droplet sizes with high surface area-to-volume ratio that promote the effective dispersion of the oil into the water column. The BFT provides such mixing and better enables more repeatable and reproducible dispersant effectiveness than the SFT. The BFT was tested extensively in a nine-participant round-robin inter-laboratory calibration test on six commercial dispersant products.[36] In addition, based on the mixing energy that can be achieved using the new baffled flask, the Agency believes a higher efficacy threshold is warranted. As a result of this increased mixing energy, better dispersion is realized under conditions more realistic of wave action in the sea.

• The variability both between analysts and within analysts is substantially lower for the BFT compared to the SFT, as measured by the coefficient of variation (CV). The CV is defined as the standard deviation divided by the mean and is expressed in terms of percent; the higher the CV, the greater the variability.[37] [38]

The Agency considered establishing listing thresholds for efficacy based on the types of oil. The Schedule could list sub-categories of dispersants based on gravities of the oil (*i.e.,* light-medium or heavy), so that a dispersant would only be authorized for use on oils that fall within the range for which it tested effective. Similarly, the Schedule could list dispersants based on temperature, allowing a dispersant to be authorized for use only at the temperature for which it tested effective. However, determining ranges or definitions for when oil changes from light to medium or heavy, is challenging because they may be affected by a number of external factors, including temperature. Likewise, listing dispersants based on temperature would require an additional degree of complexity to the authorization for use, as the temperatures may change drastically in some geographical regions affected by the same oil discharge. Even within more stable geographical regions, there may be variations at the time of an oil discharge that could affect the decision to use a dispersant stockpiled for a different temperature range. While these more specific listing approaches would provide more information on effective product choices, the Agency is concerned about how such specific listing approaches may contribute to OSC confusion in an emergency, the cost of stockpiling multiple types of dispersants, or the immediate availability of the appropriate dispersant in an emergency. Furthermore, the Agency is proposing revisions to Subpart J to authorize RRTs to request supplementary testing and information to provide greater flexibility in tailoring testing conditions to address area- and site-specific concerns. Given these factors, the Agency believes that it is appropriate that only those dispersants that achieve efficacy for both types of oils and at both temperatures be listed. Listing only the products that achieve efficacy for both types of oils at both temperatures would demonstrate a wide range of efficacy for the product, and a single listing would facilitate authorizing their use during a response action. The Agency requests comments on this approach.

(2) Dispersant Toxicity

Current Requirements: The current NCP Subpart J requires dispersants to be tested for toxicity to saltwater species. This information is available to the OSC for their consideration in authorizing dispersant use. Dispersant toxicity is tested following the protocols in Appendix C to part 300 of the NCP. The standard toxicity test for dispersants involves exposing two saltwater species, the inland silverside fish (*Menidia beryllina or M. beryllina*) and the mysid shrimp (*Americamysis bahia or A. bahia*), to five concentrations of the test product and No. 2 fuel oil, alone and in a 1:10 mixture of product to oil. Reference toxicity tests are conducted using dodecyl sodium sulfate (DSS) as a reference toxicant. The test length is 96 hours for *M. beryllina* and 48 hours for *A. bahia.* The concentration of test product causing 50% lethality to the test organisms (LC_{50}) is calculated at the end of the exposure period.

Proposed Revisions: The Agency proposes to revise the toxicity testing requirements for dispersants, including the testing protocol and the use of the test results. The proposal would require acute toxicity testing for the dispersant alone, and the dispersant mixed with both oils used for efficacy testing; the proposal is based on the ANS and IFO–120 oils. While the Agency currently provides the toxicity testing results to the OSC to assist in authorization of use determinations, it is proposing to use these testing results to determine eligibility for listing on the Schedule.

Specifically, the Agency is proposing to require evaluations of dispersant toxicity using acute toxicity tests following existing USEPA effluent testing guidelines,[39] [40] modified for use with dispersant product or dispersant product/oil mixtures, as detailed in Appendix C to part 300. Measured toxicity values for dispersant product and dispersant product/oil mixtures are proposed to include static acute toxicity tests using *A. bahia* and *M. beryllina.* Developmental toxicity using a sea urchin assay, and sub-chronic effects using *A. bahia* and *M. beryllina* are also proposed to be conducted, but with dispersant product only. The Agency is proposing the following toxicity thresholds for listing dispersants on the Schedule:

• Lethal concentration for 50% of the test species (LC_{50}) at the lower 95% confidence interval for all acute toxicity tests greater than 10 ppm;

• Inhibition concentration for 50% of the test species (IC_{50}) at the lower 95% confidence interval greater than 10 ppm;

• No Observed Effect Concentration (NOEC) equal to or greater than 1 ppm for sub-chronic toxicity.

Test Oils and Oil Acute Toxicity Values. The Agency proposes to replace the No. 2 fuel oil currently used for toxicity testing with two test oils that better represent a wider range of characteristics and that may be encountered during an incident. The proposal is based on ANS and IFO–120, as previously discussed. In addition to making the test oils consistent with the dispersant efficacy tests, testing oils of different gravities also provides a better estimation of dispersant/oil toxicity associated with differing oil constituencies, and ultimately a better representation of the potential overall toxicity of a product.

The Agency proposes to conduct the oil-only acute toxicity tests for the two reference oils, with both *A. bahia* and

[36] Venosa, A. D., D. W. King, and G. A. Sorial. 2002. The Baffled Flask Test for Dispersant Effectiveness: A Round Robin Evaluation of Reproducibility and Repeatability. Spill Sci. & Technol. Bulletin 7(5–6):299–308.

[37] Sorial, G. A., A. D. Venosa, K. M. Miller, E. Holder, and D. W. King. 2004a. Oil Spill Dispersant Effectiveness Protocol—Part I Impact of Operational Variables. ASCE. J. Env. Eng. Div., 130(10):1073–1084.

[38] Sorial, G. A., A. D. Venosa, K. M. Miller, E. Holder, and D. W. King. 2004b. Oil Spill Dispersant Effectiveness Protocol—Part II Performance of the Revised Protocol. ASCE ASCE. J. Env. Eng. Div., 130(10):1085–1093.

[39] USEPA 2002a Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Fifth edition. (Acute Methods Manual), Office of Water, Cincinnati, OH. EPA–821–R–02–012.

[40] USEPA 2002b. Short-term Methods for Estimating the Chronic toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, Third Edition. (Saltwater Chronic Methods manual). Office of Water, Cincinnati, OH. EPA–821–R–02–014.

M. beryllina, and provide this data for comparisons to dispersant and dispersant-oil mixture acute toxicity tests. EPA will make all of the reference oil toxicity test results available to the public on its Web site, including raw data and calculated median LC_{50} values. By providing this information, the Agency is reducing the number of required toxicity tests the submitter would need to conduct. Alternatively, the Agency considered requiring submitters to conduct the oil acute toxicity testing as it would provide an opportunity to detect anomalies in the submitted data. The Agency is requesting comments on whether the submitter should be required to conduct the oil-only acute toxicity testing for the two test oils.

Dispersant and Dispersant-Oil Acute Toxicity Threshold. Using the EPA toxicity classification scheme,[41] LC_{50} values ranging from 10 ppm to 100 ppm are classified as slightly toxic and above 100 ppm substances are considered acutely nontoxic to aquatic organisms. For both *M. beryllina* and *A. bahia,* the Agency is proposing as the threshold value the lower bound of the LC_{50} 95% confidence interval (CI) greater than or equal to 10 ppm for all toxicity tests to qualify a dispersant to be listed on the Schedule. The rationale for using the lower bound of the CI is that the CI should not contain any values less than or equal to 10 ppm since theoretically, the LC_{50} can fall anywhere within the CI. By using the lower CI, the Agency is providing a conservative decision criterion for acute toxicity, and by proposing a greater than or equal to 10 ppm threshold level, it is establishing an adequate safety margin without being overly restrictive.

Dispersant-Oil Mixture Acute Toxicity Protocol. The Agency is proposing to substitute the existing preparation procedure for the dispersant-oil mixture (DOM) in Appendix C to Part 300, Section 3 method for the preparation procedure for dispersant-oil mixture using a modified protocol[42] first described by Baron and Ka'aihue[43] and fully described by Hemmer et al.[44] These new modified procedures for preparation of the chemically enhanced water accommodated fractions (CEWAFs) of dispersant-oil mixtures are used to make exposure solutions. Evaluations of the dispersant-oil mixture toxicity using acute toxicity tests follow existing EPA effluent testing guidelines,[45] [46] modified for use with these exposure solutions and are detailed in Appendix C to part 300. EPA proposes to modify the variable loading preparation procedure described in Chemical Response to Oil Spills: Ecological Research Forum (CROSERF)[47] to a variable dilution procedure to standardize the oil-to-water ratio and provide a consistent chemical concentration in a test series. Additionally, the modified preparation procedure provides economies in analytical costs by reducing the need to analyze the composition of every tested concentration. Chemical analysis for the total petroleum hydrocarbon (TPH) concentration of the CEWAF stock solution is required.

Sea Urchin Developmental Assay. The Agency is proposing to require a sea urchin developmental assay (also referred to as an embryogenesis assay) to assess the potential for a dispersant product to cause adverse effects on the developmental process. During the Deep Water Horizon spill event, the possible adverse effects of oil dispersants on the developmental processes of fish and invertebrate species were identified as critical issues of concern. By incorporating the sea urchin developmental assay, the Agency is using it as a sensitive surrogate test for pelagic early life stages. This assay would employ an existing EPA test protocol[48] routinely used in effluent testing. As suggested for the dispersant acute toxicity test criteria with *A. bahia* and *M. beryllina,* the Agency is proposing as the threshold value the lower bound of the developmental IC_{50} 95% confidence interval greater than or equal to 10 ppm. For this test, the IC_{50} is defined as the concentration of dispersant that inhibits the development of 50% of exposed embryos. As described above for acute toxicity levels, the Agency is adopting a similar rationale for IC such that IC_{50} values ranging from 10 ppm to 100 ppm are considered to cause slight adverse effects on the developmental process, and above 100 ppm substances are considered to cause no adverse effects. By using the lower CI the Agency is providing a conservative decision criterion for developmental toxicity, and by proposing a greater than or equal to 10 ppm threshold level it is establishing an adequate safety margin without being overly restrictive.

Sublethal/Subchronic Studies. The Agency has limited information concerning the possible sublethal effects of dispersants currently listed on the Product Schedule. The Agency is proposing requirements for subchronic assays (duration approximately 7 days) to be performed with *A. bahia* and *M. beryllina* following established EPA short-term methods for estimating chronic toxicity of effluents.[49] While the Agency considered requiring longer-term tests, it believes the 7-day subchronic tests are reasonable alternatives for estimating chronic toxicity. This information would also be of value as guidance to regional responders and OSC's on possible adverse effects on survival and growth of larval fish and invertebrates caused by longer-term exposure to dispersants. The Agency is proposing a NOEC equal to or greater than 1 ppm listing threshold level for sub-chronic effects. This threshold level provides a tenfold safety factor from the proposed acute toxicity threshold values. The tenfold safety factor is a common practice in ecological risk assessment and thus the Agency believes it provides an adequate safety margin without being overly restrictive. The Agency is requesting comment on whether it should consider longer-term tests (*e.g.,* early life stage tests), which may be more relevant to sublethal effects caused by longer

[41] *http://www.epa.gov/oppefed1/ecorisk_ders/toera_analysis_eco.htm#Ecotox.*

[42] The modified protocol is based on a variable dilution modification of the Chemical Response to Oil Spills: Ecological Research Forum (CROSERF) testing protocol; Aurand, D. and G. Coelho (Editors). 2005. Cooperative Aquatic Toxicity Testing of Dispersed Oil and the ''Chemical Response to Oil Spills: Ecological Effects Research Forum (CROSERF).'' Ecosystem Management & Associates, Inc. Lusby, MD. Technical Report 07–03.

[43] Barron, MG, Ka'aihue L. 2003. Critical evaluation of CROSERF test methods for oil dispersant toxicity testing under subarctic conditions. Mar Pollut Bull 46:1191–1199.

[44] Hemmer, MJ, Barron, MG, Greene, R. 2011. Comparative toxicity of eight oil dispersants, Louisiana sweet crude oil (LSC) and chemically dispersed LSC to two aquatic species. Environ Toxicol Chem, 30: 2244–2252.

[45] USEPA 2002a Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Fifth edition. (Acute Methods Manual), Office of Water, Cincinnati, OH. EPA–821–R–02–012.

[46] USEPA 2002b. Short-term Methods for Estimating the Chronic toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, Third Edition. (Saltwater Chronic Methods manual). Office of Water, Cincinnati, OH. EPA–821–R–02–014.

[47] CROSERF was established as a working group of industry, government, and university scientists to coordinate and disseminate research on chemical oil spill dispersants. CROSERF participants developed aquatic toxicity testing protocols during 1994 to 2000 with the foremost objective of standardizing test methods and reducing inter-laboratory variability.

[48] USEPA 1996. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms. EPA/600/R–95/136.

[49] USEPA 2002b. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, Third Edition. (Saltwater Chronic Methods manual). Office of Water, Cincinnati, OH. EPA–821–R–02–014.

duration exposure to low concentrations of a dispersant product.

Alternative Options

In addition to the criteria discussed above, the Agency considered calculating a toxicity threshold based on the ratio of the LC_{50} of oil-alone to the LC_{50} of the dispersant-oil mixture for *M. beryllina* and *A. bahia* to assist in comparing the relative toxicity of crude oil to chemically dispersed oil. A ratio of less than or equal to 1 would indicate the toxicity of the dispersant-oil mixture is less than or equal to the toxicity of the oil-alone. The Agency considered whether this ratio should be used as a criterion for inclusion of dispersants on the Schedule or as guidance to emergency responders. Using a less than or equal to 1 ratio as a guideline would afford an adequate safety margin without being overly restrictive. While the ratio would provide a simple, interpretable, and easily justifiable value for determining acceptable toxicity levels of dispersant-oil mixtures, it would not be specific to oils in particular discharge situations. The Agency is requesting comment as to whether such a value should be calculated, and if so, whether it should be an additional listing criterion, or provided as information for the responders to consider in authorizing dispersant use.

The Agency also considered including geographically or ecologically representative species in the testing protocol. The Agency believes, however, that this issue is addressed by the proposed revisions to the supplemental testing and information requirements in section 300.910(g), with the decisions of testing geographically and ecologically representative species left to the discretion of the RRTs. While inclusion of species from different phyla and habitats would provide useful and important information on possible adverse effects of dispersant products and dispersed oil, the proposed testing protocols would need to be modified and validated. Further, the Agency is concerned about balancing the time and cost associated with the development of these tests on the part of the submitter rather than on the end users.

The Schedule currently requires no specific toxicity or efficacy tests for subsea dispersant listing or authorization of use. While the differences in toxicity values and efficacy may be affected by application in subsea environments, the Agency believes that the proposed requirements establish an adequate baseline for listing dispersants on the Schedule and for authorizing their use by responders in case of an incident. The Agency is addressing these concerns by proposing new provisions for dispersant monitoring for all subsea use, and requests comments on alternative testing and listing approaches to specifically address subsea concerns.

(3) Limitations of Use

The Agency is proposing a conditional use listing for dispersants. The proposal specifies that dispersants may only be used in saltwater environments. Dispersants are typically designed and traditionally used for responding to oil discharges in saltwater. In general, the effectiveness of dispersants decreases as the salinity of the water decreases, given the same hydrophilic-lipophilic balance, and the effectiveness is minimal in freshwater environments. Surfactants, the main active ingredient in dispersants, sustain oil droplets in water by orienting the lipophilic side of its molecule in the oil and the hydrophilic side in the water. The hydrophilic side of the surfactant is generally more soluble in waters with higher salinity values, causing the oil droplets to be more stable in saline water environments. In waters with no salinity, many dispersants have shown a very low effectiveness or are sometimes completely ineffective.[50]

The Agency is also concerned with using dispersants in freshwater environments because of the limited dilution typically available as compared with the open sea and because of the existence of water intakes in rivers, streams, and lakes for use in drinking water supplies. Using dispersants in freshwater has the potential for compounding the impacts caused by already discharged petroleum products, particularly near potable and non-potable subsurface water intakes. The Agency does recognize, however, that as a last resort, dispersants may have some limited applicability in freshwater. The provision for authorization of use under § 300.910(d) would allow for exceptions to the prohibition on the use of dispersants in freshwater in cases where there is an immediate threat to human life. The Agency is requesting comment on this proposed listing limitation.

(c) Surface Washing Agent Testing and Listing Requirements

The Agency is proposing to define Surface washing agents (SWA) as substances that separate oil from solid surfaces, such as beaches, rocks, or concrete, through a detergency mechanism that lifts and floats oil for collection and recovery from the environment with minimal dissolution, dispersion, or transfer of oil into the water column. For this agent category, the Agency is proposing to revise the toxicity testing protocols, to establish efficacy testing protocols, and to establish both toxicity and efficacy listing thresholds in § 300.915(c). The proposed revisions respond to concerns regarding their frequent use and the potential for residual impacts after their use.

(1) Surface Washing Agent Efficacy

Current Requirements: There are currently no efficacy testing requirements in the NCP Subpart J for surface washing agents to determine listing eligibility on the Schedule.

Proposed Revisions: The Agency is developing a laboratory testing protocol to evaluate the efficacy of SWAs in removing crude oil from a solid substrate.[51] Currently available efficacy testing protocols for these agents are concerned with assessing the detergency, or cleaning power, of the agents by quantifying the physical removal of oil from non-vegetative substrates as a result of their use. The protocols typically involve the application of oil to a solid substrate (or the use of pre-oiled substrate), weathering of the oil on the substrate, application of the agent to the oiled substrate, a contact period for SWA penetration, and washing of the substrate with water. The fractions of oil removed in the wash water and/or remaining on the substrate are quantified. Oil removal efficiencies for surface washing treatments are typically compared to the washing efficiency of water without surface washing agents (untreated controls). Disadvantages or potential sources of error have been identified in the existing protocols that may not reflect field performance. Of concern are, for example, the use of substrates (*e.g.,* stainless steel, porcelain) with different wetting and adhesion properties than natural substrates such as sand or gravel; short weathering times insufficient for oil attachment; and the absence of mixing energy during the washing step, which may lead to incomplete detachment of partially released oil.

The Agency's goal is to develop and evaluate a new bench-scale testing protocol that would provide a standard for EPA to use in SWA product

[50] Fingas, M., (Ed.), 2011, *Oil Spill Science and Technology,* Gulf Professional Publishing, pp. 513–518.

[51] Koran, K.M., Venosa, A.D., Luedeker, C.C., Dunnigan, K., Sorial, G.A., 2009. Development and Testing of a New Protocol for Evaluating the Effectiveness of Oil Spill Surface Washing Agents. Mar. Pollut. Bull., 58: 1903–1908.

evaluation prior to listing on the Schedule. Changes over established protocols the Agency considered include: Using natural substrates to reflect the most commonly impacted shoreline material; establishing sufficient weathering time to permit strong attachment of the oil to the substrate surface; fully quantifiable approaches with known volumes and precise measurements to allow mass balance; and a standardized and reproducible methodology to minimize operator error. PBC oil was used as the representative standard reference oil in developing the protocol since it had previously been selected as one of two standard oils for the Agency's published protocols for dispersant and bioremediation agent testing. However, the Agency is proposing revisions to the dispersant and bioremediation testing protocols, including replacing the PBC reference oil. The protocol being developed has not been tested: With the IFO–120 or the ANS oils that are proposed to be used in the revised dispersant efficacy testing protocol; at multiple temperatures; or to include freshwater systems. The Agency expects to develop final recommendations for the testing protocol following round robin testing after adjusting for the new variables. The Agency would propose this protocol in the **Federal Register** through notice and comment before adopting it as part of Subpart J requirements.

Consequently, because of the additional work needed to finalize its protocol, the Agency is proposing to allow the use of standard recognized efficacy testing methodologies for surface washing agents. An example of such a standard recognized methodology is the American Society for Testing and Materials (ASTM) Standard Test Method for Evaluating the Effectiveness of Cleaning Agents.[52] Another methodology is Environment Canada's Test Method.[53] The capability of a particular surface washing agent depends upon the application procedures and the characteristics of the surface being cleaned, such as size, shape, and material. The ASTM test method in particular covers a procedure for evaluating the capability of the agents, providing a relatively rough surface to which the oil can adhere. The Environment Canada method uses a stainless-steel 'trough' which is placed at a specified angle. The target oil is placed on an area on the trough. The treating agent is then applied in droplets to the surface of the oil and after 10 minutes at 5-minute intervals, rinses of water are applied to the trough. After drying, the trough is weighed and the removal calculated from the weight loss. Repeatability is within 5%. The Agency is requesting comment on available methodologies and its published protocol to incorporate as the testing protocol for these agents. The Agency also requests comment on whether the rule should identify the specific methodologies to be used until EPA develops and adopts a new testing protocol for SWA efficacy testing.

The Agency is also proposing an efficacy threshold of 30% in either fresh or salt water or both depending on the intended product use. This is based on the efficacy data published in ''Surface-washing Agents or Beach Cleaners.''[48] Numerous surface washing agent products, including several from the Schedule were tested using the Environment Canada methodology. The average efficacy of the surface washing agents tested is approximately 30%. The Agency requests comments on this approach and other efficacy test data available.

(2) Surface Washing Agent Toxicity

Current Requirements: The current NCP Subpart J requires surface washing agents to be tested for saltwater species toxicity. Surface washing agent toxicity is tested following the dispersant toxicity testing protocols in Appendix C to part 300 of the NCP.

Proposed Revisions: The Agency is proposing revisions to the toxicity testing requirements for surface washing agents, including the testing protocol. While the Agency currently provides the toxicity testing results to the OSC to assist in authorization of use determinations, it is proposing to use these toxicity testing results to determine listing eligibility on the Schedule.

The proposed revisions to the testing protocols for surface washing agents are detailed in Appendix C to part 300. The proposed acute toxicity test protocol for surface washing agents is based on EPA's protocol, *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters for Freshwater and Marine Organisms*.[54] The Agency proposes to require surface washing agents be tested for acute toxicity using fresh water species *Ceriodaphnia dubia* and *Pimephales promelas,* or saltwater species *Americamysis bahia* and *Menidia beryllina,* or both, depending on the intended product use. The concentration of test product causing 50% lethality to the test organisms (LC_{50}) and lower and upper 95% confidence intervals (LCI_{95} and $ULCI_{95}$) are calculated at the end of the exposure period. To be listed on the Schedule, surface washing agents must demonstrate an acute lethal concentration for 50% of the test species (LC_{50}) at the lower 95% confidence interval greater than 10 ppm in either fresh or salt water, consistent with the acute toxicity thresholds proposed for dispersants. EPA's toxicity classification scheme[55] classifies LC_{50} values ranging from 10 ppm to 100 ppm as slightly toxic and values above 100 ppm substances are considered practically nontoxic to aquatic organisms. By proposing this threshold level, the Agency is establishing an adequate safety margin without being overly restrictive. The Agency requests comments on the proposed acute toxicity methods (or any others available) and thresholds for surface washing agents.

The Agency is proposing provisions for conducting acute toxicity tests with dispersant-oil mixtures, but not for any other agent, including SWAs. EPA believes that non-dispersant products are not likely to be used in the same quantities or durations as dispersants and some may be recovered making a requirement to conduct toxicity tests of product/oil mixtures unnecessary. There may be concerns, however, for increased product toxicity because of their interaction with the oil. Thus, the Agency is requesting comment on the need for acute toxicity tests conducted with surface washing agents-reference oil mixtures. A protocol for preparation of product/oil mixtures for toxicity testing is available for review in the docket.

(3) Limitations

The Agency is proposing a conditional use listing for SWAs. The proposal specifies that these products may only be used in those water environments for which the product was tested and for which it met the listing threshold criteria. The Agency recognizes that products may yield effective results in certain environments and not in others. Products that may be

[52] ASTM Standard Test Method for Evaluating the Effectiveness of Cleaning Agents. Designation: G122—96 (Reapproved 2008). ASTM International, 100 Barr Harbour Dr., P.O. Box C–700 West Conshohocken, Pennsylvania 19428–2959, United States

[53] Fingas, Merv and Fieldhouse, Ben; ''Surface-washing Agents or Beach Cleaners'' (2010). Chapter 21 Surface-Washing Agents or Beach Cleaners. In Oil Spill Science and Technology (p716). London: Gulf Professional Publishing.

[54] *http://water.epa.gov/scitech/methods/cwa/wet/upload/2007_07_10_methods_wet_disk2_atx1-6.pdf.*

[55] USEPA 2010. *http://www.epa.gov/oppefed1/ecorisk_ders/toera_analysiseco.htm#Ecotox.*

effective in freshwater environments may not necessarily be so in saltwater environments, and vice versa. The Agency is proposing this limitation to allow product manufacturers the flexibility to select which environment the product is to be tested and authorized for use, either saltwater, fresh water, or both environments. Therefore, the product would be listed and could only be authorized for use in those water environments for which it was tested and for which it met both the efficacy and toxicity listing criteria.

(d) Bioremediation Testing and Listing Requirements

The Agency is proposing to define bioremediation agents as biological agents and/or nutrient additives deliberately introduced into a contaminated environment to increase the rate of biodegradation and mitigate any deleterious effects caused by the contaminant constituents. Bioremediation agents include microorganisms, enzymes, and nutrient additives such as fertilizers containing bioavailable forms of nitrogen, phosphorus and potassium. For this agent category, the Agency is proposing to revise the efficacy testing protocols, to establish toxicity testing protocols, and to establish both efficacy and toxicity listing thresholds in § 300.915(d).

(1) Bioremediation Agent Efficacy

Current Requirements: Bioremediation agent efficacy is currently tested following the protocols in Appendix C to part 300 of the NCP. The current bioremediation agent efficacy testing protocol is designed to determine a product's ability to biodegrade oil by quantifying changes in the oil composition resulting from biodegradation using natural seawater as the test water. The protocol tests the bioremediation agent for microbial activity and quantifies the disappearance of saturated hydrocarbons and PAHs in weathered oil; for purposes of the proposal the Agency tested the protocol using ANS 521.[56] The sample preparation procedure extracts the oil phase into dichloromethane (DCM), with a subsequent solvent exchange into hexane. The analytical technique uses a high-resolution gas chromatograph/mass spectrometer (GC/MS); GC/MS provides for a high degree of chemical separation and spectral resolution. Concurrently with the chemical analysis, a microbiological analysis is also performed to determine and monitor the viability and growth of the microbial cultures being studied. For commercial products that are strictly microbial agents not containing their own nutrients, a mineral nutrient solution is provided if requested by the submitter; no further nutrients are added to commercial products containing their own nutrients. To be listed on the Schedule, bioremediation agents must demonstrate a statistically significant difference between the average degradation of both total alkanes and total aromatics in the oil achieved by the product after 28 days and the average degradation for the same compounds achieved by the non-nutrient control in the same time period.

Proposed Revisions: The proposal reflects a series of changes to the current efficacy testing protocol for bioremediation agents. The protocol includes freshwater testing in addition to the current saltwater-based test, and uses artificial water for both fresh and saltwater testing, replacing the natural seawater currently used. The proposed protocol also eliminates several gravimetric and microbiological analyses and testing endpoints not used in the proposed listing determinations. Additionally, the proposed protocol limits the levels at which external nutrients may be added, which allows the addition for product formulations without nutrients, or for product formulations that have nutrient concentrations at insufficient levels for the experimental setup. Finally, the methodology streamlines the statistical analysis. The proposed revisions address concerns with the existing methodology as discussed below, expanding its application to include freshwater environments, improving the consistency and comparability of the test results, and generally streamlining the protocol.

Protocol. The proposed efficacy testing protocol is designed to determine a bioremediation agent's ability to biodegrade weathered crude oil in the exposure water (saltwater or freshwater) by quantifying changes in the oil composition resulting from biodegradation. It consists of a series of six product and control flasks containing artificial seawater or artificial freshwater and weathered crude oil in which biodegradation of the crude oil hydrocarbons is monitored for 28 days. Product flasks at day 28 are compared to product flasks at day 0 to determine if a specified reduction both in total resolved alkanes and total resolved aromatics was achieved in that time period. Product flasks contain exposure water, weathered oil, and product in concentrations specified by the manufacturer. Positive control flasks must contain exposure water, oil, nutrients, and the standard culture supplied by the Agency. A negative control, consisting of artificial exposure water, product, weathered crude oil, nutrients, and a sterilant is also used to ensure that the observed degradation of hydrocarbons was not caused by abiotic losses or interaction with the product. The Agency is requesting comment on whether an additional protocol specific to products containing enzymes only would be appropriate; this would consist only of exposure water, weathered oil and the enzymatic product in the concentrations specified by the manufacturer. The proposed protocol quantifies the degradation (or disappearance) of alkane hydrocarbons and aromatic hydrocarbons. The sample preparation procedure extracts the oil phase into the solvent dichloromethane (DCM; also known as methylene chloride) with a subsequent solvent exchange into hexane. The test method targets the relatively easy to degrade normal alkanes and the more resistant and toxic aromatics. The analytical technique uses a high resolution GC/MS because of its high degree of chemical separation and spectral resolution. GC/MS has long been used to study the weathering and fate of oil spilled into the environment. It gives unambiguous results for determining biodegradation efficacy. For quantitative analyses, the instrument is operated in the selected ion monitoring mode (SIM) of detection at a scan rate of > 5 scans per second to maximize the linear quantitative range and precision of the instrument.

Fresh and Saltwater Environments. The existing bioremediation test is exclusively for saline environments with no equivalent test for freshwater environments. Further, the existing test uses natural seawater and has been found to give variable results due to the compositional variability of seawater both chemically and microbiologically. The Agency proposes to replace the natural seawater with a standardized artificial saltwater formula called GP2, whose components and concentrations are generally recognized, and which is easily made. The use of artificial saltwater allows for better test reproducibility. Additionally, the Agency proposes to expand the requirement for efficacy testing to include freshwater, which allows for a better evaluation of the use of these agents in this environment. Similarly to

[56] Artificially distilled Alaska North Slope crude oil at 521 °F (272°C) to remove the low molecular weight hydrocarbons to approximate natural weathering processes that occur after a spill.

the artificial saltwater, artificial minimal salts freshwater would be used with known ingredients (Bushnell and Haas; Journal of Bacteriology, Vol. 41: 653, 1941). Because the Agency is adding a freshwater test, it is also allowing the submitter to test a product for freshwater only, saltwater only, or both. The Schedule listing would specify in which environment the product was tested and authorized for use. Products could be listed for use on saltwater only, on freshwater only, or for use on both environments, giving the option to the submitter to market its products accordingly.

GC/MS Testing Endpoints. GC/MS has long been used to study the weathering and fate of oil spilled into the environment. However, GC/MS being the primary tool used in the analysis makes this test expensive. The current protocol includes several measured variables in both the product flasks and the non-nutrient control flasks, including the gravimetric residual oil weight analysis, a Most Probable Number microbiological analysis, and the GC/MS analysis at 3 different time points, days 0, 7, and 28. The Agency is proposing to eliminate all of these analyses except the day 0 and 28 GC/MS analysis of both the non-nutrient control and the product flasks. The Agency believes this is appropriate because the other measurements are not used in determining whether a product meets the listing criterion. Additionally, the statistical analysis has been greatly simplified, and a new decision rule is proposed for listing determinations rather than relying on a statistical significance test.

• *Gravimetric Weight Analysis:* Originally, the gravimetric weight analysis was used as a preliminary test to avoid having to perform a GC/MS analysis. Products that failed to significantly reduce the gravimetric weight of the oil within 28 days were considered not effective, thereby eliminating the need to conduct the more expensive GC/MS analysis. However, numerous compounds can give rise to positive interferences with the gravimetric weight analysis, such as biomass lipids and other biogenic materials, thereby rendering the gravimetric analysis suspect. Furthermore, numerous factors can confound the interpretation of gravimetric weight changes in oil over time. This has led to confusion as some manufacturers have mistakenly concluded their product passed the testing protocol simply by complying with the gravimetric weight loss measurement. By eliminating the gravimetric analysis altogether, EPA is streamlining the testing process, resulting in less confusion and a modest analytical cost savings for the manufacturer.

• *Most Probable Number Enumeration (Microbiological Analysis), Nutrient Control, and Day-Seven Sampling Event:* Results of these test endpoints, while currently required, would not be used in determining whether a product meets the proposed listing requirements. Therefore, the Agency is proposing to eliminate these test requirements from the proposed protocol.

• *28 day Sampling Event:* Generally, results of biodegradation may occur in less than 28 days, particularly for alkanes for which biodegradation often takes place in a much shorter time period. However, 28 days are needed to make sure that the aromatic components, which biodegrade more slowly, have been reduced significantly; testing protocols that accommodate aromatics are of particular importance because of their potential ecological toxicity. While the Agency could propose different time frames in determining whether the product met the reduction criterion for alkanes and aromatics, it believes that such an approach would be confusing. Therefore, the 28 day time period is being proposed for both fractions for simplicity and to provide sufficient time for degradation of the aromatics.

Protocol Verification. The Agency proposes to provide a standard culture for performing laboratories to use as a positive control benchmark. A positive control is needed as an indication that the test was performed properly. The Agency is proposing to use as the standard culture an oil-degrading bacteria isolated from Disk Island in Prince William Sound in 1990. This culture is an excellent degrader of alkanes and aromatics in saltwater and freshwater, although it performs better in saltwater, especially in degrading the aromatics. This culture has the ability to degrade ANS 521 oil, with known efficacy values for both fresh and saltwater. The proposed positive control consists of triplicate flasks containing sterile artificial seawater or freshwater, nutrients (salts of nitrogen and phosphorus), the weathered ANS 521 oil, and the standard culture. The performing laboratory must achieve the known reduction in alkane and aromatic fractions in these positive control flasks in order to certify they successfully conducted the test procedure. Additionally, data from the positive control are required to be submitted with the product test results. The Agency is not proposing, however, that the positive control be repeated every time a product test is performed. Rather, the certifying laboratory would be required to report the results of the positive control tests conducted within a year prior to the product testing, as part of the product submission package. Additionally, this positive control culture would be used as a standard microbial inoculum to test abiotic products, such as nutrients and enzymes.

Added Nutrients. The current protocol allows the manufacturer to request the addition of nutrients to support a culture's ability to degrade the crude oil hydrocarbons. This addition is currently allowed for commercial products that are strictly microbial agents and do not contain any nutrients; the addition of nutrients is not allowed for commercial products containing its own nutrients. A modified salt solution of nitrogen and phosphorus is used as the mineral nutrient. All microbial cultures need nutrients to survive and grow. In the natural environment, biodegradation is not completely limited by nutrient availability given that a low level flow of nutrients is continuous. To maximize biodegradation rates, the addition of nutrients is typically recommended in the field with a bioremediation product unless nutrients are already high (*i.e.,* >5 mg/L). However, in a closed laboratory flask, the amount of nitrogen and phosphorus supplied by a typical product might easily become limiting quickly as biodegradation takes place because they are supplied only once at the beginning of the test. If nutrient limitation occurs, further reduction of hydrocarbons would likely be inhibited, and this may cause the product to fail the listing criteria. To address this problem, the Agency proposes modifying the protocol by allowing the addition of nutrients to any product containing living microbes that does not contain said nutrients in sufficient quantities to allow a fair evaluation. However, the additional quantities allowed are limited to total concentrations of nitrogen and phosphorus that do not to exceed the equivalent amounts used in the positive control. Capping the amount of nutrients that can be added to all products will yield more consistent results and more effective comparisons among products.

Efficacy Thresholds. The Agency is proposing to revise the listing criteria by replacing the current ''statistically significant difference'' test with defined values for the percent reduction of total alkane and aromatic concentrations. For a bioremediation agent to be listed on

the Schedule, the Agency proposes the percent reduction of the total alkane fraction (sum of all alkane concentrations determined by GC/MS) to be greater than 95% at day 28, and that the percent reduction of the total aromatic fraction (sum of all aromatic concentrations determined by GC/MS) must be greater than 70% at day 28, both based on the one-tailed Upper 95% Confidence Limit (UCL_{95}) for salt water. For freshwater, the Agency proposes the percent reduction of the total alkane fraction (sum of all alkane concentrations determined by GC/MS) to be greater than 95% at day 28, and that the percent reduction of the total aromatic fraction (sum of all aromatic concentrations determined by GC/MS) must be greater than 40% at day 28, both based on the one-tailed Upper 95% Confidence Limit (UCL_{95}).

Basis of Efficacy Thresholds. According to Haines *et al.* (2005),[57] the positive control culture was able to biodegrade total alkanes in saltwater by 98.9% and total aromatics by 79.8% in 28 days, based on the UCL_{90}. In freshwater, the percent reduction values were 97.9% and 37.8%, respectively, again based on the UCL_{90}. Thus, the proposed listing thresholds for the percent reduction of total alkanes and total aromatics from the GC/MS analysis are based on the findings of Haines *et al.* (95% for alkanes vs. 98.9% in saltwater and 97.9% in freshwater, and 70% for aromatics in saltwater and 40% in freshwater vs. 79.8% in saltwater and 37.8% in freshwater). As for the positive control, the Agency believes a reasonable target in saltwater would be 95% for total alkanes in both types of exposure waters. For aromatics reduction, 70% is considered reasonable in saltwater and 40% in freshwater, based on Haines *et al.* EPA is using UCL_{95} values rather than the UCL_{90} values from Haines because EPA's latest research uses 6 replicates for the test protocol which increases precision. The proposed criteria demonstrate that the product can cause a substantial degradation of the alkane and aromatic fractions of weathered crude oil compared to a control, as determined solely by GC/MS analysis.

Of note, these proposed thresholds for listing bioremediation products on the Schedule are similar to those established for Canadian efficacy testing, which are reductions of 30% for total aliphatics and 10% for total aromatics. The 30% reduction in total aliphatics (including all resolvable and non-resolvable but GC-detectable aliphatics) is approximately equivalent to an 80% reduction in total GC/MS-resolvable target n-alkanes, based on Canadian data. The 10% reduction in total aromatics is approximately equivalent to a 50% reduction of the 5-aromatic homologue group consisting of naphthalene, fluorene, dibenzothiophene, phenanthrene, and chrysene and their alkylated homologs. The U.S. aromatic series includes 2 other 4-ring aromatics in addition to those 5 aromatic series considered by Blenkinsopp et al.[58] Thus, the U.S. and Canadian protocols are similar in terms of decision criteria. The Agency requests comments on all the proposed changes and listing thresholds.

(2) Bioremediation Agent Toxicity

Current Requirements: The Agency currently has no bioremediation agent toxicity testing requirements for purposes of listing these agents on the Schedule. Section 5 of Appendix C is reserved for this purpose. The Agency has, however, on a case-by-case basis, requested manufacturers to test bioremediation agents for toxicity if the product contains surfactants or other ingredients that may be harmful to the environment.

Proposed Revisions: The Agency is proposing an acute toxicity testing protocol for bioremediation agents to include both fresh and saltwater. The Agency will use these testing results to determine listing eligibility on the Schedule. The proposed testing protocols for bioremediation agents are detailed in Appendix C. The proposed acute toxicity test protocol for bioremediation agents is based on EPA's protocol, *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters for Freshwater and Marine Organisms.* The Agency proposes to require bioremediation agents be tested for acute toxicity for the product alone using fresh water species *Ceriodaphnia dubia* and *Pimephales promelas,* and saltwater species *Americamysis bahia* and *Menidia beryllina.* The concentration of test product causing 50% lethality to the test organisms (LC_{50}) lower and upper 95% confidence intervals (LCI_{95} and $ULCI_{95}$) are calculated at the end of the exposure period. To be listed on the Schedule, bioremediation agents must demonstrate an acute lethal concentration for 50% of the test species (LC_{50}) at the lower 95% confidence interval greater than 10 ppm in either fresh or salt water, consistent with the acute toxicity thresholds proposed for dispersants. EPA's toxicity classification scheme[59] classifies LC_{50} values ranging from 10 ppm to 100 ppm as slightly toxic, and values above 100 ppm substances are considered practically nontoxic to aquatic organisms. By proposing this threshold level the Agency is establishing an adequate safety margin without being overly restrictive. The Agency requests comments on the proposed acute toxicity methods (or any others available) and thresholds for bioremediation agents.

Similarly to surface washing agents, the Agency is not proposing provisions for conducting acute toxicity tests with bioremediation agent-oil mixtures. The Agency is requesting comment on the need for acute toxicity tests conducted with bioremediation agents-reference oil mixtures. A protocol for preparation of product/oil mixtures for toxicity testing is available for review in the docket.

(3) Listing of Non-Proprietary Nutrients

The Agency recognizes there may be oil discharge situations where it is determined that the addition of nutrients in the form of salts of nitrogen, phosphorus and potassium (*i.e.,* fertilizers) to stimulate or enhance bioremediation may be the most effective and environmentally favorable mitigation method. However, non-proprietary commercially available formulations of nutrients are not specifically listed on the Schedule, even though as nutrient additives they are subject to Subpart J requirements. Currently, an OSC may only authorize the use of an agent not listed on the Schedule when its use is necessary to prevent or substantially reduce a hazard to human life. Further, RRTs are not currently able to preauthorize the use of nutrients unless they are listed on the Schedule. To address these concerns, the Agency proposes to include on the Schedule a specific list of the following generic non-proprietary nutrients: Ammonium nitrate, ammonium phosphate, sodium nitrate, potassium nitrate, urea, sodium triphosphate (or tripolyphosphate), sodium phosphate, potassium phosphate (mono- or dibasic), triple super phosphate, or any combination thereof. For these non-proprietary commercial nutrients, the Agency believes there is no need for submission of readily available

[57] Haines, J.R., E.J. Kleiner, K.A. McClellan, K.M. Koran, E.L. Holder, D.W. King, and A.D. Venosa. 2005. ''Laboratory evaluation of oil spill bioremediation products in salt and freshwater systems.'' J. Ind. Micorbiol. Biotechnol. 32:171–185.

[58] Blenkinsopp, S, G Sergy, Z Wang, MF Fingas, J Foght and DWS Westlake. 1995. Oil spill bioremediation agents-Canadian efficacy test protocols. Proceedings of the 1995 International Oil Spill Conference, Feb 27–March 2, Long Beach, CA. American Petroleum Institute, Washington, DC. pp. 91–96.

[59] USEPA 2010. *http://www.epa.gov/oppefed1/ecorisk_ders/toera_analysiseco.htm#Ecotox.*

information. Thus, the proposal requires no technical product data or further action on the part of a manufacturer prior to authorizing their use in response to a discharge event. However, this listing will be limited to products commonly formulated entirely of those mineral nutrients and synthetically-derived urea listed. For products that may contain additional proprietary components or have unique proprietary formulations, the requirement for the submitter to provide the toxicity and efficacy data under the bioremediation agent category will apply.

The Agency considered proposing a definition of ''fertilizer'' to specifically capture the listed bioremediation agents proposed to be exempted. However, fertilizer is a term commonly used to describe organic nutrients, which may contain substances that do not play a role in mitigating oil discharges, and that may have deleterious effects on the environment. Some non-proprietary fertilizers, for example, comprised of activated sewage sludge or manure, could contain unwanted pathogens and trace metals that could further stress the environment if used in response to an oil discharge. Thus, instead of an exemption based on a fertilizer definition, EPA proposes to restrict the exemption under the bioremediation category only to those nutrients listed above in order to avoid any confusion. The Agency requests comments on this approach.

(e) Solidifier Testing and Listing Requirements

The proposal defines solidifiers as substances that cause oil to become a coherent mass, preventing oil from dissolving or dispersing into the water column, and which are collected and recovered from the environment. For this agent category, the Agency proposes to revise the toxicity testing protocol and to establish a listing threshold for toxicity in § 300.915(e). Although solidifiers are intended to be removed from the environment, the proposed revisions and new toxicity listing threshold respond to concerns regarding the general increase in the use of chemical and biological agents as tools available for oil discharge responses.

(1) Solidifier Efficacy

There are currently no efficacy testing requirements in the NCP Subpart J for solidifiers to determine listing eligibility on the Schedule. These agents would have been captured by the current MOSCA agent category, which currently has no efficacy testing requirements, and which the Agency is proposing to eliminate. While the Agency is aware of existing protocols to determine the effectiveness of solidifiers, its focus has been on reviewing the protocols for dispersants and bioremediation agents, given that their specific process for affecting the oil allows them to be left in the environment, whereas solidifiers are intended for removal from the environment. Therefore, the Agency is not proposing an efficacy testing methodology for solidifiers, but is requesting comment on available methodologies and/or performance criteria (*e.g.,* buoyancy) it can consider.

(2) Solidifier Toxicity

Current Requirements: The current NCP Subpart J requires solidifiers to be tested for saltwater species toxicity. Solidifier toxicity is tested following the dispersant toxicity testing protocols in Appendix C to part 300 of the NCP.

Proposed Revisions: The proposal revises the toxicity testing requirements for solidifiers, including the testing protocol. While the Agency currently provides the toxicity testing results to the OSC to assist in authorization of use determinations, it is proposing to use these results to determine listing eligibility on the Schedule.

The proposed revisions to the testing protocols for solidifiers are detailed in Appendix C to part 300. The proposed acute toxicity test protocol for solidifiers is based on EPA's protocol, *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters for Freshwater and Marine Organisms.* The Agency proposes to require solidifiers be tested for acute toxicity for the product alone using fresh water species *Ceriodaphnia dubia* and *Pimephales promelas,* or saltwater species *Americamysis bahia* and *Menidia beryllina,* or both, depending on the intended product use. The concentration of test product causing 50% lethality to the test organisms (LC_{50}) and lower and upper 95% confidence intervals (LCI_{95} and $ULCI_{95}$) are calculated at the end of the exposure period. To be listed on the Schedule, solidifiers must demonstrate an acute lethal concentration for 50% of the test species (LC_{50}) at the lower 95% confidence interval greater than 10 ppm in either fresh or salt water, consistent with the acute toxicity thresholds proposed for dispersants. EPA's toxicity classification scheme [60] considers LC_{50} values ranging from 10 ppm to 100 ppm as slightly toxic and values above 100 ppm substances practically nontoxic to aquatic organisms. By proposing this threshold level, the Agency is establishing an adequate safety margin without being overly restrictive. The Agency requests comments on the proposed acute toxicity methods (or any others available) and thresholds for solidifiers.

Similarly to surface washing agents, the Agency is not proposing provisions for conducting acute toxicity tests with solidifiers-oil mixtures. The Agency is requesting comment on the need for acute toxicity tests conducted with solidifiers-reference oil mixtures. A protocol for preparation of product/oil mixtures for toxicity testing is available for review in the docket.

(3) Limitations

The Agency is proposing a conditional use listing for solidifiers. The proposal specifies that the listing of these products is limited to use only in those water environments for which the product was tested and for which it met the listing threshold criteria. The Agency recognizes that products may yield effective results in certain environments and not in others. Products that may be effective in freshwater may not necessarily be so in saltwater, and vice versa. The Agency is proposing this limitation to allow product manufacturers the flexibility to select which environment the product is to be tested and could be authorized for use, either saltwater, fresh water, or both. Therefore, the product would be listed and may only be authorized for use in those water environments for which it was tested and for which it met the listing criteria.

(f) Herding Agent Testing and Listing Requirements

The proposal defines herding agents as substances that are used to control the spreading of oil across the water surface. For this agent category, the Agency proposes to revise the toxicity testing protocol and to establish a listing threshold for toxicity in § 300.915(f). While these agents are intended to be removed from the environment, the proposed revisions and new toxicity listing threshold respond to concerns regarding the general increase in the use of chemical and biological agents as tools available for oil discharge responses.

Currently, there is a test requirement for distinguishing surface collecting agents from other chemical agents (§ 300.915(c)(9), *Test to Distinguish Between Surface Collecting Agents and Other Chemical Agents*). Because the proposal eliminates surface collecting agents as a category and redefines herding agents to better reflect its specific process for affecting the oil, and

[60] USEPA 2010. *http://www.epa.gov/oppefed1/ecorisk_ders/toera_analysis_eco.htm#Ecotox.*

given that the agents will need to be identified in order for the required testing to be submitted, the Agency is eliminating this requirement.

(1) Herding Agent Efficacy

There are currently no efficacy testing requirements in the NCP Subpart J for herding agents to determine listing eligibility on the Schedule. These agents would have been captured by the current surface collecting agent category, which currently has no efficacy testing requirements, and which the proposal eliminates. The Agency is not proposing an efficacy testing methodology for herding agents, but is requesting comment on available methodologies and/or performance criteria it can consider.

(2) Herding Agent Toxicity

Current Requirements: The current NCP Subpart J requires herding agents to be tested for saltwater species toxicity. Herding agent toxicity is tested following the dispersant toxicity testing protocols in Appendix C to part 300 of the NCP.

Proposed Revisions: The proposal revises the toxicity testing requirements for herding agents, including the testing protocol. While the Agency currently provides the toxicity testing results to the OSC to assist in authorization of use determinations, we are proposing to use these results to determine listing eligibility on the Schedule.

The proposed revisions to the testing protocols for herding agents follow the same procedures as described for surface washing agents and are detailed in Appendix C to part 300. The acute toxicity test protocol for herding agents is based on EPA's protocol, *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters for Freshwater and Marine Organisms.* The Agency proposes to require herding agents to be tested for acute toxicity for the product alone using fresh water species *Ceriodaphnia dubia* and *Pimephales promelas,* or saltwater species *Americamysis bahia* and *Menidia beryllina,* or both, depending on the intended product use. The concentration of test product causing 50% lethality to the test organisms (LC50) and lower and upper 95% confidence intervals (LCI95 and ULCI95) are calculated at the end of the exposure period. To be listed on the Schedule, herding agents must demonstrate an acute lethal concentration for 50% of the test species (LC_{50}) at the lower 95% confidence interval greater than 10 ppm in either fresh or salt water, consistent with the acute toxicity thresholds proposed for dispersants. EPA's toxicity classification scheme [61] considers LC_{50} values ranging from 10 ppm to 100 ppm as slightly toxic and values above 100 ppm substances practically nontoxic to aquatic organisms. By proposing this threshold level, the Agency is establishing an adequate safety margin without being overly restrictive. The Agency requests comments on the proposed acute toxicity methods (or any others available) and thresholds for herding agents.

Herding agents form a monolayer of surfactants on the water surface that result in the contraction of the oil slick.[62] [63] Herding agent composition may include hydrocarbons, fluorosurfactants and/or silicone-based surfactants, which suggests that a stock solution prepared using a WAF procedure similar to solidifiers may be appropriate. The Agency is requesting comment on the procedure for preparing the stock solution for herding agents for the acute toxicity tests proposed in Appendix C. Any alternative procedure for preparing the stock solution must include an appropriate rationale in order for the Agency to be able to consider it for final action.

Similarly to surface washing agents, the Agency is not proposing provisions for conducting acute toxicity tests with herding agents-oil mixtures. The Agency is requesting comment on the need for acute toxicity tests conducted with herding agents-reference oil mixtures. A protocol for preparation of product/oil mixtures for toxicity testing is available for review in the docket.

(3) Limitations

The Agency is proposing a conditional use listing for herding agents. The proposal specifies that these products may only be used in those water environments for which the product was tested and for which it met the listing threshold criteria. The Agency recognizes that products may yield effective results in certain environments and not in others. Products that may be effective in freshwater may not necessarily be so in saltwater, and vice versa. The Agency is proposing this limitation to allow product manufacturers the flexibility to select which environment the product is to be tested and could be authorized for use, either saltwater, fresh water, or both. Therefore, the product would be listed and may only be authorized for use in those water environments for which it was tested and for which it met the listing criteria.

(g) Sorbent Requirements

The proposal defines sorbents as inert, insoluble substances that readily absorb and/or adsorb oil or hazardous substances. Sorbents would exclude those contaminated with substances that would interact with the environment beyond their absorption/adsorption capabilities (*e.g.,* an invasive species). The proposed definition states that sorbents are generally collected and removed from the environment and may be used in their natural bulk form, or as manufactured products in particulate form, sheets, rolls, pillows, or booms. The list of sorbent materials in the proposed definition includes: Natural organic substances (*e.g.,* feathers, cork, peat moss, and cellulose fibers such as bagasse, corncobs, and straw); (2) inorganic/mineral compounds (*e.g.,* volcanic ash, perlite, vermiculite, zeolite, clay); and (3) synthetic compounds (*e.g.,* polypropylene, polyethylene, polyurethane, polyester). The Agency proposes to identify a list of known sorbent materials, and make it publicly available so that emergency responders can be aware and make use of such sorbents on oil discharges. The Agency is also proposing a process for submitters to request to include other products as sorbents if they can certify they meet the inert, insoluble criteria.

Current Requirements: Sorbents are currently not listed on the Schedule, but rather a list characterizing these materials is included in section 300.915(g). The current rule allows the OSC to request written certification from the manufacturers that their particular sorbent product is comprised solely of those materials identified in the rule. When a sorbent consists of materials that are not specifically listed in the current rule, the Agency issues written certifications, and sometimes requires testing and evaluation for possible listing on the Schedule.

Proposed Revisions: The Agency proposes to provide a Sorbent Product List that includes certain publicly available non-proprietary sorbent materials. The Agency also proposes to allow submitters to request that other products be included in this list as sorbents if they provide the technical information required, including data to support the claim that their product meets the sorbent definition. The Agency recognizes that a sorbent

[61] USEPA 2010. *http://www.epa.gov/oppefed1/ecorisk_ders/toera_analysis_eco.htm#Ecotox.*

[62] Buist, I., Potter, S., Nedwed, T., (2011) Herding Agents to Thicken Oil Spills in Drift Ice for In Situ Burning: New Developments, IOSC, *http://ioscproceedings.org/doi/abs/10.7901/2169-3358-2011-1-230.*

[63] Buist, I., Nedwed, T., (2011) Using Herders for Rapid *In Situ* Burning Of Oil Spills on Open Water, IOSC, *http://ioscproceedings.org/doi/abs/10.7901/2169-3358-2011-1-231.*

material may consist of one or more substances not specifically identified in the proposed non-proprietary listing. For products consisting of one or more substances not specifically identified in the proposed listing, the Agency proposes submission requirements that include general and product characterization information required under paragraphs (a)(1) through (8), and paragraph (a)(13) of proposed § 300.915. These include name and contact information, identification as manufacturer or designated agent, product name/brand/trademark(s), contact information for primary distributors or importers, product SDS, conditions for product storage, product shelf life, and product label samples. The proposal would additionally require the certification statements required under paragraphs (a)(14)(iv), (a)(15), and (a)(16) of proposed § 300.915. The submitter would be required to certify that the product does not contain specified bacterial, fungal, or viral pathogens or opportunistic pathogens above National Ambient Water Quality Criteria lowest density values; that the product does not contain specified contaminants above National Water Quality Standards levels; and that the product does not contain any of the prohibited agents. Finally, the submitter would be required to include information to support the claim that the product meets the sorbent definition, including data such as its relative solubility and non-reactivity in fresh and/or salt water. The Agency will review the submission and make a determination to include the product as a sorbent on the Sorbent Product List. The Agency requests comments on this approach.

Testing Options

The current Subpart J has no toxicity or efficacy testing requirements for sorbents. There are two ASTM standards for performance testing that could be applicable to sorbents: The ASTM F716–09 *Standard Test Methods for Sorbent Performance of Absorbents,* and the ASTM F726–12 *Standard Test Method for Sorbent Performance of Adsorbents.* These methods include laboratory tests that describe the performance of these products in removing oils that are not emulsified and other floating, immiscible liquids from the surface of water. While these methods are to be individually used as a basis for comparison of either absorbents or adsorbents in a consistent manner, they are not useful for a cross comparison of absorbents with adsorbents, even though according to ASTM F716–09 all absorbents exhibit adsorbent properties. Further, these agents are comprised of inert and insoluble materials that are generally removed from the environment after use, minimizing their potential harm. Thus, the Agency is not proposing to include efficacy or toxicity testing requirements for these agents, but is requesting comments on whether testing information should be included as part of the submission requirements for other materials or products to be included as part of the Sorbent Product List.

5. Submission of Confidential Business Information (CBI)

Currently, manufacturers may assert a claim of confidential business information (CBI) for any information in their product package submissions to EPA. Typically, manufacturers claim as CBI the chemical identity (*e.g.,* chemical name and chemical abstracts number [CAS]) and concentration (weight percent) of each chemical component in the product along with information about the concentrations of those components in the product. The manufacturer may also claim certain other information in the technical product data, including technical data for sorbents, as CBI. EPA safeguards CBI information under the requirements in 40 CFR part 2, subpart B. The proposal addresses the CBI provisions for product submission under Subpart J in § 300.950.

Due to the amount of dispersant used during the Deepwater Horizon incident, and the need for the public's right-to-know about chemicals intentionally discharged into the environment, EPA wanted to make public information about the chemicals in the dispersant used, the results of air and water monitoring for these chemicals, and the concerns for human and environmental impact. A number of stakeholders wanted to know the chemical makeup of not only the dispersant used during the incident, but also of all other dispersants on the Schedule. This resulted in both a number of Freedom of Information Act (FOIA) requests and a Notice of Intent to Sue for Failure to Perform Nondiscretionary Duties under the CWA, requesting that the Agency release CBI for all dispersants on the Schedule.

EPA worked with the manufacturer for the dispersant used on the Gulf in response to the Deepwater Horizon incident to make the product chemical information publicly available (see *http://www.epa.gov/bpspill/*). The Agency also compiled a comprehensive aggregate list of the chemicals used in all listed dispersants. During this process, some manufacturers recognized the need to make information available to the public, but also argued the need to protect proprietary business information from competitors. Companies provided information on the magnitude of resources expended to develop a product and test it for listing on the Schedule; however, they argued that disclosing the chemical components, CAS numbers, and/or concentrations for their product would allow domestic and international competitors to freely duplicate or reverse engineer their product and potentially drive them out of the market. EPA is aware that over 90% of businesses on the current Schedule are small, and that for some companies the product they developed for the Schedule is their only business. While companies could protect their product via the U.S. patent process, they would be required to release components and concentrations information, which would be made public. Manufacturers voiced concern that not only others may use that information to tailor competitive products, but that the U.S. patent process would offer no protection against international competitors.

EPA believes that when chemical agents are used on oil discharges, it is critically important for the public and all other stakeholders to have information regarding the chemicals being added to the environment, along with information about their toxicity and fate. This is particularly true for major discharge events where larger quantities of chemical or biological agents may be authorized for use. Prompt and accurate information will allow the public to evaluate and understand the potential human and environmental effects of these chemical agents. While EPA understands it is essential for companies to protect their investment in developing unique products, it is proposing limitations to what submitters are allowed to claim as CBI in an effort to balance public access to information with proprietary business needs. The proposal provides that if a company submits a product for listing on the Schedule, then it will only be allowed to claim CBI for the concentrations of all chemical components, microbiological cultures, enzymes, or nutrients; all other information submitted to EPA for listing a product on the Schedule will not be considered CBI and will be made public. While providing confidential treatment for the concentrations of product components, the proposal allows public access to the identity of chemical components and relevant health and environmental effects

information. All other information required for a product submission (*e.g.,* company data, distributors, general product properties, recommended use procedures, the product category, contaminants, production capacities, product testing data) would already be publicly available for commercial products, and would not constitute proprietary business information or provide a business advantage. The Agency requests comments on whether this approach safeguards against duplication or reverse engineering of products by competitors and whether other information in Subpart J should be considered as CBI.

Alternatively, the Agency considered maintaining the current approach of allowing CBI claims for any information in their submission. When the incident arises where affected stakeholders or the public wants access to specific information, the Agency would request that the company substantiate its claims and make a determination whether to honor the claim or release the information to the public as provided in 40 CFR part 2, subpart B. The Agency also considered modifying the current approach by making the component identity and concentration information public without further notice or action for major discharge events or SONS, or for events where a given amount of chemical or biological agent would be allowed for use. Finally, another option for modifying the current approach would be to allow manufacturers to waive CBI claims only for certain chemical components for monitoring purposes (*e.g.* manufacturer identifies a ''marker'' component as a condition for listing) was also considered. The Agency is rejecting the current approach because it does not believe that, even with the modifications considered, it offers the appropriate balance between the public interest and business needs.

EPA also considered developing an aggregate list of components used in categories of chemical and biological agents for public disclosure. For example, a list of all the chemicals used in listed dispersants, a separate list for those substances used in surface washing agents, etc. This would allow information to be disassociated with specific products and protected from reverse engineering or duplication of products by competitors, while providing public access. The concern with this approach is how to update the aggregate list for new products without potentially revealing the components added to the list for that new product. Further, in the event of a major discharge or SONS, the interest will be for information and monitoring data specific to the product being used. Consequently, EPA is not adopting this approach, but requests comments on these and other options to handle CBI while balancing all interests.

6. Addition of a Product to the Schedule

The proposal establishes the requirements for submitters to request a product be listed on the Schedule in § 300.955. It provides administrative information, such as the address where to submit the package, as well as details of the requirements for a complete submission package. Additionally, it addresses how a submitter may request a listing determination review and the requirements when there are changes in a listed product. Finally, the proposal addresses the process the Agency will follow to review all new submissions, requests for review of decisions and product changes, as well as how it will transition from the current Schedule to a new one that reflects the new and amended testing and data requirement.

Submission. The proposal updates the address where the package is to be submitted.

Package contents. The proposal specifies a complete package must include, as follows:

- A company letter certifying all testing was conducted on representative product samples at a nationally or internationally accredited laboratory, that it was conducted in accordance with all technical rule requirements, and that all test results and product technical data and information reported are true and accurate;
- A numbered Table of Contents showing all required information and data submitted;
- All required data and information (both general and product category specific) in the order the requirements appear in the rule; and
- A separate inner envelope labeled: ''CONFIDENTIAL BUSINESS INFORMATION—TO BE OPENED BY THE PRODUCT SCHEDULE MANAGER ONLY'', if applicable.

Because of their intended function in responding to oil discharges, products listed on the Schedule will certainly impact the environment. It is important that the information provided by the submitter is true and accurate, as it serves as the basis for evaluating those potential environmental impacts. The Agency believes that it is appropriate for the submitter to be held accountable for the technical data and information provided to make these listing determinations. Thus, the proposal requires the submitter to certify the accuracy of the information submitted, and will reject any submission that is determined to be incomplete or non-compliant, misleading, or inaccurate.

The requirements for a Table of Contents and for the information to be organized as it appears in the regulation are intended to make the Agency review process as efficient as possible. These requirements will assist the Agency in conducting a quick and accurate review, both during the transition period, as well as for future submissions, by generally simplifying the review process.

While the Agency needs to process packages containing information claimed to be CBI with additional safeguards, it is the responsibility of the submitter to ensure that this information comes to the Agency clearly identified as such. Therefore, the proposal requires a separate and clearly marked envelope for CBI to ensure proper handling.

EPA Review. The proposal maintains most of the existing Agency process for reviewing product submissions. A revision to the current process increases the number of days allowed for the Agency to complete its product review from the current 60 days to 90 days from the date of receipt. This proposed change considers the additional technical data and information proposed to be required, as well as the Agency's past experience with submission packages based on the current requirements.

EPA will first review the package for completeness and compliance with all data and information requirements and will contact the submitter to verify information, or to request clarification or additional information, including a product sample, as necessary. The Agency will make product listing determinations based on a technical evaluation of all data and information submitted, any relevant information on impacts or potential impacts of the product or any of its components on human health or the environment, and on the intended use of the product. The Agency reserves the right to make a determination on whether the product will be listed, and under which category. For products that may meet more than one category (*e.g.,* a product that meets both the bioremediation and dispersant agent criteria), the Agency requests comments on whether there should be any product listing limitations beyond those identified for each individual product category. Within the 90-day timeframe, the Agency will notify the submitter, in writing, of its decision to either list the product on the Schedule and under which category or categories, or of its decision and supporting rationale to reject the submission. Submitters may

revise submission packages to address test results, data, or information deficiencies and resubmit them. Because the Agency will need a complete set of data and technical information to make a listing determination, the 90-day review time period will start anew once a complete package is resubmitted.

Request for review of decision. The proposal is not substantively changing the process for a submitter to request that the Agency review its determination on a product. If the Agency rejects a product for listing on the Schedule, the proposal continues to allow for a submitter to appeal to the EPA Administrator to review its determination to reject the product listing. The proposal maintains the requirement that such a request be in writing, within 30 days of receipt of the written notification of EPA's decision not to list the product on the Schedule. The request to review the Agency's determination must include a clear and concise statement with supporting facts and technical analysis that demonstrates why the submitter believes the Agency's assessment of the product was incorrect. The proposal allows the Administrator to request additional information or a meeting opportunity. Within 60 days of receipt of any such request, or within 60 days of receipt of any requested additional information, the proposal requires the Administrator or her designee to notify the submitter in writing of the review decision, maintaining the current timeframe.

Changes to a product listing. The Agency proposes to revise the provisions for notification of changes to a product listing. Submitters must notify EPA in writing within 30 days of any changes to the general product information submitted for listing on the Schedule so the OSCs have timely updated information. The proposal revises the notification requirement to include details of the specific changes to information submitted under § 300.915(a)(1) through (8) and § 300.915(a)(19) through (21) for a product on the Schedule, including the reasons for such changes and the supporting data and information, and maintains the provision allowing EPA to request additional information and clarification regarding these changes. For any changes to the chemical components and/or their concentrations, the proposed revisions would require retesting of the product according to the requirements for the product category, and the resubmission of a complete new package for a new review and consideration for a listing determination by the Agency of the reformulated product. While the Agency currently has and is retaining the option of requiring additional testing, it believes that when the chemical components or concentrations of a product change, an automatic retesting requirement is merited. The Agency believes this requirement is appropriate when the identity of the product itself changes; the only way of evaluating the potential effects of these changes on the efficacy and toxicity of a new product formulation is to retest it. The Agency considered whether it was necessary to explicitly provide the flexibility to waive this requirement under extraordinary circumstances (*i.e.,* a SONS event). However, OSCs already have broad authority to use agents in areas impacted or threatened by a release or discharge, whether the agent is identified or not on the Schedule, to prevent or substantially reduce an immediate threat to human life. In addition, the Agency considered whether there is a chemical concentration threshold that could accommodate minor adjustments to a product. For example, a producer may make a slight variation in a product formula to account for a food grade or technical grade chemical component. Such a threshold might be that if concentration changes vary by no more than 1%, no retesting is necessary. However, the Agency has no basis for such a threshold and requests comment on this approach with appropriate technical details. Because of this, and the concern for the potential impact reformulated products may have on the environment, the Agency is proposing to require retesting whenever the chemical components or concentrations of a product change. However, the Agency is requesting comments on whether it should require the retesting of all products that have a change in composition, even if the only change is of chemical components that may considered inert.

Transitioning Listed Products from the Current Schedule to the New Schedule. The Agency believes it important that products on the current Schedule continue to be available during the transition period to a new Schedule that reflects the amended requirements. During this transition period, all products on the current Schedule will remain conditionally listed and the Agency will rely on it for planning and response activities. Because of the proposed revisions to test protocols and listing criteria, and because of the additional test requirements, the Agency proposes that all products currently on the Schedule be retested, and that the new data and information be submitted to the Agency for reevaluation of the current listings within 24 months of the effective date of a final rule. The Agency believes this provides adequate time for submitters to prepare and submit new packages to EPA and for the Agency to review and make decisions on these products. For a product to be transitioned from the current Schedule to the new Schedule, manufacturers would be required to submit a new, complete package according to the amended test and listing criteria, and EPA would need to make a favorable finding to list the product on the new Schedule, either as currently listed or with modifications. Products on the current Schedule for which a new submission is not received, or that upon review of their submissions do not meet the revised listing criteria, would be removed from the Schedule at the end of the 24-month transition period. While the Agency is reviewing the new submission packages, planning and response authorities are encouraged to consider those products that based on existing data would meet the revised listing criteria. While the existing data may be limited and likely developed with different protocols, considering the new requirements in selecting products for planning and response activities would provide an increased level of environmental protection. The Agency notes, however, that this is not a requirement, and that the proposal would allow any product on the current Schedule to be authorized for use following the current protocols, until the 24-month transition period is over. The Agency is requesting comments on the practicability of this transition process, and whether the 24-month period allows sufficient time for retesting of products on the current Schedule, and for EPA to review and make listing determinations on the submissions for the new Schedule. The Agency also requests comments on potential R&D costs of modifying existing products to meet the new requirements that could be incurred during this transition.

7. Mandatory Product Disclaimer

The current requirements provide that the listing of a product on the Schedule does not constitute approval or endorsement of the product. To avoid possible misinterpretation or misrepresentation, the Agency currently requires that any label, advertisement, or technical literature that refers to the placement of the product on the Schedule must either reproduce in its entirety EPA's written notification that it will add the product to the Schedule

currently in § 300.920(a)(2) or (b)(2), or include the disclaimer currently set forth in § 300.920(e). It remains the Agency's position that listing a product on the Schedule does not constitute approval or endorsement of that product, nor a recommendation of its use. The Agency continues to believe that it is important to avoid any possible misinterpretation or misrepresentation of this policy. Thus, the requirement for a disclaimer to be included on any label, advertisement, or technical literature for the product is maintained. However, the proposal removes the alternative to reproduce in its entirety EPA's written notification that it will add the product to the Schedule currently in § 300.920(a)(2) or (b)(2). The Agency believes it will be able to update the Schedule list within a reasonable timeframe given the advances in information technology, and thus the option of producing the EPA letter of notification for a product listing should no longer be necessary. The Agency is proposing to modify the disclaimer language as follows:

[PRODUCT NAME] is listed on the National Contingency Plan (NCP) Product Schedule. This listing does NOT mean that EPA approves, recommends, licenses, or certifies the use of [PRODUCT NAME] on an oil discharge. This listing means only that data have been submitted to EPA as required by Subpart J of the NCP. Only a Federal On-Scene Coordinator (OSC) may authorize use of this product according to the NCP.

The proposed revisions set forth in § 300.965 are intended to clarify that the use of these products is conditional to OSC authorization following the requirements set forth under the NCP regulations. The disclaimer language must continue to be conspicuously displayed in its entirety, and must be fully reproduced on all product literatures, labels, and electronic media, including Web site pages. As discussed in the next section, a product can be removed from the Schedule if the submitter does not comply with the disclaimer requirements, or makes any improper attempt to demonstrate the approval or endorsement of a product. The Agency requests comments on the proposed revisions.

8. Removal of a Product From the Schedule

Products that are not properly used in the field may cause harm to human health and the environment, and may constitute violations of the CWA, and other federal, state, or local laws. Misleading, inaccurate, or incorrect statements within a product submittal package or within language that refers to the listing of a product on the Schedule may result in their improper or incorrect use. Falsification of federal documents, unsupported toxicity or efficacy claims, submission of incorrect product composition or use information, or withholding technical product data are some examples of these acts. To minimize potential misuse of listed products, the Agency believes it is appropriate to further clarify the criteria for the removal of a product from the Schedule. In § 300.970 the proposal specifically includes, but does not limit, as causes for removal from the Schedule: Any misleading, inaccurate, or incorrect statements within the product submission to EPA or to any person or private or public entity regarding the composition or use of the product to remove or control oil discharges, including on labels, advertisements, or technical literature; any alterations to the chemical components, concentrations, or use conditions of the product without proper notification to EPA as required by § 300.955(e); the failure to print the disclaimer provided in § 300.965 on all labels, advertisements, or technical literature; or any new or previously unknown relevant information concerning the impacts or potential impacts of the product to human health or the environment. It also establishes a process for removal if the Agency obtains evidence of cause for removal. EPA would notify the submitter in writing, at the address of record, of its reasons for removal of the product from the Schedule. The proposal would allow for an appeals process similar to the one set forth for listing determinations. Appeals must be received within 30 days of receipt of EPA's removal notification and must contain a clear and concise statement with supporting facts and technical analysis demonstrating why the submitter believes EPA's decision was incorrect. Written notification from the Administrator will be sent to the submitter within 60 days of any appeal, or within 60 days of receipt of any requested additional information. However, if no appeal is received within the 30 days of receipt of EPA's removal notification, the product would be delisted without further notice. The Agency requests comments on the proposed clarification of criteria for removal of products from the Schedule, and on the associated appeals process.

9. Appendix C to Part 300

The Agency is proposing to revise the current Appendix C—*Swirling Flask Dispersant Efficacy Test, Revised Standard Dispersant Toxicity Test, and Bioremediation Agent Efficacy Test* as Appendix C—*Requirements for Product Testing Protocols and Summary Test Data: Dispersant Baffled Flask Efficacy and Toxicity Tests; Standard Acute Toxicity Test for Bioremediation Agents, Surface Washing Agents, Herding Agents, and Solidifiers; and Bioremediation Agent Efficacy Test.* The proposed revisions reflect the proposed new and revised testing protocols for listing agents on the Schedule. The details of the technical changes and rationale are discussed for each agent in section V.C.4 of this preamble—Data and Information Requirements for Product Schedule Listing. The appendix reflects the proposed technical considerations and listing requirements. The Agency is requesting comment on the protocols and their technical rationale. The Agency is also requesting comment on its organization and ease of use.

10. Appendix E to Part 300

The 1994 revisions to the NCP established Appendix E, *Oil Spill Response,* which separates the oil spill response requirements of the NCP from the hazardous substance release requirements (59 FR 47414). The purpose of creating this appendix was to compile general oil discharge response requirements into one document to aid responsible parties and responders with their duties under the national response system. The Agency's intent was to provide guidance, and not to alter in any way the meaning or policy stated in other sections or subparts of the NCP. However, some minor variations between the Appendix E provisions and the analogous provisions of the NCP rule language were necessary to ensure that the appendix addressed only oil discharges; hazardous substance releases continue to be addressed in the NCP rule but are not addressed in Appendix E.

The Agency proposes to remove Appendix E. While having all of the information pertaining to oil discharges compiled in one location may offer useful guidance, it is not necessary that this guidance be codified as a regulatory appendix to the NCP. The provisions in the appendix do not alter any NCP requirement; however, they do contain variations from the main NCP requirements in order to have the appendix be relevant solely to oil discharges. While EPA carefully reviewed the appendix and the relevant sections of the NCP at the time it was established to ensure consistency in policy, instructions, guidance and requirements, there were intentional minor variations. These may result in having responses to oil discharges

subject to two sets of what appear to be potentially conflicting requirements, causing unnecessary confusion.

Because all requirements in Appendix E are part of the NCP, any revisions to the NCP necessitate revisions to this appendix. This adds burden not only for the Agency in revising and ensuring consistency, but also for the regulated community in reviewing redundant and duplicative requirements. While it may be a useful tool to have all of the oil discharge specific requirements in one location, the Agency has reconsidered its position and believes that this is more appropriately achieved through a separate guidance document, one that does not codify duplicative regulatory requirements. The Agency requests comments on the proposal to remove Appendix E from the NCP regulation, and whether it should continue to offer similar guidance through other formats.

VI. Summary of Proposed Rule Provisions

This section summarizes the proposed changes to 40 CFR parts 110 and 300. Subpart J has been renumbered to include new, consolidated, and revised sections. Some of the rule sections have been retained, removed, or moved in their entirety. The Table below provides an overview of the existing rule and proposed rule citations for a quick reference of the proposed changes.

Section 110.4, Dispersants, would be revised to link the rule with the new and amended regulatory definitions for Subpart J product categories.

Section 300.5, Definitions, would be revised to include new, amended, and deleted definitions.

Subpart J—Use of Dispersants, Chemicals, and Bioremediations Agents, heading would be revised to reflect new and amended regulatory definitions for product categories.

Section 300.900, General, paragraphs (a) and (c) would be revised to reflect new and amended regulatory definitions for product categories.

Section 300.905, NCP Product Schedule, would be removed.

Section 300.910, Authorization of Use, would be revised and new paragraphs added to clarify planning and preauthorization responsibilities.

- Paragraph (a) would be revised to clarify the requirements, including process, responsibilities, and factors to consider for preauthorization; and add new requirements for preauthorization plan review, concurrence, and withdrawal procedures.
- Paragraph (b) would be revised to clarify the requirements for using a listed product not addressed by a preauthorization plan and add new parameters for use considerations.
- Paragraph (c) would be revised to clarify the requirements for authorizing the use of burning agents by an OSC for authorized in-situ burns.
- Paragraph (d) would be revised to clarify the exception requirements and add specific time frames for notification of continued agent use.
- Paragraph (e) would be revised to expand the prohibition to include nonylphenol (NP) or nonylphenol ethoxylates (NPEs) as components of chemical or biological agents.
- Paragraph (f) would be revised to add new regulatory requirements for agent storage and use. Existing paragraph (f) requirements would be moved to new paragraph (g), Supplemental Testing, Monitoring, and Information.
- New paragraph (g), Supplemental Testing, Monitoring, and Information, would revise the regulatory text to clarify the requirements for supplemental testing, monitoring and information.
- New paragraph (h), Recovery of Oil and Agents from the Environment, would add regulatory requirements for recovery of oil and agents from the environment.
- New paragraph (i), Reporting of Agent Use, would add regulatory requirements for notification of agent use on an oil discharge.

New section 300.913, Monitoring the Use of Dispersants, would add regulatory requirements for monitoring certain prolonged surface and subsurface use of dispersants.

Section 300.915, Data Requirements, would be revised to consolidate general submission requirements applicable to all product categories. The section would be restructured to include new testing and listing requirements for specific product categories.

- Paragraph (a), Dispersants, would be revised to consolidate general testing and listing requirements from existing paragraphs (a), (b), (d), and (f). The paragraph would include revisions and new requirements for the identification of and testing for all product categories designated for listing. Existing paragraph (a) requirements specific to dispersants would be moved to new section 300.915(b), Dispersant Testing and Listing Requirements. The paragraph would also be revised to add new toxicity and efficacy testing requirements, limitations for use, and new criteria for listing a dispersant to the Schedule. Existing paragraph (b) would be moved to new paragraph (c), Surface Washing Agent Testing and Listing Requirements.
- Paragraph (b), Surface Washing Agents, would be moved to new paragraph (c), Surface Washing Agent Testing and Listing Requirements. The paragraph would be revised to add new toxicity and efficacy testing requirements, limitations for use, and new criteria for listing a surface washing agent to the Schedule. Existing paragraph (c), Surface Collecting Agents, would be deleted.
- Paragraph (d), Bioremediation Agents, would be revised to add new toxicity and efficacy testing requirements, limitations for use, and new criteria for listing a bioremediation agent to the Schedule. Existing paragraphs (d)(9) and (10) were moved to new paragraph (a), General Product Information.
- Paragraph (e) would be revised to add new regulatory requirements for submission and listing of a solidifier. Existing paragraph (e), Burning Agents, would be deleted.
- Paragraph (f) would be revised to add new toxicity testing requirements, limitations of use, and criteria for listing a herding agent on the Schedule. Existing paragraph (f), Miscellaneous Oil Spill Control Agents, would be deleted.
- Paragraph (g), Sorbents, would be revised to add new exceptions for listing a sorbent to the Schedule.

Section 300.920, Addition of Products to Schedule, would be moved to new section 300.955, Addition of a Product to the Schedule.

- Paragraph (a) would be revised to include submission instructions for all product categories. Existing paragraphs (a)(1) through (3) regulatory text specific to dispersant applications would be moved to new §§ 300.915(b) and 300.955(c) and (d).
- Paragraph (b) would be revised to add new regulatory text for preparation of complete submission packages. Existing paragraph (b) regulatory text would be moved to new § 300.955(c) and (d).
- Paragraph (c) would be revised to add regulatory text for EPA's review of submission packages and decision criteria for listing. Existing paragraph (c) would be moved to new § 300.950, Submission of Confidential Business Information (CBI).
- Paragraph (d) would be revised to add regulatory text for requesting a listing decision review. Existing paragraph (d) would be moved to new § 300.955(e), Changes to a Listed Product.
- Paragraph (e) would be revised to add new regulatory text for notification of changes to a listed product. Existing paragraph (e) would be moved to new

§ 300.965, Mandatory Product Disclaimer.

- New paragraph (f) would add new regulatory requirements for transitioning products on the current Schedule to the new Schedule.

New § 300.950, Confidential Business Information (CBI), would revise and clarify the allowable CBI claims in a submission package.

New § 300.965, Mandatory Product Disclaimer, would clarify the regulatory text for including a disclaimer statement on all product labels and literature.

New § 300.970, Removal of a Product from the Schedule, would add basis for removal of products from the Schedule, EPA notification of decision, and appeals process.

Revised Appendix C to Part 300—Requirements for Product Testing Protocols and Summary Test Data: Dispersant Baffled Flask Efficacy and Toxicity Tests; Standard Acute Toxicity Test for Bioremediation Agents, Surface Washing Agents, Herding Agents, and Solidifiers; and Bioremediation Agent Efficacy Test.

Removed Appendix E to Part 300—Oil Spill Response.

40 CFR PART 100 DISCHARGE OF OIL—DISTRIBUTION TABLE

Current citation	Proposed rule citation
110.4 Dispersants	110.4 Chemical and Biological Agents.

40 CFR PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN—DISTRIBUTION TABLE

Current citations	Proposed rule citations
§ 300.5 Definitions	§ 300.5 Definitions.
Subpart J—Use of Dispersants and Other Chemicals	Subpart J—Use of Dispersants, and Other Chemical and Biological Agents.
§ 300.900 General	§ 300.900 General.
§ 300.900(a)	§ 300.900(a)
§ 300.900(c)	§ 300.900(c)
§ 300.905 NCP Product Schedule	Deleted.
§ 300.910 Authorization of Use	§ 300.910 Authorization for Agent Use.
§ 300.910(a)	§ 300.910(a) Use of Agents Identified on the Schedule on Oil Discharges Addressed by a Preauthorization Plan.
§ 300.910(b)	§ 300.910(b) Use of Agents Identified on the Schedule on Oil Discharges Not Addressed by a Preauthorization Plan.
§ 300.910(c)	§ 300.910(c) Burning Agents.
§ 300.910(d)	§ 300.910(d) Exceptions.
§ 300.910(e)	§ 300.910(e) Prohibited Agents.
§ 300.910(f)	§ 300.910(g) Supplemental Testing, Monitoring, and Information.
	§ 300.910(f) Storage and Use of Agents.
	§ 300.910(h) Recovery of Oil and Agents from the Environment.
	§ 300.910(i) Reporting of Agent Use.
	§ 300.913 Monitoring the Use of Dispersants.
	§ 300.913(a).
	§ 300.913(b).
	§ 300.913(c).
	§ 300.913(d).
	§ 300.913(e).
	§ 300.913(f).
§ 300.915 Data Requirements	§ 300.915 Data and Information Requirements for Product Schedule Listing.
§ 300.915(a)(1) through (12) Dispersants	§ 300.915(a)(1) through (21) General Product Information.
	§ 300.915(b) Dispersant Testing and Listing Requirements.
§ 300.915(b) Surface Washing Agents	§ 300.915(a)(1) through (21) General Product Information.
	§ 300.915(c) Surface Washing Agent Testing and Listing Requirements.
§ 300.915(c) Surface Collecting Agents	Deleted.
$300.915(d) Bioremediation Agents	§ 300.915(a)(1) through (21) General Product Information.
	§ 300.915(d) Bioremediation Agent Testing and Listing Requirements.
§ 300.915(e) Burning Agents	Deleted.
§ 300.915(f) Miscellaneous Oil Spill Control Agents	Deleted.
§ 300.915(g) Sorbents	§ 300.915(g) Sorbent Listing Requirements.
§ 300.915(h) Mixed Products	Deleted.
	§ 300.915(e) Solidifier Testing and Listing Requirements, including § 300.915(a)(1) through (21) General Product Information.
	§ 300.915(f) Herding Agent Testing and Listing Requirements, including § 300.915(a)(1) through (21) General Product Information.
§ 300.920 Addition of Products to Schedule	§ 300.955 Addition of a Product to the Schedule.
§ 300.920(a)(1) Dispersants	§ 300.955(a) Submission.
	§ 300.915(b) Dispersant Testing and Listing Requirements.
§ 300.920(a)(2)	§ 300.955(c) EPA Review.
§ 300.920(a)(3)	§ 300.955(d) Request for Review of Decision.
	§ 300.955(b) Package Contents.
§ 300.920(b)(1) Surface Washing Agents, Surface Collecting Agents, Bioremediation Agents, and Miscellaneous Oil Spill Control Agents.	§ 300.955(a) Submission.

40 CFR PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN—DISTRIBUTION TABLE—Continued

Current citations	Proposed rule citations
§ 300.920(b)(2)	§ 300.955(c) EPA Review.
§ 300.920(c)	§ 300.950 Submission of Confidential Business Information (CBI).
§ 300.920(d)	§ 300.955(e) Changes to a Listed Product.
	§ 300.955(f) Transitioning Listed Products from the Current Schedule to the New Schedule.
§ 300.920(e)	§ 300.965 Mandatory Product Disclaimer.
	§ 300.970 Removal of a Product from the Schedule.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' This action raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the *Regulatory Impact Analysis for Proposed Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan Regulations.* A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here.

The Agency expects the proposed rule would not cause a significant economic impact on a substantial number of small businesses. The total incremental costs are estimated as $667,610 to $694,343 annually at 3% and 7% ($2011) annualization rates, respectively. The benefits of this action are assessed qualitatively and include, for example, greater clarity of regulatory requirements, as well as less toxic products. The resulting ratio of compliance cost to annual sales revenue for the proposed rule for existing and new product manufacturers would be less than one percent in most instances.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1664.10. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The ICR supporting this proposed rule is largely self-implementing. The information collection is to ensure that: (1) The Agency has the necessary information to make Schedule listing determinations specific to the different product categories; (2) product use by owners or operators of facilities or vessels, or response personnel, in response to oil discharges is performed in accordance with all applicable requirements; and (3) the Agency can verify compliance as needed. Section 300.950 of the NCP contains provisions for confidentiality.

EPA has carefully considered the burden imposed upon the regulated community by the proposed regulations. EPA believes that the activities required are necessary and, to the extent possible, has attempted to minimize the burden imposed. The minimum requirements specified in the proposed rule are intended to ensure that, when needed, products are used properly in the field to respond to an oil discharge in a manner protective of human health and the environment.

Respondents/affected entities: Manufacturers of oil spill mitigating agents (products)/Oil spill responsible parties.

Respondent's obligation to respond: Mandatory (40 CFR Part 300, Subpart J).

Estimated number of respondents: 65.

Frequency of response: Initially.

Total estimated burden: 721 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $584,504 (per year), includes $575,400 operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *oria_submisssions@omb.eop.gov*, Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than February 23, 2015. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) As defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are product

manufacturers and laboratories and state and local governments that are involved in product development, testing and use for oil discharge response. EPA conducted a small business analysis consistent with the Agency's 2006 small business guidance. The Agency's analysis indicates that about 95 percent of manufacturers are small businesses. In conducting the small business analysis, the agency compared the incremental annualized compliance costs to the annual sales revenue for the smallest entities. The results indicate that 90 percent of the smallest manufacturers have annualized compliance costs that are less than 1 percent of their annual sales revenue, and that no manufacturers are expected to have incremental costs that exceed 3 percent of annual sales. The small business analysis is available for review in the Regulatory Impact Analysis (RIA). Therefore, we have determined that this proposed rule does not have a significant impact on a substantial number of small entities.

Nonetheless, EPA has tried to reduce the impact of this rule on small entities in developing the regulatory requirements that balance the costs and burden, while addressing the environmental protection concerns. We continue to be interested in the potential impacts of this proposed rule on small business entities and welcome comments on the issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This proposed rule imposes no new enforceable duty on any state, local or tribal governments or the private sector. UMRA excludes from the definition of ''Federal intergovernmental mandate'' and ''Federal private sector mandate'' duties that arise from conditions of Federal assistance. UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. UMRA also excludes from the definition of ''Federal private sector mandate'' duties that arise from participation in a voluntary Federal program. Since the decision on whether to request that a product be included on the Schedule is voluntary, the Agency has determined that this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal does not alter the general procedures already defined in the NCP of how state, local, and federal agencies cooperate in responding to oil spills and how to consult with the OSC and RRT when considering the use of products on the Schedule. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law, similarly to the effect on states. EPA will be consulting with tribal officials as it develops this regulation to permit them to have meaningful and timely input into its development. Consultation will include conference calls, webinars, and meetings with interested tribal representatives to ensure that their concerns are addressed before the rule is finalized. In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish environmental standards, such as limits on levels of pollutants in the water, that are intended to directly mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposal focuses on maintaining the availability of certain response tools that can be considered when responding to oil discharges, minimizing any potential adverse impacts from their use, and resulting in greater overall environmental protection. Thus, the proposed rule would not cause reductions in the supply or production of oil, fuel, coal, or electricity; nor would it result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. The Agency conducted a search to identify potentially applicable

voluntary consensus standards for efficacy testing. However, we identified no such standards. Therefore, EPA developed the Baffled Flask Efficacy Test and the Bioremediation Efficacy Test required in Appendix C of this proposed rule. Voluntary consensus standards developed by ASTM are recommended for several product property data points, such as pH, flash point and pour point. The product toxicity testing relies on existing protocols that are universally accepted. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards for product efficacy and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629 (February 11, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). To address this goal, EPA conducted a qualitative analysis of the environmental justice issues under this proposed rule.

Under the NCP, RRTs and ACs are required to address, as part of their planning activities, the desirability of using appropriate chemical or biological agents, or other spill mitigating devices. In addition, the OSC, under authority granted by the NCP, must respond to an oil spill in a diligent and effective manner to protect human health and the environment. If chemical or biological agents are needed, the OSC must coordinate with the RRT and ACs before their use is authorized. In all cases, the RRT, ACs and OSC will address a broad array of oil spill response and mitigation issues, including the potential for environmental justice concerns. Historically, EPA has not found any evidence that the use of chemical or biological agents on the Schedule on oil spills in the U.S. has had any disproportionate effect on any environmental justice communities. However, EPA will continue to monitor the implementation of the rule to ensure the planned or actual use of chemical or biological agents has no disproportionate effect on any EJ communities.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Specifically, the proposed rule provides additional safeguards before any product can be listed on the Schedule, as well as allows OSCs and RRTs to request additional information to ensure that the use of any chemical or biological agent, or any other spill mitigating substance, in responding to oil discharges is protective of human health and the environment. This proposed rule is consistent with EPA's Environmental Justice Strategy and the OSWER Environmental Justice Action Agenda.

List of Subjects

40 CFR Part 110

Environmental protection, Oil pollution, and Reporting and recordkeeping requirements.

40 CFR Part 300

Air pollution control, Area contingency planning, Bioremediation, Chemicals, Dispersants, Environmental protection, Hazardous materials, Hazardous substances, Intergovernmental relations, Natural resources, Oil spills, Oil spill mitigating devices, Regional response teams, Sorbents, and Surface washing agents.

Dated: January 9, 2015.

Gina McCarthy,

Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 110 and 300 to read as follows:

PART 110—DISCHARGE OF OIL

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR parts 1971–1975 Comp., p. 793.

■ 2. Revise § 110.4 and its section heading to read as follows:

§ 110.4 Chemical or biological agents.

Addition of any chemical or biological agent, as defined in § 300.5, to oil to be discharged that would circumvent the provisions of this part is prohibited.

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 3. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Subpart A—Introduction

■ 4. Amend § 300.5 by:

■ a. Adding in alphabetical order the definitions of ''Bioaccumulation'', ''Bioconcentration'', ''Biodegradation'', ''Biological agents'', and ''Bioremediation'';

■ b. Revising the definitions of ''Bioremediation agents'', ''Burning agents'', ''Chemical agents'', and ''Dispersants'';

■ c. Adding in alphabetical order the definition of ''Herding agents'';

■ d. Removing the definitions for ''Miscellaneous oil spill control agent'';

■ e. Adding in alphabetical order the definition of ''Products'';

■ f. Revising the definition of ''Sinking agents'';

■ g. Adding in alphabetical order the definition of ''Solidifiers''; and

■ h. Revising the definition of ''Sorbents''

■ i. Removing the definition for ''Surface collecting agents''.

■ j. Revising the definition title ''Surface washing agent'' and its definition;

The revisions and additions read as follows:

§ 300.5 Definitions.

* * * * *

Bioaccumulation is the process of accumulation of chemicals in the tissue of organisms through any route, including respiration, ingestion, or direct contact with the ambient or contaminated medium.

Bioconcentration is the accumulation of chemicals in the tissues of organisms from water alone.

Biodegradation is a process by which microorganisms metabolically decompose contaminants into biomass and simpler compounds such as carbon dioxide, water, and innocuous end products.

Biological agents are microorganisms (typically bacteria, fungi, or algae) or biological catalysts, such as enzymes, able to enhance the biodegradation of a contaminated environment.

Bioremediation is the process of enhancing the ability of microorganisms to convert contaminants into biomass and innocuous end products by the addition of materials into a contaminated environment to accelerate the natural biodegradation process.

Bioremediation agents are biological agents and/or nutrient additives deliberately introduced into a contaminated environment to increase the rate of biodegradation and mitigate any deleterious effects caused by the contaminant constituents. Bioremediation agents include microorganisms, enzymes, and nutrient additives such as fertilizers containing bioavailable forms of nitrogen, phosphorus and potassium.

Burning agents are additives that improve the combustibility of the materials to which they are applied through physical or chemical means.

* * * * *

Chemical agents are elements, compounds, or mixtures designed to facilitate the removal of oil from a contaminated environment and mitigate any deleterious effects. Chemical agent categories include burning agents, dispersants, herding agents, sinking agents, solidifiers, surface washing agents, and bioremediation agents that consist of nutrient additives.

* * * * *

Dispersants are typically mixtures of solvents, surfactants, and additives that promote the formation of small droplets of oil in the water column by reducing the oil-water interfacial tension.

* * * * *

Herding agents are substances that are used to control the spreading of the oil across the water surface.

* * * * *

Products are chemical or biological agents manufactured using a unique composition or formulation.

* * * * *

Sinking agents are substances deliberately introduced into an oil discharge for the purpose of submerging the oil to the bottom of a water body.

* * * * *

Solidifiers are substances that through a chemical reaction cause oil to become a cohesive mass, preventing oil from dissolving or dispersing into the water column, and which are collected and recovered from the environment.

Sorbents are inert, insoluble substances that readily absorb and/or adsorb oil or hazardous substances, and that are not combined with or act as a chemical or biological agent. Sorbents are generally collected and recovered from the environment. Sorbents may be used in their natural bulk form, or as manufactured products in particulate form, sheets, rolls, pillows, or booms. Sorbents consist of:

(1) Natural organic substances (*e.g.,* feathers, cork, peat moss, and cellulose fibers such as bagasse, corncobs, and straw);

(2) Inorganic/mineral compounds (*e.g.,* volcanic ash, perlite, vermiculite, zeolite, clay); and

(3) Synthetic compounds (*e.g.,* polypropylene, polyethylene, polyurethane, polyester).

* * * * *

Surface washing agents are substances that separate oil from solid surfaces, such as beaches, rocks, metals, or concrete, through a detergency mechanism that lifts and floats oil for collection and recovery from the environment with minimal dissolution, dispersion, or transfer of oil into the water column.

* * * * *

Subpart J—Use of Dispersants, and Other Chemical and Biological Agents

■ 5. Revise the heading of Subpart J as set out above.

■ 6. Amend § 300.900 by revising paragraphs (a) and (c), and by adding paragraph (d) to read as follows:

§ 300.900 General.

(a) Section 311(d)(2)(G) of the Clean Water Act (CWA) requires EPA to prepare a schedule identifying dispersants, other chemicals, other spill mitigating devices and substances if any, that may be used in carrying out the NCP; and the waters and quantities in which they may be used. This subpart establishes a schedule identifying chemical and biological agents, and procedures that, when taken together, identify the waters and quantities in which such dispersants, other chemicals, or other spill mitigating devices and substances may be used.

* * * * *

(c) This subpart applies to the use of chemical and biological agents as defined in Subpart A of this part, or other substances that may be used to remove, control, or otherwise mitigate oil discharges.

(d) [Reserved]

§ 300.905 [Removed]

■ 7. Remove § 300.905.

■ 8. Revise § 300.910 and the section heading to read as follows:

§ 300.910 Authorization for agent use.

Use of chemical or biological agents in response to oil discharges to waters of the U.S. or adjoining shorelines must be authorized by the OSC in accordance with the provisions of this section:

(a) *Use of Agents Identified on the Schedule on Oil Discharges Addressed by a Preauthorization Plan.* RRTs and Area Committees shall address in a preauthorization plan, as part of their planning activities, whether the use of chemical and biological agents listed on the Schedule on certain oil discharges is appropriate. RRTs and Area Committees shall, as appropriate, include applicable approved preauthorization plans in RCPs and ACPs. When a preauthorization plan is approved in advance for the use of certain agents under specified discharge situations, then the OSC may authorize the use of agents on the Schedule for their intended purpose without obtaining the incident specific concurrences described in paragraph (b) of this section.

(1) *Preauthorization Plan Development.* For discharge situations identified where such agents may be used, the preauthorization plan must specify limits for the quantities and the duration of use, and use parameters for water depth, distance to shoreline, and proximity to populated areas. In meeting the provisions of this paragraph, preauthorization plans should document how regional factors are addressed including likely sources and types of oil that might be discharged, various discharge scenarios, the existence and location of environmentally sensitive resources or restricted areas that might be impacted by discharged oil, and logistical factors including inventory, storage locations and manufacturing capability of available agents, availability of equipment needed for agent use, availability of adequately trained

operators, and means to monitor agent use in the environment.

(2) *Preauthorization Plan Approval.* The EPA representative to the RRT, the Department of Commerce and the Department of the Interior natural resource trustees and, as appropriate the RRT representative from the state(s) with jurisdiction over waters and adjoining shorelines within the preauthorization plan area shall review and either approve, approve with modification, or disapprove the preauthorization plans developed by the RRT and/or the Area Committees. Withdrawal of concurrence means the preauthorization plan becomes invalid and the authorization of use for chemical or biological agents must be performed according to paragraph (b) of this section. The RRTs and Area Committees shall address the withdrawal and the RRT shall notify the NRT of the final status of the preauthorization plan within 30 days from withdrawal.

(3) *Preauthorization Plans Reviews.* The RRT and/or the Area Committees must review, and revise as needed, preauthorization plans at least every 5 years; after a major discharge or after a Spill of National Significance (SONS); to address revisions of the Schedule; to reflect new listings of threatened and/or endangered species; and to address any other change that may impact the conditions under which the use of chemical and biological agents is preauthorized. The designated EPA RRT representative, the Department of Commerce and the Department of the Interior natural resource trustees, and the RRT representative from the state(s) with jurisdiction over the waters of the area to which a preauthorization plan applies shall review and either approve, approve with modification, or disapprove any revisions to the preauthorization plans.

(b) *Use of Agents Identified on the Schedule on Oil Discharges Not Addressed by a Preauthorization Plan.* For discharge situations that are not addressed by the preauthorization plan developed pursuant to paragraph (a) of this section, the OSC may authorize the use of appropriate chemical or biological agents identified on the Schedule for their intended purpose on an oil discharge with the concurrence of the designated EPA RRT representative and, as appropriate, the concurrence of the RRT representatives from the state(s) with jurisdiction over the waters and adjoining shorelines threatened by the release or discharge, and in consultation with the Department of Commerce and the Department of the Interior natural resource trustees. In meeting the provisions of this paragraph, the OSC must consider and document the parameters for the use of agents including the quantities to be used, the duration of use, the depth of water, the distance to shoreline and proximity to populated areas, and should address factors such as environmentally sensitive resources or restricted areas that might be impacted, agent inventory and storage locations, agent manufacturing capability, availability of equipment needed for agent use, availability of adequately trained operators and appropriate means to monitor agent use in the environment.

(c) *Burning Agents.* For authorized in-situ burns, the OSC may authorize the use of burning agents.

(d) *Exception.* The OSC may authorize the use of any chemical or biological agent, whether it is identified or not on the Schedule, without obtaining the immediate concurrence of the designated EPA RRT representative and, as appropriate, the RRT representatives from the state(s) with jurisdiction over the waters and adjoining shorelines threatened by the release or discharge, when, in the judgment of the OSC, the use of the agent is necessary to prevent or substantially reduce a threat to human life. If an OSC authorizes the use of an agent pursuant to this paragraph, he or she shall immediately notify, and document the circumstances requiring and the reasons for use of the agent to the EPA RRT representative and, as appropriate, the RRT representatives from the affected state(s) and, the Department of Commerce/Department of the Interior natural resources trustees. Use of any agent beyond 48 hours under this exception shall be in accordance with paragraphs (a) or (b) of this section.

(e) *Prohibited Agents.* Notwithstanding paragraph (d) of this section, the OSC may not authorize the use of the following:

(1) Sinking agents, or any other chemical agent, biological agent, or any substance that acts as a sinking agent when mixed with oil; and

(2) Chemical or biological agents that have either nonylphenol (NP) or nonylphenol ethoxylates (NPEs) as components.

(f) *Storage and Use of Agents.* The OSC may authorize for use only products that are certified by the responsible party to have been stored under the conditions provided by the submitter under § 300.915(a)(6) and whose date of use does not exceed the expiration date listed on the container's label at the time of the incident. The responsible party must provide the OSC product documentation, developed in consultation with the submitter of the product to the Schedule, prior to OSC authorization of product use affirming it has maintained its integrity, including no changes in its composition, efficacy, and toxicity. The owner or operator of a facility or vessel must ensure samples of the expired product lot are tested following the applicable testing protocols in Appendix C, and that they are representative of all storage conditions at any end user location. If testing demonstrates the expired product has maintained its integrity, the product may be used for an additional 5 years from the date of the testing described above. The responsible party, or its representative, must re-label the tested product lots and maintain test results and document all of the information under § 300.915(a)(17) and (a)(18) until used. The owner or operator of a facility or vessel must ensure the testing of re-labeled products every 5 years.

(g) *Supplemental Testing, Monitoring and Information.* The RRT may require supplementary toxicity and efficacy testing, or available data or information that addresses site, area, or ecosystem specific concerns relative to the use of a product for both planning and authorization of use. During a discharge incident, the RRT may request that the OSC require a responsible party to conduct additional monitoring associated with the use of a product. Such additional monitoring data may include supplemental toxicity and efficacy testing or submission of available data or information that addresses the discharge area or ecosystem specific concerns relative to the use of a product or that aids the OSC and/or the RRT in operational decisions.

(h) *Recovery of Agents from the Environment.* Depending on factors such as the safety of response personnel and harm to the environment, and as directed by the OSC, the responsible party shall ensure that any removal action adequately contains, collects, stores and disposes of agents that are intended to be recovered from the environment.

(i) *Reporting of Agent Use.* Unless already included in the OSC report required under § 300.165 of this part, within 30 days of completion of agent operations, the authorizing OSC shall provide the RRT the following information on chemical and biological agents used in response to an oil discharge: product name, quantity and concentration used, duration of use, locations, and any data collected and analysis of efficacy or environmental effects.

■ 9. Add § 300.913 to read as follows:

§ 300.913 Monitoring the use of dispersants.

As directed by the OSC, the responsible party must monitor any subsurface use of dispersant in response to an oil discharge, surface use of dispersant in response to oil discharges of more than 100,000 U.S. gallons occurring within 24 hours, and surface use of dispersant for more than 96 hours in response to an oil discharge, and submit a Quality Assurance Project Plan for approval to the OSC covering the collection of all environmental data. When these dispersant use conditions are met, and for the duration of dispersant operations, the responsible party shall:

(a) Document the characteristics of the source oil; best estimate of the oil discharge flow rate, periodically reevaluated as conditions dictate, including a description of the method, associated uncertainties, and materials; dispersant(s) product used, rationale for dispersant product choice(s) including the results of any efficacy and toxicity tests specific to area or site conditions, recommended dispersant-to-oil ratio (DOR); and the application method and procedures, including a description of the equipment to be used, hourly application rates, capacities, and total amount of dispersant needed. For subsurface discharges also document the best estimate of the discharge flow rate of any associated volatile petroleum hydrocarbons, periodically reevaluated as conditions dictate, including a description of the method, associated uncertainties, and materials.

(b) In areas not affected by the discharge of oil, collect a representative set of background water column samples following standard operating and quality assurance procedures, at the closest safe distance from the discharge as determined by the OSC and in any direction of likely transport considering surface and subsurface currents and oil properties for the variables listed below. In the dispersed oil plume, collect daily water column samples following standard operating and quality assurance procedures, at such depths and locations where dispersed oil is likely to be present and analyze for:

(1) In-situ oil droplet size distribution, including mass or volume mean diameter for droplet sizes ranging from 2.5 to 2,000 μm, with the majority of data collected between the 2.5 and 100 μm size;

(2) In-situ fluorometry and fluorescence signatures targeted to the type of oil discharged and referenced against the source oil;

(3) Dissolved oxygen (DO);

(4) Total petroleum hydrocarbons, individual resolvable constituents including volatile organic compounds, aliphatic hydrocarbons, monocyclic, polycyclic, and other aromatic hydrocarbons including alkylated homologs, and hopane and sterane biomarker compounds;

(5) Carbon dioxide (CO_2) (subsurface only);

(6) Methane, if present (subsurface only);

(7) Heavy metals, including nickel and vanadium;

(8) Turbidity;

(9) Water temperature;

(10) pH; and

(11) Conductivity.

(c) In consultation with the OSC, and using best available technologies, characterize the dispersant effectiveness and oil distribution, considering the condition of oil, dispersant, and dispersed oil components from the discharge location;

(d) In consultation with the OSC, characterize the ecological receptors (*e.g.* aquatic species, wildlife, and/or other biological resources) and their habitats that may be present in the discharge area and their exposure pathways. Include those species that may be in sensitive life stages, transient or migratory species, breeding or breeding-related activities (*e.g.,* embryo and larvae development), and threatened and/or endangered species that may be exposed to the oil that is not dispersed, the dispersed oil, and the dispersant alone. Estimate an acute toxicity level of concern for the dispersed oil using available dose/response information relevant to potentially exposed species.

(e) Immediately report to the OSC any:

(1) Deviation of more than 10 percent from the mean hourly dispersant use rate for subsurface application, based on the dispersant volume authorized for 24 hours use, and the reason for the deviation; and

(2) Ecological receptors, including any threatened or endangered species that may be exposed based on dispersed plume trajectory modeling and level of concern information.

(f) Report daily to the OSC water sampling and data analyses collected in § 300.913(b) and include:

(1) Specific hourly dispersant application rate and the total amount of dispersant used for the previous reporting period established by the OSC with concurrence from the EPA representative to the RRT;

(2) All collected data and analyses of those data within a timeframe necessary to make operational decisions (*e.g.,* within 24 hours of collection), including documented observations, photographs, video, and any other information related to dispersant use, unless an alternate timeframe is authorized by the OSC;

(3) For analyses that take more than 24 hours due to analytical methods, provide such data and results within 5 days, unless an alternate timeframe is authorized by the OSC; and

(4) Estimates of the daily transport of dispersed and non-dispersed oil and associated volatile petroleum hydrocarbons, and dispersants, using the best available trajectory modeling.

■ 10. Revise § 300.915 and the section heading to read as follows:

§ 300.915 Data and information requirements for Product Schedule listing.

If you are submitting an application for listing a product to the Schedule, you must provide EPA the information required under § 300.955. Your submission must contain:

(a) *General Information for any Product Category.* (1) Your name, physical address, email, and telephone number;

(2) Your identity as the manufacturer of the product, a vendor, importer, or distributor of the product, and/or a designated agent acting on behalf of the manufacturer. Provide documentation of such identity;

(3) All name(s), brand(s), and/or trademark(s) under which the product is to be sold;

(4) Names, physical addresses, emails and telephone numbers of the primary distributors, vendors, importers, and/or designated agent acting on behalf of the manufacturer;

(5) A Safety Data Sheet (SDS) for the product;

(6) The maximum, minimum and optimum temperature, humidity and other relevant conditions for product storage and a brief description of the consequences to performance if the product is not stored within these limits;

(7) The anticipated shelf life of the product at the storage conditions noted in paragraph (a)(6) of this section and documentation for this determination;

(8) A sample product label for all name(s), brand(s), and/or trademark(s) under which the product is to be sold that includes manufacture and expiration dates, and conditions for storage. You may use an existing label provided it already contains the required dates and storage information;

(9) The chemical or biological agent category under which you want the product to be considered for listing on the Schedule, including detailed information on the specific process(es)

through which the product affects the oil, and the specific environment(s) (waters and/or adjoining shorelines) on which it is intended to be used. If your product meets the definition of more than one chemical or biological agent category and you want it considered for listing on the Schedule in more than one category, you must identify all applicable categories and provide the test data to meet the listing criteria appropriate to each category;

(10) Recommended product use procedures, including product concentrations, use ratios, types of application equipment, conditions for use, and any application restrictions. These procedures must address, as appropriate, variables such as weather, water salinity, water temperature, types and weathering states of oils or other pollutants, and product and oil containment, collection, recovery and disposal, and include supporting documentation and standard methods used to determine them;

(11) Environmental fate information, including any known measured data and supporting documentation, on the persistence, bioconcentration factor, bioaccumulation factor, and biodegradability of the product and all of its components in the environment;

(12) The physical/chemical properties of the product, as appropriate, and a citation for the standard methods used to determine them, including:

(i) Physical state and appearance;

(ii) Vapor pressure;

(iii) Flash point;

(iv) Pour point;

(v) Viscosity;

(vi) Specific gravity;

(vii) Particle size for solid components; and

(viii) pH.

(13) The identity and concentration of all components in the product, including each specific component name; corresponding Chemical Abstract Service (CAS) Registry Number; the maximum, minimum, and average weight percent of each component in the product; and the intended function of each component (*e.g.,* solvent, surfactant);

(14) For products that contain microorganisms, enzymes and/or nutrients, provide the following along with a citation or a description of the methodology used to determine:

(i) The name of all microorganisms by current genus and species, including any reclassifications, and any physical, chemical, or biological technique used to manipulate the genetic composition and the weight percent of each genus in the product;

(ii) The name of all enzymes and their International Union of Biochemistry (I.U.B.) number(s); Enzyme Classification (EC) code numbers; the source of each enzyme; units; and specific oil-degrading activity;

(iii) The name(s), maximum, minimum, and average weight percent of the nutrients contained in the product; and

(iv) Certification, including data, methodology, and supporting documentation, indicating that the product does not contain, at levels that exceed the National Ambient Water Quality Criteria lowest density value, bacterial, fungal, or viral pathogens or opportunistic pathogens including, but not limited to: enteric bacteria such as *Salmonella,* fecal coliforms, *Shigella,* or Coagulase positive *Staphylococci,* and Beta Hemolytic *Streptococci* and enterococci.

(15) Certification, including data, methodology, and supporting documentation, indicating that the product does not contain, at levels above National Water Quality Standards lowest acute value for aquatic life:

(i) Arsenic, cadmium, chromium, copper, lead, mercury, nickel, vanadium, zinc, and any other heavy metal reasonably expected to be in the product;

(ii) Cyanide*;*

(iii) Chlorinated hydrocarbons;

(iv) Pesticides;

(v) Polychlorinated Biphenyls (PCBs); and

(vi) Polynuclear aromatic hydrocarbons (PAHs).

(16) Certification, including data, methodology, and supporting documentation, indicating that the product does not contain any of the prohibited agents identified in § 300.910(e);

(17) Information about the laboratory that conducted the required tests, including:

(i) Name of the laboratory, address, contact name, email, and phone number; and

(ii) The national and/or international accreditations held by the laboratory.

(18) All test data and calculations, including:

(i) Raw data and replicates, including positive controls;

(ii) Notes and observations collected during tests;

(iii) Calculated mean values and standard deviations;

(iv) Reports, including a summary of stock solution preparation;

(v) Source and preparation of test organisms;

(vi) Test conditions; and

(vii) Chain of custody forms.

(19) An estimate of the annual product production volume, the average and maximum amount that could be produced per day, and the time frame needed to reach that maximum production rate (days);

(20) Recognition received from EPA's Design for the Environment (DfE) if applicable; and

(21) International product testing or use data or certifications, if available, informing the performance capabilities or environmental benefits of the product.

(b) *Dispersant Testing and Listing Requirements*—(1) *Dispersant Efficacy test and listing criteria.* Test the dispersant product for efficacy using the Baffled Flask Test (BFT) method in Appendix C to part 300. To be listed on the Schedule, the dispersant must demonstrate for each oil and temperature a Dispersant Effectiveness (DE) at the 95% lower confidence level (LCL_{95}) greater than or equal to:

(i) 55% for Intermediate Fuel Oil 120 (IFO–120) at 5 °C;

(ii) 65% for IFO–120 at 25 °C;

(iii) 70% for Alaska North Slope (ANS) crude oil at 5 °C; and

(iv) 75% for ANS at 25 °C.

(2) *Dispersant Toxicity tests and listing criteria.* Use the methods specified in Appendix C to part 300 to test the dispersant alone, the dispersant mixed with ANS, and the dispersant mixed with IFO–120 for acute toxicity, using *Americamysis bahia* and *Menidia beryllina.* Use the methods specified in Appendix C to part 300 to test the dispersant alone for developmental toxicity using a sea urchin assay and for sub-chronic effects using *Americamysis bahia* and *Menidia beryllina.* To be listed on the Schedule, the lethal concentration for 50% of the test species (LC_{50}) at the lower 95% confidence interval for all acute toxicity tests must be greater than 10 ppm; the inhibition concentration for 50% of the test species (IC_{50}) at the lower 95% confidence interval must be greater than 10 ppm; and the sub-chronic No Observed Effect Concentration (NOEC) must be equal to or greater than 1 ppm.

(3) *Limitations.* Product listing would be for use only in saltwater environments.

(c) *Surface Washing Agent Testing and Listing Requirements*—

(1) *Surface Washing Agent Efficacy test and listing criteria.* To be listed on the Schedule, using a recognized standard methodology, the surface washing agent must meet an efficacy of greater than or equal to 30% in either fresh or saltwater or both depending on the intended product use.

(2) *Surface Washing Agent Toxicity test and listing criteria.* Using the toxicity test methodology in Appendix C to part 300, test the surface washing agent for acute toxicity against fresh water species *Ceriodaphnia dubia* and *Pimephales promelas,* or saltwater species *Americamysis bahia* and *Menidia beryllina,* or both, depending on the intended product use. To be listed on the Schedule, the surface washing agent must demonstrate an LC_{50} at the lower 95% confidence interval of greater than 10 ppm in either fresh or saltwater for all tested species.

(3) *Limitations.* Based on testing, product listing would be for use only in the fresh and/or saltwater environments for which it was tested and for which it met the efficacy and toxicity listing criteria.

(d) *Bioremediation Agent Testing and Listing Requirements*—(1) *Bioremediation Agent Efficacy test and listing criteria.* To be listed on the Schedule, a bioremediation agent must successfully degrade both alkanes and aromatics as determined by gas chromatography/mass spectrometry (GC/MS) in salt or fresh water or both, depending on the intended product use, following the test method specified in Appendix C to part 300. The percentage reduction of total alkanes (aliphatic fraction) from the GC/MS analysis must be greater than or equal to 95% at day 28, based on the ninety-fifth percentile Upper Confidence Limit (UCL_{95}) for both salt and freshwater. The percentage reduction of total aromatics (aromatic fraction) must be greater than or equal to 70% at day 28 for saltwater and greater than or equal to 40% for freshwater based on the UCL_{95}.

(2) *Bioremediation Agent Toxicity test and listing criteria.* The bioremediation agent must be tested for acute toxicity in saltwater, freshwater or both, depending on the intended product use, following the method specified in Appendix C to part 300. To be listed on the Schedule, the bioremediation agent must demonstrate an LC_{50} at the lower 95% confidence interval of greater than 10 ppm in either fresh or saltwater for all tested species.

(3) *Limitations.* Based on testing, product listing would be for use only in the fresh and/or saltwater environments for which it was tested and for which it met the efficacy and toxicity listing criteria.

(4) *Exceptions.* If the product consists solely of: ammonium nitrate, ammonium phosphate, ammonium sulfate, calcium ammonium nitrate, sodium nitrate, potassium nitrate, synthetically-derived urea, sodium triphosphate (or tripolyphosphate), sodium phosphate, potassium phosphate (mono- or dibasic), triple super phosphate, potassium sulphate, or any combination thereof, no technical product data are required, are generically listed as non-proprietary nutrients on the Schedule, and no further action is necessary.

(e) *Solidifier Testing and Listing Requirements.* (1) Solidifiers must be tested for acute toxicity in saltwater, freshwater or both, depending on the intended product use, following the method specified in Appendix C to part 300. To be listed on the Schedule, the solidifier must demonstrate an LC_{50} at the lower 95% confidence interval of greater than 10 ppm in either fresh or saltwater for all tested species.

(2) *Limitations.* Based on testing, product listing would be for use only in the fresh and/or saltwater environments for which it was tested and for which it met the toxicity listing criteria.

(f) *Herding Agent Testing and Listing Requirements.* (1) Herding agents must be tested for acute toxicity in saltwater, freshwater, or both, depending on the intended product use, following the method specified in Appendix C to part 300. The herding agent must demonstrate an LC_{50} at the lower 95% confidence interval of greater than 10 ppm in either fresh or saltwater for all tested species.

(2) *Limitations.* Based on testing, product listing would be for use only in fresh and/or saltwater environments for which it was tested and for which it met the toxicity listing criteria.

(g) *Sorbent Requirements.* Known sorbent materials and products will be identified on a publicly available Sorbent Product List for the use of such products when responding to an oil discharge as follows:

(1) For sorbent products that consist solely of the following materials, or any combination thereof, no technical data are required and no further action is necessary for use as a sorbent:

(i) Feathers, cork, peat moss, and cellulose fibers such as bagasse, corncobs, and straw;

(ii) Volcanic ash, perlite, vermiculite, zeolite, and clay; and

(iii) Polypropylene, polyethylene, polyurethane, and polyester.

(2) If the product consists of one or more natural organic substances, inorganic/mineral compounds, and/or synthetic compounds not specifically identified in paragraph (g)(1) of this section but you believe the product meets the definition of a sorbent then, as applicable under § 300.955(a) and (b), you must submit the following information for consideration for listing it as a sorbent on the Sorbent Product List:

(i) The information required under paragraphs (a)(1) through (8), and paragraph (a)(13) of this section;

(ii) The certifications required under paragraphs (a)(14)(iv), (a)(15), and (a)(16) of this section; and

(iii) Information, including data, to support the claim your product meets the sorbent definition under § 300.5.

§ 300.920 [Removed]

■ 11. Remove § 300.920.

■ 12. Add § 300.950 to subpart J to read as follows:

§ 300.950 Submission of Confidential Business Information (CBI).

(a) Except as provided in paragraph (b) of this section, all product information submitted to EPA as required under § 300.915 will be disclosed to the public.

(b) You may only claim the concentration and the maximum, minimum, and average weight percent of each chemical component or microorganism in your product, as identified in § 300.915(a)(13) or (14), to be CBI. EPA will handle such claims in accordance with 40 CFR part 2, subpart B.

(1) You must make your CBI claim at the time you submit your information to EPA to be listed on the Schedule.

(2) You must redact the CBI from all submitted information but include the CBI separately with your submission package. Clearly identify and mark the information as ''Confidential Business Information'' and place it in a separate inner envelope in your submission package labeled with ''CONFIDENTIAL BUSINESS INFORMATION—TO BE OPENED BY THE PRODUCT SCHEDULE MANAGER ONLY.''

■ 13. Add § 300.955 to subpart J to read as follows:

§ 300.955 Addition of a product to the Schedule.

(a) *Submission.* Submit your complete package to: U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Mail Code: 5104A, Room 1448, William J. Clinton North, Washington, DC 20460, Attention: Product Schedule Manager.

(b) *Package contents.* Your package shall include, in this order:

(1) A cover letter on company letterhead signed and dated by you certifying that:

(i) All testing was conducted on representative product samples;

(ii) Testing was conducted at a nationally or internationally accredited laboratory in accordance with the

methods specified in Appendix C to part 300, and other applicable methods as appropriate; and

(iii) All test results and product technical data and information are true and accurate.

(2) A numbered Table of Contents showing the information and data submitted under § 300.915(a) through (g);

(3) All required data and information arranged in the same order as specified in § 300.915(a) through (g); and

(4) A separate envelope containing Confidential Business Information as specified in § 300.950(b), if applicable.

(c) *EPA Review.* EPA shall, within 90 days of receiving a submission package:

(1) Review the package for completeness and compliance with all data and information requirements in §§ 300.915, 300.950, and this section, verify information, and request clarification or additional information as necessary;

(2) Make a product listing determination based on a technical evaluation of all data and information submitted, relevant information on impacts or potential impacts of the product or any of its components on human health or the environment, and the intended use of the product. EPA reserves the right to make a determination on whether the product will be listed, and under which category; and

(3) Notify you, in writing, of its decision to list the product on the Schedule and in which category or categories, or of its decision and supporting rationale to reject the submission. If your submission is rejected:

(i) You may revise the submission package to address test results, data, or information deficiencies and resubmit it.

(ii) EPA's 90-day review will not start until a complete package is resubmitted.

(d) *Request for review of decision.* If your product is rejected for listing on the Schedule, you may request that the EPA Administrator review the determination. Your request must be in writing within 30 days of receipt of notification of EPA's decision not to list the product on the Schedule. Your request must contain a clear and concise statement with supporting facts and technical analysis demonstrating why you believe EPA's decision was incorrect.

(1) The EPA Administrator or designee may request additional information from you and may offer an opportunity for you to meet with EPA.

(2) The EPA Administrator or his designee will notify you in writing of the decision within 60 days of receipt of your request, or within 60 days of receipt of requested additional information.

(e) *Changes to a product listing.* You must notify EPA in writing within 30 days of any changes to information submitted under § 300.915(a)(1) through (8) and § 300.915(a)(19) through (21) for a product on the Schedule. In the notification, you must detail the specific changes, the reasons for such changes and supporting data and information. EPA may request additional information and clarification regarding these changes. If you change the chemical components and/or concentrations, you must retest the reformulated product according to the requirements for the product category and submit a complete new package for a review and consideration for listing on the Schedule by EPA.

(f) *Transitioning Listed Products from the Current Schedule to the New Schedule.* All products on the current Schedule as of [EFFECTIVE DATE OF FINAL RULE] will remain conditionally listed until [DATE 24 MONTHS FROM THE EFFECTIVE DATE OF FINAL RULE] at which time all products that have not submitted and been listed in the new Schedule based on the amended test and listing criteria will be removed. Your product will be transitioned from the current Schedule to the new Schedule prior to [DATE 24 MONTHS FROM THE EFFECTIVE DATE OF FINAL RULE] after you submit a new, complete package according to the amended test and listing criteria and EPA makes a favorable finding to list the product on the new Schedule.

■ 14. Add § 300.965 to subpart J to read as follows:

§ 300.965 Mandatory product disclaimer.

The listing of a product on the Schedule does not constitute approval or recommendation of the product. To avoid possible misinterpretation or misrepresentation, any label, advertisement, or technical literature for the product must display in its entirety the disclaimer shown below. The disclaimer must be conspicuous and must be fully reproduced on all product literatures, labels, and electronic media including Web site pages.

DISCLAIMER [PRODUCT NAME] is listed on the National Contingency Plan (NCP) Product Schedule. This listing does NOT mean that EPA approves, recommends, licenses, or certifies the use of [PRODUCT NAME] on an oil discharge. This listing means only that data have been submitted to EPA as required by Subpart J of the NCP. Only a Federal On-Scene Coordinator (OSC) may authorize use of this product according to the NCP.

■ 15. Add § 300.970 to subpart J to read as follows:

§ 300.970 Removal of a product from the Schedule.

(a) The EPA Administrator may remove your product from the Schedule for reasons including, but not limited to:

(1) Misleading, inaccurate, or incorrect statements within the product submission to EPA or to any person or private or public entity regarding the composition or use of the product to remove or control oil discharges, including on labels, advertisements, or technical literature; or

(2) Alterations to the chemical components, concentrations, or use conditions of the product without proper notification to EPA as required by § 300.955(e); or

(3) Failure to print the disclaimer provided in § 300.965 on all labels, advertisements, or technical literature, or

(4) New or previously unknown relevant information concerning the impacts or potential impacts of the product to human health or the environment.

(b) EPA will notify you in writing, at your address of record, of its reasons for deciding to remove the product from the Schedule. If EPA receives no appeal from you in 30 days, the product will be removed from the Schedule without further notice to you.

(c) You may appeal the decision to remove your product from the Schedule within 30 days of receipt of EPA's notification. Your appeal must contain a clear and concise statement with supporting facts and technical analysis demonstrating why you believe EPA's decision was incorrect. The EPA Administrator will notify you in writing of his decision within 60 days of your appeal, or within 60 days of receipt of any requested additional information.

■ 16. Revise Appendix C to Part 300 and appendix heading to read as follows:

Appendix C to Part 300—Requirements for Product Testing Protocols and Summary Test Data: Dispersant Baffled Flask Efficacy and Toxicity Tests; Standard Acute Toxicity Test for Bioremediation Agents, Surface Washing Agents, Herding Agents, and Solidifiers; and Bioremediation Agent Efficacy Test.

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1.0 *Applicability and Scope.* This Appendix establishes laboratory protocols required under Subpart J (Use of Dispersants and Other Chemical and Biological Agents) of 40 CFR part 300 (National Oil and Hazardous Substances Pollution Contingency Plan) to make listing determinations for the Product Schedule. The protocols apply, based on product type, to dispersants, bioremediation agents, surface washing agents, herding agents, and solidifiers as defined in Subpart A (Introduction) of 40 CFR part 300.

2.0 *Baffled Flask Dispersant Efficacy Test (BFT)*

2.1 *Summary.* This laboratory protocol establishes procedures to evaluate the degree to which a product effectively disperses oil spilled on the surface of seawater, using a modified 150-mL screw-cap trypsinizing flask (an Erlenmeyer flask with baffles) with a glass and Teflon® stopcock near the bottom to allow removal of subsurface water samples without disturbing the surface oil layer. The efficacy of a dispersant is measured using two types of oils (Intermediate Fuel Oil 120 and Alaska North Slope) at two temperatures (5 °C and 25 °C). Six replicates are required at each condition with two method blank replicates at each temperature. A layer of oil is placed on the surface of artificial seawater, and the dispersant is added to the slick at a dispersant:oil ratio (DOR) of 1:25 (4%) by volume. A standard orbital shaker table provides turbulent mixing at a speed of 250 revolutions per minute (rpm) for 10 minutes, immediately after which it is maintained stationary for 10 minutes to allow non-dispersed oil to rise to the water's surface. An undisturbed water sample is removed from the bottom of the flask through the stopcock, extracted with dichloromethane (DCM), and analyzed for oil content by UV-visible absorption spectrophotometry at wavelengths ranging between 340 and 400 nm.

2.2 *Apparatus.* All equipment must be maintained and calibrated per standard laboratory procedures.

2.2.1 *Modified Trypsinizing Flask.* A modified 150 mL glass screw-capped Erlenmeyer flask with baffles (*e.g.,* Wheaton No. 355394 or equivalent) fitted with a 2 mm bore Teflon® stopcock and glass tubing, the center of which is no more than 1.3 cm from the bottom, as shown in Figure 1.

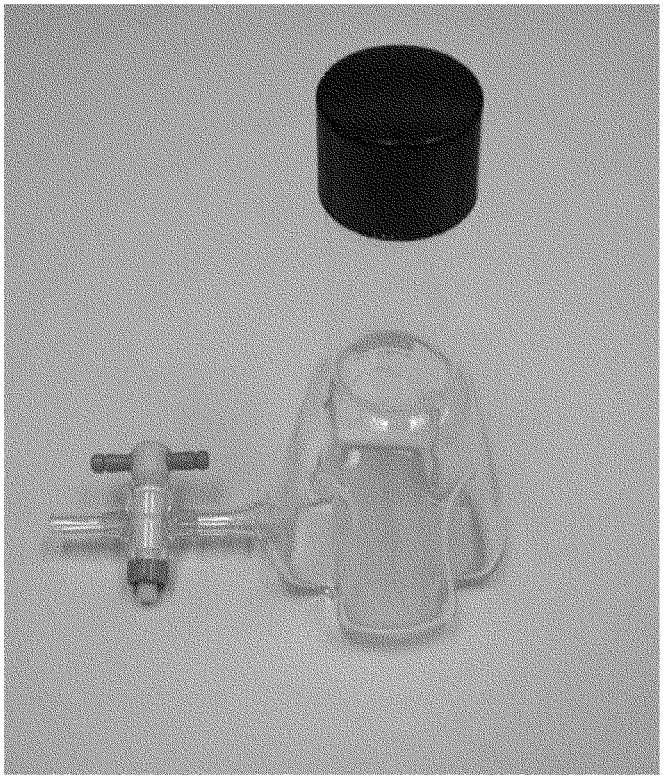

Figure 1. A Baffled Trypsinizing Flask

2.2.2 *Orbital Shaker Table.* An orbital shaker table with a variable speed control unit capable of maintaining 250 rpm. The orbital diameter must be approximately 1.0 inch (2.5 cm) +/− 0.1 inch (0.25 cm).

2.2.3 *Spectrophotometer.* A UV-visible spectrophotometer capable of measuring absorbance between 340 and 400 nm (*e.g.,* Shimadzu UV–1800, Agilent 8453, or equivalent). Use standard transmission-matched quartz 10-mm path length rectangular cells with PTFE cover for absorbance measurements.

2.2.4 *Glassware.* Including: 25-ml graduated mixing cylinders (a graduated cylinder with a ground glass stopper); 50- and 100-ml graduated cylinders; 125-mL separatory funnels with Teflon stopcocks; 10 ml volumetric flasks; 30 ml crimp style glass serum bottles; 1-, 2-, 5-mL pipettes; other miscellaneous laboratory items.

2.2.5 *Micropipettor.* Use a micropipettor capable of dispensing 4 µL of dispersant and 100 µL of oil (*e.g.,* Brinkmann Eppendorf repeater pipettor with 100 µL and 5 mL syringe tip attachments or equivalent).

2.2.6 *Syringes.* 25-, 100-, 250-, 1000-, 2500-, 5000- µl gas-tight syringes.

2.2.7 *Constant temperature rooms or incubators to hold the shaker at* 5 °C and 25 °C.

2.2.8 *Analytical Balance.*

2.2.9 *Chemical fume hood.*

2.3 *Reagents*

2.3.1 *Artificial seawater.* Use the artificial seawater GP2 formulation shown in Table 1 of this Appendix.

2.3.2 *Test oils.* Use the two EPA standard reference oils, Alaska North Slope oil (ANS) and Intermediate Fuel Oil 120 (IFO 120). To obtain these oils at no charge (except for a minimal shipping fee), see the instructions at *http://www.epa.gov/emergencies/content/ncp/index.htm.* Selected properties are summarized in Table 2 of this Appendix.

2.3.3 *Dichloromethane (DCM) (also known as methylene chloride), pesticide quality.*

2.3.4 *Positive Control Dispersant.* Dispersant sample with a known, reproducible efficacy. To obtain this control sample at no cost (except for shipping), see the instructions at *http://www.epa.gov/emergencies/content/ncp/index.htm.*

2.4 *Container Handling and Storage*

2.4.1 *Glassware.* If the glassware has been used with oil before, rinse with DCM to remove as much of the oil adhering to the sides of the flask as possible; waste DCM may be used. Soak in warm water with detergent and individually wash with bristled brushes. First rinse with tap water, then follow with two de-ionized water rinses. Dry either on a rack or in a 110 °C drying oven). After drying, rinse with fresh DCM (use sparingly).

2.4.2 *Serum bottles and other non-volumetric glassware.* Bake for at least 4 hours in a muffle furnace at 450 °C.

2.5 *Calibration Curve for the UV-visible spectrophotometer*

2.5.1 *Stock Standard Solution Preparation.* Stock standard solution concentrations are based on the mass measurements after each addition and density determinations of the oil/dispersant/DCM solution using a density bottle or a 1-mL gas tight syringe. An example calculation is given in Table 3 of this Appendix according to the following equation:

$$theoretical\ concentration, \frac{mg}{mL} = \frac{mass\ of\ oil,\ \ g * 1000\ mg/g}{total\ mass,\ \ g/\rho_{solution,\ g/mL}} \qquad \text{(Equation 1)}$$

Use the reference oils and the specific dispersant being tested for a particular set of experimental test runs. Prepare the stock solution of dispersant-oil mixture in DCM, starting with 2 ml of the oil, then adding 80 µl of the dispersant followed by 18 ml of DCM. Two sets of standards are needed, one for each oil and dispersant combination.

2.5.2 Six-*point Calibration Curve.* For each reference oil, add specific volumes of its stock standard solution (given in Table 4 of this Appendix) to 30 ml of artificial seawater in a 125 ml separatory funnel. Extract the oil/water mixture with triplicate 5 ml volumes of DCM. Follow each DCM addition by 15 seconds of vigorous shaking, carefully releasing the initial pressure inside the separatory funnel by partially removing the glass stopper inside a fume hood after the first few shakes. Then, allow a 2-minute stationary period for phase separation for each extraction. Drain the extracts into a 25-mL graduated mixing cylinder. Release any entrained bubbles of DCM from the water layer by sideways shaking of the funnel. Use precaution not to drain water into the DCM extract as it can affect the absorbance readings. Adjust the final volume of the collected extracts to 20 mL in the mixing cylinder using DCM. Determine specific masses for oil concentrations in the standards as volumes of oil/dispersant solution multiplied by the concentration of the stock solution. An example calculation is given in Table 4 of this Appendix. Two calibration curves are needed, one for each oil and dispersant combination.

2.6 *Sample Preparation and Testing.* See section 2.7 of this Appendix for a detailed description of the spectrophotometer's linear calibration procedure.

2.6.1 Six replicates of each oil and test dispersant are required at each temperature plus two additional tests of method blanks (artificial seawater without oil and dispersant), one at each temperature. A completed test consists of 26 baffled flask tests (a total of six replicates for each of two reference oil/test dispersant combinations at two temperatures (5 °C and 25 °C), plus two method blanks).

2.6.2 A positive control run of 6 replicates of a dispersant with known dispersion efficacy (see 2.3.4 above for how to obtain) is prepared with both oils at both temperatures to verify the protocol is being correctly performed. The lab must certify that a positive control was successfully conducted within a year of any testing submitted for a dispersant listing.

2.6.3 Attach a 3-inch length of Teflon tubing to the stopcock of each of the 150-mL baffled flasks. Add 120 mL of artificial seawater to each flask. Put screw cap on flasks and place them at the appropriate temperature (either 5 °C or 25 °C) for equilibration.

2.6.4 Calibrate and adjust the shaker table to 250 ± 10 rpm.

2.6.5 Prepare and time separately each baffled flask. Sequentially add 100 µL of oil and 4 µL of dispersant to the flask layering them onto the center of the seawater to give a dispersant-to-oil ratio (DOR) of 1:25. Avoid any oil or dispersant splashing on the flask walls, as it may reduce efficacy or cause errors in the calculated results. Discard the sample and repeat the setup if: (1) Any oil or dispersant splashing occurs during the additions, or (2) the dispersant contacts the water first rather than the oil.

2.6.6 For the oil, fill the tip of the pipettor, using a wipe to remove any oil from the sides of the tip. Holding the pipettor vertically, dispense several times back into the reservoir to ensure that the oil flows smoothly. Insert the syringe tip vertically into the baffled flask, and let the bottom of the pipettor rest on the neck of the flask. Slowly and carefully dispense the oil one time onto the center of the water's surface. IFO 120 takes longer to drip, and ANS will splash if dispensed too fast. The remainder of the oil can either be returned to the oil bottle or set aside for use in the next test flask. Note to 2.6.6: If a Brinkmann Eppendorf repeater pipettor is used for dispensing the oil, attach a 5-mL syringe tip, and set the dial to 1.

2.6.7 For the dispersant, use the same procedure as for the oil to dispense onto the center of the oil slick surface. As the dispersant first contacts the oil, it will usually push the oil to the sides of the flask. Replace the screw cap onto the flask.

Note to 2.6.7: If a Brinkmann Eppendorf repeater pipettor is used for dispensing the dispersant, attach a 100-µL syringe tip, and set the dial to 2.

2.6.8 Carefully place flask securely onto the shaker and agitate for 10 ± 0.25 minutes at 250 ± 10 rpm.

2.6.9 Remove the flask from the shaker table and allow a stationary, quiescent period of 10 ± 0.25 minutes to allow undispersed and/or recoalesced oil droplets to refloat to the surface.

2.6.10 Carefully open the screw cap, then the stopcock at the bottom, and discard the first several mL of seawater into a waste beaker to remove non-mixed water-oil initially trapped in the stopcock tubing. Collect a volume slightly greater than 30-mL into a 50-mL graduated cylinder. Adjust the collected volume to the 30-mL mark by

removing excess with a disposable glass Pasteur pipette. A web-like emulsion may form at the solvent/water interface during the water sample extraction. Avoid pulling any emulsion phase into the DCM extract as it may cloud the DCM-extract leading to error.

2.6.11 Transfer the water-oil sample from the graduated cylinder into a 125-mL glass separatory funnel fitted with a Teflon stopcock.

2.6.12 Add 5 mL DCM to the separatory funnel. Start shaking, releasing pressure into the fume hood by loosening the glass stopper. Shake vigorously at least 20 times for 15 seconds.

2.6.13 Allow the funnel to remain in a stationary position for 2 minutes to allow phase separation of the water and DCM.

2.6.14 Drain the DCM layer from the separatory funnel into a 25 mL mixing cylinder. Avoid pulling any emulsion phase into the DCM extract as it may cloud the DCM extract.

2.6.15 Repeat the DCM-extraction process two or three additional times until the DCM is clear. Collect each extract in the graduated cylinder. After the final extraction, lightly shake the separatory funnel sideways once or twice to dislodge entrained bubbles of DCM and drain.

2.6.16 Adjust the final volume to a known quantity, 20 or 25 mL, in the mixing cylinder. IFO 120 samples may require dilution when dispersed chemically because of their high absorbance properties. Using a syringe, dispense 2.5 mL or 5.0 mL of an IFO 120 sample into a 10-mL volumetric flask, and fill with DCM to make either a 1:4 or 1:2 dilution, respectively. ANS samples adjusted to 25 mL typically don't require dilution.

2.6.17 If analysis cannot be conducted immediately, store the extracted DCM samples at 4 °C until time of analysis. Glass-stoppered mixing cylinders may be used for short-term storage or prior to bringing the extracts up to volume. After bringing to volume, transfer the DCM extracts to 25–30 ml crimp-style serum vials with aluminum/Teflon seals.

2.6.18 Complete all analysis within 10 consecutive days from when the sample was collected.

2.7 *UV-Visible Spectrophotometer Linear Stability Calibration*

2.7.1 A six-point calibration of the UV-visible spectrophotometer is required at least once per day for each oil. The stability calibration criterion is determined with the six oil standards identified in Table 4 of this Appendix.

2.7.2 Turn on spectrophotometer and allow it to warm up for at least 30 minutes before beginning analysis. Blank the instrument for the wavelengths between 340 and 400 nm with DCM.

2.7.3 If refrigerated, allow all extracts, standards and samples to warm to room temperature.

2.7.4 Determine the absorbance of the six standards between the wavelengths of 340 and 400 nm. This can be done by either one of the following methods:

2.7.4.1 *Trapezoidal Rule.* Program the spectrophotometer to take readings every 5λ or 10λ and calculate the area under the curve using the Trapezoidal rule:

$$\int_{340\lambda}^{400\lambda} f(x)dx \approx \frac{H}{2}\sum_{k=1}^{N}\left(f(x_{k+1})+f(x_k)\right) \qquad \text{(Equation 2)}$$

where N+1 = number of absorbance measurements to delineate N equally spaced sections of the curve, and H = the distance (λ) between each reading. For H = 5, N+1 = 13 measurements, for H = 10, N+1 = 7. The following formula illustrates readings taken every 10λ.

$$Area = \frac{(Abs_{340}+Abs_{350})*10}{2} + \frac{(Abs_{350}+Abs_{360})*10}{2} + \cdots \frac{(Abs_{390}+Abs_{400})*10}{2} \qquad \text{(Equation 3)}$$

When using readings taken every 5λ, each absorbance sum is multiplied by 5.

2.7.4.2 Automatic *Integration.* Program the spectrophotometer to automatically integrate the area under the curve between 340 nm and 400 nm.

2.7.4.3 If the wavelengths must be manually set on the spectrophotometer, the older method of only measuring at 340 λ, 370 λ, and 400 λ may be used. Then calculate using the trapezoidal rule for N + 1 = 3, H = 30. While the resulting area count with the older method is less accurate, the final results are similar since the inaccuracy is systematic.

2.7.5 After determining the area count for each standard, determine the response factor (RF) for the oil at each concentration using the following equation:

$$RF = \frac{Theoretical\ Concentration, \frac{g}{mL}\ (Eq.1)}{area\ (Eq.3)} \qquad \text{(Equation 4)}$$

2.7.6 Spectrophotometer stability for the initial calibration is acceptable when the RFs of the six standard extracts are less than 10% different from the overall mean value for the six standards, as calculated in Equation 5 of this Appendix and depicted in the example in Table 4 of this Appendix.

$$\%\ difference = \frac{|RF-\overline{RF}|}{\overline{RF}} * 100 \qquad \text{(Equation 5)}$$

2.7.7 If this criterion is satisfied, begin analysis of sample extracts. Absorbances greater than or equal to 3.5 are not included because absorbance saturation occurs at and above this value. If any of the standard oil extracts fails to satisfy the initial-stability criterion, the source of the problem (*e.g.,* preparation protocol for the oil standards, spectrophotometer stability, etc.) must be corrected before analysis of the sample extracts begins.

2.7.8 Determine the slope of the calibration points by using linear regression forced zero intercept:

$$Y(area\ under\ absorbance\ curve) = m(slope) * x(concentration\ of\ oil) \qquad \text{(Equation 6)}$$

2.8 Spectrophotometric *Analysis and Calculations*

2.8.1 Once a successful calibration curve for each of the two reference oils has been created and verified, measure experimental replicates for each of the reference oils at each temperature followed by a standard check sample.

2.8.2 The same procedure is followed for the positive controls.

2.8.3 Determine the area for the absorbance values obtained for the experimental samples by using Equation 2 of this Appendix and illustrated by Equation 3 of this Appendix.

2.8.4 Calculate the Total Oil dispersed and the percentage of oil dispersed (%OD) based on the ratio of oil dispersed in the test system to the total oil added to the system, as follows:

$$Total\ Oil\ Dispersed, mg = \frac{Area\ (Eq.2)}{Calibration\ Curve\ Slope} * V_{DCM} * \frac{V_{tw}}{V_{ew}} \qquad \text{(Equation 7)}$$

where:

V_{DCM} = final volume of the DCM extract (mL)

V_{tw} = total seawater in Baffled Flask (120 mL)

V_{ew} = volume seawater extracted (30 mL)

$$\%OD = \frac{Total\ Oil\ Dispersed}{\rho_{Oil} * V_{Oil}} * 100 \qquad \text{(Equation 8)}$$

where:

ρ_{Oil} = density of the specific test oil, mg/mL and

V_{Oil} = Volume (mL of oil added to test flask (100 µL = 0.1 mL))

2.8.5 The %ODs for the six replicates within a particular treatment are then subjected to an outlier test, the Grubb's Test or Maximum Normal Residual test (6). A convenient Internet-based calculator of a Grubbs outlier may be found at: *http://www.graphpad.com/quickcalcs/Grubbs1.cfm.* If an outlier is detected ($p < 0.05$), analyze an additional replicate to obtain the required six replicates.

2.8.6 Report the Dispersion Efficacy value for each oil and each temperature, which is the lower 95% confidence level of the 6 independent replicates (DE_{LCL95}) for each oil/temperature combination. Error bars are not needed as reporting the lower confidence level computationally takes the variability of the replicates into account as shown in Equation 9 of this Appendix.

$$DE_{LCL95} = \overline{\%OD} - \left(\frac{t_{(n-1,1-\alpha)} * s}{\sqrt{n}}\right) \qquad \text{(Equation 9)}$$

where $\overline{\%OD}$ = mean percentage oil dispersed for the n = 6 replicates, S = standard deviation, and $t_{(n-1,1-\alpha)}$ = 100 * $(1-\alpha)^{th}$ percentile from the t-distribution with n-1 degrees of freedom. For 6 replicates, $t_{n-1,1-\alpha} = 2.015$, where $\alpha = 0.05$. An example of the calculations is given in Table 5 of this Appendix.

2.9 Performance *Criterion*

The dispersant product tested will remain in consideration for listing on the NCP Product Schedule if the dispersant efficacy (DE_{LCL95}), as calculated in section 2.8.6 of this Appendix, is:

Oil	Temp (°C)	DE_{LCL95} (%)
ANS	5	≥ 70
ANS	25	≥ 75
IFO120	5	≥ 55
IFO120	25	≥ 65

2.10 *Quality Control (QC) Procedures for Oil Concentration Measurements*

2.10.1 *Absorbance readings.* Perform at least 5% of all UV-visible spectrophotometric measurements in duplicate as a QC check on the analytical measurement method. The absorbance values for the duplicates must agree within ± 5% of their mean value.

2.10.2 *Method blanks.* Analytical method blanks involve an analysis of artificial seawater blanks (artificial seawater without oil or dispersant in a baffled flask) through testing and analytical procedures. Analyze method blanks with a frequency of at least two per completed test. Oil concentrations in method blanks must be less than detectable limits.

2.10.3 *Accuracy.* Determine accuracy by using a mid-point standard calibration check after each set of replicate samples analyzed. The acceptance criterion is based on a percent recovery of 90–110% using the following equation:

$$\%recovery = 100 * \frac{measured\ concentration\ of\ check\ standard}{theoretical\ concentration\ of\ check\ standard} \qquad \text{(Equation 10)}$$

2.10.4 Calibration *QC checks.* Before analyzing samples, the spectrophotometer must meet an instrument stability calibration criterion using the oil standards. The instrument stability for initial calibration is acceptable when the RFs (Equation 5 of this Appendix) for each of the six standard concentration levels are less than 10% different from the overall mean value.

TABLE 1—CONSTITUENT CONCENTRATIONS FOR GP2 ARTIFICIAL SEAWATER

[Based on Spotte et al., 1984]

Constituent	Concentration (g/L)
NaCl	21.03
Na_2SO_4	3.52
KCl	0.61
KBr*	0.088
$Na_2B_4O_7 \cdot 10H_2O$*	0.034
$MgCl_2 \cdot 6H_20$	9.50
$CaCl_2 \cdot 2H_2O$	1.32
$SrCl_2 \cdot 6H_2O$*	0.02
$NaHCO_2$*	0.17

*Use Stock Solution, 1 mL/L GP2 for 100X stock solution for Bromide, Borate, and Strontium.

10 mL/L GP2 for bicarbonate—10X stock solution as it is not soluble in a 100X solution.

Adjust to pH 8.0 prior to autoclaving.

TABLE 2—TEST OIL CHARACTERISTICS

Oil	Density, mg/mL @ 15 °C	API gravity (deg)	Viscosity @ 15 °C, (cSt)	Category by API gravity	Category by kinematic viscosity
ANS	884	28.2	40	Medium	Light
IFO120	948	17.5	1520	Heavy	Heavy

TABLE 3—STOCK SOLUTION PREPARATION

Item	Amount
Mass of Bottle, g	29.9666
Mass of Bottle + oil, g	31.5734
Mass of bottle + disp + oil + DCM, g	55.0425
Mass of oil, g	1.6068

TABLE 3—STOCK SOLUTION PREPARATION—Continued

Item	Amount
Mass of disp + oil + DCM, g	25.0759
Mass of 1 mL syringe, g	14.5563
Mass of 1 mL syringe + solution, g	15.8779

TABLE 3—STOCK SOLUTION PREPARATION—Continued

Item	Amount
Density of solution, g/mL	1.3216
Volume of solution, mL	18.9740
Conc. Of stock solution, mg/mL	84.6850

Table 4. Dispersant Calibration Example for Both Oils

ANS	Stock Solution Concentration mg/mL				84.6848				
Standard – Stock vol. (uL)	Theoretical Conc.	Abs 340 nm	…..	Abs 400 nm	Calculated Trapezoid Area	RF	Avg. RF	Dev. From Avg. RF	Slope
20	0.085	0.231	…..	0.09	8.55	0.0099	0.0101	2.27	99.11
40	0.169	0.452	…..	0.175	16.68	0.0102		0.15	
80	0.339	0.864	…..	0.334	31.91	0.0106		4.72	
120	0.484	1.307	…..	0.503	48.16	0.0100		0.88	
160	0.677	1.818	…..	0.711	67.38	0.0101		0.82	
200	0.847	2.251	…..	0.888	84.30	0.0100		0.91	
IFO120	Stock Solution Concentration mg/mL				95.7542				
Standard – Stock vol. (uL)	Theoretical Conc.	Abs 340 nm	…..	Abs 400 nm	Calculated Trapezoid Area	RF	Avg. RF	Dev. From Avg. RF	Slope
10	0.048	0.278	…..	0.109	10.33	0.0046	0.0048	3.64	205.67
20	0.096	0.536	…..	0.209	19.87	0.0048		0.22	
40	0.192	1.066	…..	0.414	39.39	0.0049		1.10	
60	0.287	1.608	…..	0.628	59.72	0.0048		0.04	
80	0.383	2.154	…..	0.836	79.73	0.0048		0.10	
100	0.479	2.649	…..	1.021	97.24	0.0049		2.39	

Table 5. Sample Calculation with ANS

Rep	Abs 340nm	..	Abs 400nm	Area from spec	Dilution Factor	Extract Volume (ml)	Area	Conc, mg/mL.	Mass in 30 mL, mg	Total Oil Dispersed, mg	Efficiency %	Avg.	Std. Dev.	Coeff. Of Var	LCL 95
1	2.096	..	0.814	77.51	1	25	77.59	0.72	18.12	72.49	82.00	81.01	3.17	3.91	78.40
2	1.985	..	0.774	73.72	1	25	73.70	0.69	17.21	68.86	77.89				
3	2.012	..	0.781	74.50	1	25	74.54	0.70	17.41	69.64	78.78				
4	2.18	..	0.841	80.25	1	25	80.19	0.75	18.73	74.93	84.76				
5	1.999	..	0.785	73.87	1	25	73.93	0.69	17.27	69.07	78.13				
6	2.173	..	0.841	79.86	1	25	79.96	0.75	18.68	74.71	84.51				
dup	2.162	..	0.841	80.143	1	25	80.16	0.75	18.72	74.89	84.72	0.04			
	2.18	..	0.841	80.245	1	25	80.19	0.75	18.73	74.93	84.76				

2.11 *References for Section 2.0*

(1) U.S. Environmental Protection Agency (1994), ''Swirling Flask Dispersant Effectiveness Test,'' *Title 40 Code of Federal Regulations,* Pt. 300, Appendix C, pp 47458–47461.

(2) Sorial, G.A., A.D. Venosa, K.M, Koran, E. Holder, and D.W. King. 2004. ''Oil spill dispersant effectiveness protocol: I. Impact of operational variables.'' ASCE J. Env. Eng. 130(10):1073–1084.

(3) Sorial, G.A., A.D. Venosa, K.M, Koran, E. Holder, and D.W. King. 2004. ''Oil spill dispersant effectiveness protocol: II. Performance of revised protocol.'' ASCE J. Env. Eng. 130(10):1085–1093.

(4) Venosa, A.D., D.W. King, and G.A. Sorial. 2002. ''The baffled flask test for dispersant effectiveness: A round robin evaluation of reproducibility and repeatability.'' Spill Sci. & Technol. Bulletin 7(5–6):299–308.

(5) Spotte, S., G. Adams, and P.M. Bubucis. 1984. ''GP2 medium is an synthetic seawater for culture or maintenance of marine organisms,'' Zoo Biol, 3:229–240.

(6) Grubbs, F. 1969. ''Sample Criteria for Testing Outlying Observations,'' Annals of Mathematical Statistics, pp. 27–58.

3.0 Dispersant Toxicity Testing

3.1 *Summary.* This laboratory protocol includes testing for: (1) Dispersant standard static acute toxicity tests for the mysid shrimp, *Americamysis bahia* (48-hr duration) and the inland silverside, *Menidia beryllina* (96-hr duration); (2) dispersant/oil mixture static acute toxicity tests for *Americamysis bahia* and *Menidia beryllina* (48-hr and 96-hr duration, respectively); (3) dispersant developmental assay for the purple sea urchin, *Strongylocentrotus purpuratus,* (72-hr duration); and (4) dispersant 7-day static subchronic tests with *Americamysis bahia* and *Menidia beryllina* (Table 6 of this Appendix).

TABLE 6—TOXICITY TESTING REQUIREMENTS FOR DISPERSANTS

Test substance	Test procedure			
	96-hr static acute: *Menidia beryllina*	48-hr static acute: *Americamysis Bahia*	72-hr sea urchin *Developmental Assay*	7-day sub-chronic: *M. beryllina* & *A. bahia*
Dispersant only	*yes*	*yes*	*yes*	*yes.*
Dispersant/Reference Oil Mixture	*yes*	*yes*	*no*	*no.*

3.2 *Preparation of Stock Solutions*

3.2.1 *Dispersant.* Prepare a 1000 µL/L primary stock solution prior to test initiation by adding 1.1 mL of dispersant to 1100 mL of dilution water consisting of salinity adjusted uncontaminated natural or artificial seawater, in a glass vessel. Using a laboratory top stirrer equipped with a stainless steel blade, center the stirrer blade in the mixing vessel one inch off the bottom. Initially mix the resulting stock solution for approximately five seconds at speeds of < 10,000 rpm to avoid foaming. Thereafter, set the speed to provide a 70% vortex. Using a glass pipette, remove appropriate aliquots of stock solution from between the mixing vessel wall and edge of the vortex and place directly into the dilution water within an exposure vessel. Suspend mixing of the stock solution after the removal of each aliquot. Base the preparation of exposure solutions on the nominal concentration of the stock solution and follow procedures outlined in sections 3.5 and 3.6 of this Appendix.

3.2.2 *Dispersant-Reference Oil(s) Mixtures.* Use IFO 120 and ANS oils. To obtain these oils at no charge (except for a minimal shipping fee) see *http://www.epa.gov/emergencies/content/ncp/index.htm.* Assessment of dispersant-reference oil mixture (DOM) toxicity is determined for each reference oil using the aqueous phase of a chemically enhanced-water accommodated fraction (CE–WAF). Repeat the following procedure for each reference oil tested. Fit a glass aspirator bottle (approximately 23L) equipped with a hose bib at the base with a length of silicon tubing containing a hose clamp. Fill the bottle with 19L of seawater leaving a 20% headspace above the liquid, place on a magnetic stir plate then add and center a stir bar. Add the respective crude oil at 25g/L using a silicon tube attached to a glass funnel that reaches just below the water surface. Using this method reduces the production of air bubbles on the oil surface slick. Adjust the stir plate to obtain an oil vortex of 25% of the total volume of the seawater, then add the dispersant to be tested at a ratio of 1:10 dispersant:oil (2.5 g/L). Securely seal the bottle to reduce the loss of volatiles using a silicon stopper and wraps of Parafilm and stir for 18 hours, then allow the solution to settle for 6 hours. Maintain the temperature at 25 °C during stirring and settling. Purge the hose at the base of the bottle of any material followed by removal of the CE–WAF (aqueous phase) into a clean glass container without disturbing the surface oil slick. The CE–WAF should be remixed and 1–2 L removed for chemical analysis of total petroleum hydrocarbons (TPH) following the procedures outlined in section 3.4 of this Appendix. The remaining volume will be used for the preparation of exposure solutions following procedures outlined in section 3.3 of this Appendix. To reduce time and cost, mix sufficient amounts of dispersant product-reference oil mixture CE–WAF to allow preparation of exposure solutions for conducting simultaneous acute tests with both *Americamysis bahia* and *Menidia beryllina.*

3.3 *Preparation of Exposure Concentrations*

3.3.1 *Concentration Selection.* Preliminary rangefinder tests may be necessary using a series of logarithmic concentrations (*e.g.* 0.1, 1, 10, 100 µl dispersant product/L or mg TPH/L) to determine the appropriate exposure concentration range necessary to determine LC_{50} values and 95% confidence intervals. For definitive tests, conduct a minimum of five test concentrations using a geometric ratio between 1.5 and 2.0 (*e.g.* 2, 4, 8, 16, and 32). Note that when testing only the dispersant product, the highest test concentration must not exceed the dispersant's self-dispersibility limit.

3.3.2 *Exposure Concentrations.* Exposure solutions are prepared by adding the appropriate amount of stock solution directly to dilution water in each test chamber. Mix each exposure solution using five rotations in one direction followed by five rotations in the opposite direction using a solid glass stir rod.

3.3.3 *Reference Toxicants.* Separate toxicity tests must be performed with a reference toxicant for each species tested. Conduct additional reference toxicity tests any time a change in the population or source of a test species occurs. Use sodium dodecyl sulfate (SDS), also known as dodecyl sodium sulfate (DSS), and sodium lauryl sulfate (SLS) as the reference toxicant for exposures conducted with *Menidia beryllina* and *Americamysis bahia.* Use copper chloride as the reference toxicant for exposures conducted with the sea urchin developmental test. Use reagent grade quality SDS and copper chloride for tests. Information on procedures for conducting reference toxicant tests with these species can be found in the specific EPA methods documents cited in sections 3.5.1, 3.6.1 and 3.7.1 of this Appendix.

3.4 *Chemical Analysis of Stock Solutions.* Add the 1L sample of CE–WAF (Section 3.2.2 of this Appendix) solutions directly to amber glass bottles with Teflon®-lined cap. Collect a replicate sample in the event of accidental loss or if reanalysis of the stock solution becomes necessary. Adjust sample to a pH=2 using 50% hydrochloric acid, immediately refrigerate and analyze within 48 hours of collection. Analyze samples for C9–C32 TPH by gas chromatography-flame ionization detection (GC–FID) following EPA SW–846, Method 8015B–DRO (4). Report TPH concentration of stock solutions as milligrams TPH/L and use in the calculation of exposure concentrations for all toxicity tests conducted with CE–WAF.

3.5 *Static Acute Tests With M. beryllina and A. bahia*

3.5.1 *General.* Use EPA's *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms* (EPA–821–R–02–012) (1) for testing each species separately with dispersant product or a mixture of dispersant product and reference oil (DOM).

3.5.2 *Test Solutions.* Modify procedures in EPA–821–R–02–012 specifically dealing with the handling and toxicity testing of effluents or receiving water samples as follows: Prepare stock solutions following section 3.2 of this Appendix and exposure concentrations following section 3.3 of this Appendix.

3.5.3 *Number of Treatments, Replicates and Organisms.* Conduct a minimum of three replicates of at least five exposure treatments plus a minimum of three replicate dilution water controls. Expose ten organisms per replicate treatment.

3.5.4 *Exposure Period.* Test duration is 48-hr for *Americamysis bahia* and 96-hr for *Menidia beryllina.* Mortality must be recorded at each 24 hour period of each test.

3.5.5 *Test Acceptability.* For each test performed, survival of control animals must be >90% and test results must allow determination of statistically valid LC_{50} and 95% confidence interval values except in cases where the LC_{50} is >1000 µl/L or is determined to be greater than the limits of water solubility of dispersibility.

3.5.6 *Static Acute Test Summary.* A summary of required test conditions is provided in Table 7 of this Appendix.

3.6 *Sea Urchin Developmental Test With Dispersant Product*

3.6.1 *General.* Use Section 15, ''Purple Urchin, *Strongylocentrotus purpuratus* and Sand Dollar, *Dendraster excentricus* Larval Development Test Method'' of EPA's *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms* (EPA/600/R–95–136) (2).

3.6.2 *Test Organism.* Tests of dispersant products are to follow methods for the purple urchin only. Tests with the sand dollar are not required.

3.6.3 *Test Solutions.* Modify procedures in EPA/600/R–95–136, Section 15 specifically dealing with the handling and toxicity testing of effluents or receiving water samples as follows: Prepare stock solutions following section 3.2.1 of this Appendix and exposure concentrations following section 3.3 of this Appendix.

3.6.4 *Number of Treatments and Replicates.* Conduct a minimum of four replicates of five exposure treatments plus a minimum of four replicate dilution water controls.

3.6.5 *Exposure Duration and Test Endpoint.* Examine the effects of the dispersant product on normal development of sea urchin embryos over a period of 72 hours. An IC_{50} (the exposure concentration at which normal development is inhibited in 50% of the embryos) with 95% confidence intervals are to be determined in place of an IC_{25}. The concentration of dispersant causing inhibition of development in 50% of exposed embryos (IC_{50}) with the lower and upper 95% confidence intervals (LCI_{95} and $ULCI_{95}$) must be calculated at the end of the exposure period. Mortality determinations are not required.

3.6.6 *Test Acceptability.* Requirements of the assay are: (i) ≥ 80% normal larval development in the control treatment, (ii) the minimum significant difference (MSD) that can be statically detected relative to the control is ≤25%, (iii) test results which support the determination of a statistically valid IC_{50} and 95% confidence interval unless the LC_{50} is >1000 µl/L or is greater than the limits of water solubility of dispersibility.

3.6.7 *Urchin Developmental Test Summary.* A summary of required test conditions is provided in Table 7 of this Appendix.

3.7 *Seven-Day Subchronic Tests With M. beryllina and A. bahia*

3.7.1 *General.* Use Section 13, Method 1006.0, ''Inland Silverside (*Menidia beryllina*) Larval Survival and Growth Method,'' and Section 14, Method 1007.0, ''Mysid (*Mysidopsis* [renamed *Americamysis*] *bahia*) Survival, Growth, and Fecundity Method'' of EPA's *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms* (EPA–821–R–02–014) (3) for testing of dispersant product.

3.7.2 *Test Solutions.* Modify procedures in EPA–821–R–02–014, sections 13 and 14 specifically dealing with the handling and toxicity testing of effluents or receiving water samples as follows: Prepare stock solutions following section 3.2.1 of this Appendix and exposure concentrations following section 3.3 of this Appendix. Exposure solutions should be renewed every 24 hr for the duration of the test.

3.7.3 *Number of Treatments, Replicates and Organisms.* (i) *Menidia beryllina:* Conduct a minimum of four replicates of at least five exposure treatments plus a minimum of four replicate dilution water controls. Expose ten *M. beryllina* per replicate treatment. (ii) *Americamysis bahia:* Conduct a minimum of eight replicates of at least five exposure treatments plus a minimum of eight replicate dilution water controls. Expose five *A. bahia* per replicate treatment.

3.7.4 *Exposure Duration and Test Endpoint.* The test duration is seven days for both species. Test endpoints for *Menidia beryllina* are survival and growth (dry weight) and for *Americamysis bahia* is survival, growth (dry weight) and fecundity. Calculate an LC_{50} and 95% confidence interval for survival and IC_{25} and IC_{50} with 95% confidence intervals for growth (and fecundity for *A. bahia* only). Report the lowest observed effect concentration (LOEC) and no observed effect concentration (NOEC) for each endpoint.

3.7.5 *Test Acceptability.* Requirements of the assay are: (i) ≥80% survival in the control treatment for each species, (ii) dry weights must meet the specific requirements as stipulated in Method 1006.0 for *Menidia beryllina* and Method 1007.0 for *Americamysis bahia,* (iii) egg production must occur in 50% of female *Americamysis bahia* in the replicate control treatments.

3.7.6 *Subchronic Test Summary.* A summary of required test conditions for each species is provided in Table 7 of this Appendix.

3.8. *Laboratory Report.* The laboratory must include, for each toxicity test report, all applicable information, data and analyses as follows:

3.8.1 *Test Objective:* Protocol title and source, endpoint(s);

3.8.2 *Product Information:* Product name, manufacturer contact information, lot number, production date, date received/chain of custody;

3.8.3 *Contract Facility:* Contact information;

3.8.4 *Dilution Water:* Source, pretreatment, physical and chemical characteristics (pH, salinity);

3.8.5 *Test Conditions:* Date and time of test (start and end), test chambers type and volume, volume of solution per chamber, number of organisms per chamber, number of replicate chambers per treatment, feeding frequency, amount and type of food, test concentrations, test temperature (mean and range), test salinity (mean and range);

3.8.6 *Test Organisms:* Common and scientific name, source contact information, age and date purchased, acclimation conditions (*e.g.,* temperature, salinity, both mean and range), age at test start;

3.8.7 *Reference toxicant:* Date received, lot number, date of most recent test, results and current Cumulative Sum Chart, dilution water used, physical and chemical methods used;

3.8.8 *Quality Assurance:* Verification of laboratory accreditation, including subcontractor facilities;

3.8.9 *Test Results:* Raw data in tabular and graphical form, daily records of affected organisms in each concentration replicate and controls, table of required endpoints (*i.e.,* LC_{50} with 95% confidence interval (CI), IC_{25} and IC_{50} with 95% CI, LOEC and NOEC), statistical methods used to calculate endpoints, summary tables of test conditions and QA data;

3.8.10 *Analytical Results:* Method summary including Limit of Detection (LOD)/Limit of Quantitation (LOQ), deviations and reasons if any, sample summary, results including chromatograms and data qualifiers, QA summary including calibration curves, method blank and surrogate recovery, analytical results summary; and

3.8.11 *Conclusions:* Relationship between test endpoints and threshold limit.

TABLE 7—SUMMARY OF TEST CONDITIONS—DISPERSANT TOXICITY

	Acute *M. beryllina*	Acute *A. bahia*	Subchronic *M. beryllina*	Subchronic *A. bahia*	Development *S. purpuratus*
Test type	Static non-renewal	Static non-renewal	Static renewal (daily)	Static renewal (daily)	Static non-renewal.
Test duration	96 hours	48 hours	7 days	7 days	72 ± 2 hours.
Salinity	20 ± 2‰	20 ± 2‰	20 ± 2‰	20 ± 2‰	34 ± 2‰.
Temperature	25 ± 1 °C. Test temperatures must not deviate (maximum minus minimum temperature) by for than 3 °C during the test.				15 ± 1 °C.
Light quality	Ambient laboratory illumination				
Light intensity	10–20 μE/m²/s				
Photoperiod	16 h light, 8 h darkness, with phase in/out period recommended				
Test chamber size [1]	250 mL	250 mL	600 mL–1 L	400 mL	30 mL.
Test solution volume [1].	200 mL	200 mL	500–750 mL	150 mL	10 mL.
Age of test organism [2].	9–14 days	1–5 days	7–11 days	7 days	1 hr old fertilized eggs.
No. organisms per test chamber.	10	10	10	5	25 embryos per mL.
No. of replicate chambers per concentration.	3	3	4	8	4.
Feeding regime	Refer to specific feeding procedures provided in each test method				None.
Aeration	None, unless DO falls below 4.0 mg/L, then aerate all chambers. Rate:<100 bubbles/minute				
Test concentrations	5 exposure concentrations and a control (minimum required)				
Test acceptability (required).	≥90% survival in controls.	≥90% survival in controls.	For controls: ≥80% survival; average dry weight ≥0.5mg where test starts with 7 day old larvae, or ≥ 0.43 mg for larvae preserved for ≤7days.	For controls: ≥80% survival; average dry weight ≥0.20 mg; ≥ 50% of control females produce eggs.	≥80% normal shell development in controls.

[1] Recommended minimum value.
[2] *Less than or equal to 24-hr range in age.*

3.9 *References for Section 3.0*

(1) U.S. EPA. 2002. *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms.* Fifth Edition. U.S. Environmental Protection Agency, Washington, DC (EPA–821–R–02–012).

(2) U.S. EPA. 1995. *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms.* First Edition. U.S. Environmental Protection Agency, Washington, DC (EPA/600/R–95–136)

(3) U.S. EPA. 2002. *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms* U.S. Environmental Protection Agency, Washington, DC (EPA–821–R–02–014).

(4) U.S. EPA. 2008. *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* U.S. Environmental Protection Agency, Washington, DC (SW–846) *http://www.epa.gov/osw/hazard/testmethods/sw846/online/index.htm.*

4.0 *Standard Acute Toxicity Testing of Surface Washing Agents, Bioremediation Agents, Herding Agents, and Solidifiers.*

4.1 *Summary.* This laboratory protocol includes testing for: (1) Saltwater standard static acute toxicity tests for test products with the mysid shrimp, *Americamysis bahia* (48-hr duration) and the inland silverside, *Menidia beryllina* (96-hr duration); and (2) freshwater standard static acute toxicity tests for test products with the daphnid, *Ceriodaphnia dubia* (48-hr duration) and the fathead minnow, *Pimephales promelas* (96-hr duration) (see Table 8 of this Appendix).

TABLE 8—TOXICITY TESTING REQUIREMENTS FOR SURFACE WASHING AGENTS, HERDING AGENTS, BIOREMEDIATION AGENTS AND SOLIDFIERS

Application environment	Test procedure			
	96-hr static acute: *Menidia beryllina*	*48-hr static acute: Americamysis bahia*	96-hr static acute: *Pimephales promelas*	48-hr static acute: *Ceriodaphnia dubia*
Saltwater only	*yes*	*yes*	*no*	*no.*
Freshwater only	*no*	*no*	*yes*	*yes.*
Freshwater and saltwater use	*yes*	*yes*	*yes*	*yes.*

4.2 *Dilution Water.* Use Section 7 of EPA's *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms* (EPA–821–R–02–012) [1] for preparation of the appropriate dilution water for each species tested. Use of clean natural or synthetic seawater for tests conducted with saltwater species is acceptable.

4.3 *Preparation of Stock Solutions*

4.3.1 Liquid *Surface Washing Agents and/or Herding Agents.* Prepare a 1000 µL/L stock solution prior to test initiation by adding 1.1 mL of test product to 1100 mL of dilution water in a glass vessel. Place on a magnetic stir plate then add and center a stir bar and adjust the stir plate to obtain a vortex of 25% of the total volume of the liquid. Mix the resulting stock solution for approximately five minutes at room temperature. Using a glass pipette, remove appropriate aliquots of stock solution from between the mixing vessel wall and edge of the vortex and place directly into the dilution water within an exposure vessel. Base the preparation of exposure solutions on the nominal concentration of the stock solution and follow procedures outlined in sections 4.6 and/or 4.7 of this Appendix, as appropriate.

4.3.2 *Bioremediation Agents.* For products consisting of two or more liquid and/or solid components, prepare the product following the manufacturers recommended procedure and ensure the test product mixture is completely blended. Prepare a 1000 µL/L stock solution prior to test initiation by adding 1.1 mL of the test product mixture to 1100 mL of dilution water in a glass vessel. Place on a magnetic stir plate then add and center a stir bar and adjust the stir plate to obtain a vortex of 25% of the total volume of the liquid. Mix the resulting stock solution for approximately five minutes at room temperature. Using a glass pipette, remove appropriate aliquots of stock solution from between the mixing vessel wall and edge of the vortex and place directly into the dilution water within an exposure vessel. Base the preparation of exposure solutions on the nominal concentration of the stock solution and follow procedures outlined in sections 4.5 and/or 4.6 of this Appendix, as appropriate.

4.3.3 *Solid Phase Products.* Assessment of the toxicity of solidifiers and other solid phase products are determined using the aqueous phase of water-accommodated fractions (WAFs) of the test product. Fit a glass aspirator bottle (approximately 23L) equipped with a hose bib at the base with a length of silicon tubing containing a hose clamp. Fill the bottle with 19L of dilution water leaving a 20% headspace above the liquid, place on a magnetic stir plate then add and center a stir bar. Add the test product at 25 g/L and securely seal the bottle using a silicon stopper and wraps of parafilm. Adjust the stir plate to obtain a vortex of 25% of the total fluid volume, stir for 18 hours then settle for 6 hours. Maintain the temperature at 25 °C during stirring and settling. Purge the hose at the base of the bottle of any material followed by removal of the WAF (aqueous phase) into a clean glass container without disturbing the product on the surface. The WAF should be remixed and used for the preparation of exposure solutions following procedures outlined in section 4.4 of this Appendix.

4.4 *Preparation of Exposure Concentrations*

4.4.1 *Concentration Selection.* Preliminary rangefinder tests may be necessary using a series of logarithmic concentrations (*e.g.* 0.1, 1, 10, 100 µl test product/L) to determine the appropriate exposure concentration range necessary to determine LC_{50} values and 95% confidence intervals. For definitive tests, conduct a minimum of five test concentrations using a geometric ratio between 1.5 and 2.0 (*e.g.* 2, 4, 8, 16, and 32). Note that when testing the product, the highest test concentration should not exceed the test product's self-dispersibility limit.

4.4.2 *Exposure Concentrations.* Exposure solutions are prepared by adding the appropriate amount of stock solution directly to dilution water in each test chamber. Mix each exposure solution using five rotations in one direction followed by five rotations in the opposite direction using a solid glass stir rod.

4.4.3 *Reference Toxicants.* Separate toxicity tests must be performed with a reference toxicant for each species tested. Conduct additional reference toxicity tests any time a change in the culture population or source of a test species occurs. Use reagent grade quality sodium dodecyl sulfate (SDS), also known as dodecyl sodium sulfate (DSS), and sodium lauryl sulfate (SLS) as the reference toxicant. Information on procedures for conducting reference toxicant tests with these species can be found in section 4 of EPA's *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms* (EPA–821–R–02–012) (3).

4.5 *Saltwater Static Acute Tests With Menidia beryllina and Americamysis bahia*

4.5.1 *General.* Use EPA's *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms* (EPA–821–R–02–012) (1) for testing each species separately with the test product.

4.5.2 *Test Solutions.* Modify procedures in EPA–821–R–02–012 specifically dealing with the handling and toxicity testing of effluents or receiving water samples as follows: Prepare stock solutions following the appropriate sections (4.3.1, 4.3.2, or 4.3.3) of this Appendix and exposure concentrations following section 4.4 of this Appendix.

4.5.3 *Number of Treatments, Replicates and Organisms.* Conduct a minimum of three replicates of at least five exposure treatments plus a minimum of three replicate dilution water controls. Expose ten organisms per replicate treatment.

4.5.4 *Exposure Period.* Test duration is 48-hr for *A. bahia* and 96-hr for *M. beryllina.* Mortality must be recorded at each 24 hour period of each test.

4.5.5 *Test Acceptability.* For each test performed, survival of control animals must be > 90% and test results must allow determination of statistically valid LC_{50} and 95% confidence interval values except in cases where the LC_{50} is >1000 µl/L or is determined to be greater than the limits of water solubility or dispersibility.

4.5.6 *Static Acute Test Summary.* A summary of required test conditions is provided in Table 9 of this Appendix.

4.6 *Freshwater Static Acute Tests With Pimephales promelas and Ceriodaphnia dubia*

4.6.1 *General.* Use EPA's *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms* (EPA–821–R–02–012) (1) for testing each species separately with the test product.

4.6.2 *Test Solutions.* Modify procedures in EPA–821–R–02–012 specifically dealing with the handling and toxicity testing of effluents or receiving water samples as follows: Prepare stock solutions following the appropriate sections (4.3.1, 4.3.2, or 4.3.3) of this Appendix and exposure concentrations following section 4.4 of this Appendix.

4.6.3 *Number of Treatments, Replicates and Organisms. P. promelas:* Conduct a minimum of three replicates of at least five exposure treatments plus a minimum of three replicate dilution water controls. Expose ten organisms per replicate treatment. *C. dubia:* Conduct a minimum of four replicates of at least five exposure treatments plus a minimum of four replicate dilution water controls. Expose five organisms per replicate treatment.

4.6.4 *Exposure Period.* Test duration is 48-hr for *C. dubia* and 96-hr for *P. promelas.* Mortality must be recorded at each 24 hour period of each test.

4.6.5 *Test Acceptability.* For each test performed, survival of control animals must be > 90% and test results must allow determination of statistically valid LC_{50} and 95% confidence interval values except in cases where the LC_{50} is >1000 µl/L or is determined to be greater than the limits of water solubility of dispersibility.

4.6.6 *Static Acute Test Summary.* A summary of required test conditions is provided in Table 9 of this Appendix.

4.7 *Laboratory Report*

The laboratory must include, for each toxicity test report, all applicable information, data and analyses as follows:

4.7.1 *Test Objective:* Protocol title and source, endpoint(s);

4.7.2 *Product Information:* Product name, manufacturer contact information, lot number, production date, date received/chain of custody;

4.7.3 *Contract Facility:* Contact information;

4.7.4 *Dilution Water:* Source, pretreatment, physical and chemical characteristics (pH, salinity);

4.7.5 *Test Conditions:* Date and time of test (start and end), test chambers type and volume, volume of solution per chamber, number of organisms per chamber, number of replicate chambers per treatment, feeding frequency, amount and type of food, test concentrations, test temperature (mean and range), test salinity (mean and range);

4.7.6 *Test Organisms:* Common and scientific name, source contact information, age and date purchased, acclimation conditions (*e.g.,* temperature, salinity, both mean and range), age at test start;

4.7.7 *Reference toxicant:* Date received, lot number, date of most recent test, results

and current Cumulative Sum Chart, dilution water used, physical and chemical methods used;

4.7.8 *Quality Assurance:* Verification of laboratory accreditation, including subcontractor facilities;

4.7.9 *Test Results:* Raw data in tabular and graphical form, daily records of affected organisms in each concentration replicate and controls, table of required endpoints (*i.e.,* LC_{50}, 95% CI, inhibited concentration for 50% of the species (IC_{50}), lower observed effect concentration (LOEC) and no observed effect concentration (NOEC)), statistical methods used to calculate endpoints, summary tables of test conditions and QA data; and

4.7.10 *Conclusions:* Relationship between test endpoints and threshold limit.

TABLE 9—SUMMARY OF TEST CONDITIONS—SURFACE WASHING AGENTS, HERDING AGENTS, BIOREMEDIATION AGENTS AND SOLIDIFIERS TOXICITY

	Saltwater Acute *M. beryllina*	Saltwater Acute *A. bahia*	Freshwater Acute *P. promelas*	Freshwater Acute *C. dubia*
Test type	Static non-renewal	Static non-renewal	Static non-renewal	Static non-renewal.
Test duration	96 hours	48 hours	96 hours	48 hours.
Salinity	20 ± 2‰	20 ± 2‰	NA	NA.
Temperature	25 ± 1 °C. Test temperatures must not deviate (maximum minus minimum temperature) by more than 3 °C during the test.			
Light quality	Ambient laboratory illumination			
Light intensity	10–20 µE/m²/s			
Photoperiod	16 h light, 8 h darkness, with phase in/out period recommended			
Test chamber size [1]	250 mL	250 mL	250 mL	30 mL.
Test solution volume [1]	200 mL	200 mL	200 mL	15 mL.
Age of test organism [2]	9–14 days	1–5 days	1–14 days	<24 hours.
No. organisms per test chamber	10	10	10	5.
No. of replicate chambers per concentration (minimum).	3	3	3	4.
Feeding regime	Refer to specific feeding procedures provided in each test method			
Aeration	None, unless DO falls below 4.0 mg/L, then aerate all chambers. Rate: <100 bubbles/minute			
Test concentrations	5 exposure concentrations and a control (minimum required)			
Test acceptability (required)	≥90% survival in controls			

[1] Recommended minimum value.
[2] Less than or equal to 24-hr range in age.

4.8 *References for Section 4*

(1) U.S. EPA. 2002. *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms.* Fifth Edition. U.S. Environmental Protection Agency, Washington, DC (EPA–821–R–02–012).

5.0 *Bioremediation Agent Efficacy Test Protocol*

5.1 *Summary.* This protocol quantifies changes in weathered Alaska North Slope (ANS) crude oil composition of alkanes and aromatics resulting from the use of a bioremediation agent in either artificial seawater or freshwater. The manufacturer may test either one or both freshwater or saltwater, depending on the product's intended use. Biodegradation of the alkanes and aromatics is monitored for 28 days at 20–23 °C. Product flasks at Day 28 are compared to Day 0 flasks to determine reductions in alkanes and aromatics. A positive control of a known oil-degrading bacterial culture supplied by EPA is tested. A negative, sterile control is also set up containing exposure water, weathered crude oil, product, and a sterilant, sodium azide. The purpose of the negative, killed control is to make sure the disappearance of the oil constituents at day 28 is due to biodegradation and not some physical loss such as volatilization. The day 28 GC/MS results from the killed control must not be less than 90% of the day 0 results. The sample preparation procedure extracts the oil phase into the solvent dichloromethane (DCM) (also known as methylene chloride) with a subsequent solvent exchange into hexane. The hexane extracts are analyzed by a high resolution gas chromatograph/mass spectrometer (GC/MS) operated in the selected ion monitoring mode (SIM) at a scan rate of >5 scans per second. Note to 5.1: Artificially distilled at 521 °F (272 °C) to remove the low molecular weight hydrocarbons to approximate natural weathering processes that occur after a spill.

5.2 Apparatus. All equipment must be maintained and calibrated per standard laboratory procedures.

5.2.1 Assorted flasks and other glassware;

5.2.2 Graduated cylinders (100 mL);

5.2.3 Deionized water; 250 mL borosilicate glass Erlenmeyer flasks;

5.2.4 Pasteur pipettes;

5.2.5 Multichannel pipettor (5–50 mL and 50–200 mL);

5.2.6 Autoclave; environmental room or incubator;

5.2.7 Balance accurate to 0.1 mg;

5.2.8 Orbital shaker table with clamps sized to hold flasks securely;

5.2.9 GC/MS instrument equipped with a DB–5 capillary column (30 m, 0.25 mm ID, and 0.25 mm film thickness) or equivalent, and a split/splitless injection port operating in the splitless mode, such as a Agilent 6890 GC/5973 MS (or equivalent) equipped with an auto-sampler for testing multiple samples; and

5.2.10 Fixed Rotor Centrifuge.

5.3 *Reagents and Culture Medium*

5.3.1 *Stock Seawater Preparation.* Prepare the artificial seawater GP2 (Spotte *et al.,* 1984) following the procedures in section 2.3 of this Appendix, to obtain the final concentration of the salts listed in Table 1 of this Appendix, except for the sodium bicarbonate ($NaHCO_3$) which is prepared separately. Autoclave the artificial seawater. Filter sterilize the concentrated solution of sodium bicarbonate through a 0.45 µm membrane filter and add to the autoclaved and cooled artificial seawater GP2 to obtain the final concentration listed in Table 1 of this Appendix.

5.3.2 *Seawater for the positive control flasks.* Prepare sodium triphosphate (a.k.a.,

sodium tripolyphosphate) ($Na_5P_3O_{10}$), potassium nitrate (KNO_3), and ferric chloride hexahydrate ($FeCl_3 \cdot 6H_2O$) as a concentrated solution. Filter sterilize through a 0.45 µm membrane filter and add to autoclaved artificial seawater to obtain the final nutrient concentrations listed in Table 10 of this Appendix. Calibrate the pH meter at room temperature (approximately 20–23 °C) using commercial buffers of pH 4.0, 7.0, and 10.0, as appropriate, prior to use. Adjust the pH of the artificial seawater with concentrated hydrochloric acid (HCl) or 10 normality sodium hydroxide (10 N NaOH), as appropriate.

TABLE 10—ARTIFICIAL SEAWATER NUTRIENT CONCENTRATIONS

Constituent	Final concentration, g/L
* $FeCl_3 \cdot 6H_2O$	0.050
KNO_3	2.890
* $Na_5P_3O_{10}$	0.297

* Added aseptically after the GP2 has been autoclaved to limit phosphorus and iron precipitation.

5.3.3 Seawater *for bioremediation agents that do not include nutrients.* If a bioremediation agent contains living microorganisms but not nutrients (or limiting concentrations of nutrients), then nutrients may be added by the manufacturer. However, the total concentration of the nutrients added to the bioremediation agent must not exceed the final concentrations listed in Table 11 of this Appendix.

TABLE 11—ARTIFICIAL SEAWATER NUTRIENT CONCENTRATIONS FOR BIOREMEDIATION AGENTS HAVING NO NUTRIENTS INCLUDED

Constituent	Final concentration, g/L
as Iron (Fe)	0.010
as Nitrogen (N)	0.400
as Phosphorus (P)	0.075

If nutrients are supplied by the product manufacturer, the specific composition and concentration used in the efficacy testing must be submitted.

5.3.4 *Freshwater Preparation.* The artificial freshwater, which is a modification of Bushnell-Haas medium (Haines *et al.,* 2005), is prepared following the concentrations listed in Table 12 of this Appendix and then autoclaved. The pH is adjusted to 7.4 before autoclaving. Constituents removed from the original formulation are KNO_3, K_2HPO4 and KH_2PO_4.

TABLE 12—CONSTITUENT CONCENTRATIONS FOR ARTIFICIAL FRESHWATER

[Bushnell-Haas]

Constituent	Final concentration (mg/L)
$MgSO_4 \cdot 7H_2O$	200
$CaCl_2 \cdot 2H_2O$	20
$FeCl_3 \cdot 6H_2O$	50
$MnSO_4 \cdot H_2O$	0.0302
H_3BO_3	0.0572
$ZnSO_4 \cdot 7H_2O$	0.0428
$(NH_4)_6Mo_7O_2$	0.0347

5.3.5 *Freshwater for the positive control.* To prepare the freshwater for the positive controls, prepare the nutrients potassium phosphate monobasic (KH_2PO_4), potassium phosphate dibasic (K_2HPO_4) and potassium nitrate (KNO_3) as a concentrated solution. Filter sterilize and add to autoclaved artificial freshwater to obtain the final concentrations given in Table 13 of this Appendix. Calibrate the pH meter at room temperature (approximately 20–23 °C) using commercial buffers of pH 4.0, 7.0, and 10.0, as appropriate, prior to use. Adjust the pH of the artificial freshwater to 7.4 with 1 N HCl or 1 N NaOH, as appropriate.

TABLE 13—FRESHWATER NUTRIENT CONCENTRATIONS

Constituent	Final concentration (g/L) [1]
KNO_3	2.89
KH_2PO_4	1.00
K_2HPO_4	1.00

[1] Adjust pH to 7.4 prior to autoclaving

5.3.6 *Freshwater for bioremediation agents that contain living microorganisms but not nutrients or limiting concentrations of nutrients.* If a bioremediation agent does not include nutrients, then nutrients may be added. However, the total concentration of the nutrients added to the bioremediation agent must not exceed the final concentrations provided in Table 14 of this Appendix.

TABLE 14—ARTIFICIAL FRESHWATER NUTRIENT CONCENTRATIONS FOR BIOREMEDIATION AGENTS HAVING NO NUTRIENTS INCLUDED

Constituent	Final concentration, g/L [1]
as Iron (Fe)	not added since iron is already in the freshwater solution.
as Nitrogen (N)	0.400.
as Phosphorus (P)	0.400.

[1] Adjust to pH 7.4 prior to autoclaving.

If nutrients are supplied by the product vendor, the specific composition and concentration used in the efficacy testing must be submitted.

5.3.7 *Oil Preparation.* The test oil, weathered ANS521 crude oil, can be obtained from EPA at no charge (except for a minimal shipping fee). See *http://www.epa.gov/emergencies/content/ncp/index.htm* for more information.

5.3.8 *Sodium azide sterilant.* Prepare a stock solution of NaN_3 for addition to the negative killed control. The final concentration in the killed controls will be 0.5 g/L.

5.4 *Experimental Setup and Procedure*

5.4.1 Autoclave clean borosilicate glass Erlenmeyer flasks (250 mL) for 20 minutes at 121 °C at 15 psig.

5.4.2 Label flasks with the appropriate code (negative control, positive control, or product; day to be sampled (0 or 28); letter indicating replicate number) to reflect the following treatment design in Table 15 of this Appendix:

TABLE 15—BIOREMEDIATION EFFICACY TEST—SUMMARY OF EXPERIMENTAL SETUP

Treatment	Number of replicates at sampling times		Analysis
	Day 0	Day 28	
Negative (killed) Control (oil + exposure water + product + EPA culture + NaN_3 sterilant)	0	3	GC/MS
*Positive control (oil + exposure water + nutrients + EPA culture)	6	6	GC/MS
Test Type 1: Product containing living microorganisms (oil + exposure water + living product + supplemented nutrients (if necessary)).	6	6	GC/MS
Test Type 2: Product containing proprietary nutrients but no live microorganisms (oil + exposure water + product + EPA culture).	6	6	GC/MS
Test Type 3: Product (such as an enzyme) containing no live microorganisms and no nutrients (oil + exposure water + product).	6	6	GC/MS

* The laboratory must report positive control test results conducted within the year of any test results for bioremediation products, for one or both types of water as applicable.

5.4.3 Aseptically dispense 100 mL of pre-sterilized artificial exposure water (seawater or freshwater) into each flask. For the positive control flasks, use exposure water containing nutrients. Alternatively, the artificial exposure water can be dispensed into clean flasks and then autoclaved.

5.4.4 Tare the labeled flasks containing exposure water and other additions, as necessary, on the balance with a minimum accuracy of 0.01 g. Add drop-wise 0.50 g oil (this results in a final oil concentration of 5 g/L) using a sterile Pasteur pipette to the center of the flask taking care to avoid splashing the oil onto the sides of the flasks. Record the precise weight. ANS521 may be previously warmed in a hot water bath to facilitate its flow. Take precautions when handling and charging the flasks to minimize the likelihood of contamination by exogenous microbes, including using a new sterile pipette for each series of flasks.

5.4.5 Preparation of the EPA culture for both the positive control flasks and the flasks containing non-living bio-stimulation products. Use two vials containing approximately 5 mL of the known EPA culture frozen in glycerol. Thaw both vials at room temperature, transfer the contents of both thawed vials to a single sterile centrifuge tube, rinse tubes with two volumes each of sterile exposure water, centrifuge at between 6,000 and 7,000 ×s gravity (6,000–7,000 × *g*) for 15 minutes using a fixed rotor to fully pellet the cells.

5.4.6 Positive control flasks contain exposure water, oil, nutrients, and the EPA culture.

5.4.7 Negative killed control flasks for all products shall contain exposure water, oil, product, the EPA culture for products not containing a living culture, and the sodium azide sterilant at a final concentration of 0.5 g/L. Add the sodium azide sterilant prior to adding any product or EPA culture. For the negative killed control flasks and product flasks, prepare and add the product to the flasks in a concentration specified by the manufacturer or vendor.

5.4.8 For non-living products that contain nutrient only, use the EPA culture as the inoculum.

5.4.9 For other non-living products (*e.g.,* enzymes), do not add nutrients or the EPA culture as the inoculum as they are not needed.

5.4.10 For products containing microbial cultures, prepare 6 flasks the same way as in Steps a-d, but without the EPA culture. A product that contains its own nutrients must not be amended with nutrients, unless the product contains insufficient nutrients. Since this is a closed flask test, nutrients could be limiting if they are at the same concentration as used in the field. This could cause the product to fail the test. Thus, the manufacturer has the option to supplement its product with a higher concentration of nutrients than that contained in the product. Any nutrient supplements to a product must be reported and must not exceed the concentration limits in Table 10 (for seawater) and 13 (for freshwater) of this Appendix, as applicable.

5.4.11 Cap all flasks either with cotton stoppers or loosely applied aluminum foil to allow gas exchange with the atmosphere. Set aside the T=0 flasks for immediate extraction and analysis. Place the rest of the flasks onto the orbital shaker table. Do not tip the flasks excessively to avoid stranding oil above the mixing area of the flask. Set the orbital shaker to 200 rpm and shake the flasks for 28 days at 20–23° C.

5.4.12 Submit all information on added cultures and nutrients for testing in the data report.

5.5 *Sampling and Chemical Analysis*

5.5.1 *Summary.* At each sampling event (Days 0 and 28), product and control flasks are sacrificed for analysis of residual oil concentrations (SOP 4 of this Appendix). Record all physical observations for each flask (such as degree of emulsification, whether the oil has congealed into tar balls, wall growth, color, etc.) at each sampling. The analytical procedure is summarized in Table 16 of this Appendix. Dichloromethane (DCM) is the solvent used for the initial extraction. Solvent-exchange the extract into hexane prior to injection into the gas chromatograph. The solvent exchange is done to prevent asphaltenes from contaminating the column.

TABLE 16—BIOREMEDIATION EFFICACY—SUMMARY OF ANALYTICAL PROCEDURES

Matrix	Measurement	Sampling/measurement method	Analysis method	Sample container/quantity of sample	Preservation/storage	Holding times
DCM	N/A	Solvent Exchange to Hexane.	N/A	Capped Vial with Teflon septa, 30 mL.	4 °C	6 months.
Hexane	Hydrocarbon Concentration	SOP 4	GC/MS	Capped Vial with Teflon septa, 10 mL.	4 °C	6 months.

5.5.2 *Hydrocarbon Extraction.* To measure extraction efficiency, 500 mL of the surrogate recovery standard (compounds and concentrations described in SOP 1 in this Appendix) is added to each flask. Add 50 mL DCM to each flask. Use magnetic stir bars to stir the flasks for 20 minutes to transfer the oil into the DCM phase. Allow the flasks to stand one hour for phase separation. If an emulsion remains after one hour, centrifuge the emulsion in Teflon® centrifuge tubes for at least ten minutes in a low speed centrifuge at 3,000 × gravity (3,000 × *g*) to break the emulsion and recover the DCM phase. Pass the DCM extract through a funnel plugged with glass wool and containing approximately 20 g anhydrous, granular sodium sulfate (Na_2SO_4) to remove water. Collect the extract in 30 mL serum vials, capped with Teflon lined septa and aluminum crimp seals, and store at 4 °C for up to 6 months.

5.5.3 *Solvent Exchange.* Perform a solvent exchange (DCM to hexane) prior to GC/MS analysis to prevent injection of asphaltenes into the GC/MS column. Using a Class A volumetric pipette, transfer10 mL of DCM extract to 16 x 125 mm test tubes with Teflon lined screw caps. Place the test tubes in a 37° C water bath under a stream of dry nitrogen gas. Reduce the sample to 1 mL and return to volume with hexane. Repeat the blow down and re-suspension twice to exchange the hydrocarbons from DCM into the hexane.

5.5.4 *Hydrocarbon Analysis.* Quantify the concentrations of 25 alkanes (including hopane) and 31 aromatics (SOP 4, Table SOP 4.1 of this Appendix) using an Agilent 6890 GC/5973 MS or equivalent equipped with a 30-m × 0.25-mm ID × 0.25-µm film thickness DB–5 or equivalent fused silica column. To prepare the samples, transfer 1.0 mL of the hexane extract into a 2 mL autosampler vial with Teflon lined cap. Add 20 µL of internal standard solution to each vial with a syringe or positive displacement pipettor. SOP 2 of this Appendix outlines the procedure for preparing the internal standard solution. Load vials onto the autosampler tray and analyze in selected ion monitoring mode (SIM). Sum the individual alkane concentrations for the total alkane concentration and the individual aromatic concentrations for total aromatic concentrations in each flask.

5.6 *Quality Assurance/Quality Control (QA/QC)*

5.6.1 *Objectives.* The critical variables to be analyzed for each set of experimental conditions are the individual petroleum hydrocarbons, *i.e.,* the alkanes ranging in carbon number from nC–14 to nC–35, plus pristane and phytane, and the 2- to 4-ring polycyclic aromatic hydrocarbons (PAHs) and their alkylated homologs as listed in SOP 4 of this Appendix. The quality assurance objectives for precision, accuracy, and detection limits are ± 20%, 75–125% recovery, and 22.5 µg/L, respectively. For more details, refer to the SOPs of this Appendix.

5.6.2 *Precision Objectives.* Precision is presented as relative percent difference (RPD) for duplicate measurements and as relative standard deviation (RSD, or coefficient of variance) for triplicate measurements, applicable to replication of treatments as separate samples.

5.6.3 *Accuracy Objectives.* These are based on the check standards and standard oil samples run concurrently with the sample analyses for GC/MS analysis of critical

compounds. Critical compounds in the check standards and in the oil standards must fall within 75–125% of expected values for the analysis to be valid. Six surrogate compounds (SOP 1 of this Appendix) added to each sample before extraction can also serve as a surrogate for determining accuracy. The measured surrogate concentrations must fall within 75–125% of expected values.

5.6.4 *Calibration Range.* Conduct all measurements within the linear calibration range of the instrument. The calibrated concentration range for GC/MS analysis is 1 mg/L to 30 mg/L. If the measured concentration of any critical compound is above the calibration range, dilute the sample and re-analyze to quantify that particular compound within the linear calibration range.

5.6.5 *Quality Control.* Table 17 of this Appendix summarizes the QC checks for each measurement. See the corresponding SOP in this Appendix for detailed descriptions of QC checks, frequency, acceptance criteria, and corrective actions.

TABLE 17—QA/QC CHECKS

Sample matrix	Measurement	QA/QC check	Frequency	Acceptance criteria	Corrective action
DCM	GC/MS hydrocarbon analysis.	Blanks	Once per calibrated run	Peak area of interfering peaks <10% of lowest standard peak area.	Flush with solvent, clean injection port, and/or bake column.
DCM	GC/MS hydrocarbon analysis.	DFTPP Check Standard	Once per calibrated run	Must pass all DFTPP criteria.	If any criteria fail, retune and rerun DFTPP check standard.
DCM	GC/MS hydrocarbon analysis.	Initial Calibration Samples.	Once per calibrated run	Response Factor RSD ≤25%.	If RSD for any one compound >25%, recalibrate.
DCM	GC/MS hydrocarbon analysis.	Calibration Check Standards.	Every 10–15 samples	± 25% of expected values.	If >5 compounds are out of range, recalibrate and rerun samples.
Hexane	GC/MS hydrocarbon analysis.	Surrogates	Every Sample	± 30% of expected values.	Re-inject.
Hexane	GC/MS hydrocarbon analysis.	Biomarker Concentration.	Every Sample	± 25% of average values.	Re-inject.

5.7 *Pass/Fail Criteria*

5.7.1 Calculate the mean and standard deviation of the hopane-normalized total aromatics (sum of all resolved aromatics) and hopane-normalized total alkane concentrations (sum of all resolved alkanes) from the 6 independent replicates at days 0 and 28. To normalize, divide the sum of the alkane analytes and the sum of the aromatic analytes in each replicate by the hopane concentration in the corresponding replicate.

5.7.2 From those data, calculate the 95% Upper Confidence Level (UCL_{95}) at days 0 and 28 using the following formula (Equation 11 of this Appendix):

$$UCL_{95} = \bar{x}_{t(0and28)} + \left(\frac{t_{95,5df} \times \sigma}{\sqrt{n}} \right) \qquad \text{(Equation 11)}$$

Where:

x_{t28} = total hopane-normalized alkane or total hopane-normalized aromatic mean of 6 replicates at days 0 and 28,

$t_{95,\ 5\ df}$ = the 95% one-tailed t-value with 5 degrees of freedom (2.015),

σ = the standard deviation of the 6 replicates at day 0 and 28, and

n = no. of replicates = 6.

5.7.3 Using Equation 12 of this Appendix, calculate the % reduction of each oil fraction from day 0 to day 28, using the day 0 and 28 UCL_{95} hopane-normalized values for each fraction:

$$\%\ reduction = 100 \times \left[1 - \left(\frac{t_{28(UCL95)}}{t_{0(UCL95)}} \right) \right] \qquad \text{(Equation 12)}$$

Where:

$t_{28(UCL95)}$ = UCL_{95} of the hopane-normalized total alkane or total aromatic mean of 6 replicates on day 28, and

$t_{0(UCL95)}$ = UCL_{95} of the hopane-normalized total alkane or total aromatic mean of 6 replicates on day 0.

5.7.4 A product is successful in saltwater if the % reduction of total alkanes (aliphatic fraction) from the GC/MS analysis is greater than or equal to 95% and the % reduction of total aromatics (aromatic fraction) is greater than or equal to 70% at day 28 based on the UCL_{95} (Equation 12 of this Appendix). For freshwater, a product is successful if the % reduction of total alkanes and total aromatics is greater than or equal to 95% and 40%, respectively. The benchmark reduction ranges in aliphatic and aromatic fractions for the positive control are the same as for the products specified above. The average concentration of the biomarker hopane at day 28 must not differ from the average concentration at day 0 by more than 12% in the positive control. If the conditions for the positive control are not met, the entire procedure must be repeated.

5.8 *Data Verification and Reporting.* GC/MS data files are generated by MS ChemStation software (the Agilent standard software for GC/MS) or equivalent for each injection. Data files contain summed ion chromatograms and selected ion chromatograms. Calibration curves are generated within MS ChemStation software, and all data files are calculated against the calibration curve by MS ChemStation. Data verification would be done by crosschecking between analysts for 10% of the raw data and its reduction process.

5.9 *Laboratory Report.* The summary of findings from a product test must include the data listings for each analyte that was analyzed (*i.e.,* all individual alkanes and aromatics in the list of required analytes). Express all concentrations as mg analyte/L exposure water.

5.10 *Standard Operating Procedures (SOPs) 1–4*

5.10.1 *SOP 1. Preparation of Surrogate Recovery Standards*

5.10.1.1 *Preparation:*

5.10.1.1.1 Solvents: Dichloromethane (DCM), Optima (Fisher) grade or equivalent.

5.10.1.1.2 Reagents: D36-Heptadecane (C17), D50-Tetracosane (C24), D66-Dotriacontane (C32), D10–1-Methylnaphthalene, D10-Phenanthrene, D10-Pyrene, 5-beta-cholestane (coprostane).

Note: Deuterated reagents are available from Cambridge Isotope Laboratories, Andover, MA.

5.10.1.1.3 Equipment: Micro-spatula, Small beakers, Glass funnel, Analytical balance (0.0001g), Vials with Teflon-lined caps, Teflon wash bottle with Optima grade DCM, Volumetric flask (250 mL), class A, Pasteur pipettes.

5.10.1.2 *Procedure:*

5.10.1.2.1 Using a calibrated analytical balance, weigh 100 mg (0.100 g) of each reagent into separate 10–25 mL beakers.

5.10.1.2.2 Dissolve the reagents in their beakers by adding 10 mL DCM. Use a Pasteur pipette to transfer the solutions to a single 250 mL volumetric flask.

5.10.1.2.3 Wash the beakers 3 or 4 times with DCM. Use a Pasteur pipette to transfer each of the washings to the 250 mL volumetric flask.

5.10.1.2.4 Dilute the solution to the 250 mL volume mark on the volumetric flask with DCM.

5.10.1.2.5 Use a glass stopper to seal the flask and homogenize the solution by inverting the flask 5 or more times. The final concentration of this solution is 400 mg/L for each of the reagents.

5.10.1.2.6 Transfer the solution into 40 mL storage vials and cap with Teflon-lined caps and label each with the date of preparation, operator, sample names, and concentrations.

5.10.1.2.7 Weigh each vial and record its weight on the label. This weight is used to monitor possible evaporation during storage.

5.10.1.2.8 Store these vials at 0 °C or lower.

5.10.1.2.9 Before using, allow the solution to come to room temperature, and then shake it well.

5.10.1.2.10 Weigh the vial before using it, and compare the weight with the last weight recorded on the vial.

5.10.1.2.11 If the weights are consistent, the integrity of the solution can be assumed. If not, investigate and resolve the cause. Prepare a new solution if the integrity has been compromised.

5.10.1.3 *Quality Control:* Inject 20 µL of the surrogate stock solution into 1 mL DCM. Add 20 µL of the internal standard solution (SOP 2 of this Appendix). Analyze this solution by GC/MS using a calibrated method (SOPs 3 and 4 of this Appendix). The expected concentration of each of the corresponding surrogate compounds is 8 ± 2 mg/L. If the measured value does not fall within this range, prepare and measure another independent surrogate solution. If the measured concentration of the second surrogate solution is within the allowable tolerance range, the calibration and instrument conditions are acceptable; properly discard the first surrogate solution. If the concentration of the second surrogate solution is also out of range, then clean and recalibrate the instrument until the problem is resolved.

5.10.2 *SOP 2. Preparation of Internal Standard Solution*

5.10.2.1 *Preparation*

5.10.2.1.1 Solvents: Dichloromethane (DCM), Optima (Fisher) grade or equivalent.

5.10.2.1.2 Reagents: D34 n-Hexadecane (C16), D42 n-Eicosane (C20), D62 n-Triacontane (C30), D8-Naphthalene, D10-Anthracene, D12-Chrysene, 5-alpha-Androstane.

Note: Deuterated reagents are available from Cambridge Isotope Laboratories, Andover, MA.

5.10.2.1.3 Equipment: Micro-spatula, Small beakers, Glass funnel, Analytical balance (0.0001g), calibrated and checked for accuracy, Amber vials with Teflon-lined caps, labeled, Teflon wash bottle with DCM, Volumetric flask (200 mL), class A, Pasteur pipettes.

5.10.2.2 *Procedure:*

5.10.2.2.1 Using a calibrated analytical balance, weigh 100 mg (0.100 g) of each of the reagents into separate small beakers.

5.10.2.2.2 Dissolve the reagents in their beakers by adding 10 mL DCM; using a Pasteur pipette, transfer the solutions to a single 200 mL volumetric flask.

5.10.2.2.3 Wash the beakers 3 or 4 times with DCM; use a Pasteur pipette to transfer each of the washings to the 200 mL volume mark on the volumetric flask.

5.10.2.2.4 Dilute the solution with DCM to the 200 mL volume.

5.10.2.2.5 Seal the flask with a glass stopper and homogenize the solution by inverting the flask a minimum of 5 times. The final concentration of this solution is 500 mg/L of each reagent.

5.10.2.2.6 Transfer the solution into 40 mL storage vials and cap with Teflon-lined caps. Label each vial with the date of preparation, operator, sample names, and concentrations.

5.10.2.2.7 Weigh each vial, and record its weight on the label. This weight is used to monitor possible evaporation during storage.

5.10.2.2.8 Store this solution at 0 °C or lower.

5.10.2.2.9 Before using, allow the solution to come to room temperature, and then shake it well.

5.10.2.2.10 Weigh the vial before using it, and compare the weight with the last weight recorded on the vial.

5.10.2.2.11 If the weights are consistent, the integrity of the solution can be assumed. If not, investigate and resolve the cause. Prepare a new solution if the integrity has been compromised.

5.10.2.3 *Quality Control:* Inject 20 µL of the internal standard solution into 1 mL DCM. Analyze this solution by GC/MS. The only peaks corresponding to the internal standards must appear. If other peaks appear, particularly close to the internal standard peaks, discard the internal standard solution and prepare a new solution.

5.10.3 *SOP 3. Preparation of Working Standards, Check Standards, and Oil Standards for GC/MS Consistency.*

5.10.3.1 *Preparation:*

5.10.3.1.1 Solvent: Dichloromethane (DCM), Optima (Fisher) grade or equivalent.

5.10.3.1.2 Stock solutions:

5.10.3.1.2.1 Oil analysis standard: 44 compounds, 100 mg/L in hexane/DCM (9:1), four, 1-mL vials required. Available from Absolute Standards, Inc., Hamden, CT, Part # 90311.

5.10.3.1.2.2 Nine compound PAH standard: 1,000 mg/L in DCM, one vial. Available from Absolute Standards, Inc., Hamden, CT, Part # 90822.

5.10.3.1.2.3 1,2-Benzodiphenylene sulfide, (synonym for naphthobenzothiophene). Prepare a 2 mg/mL stock solution. Available from Sigma-Aldrich Co., Part # 255122, purity 99%.

5.10.3.1.2.4 Hopane solution (17 β (H), 21β (H), 0.1 mg/mL in isooctane. Available from Sigma-Aldrich Co. Part # 07562.

5.10.3.1.2.5 Surrogate solution: 400 mg/L of each reagent in DCM (see SOP 1 of this Appendix).

5.10.3.1.2.6 Internal standard solution, 500 mg/L in DCM (see SOP 2 of this Appendix).

5.10.3.1.3 Alaska North Slope Crude Oil 521 (ANS521).

5.10.3.1.4 Equipment:

5.10.3.1.4.1 Glass storage vials with Teflon-lined caps (2 mL and 40 mL capacity);

5.10.3.1.4.2 Volumetric flasks, Class A, 5 mL, 10 mL, and 100 mL.

5.10.3.1.4.3 Glass syringes capable of dispensing 25–500 mL with an accuracy and precision of ± 1%, or equivalent.

5.10.3.1.4.4 Wheaton repetitive dispenser, Model 411 STEP–PETTE or equivalent.

5.10.3.1.4.5 Teflon wash bottle filled with Optima grade DCM or equivalent grade DCM.

5.10.3.1.4.6 Pasteur pipettes.

The volumes of stock solutions required to make the working standards are listed in Table SOP 3.1 of this Appendix.

TABLE SOP 3.1—AMOUNT OF STOCK SOLUTIONS REQUIRED TO MAKE THE WORKING STANDARDS

Stock standards	A	B	C	D	E		F
Working standards concentration, mg/L	Oil Analysis Mix (44 compounds, 100 mg/L) µL	Aromatics Mix (9 compounds, 1000 mg/L) µL	1,2-Benzodiphenylene sulfide (NBT) (2 mg/mL) µL	Surrogate solution (100 mg/L) µL	Hopane solution (100 mg/L) µL	Volumetric Flask Volume mL	ISTD (500 mg/L) µL
STD 30 (no hopane)	1500	150	75	375	0	5	100
STD 20 (5 mg/L hopane)	1000	100	50	250	250	5	100
STD 10 (2.5 mg/L hopane)	500	50	25	125	125	5	100
STD 5* (1 mg/L hopane)	500	50	25	125	100	10	200
STD 5-Utility (1 mg/L hopane)	500	50	25	125	100	10 (used for preparation of STD 2.5 & STD 1).	0
STD 2.5 (0.5 mg/L hopane)	Use 5 mL of STD 5-Utility and dilute to 10 mL						200
STD 1 (0.2 mg/L hopane)	Use 2 mL of STD 5-Utility and dilute to 10 mL						200

*Make extra STD 5 for use as check standard.

5.10.3.2 *Procedure for Working Standards and Check Standards:*

5.10.3.2.1 Label three 5 mL volumetric flasks as STD30, STD20, STD10, and two 10 mL volumetric flasks as STD5, and STD5-utility.

5.10.3.2.2 Add 1–2 mL of DCM to each volumetric flask.

5.10.3.2.3 Using glass syringes, add the appropriate volume of stock solution A (as listed in Table SOP 3.1 of this Appendix) to the flasks labeled STD30, STD20, STD10, STD5, and STD5-utility.

5.10.3.2.4 Wash the walls of the inner neck of the flasks with several drops of DCM to rinse off the residue of the stock solution into the flasks.

5.10.3.2.5 Repeat Step 3 and Step 4 to dispense stock solutions B–E (do not add stock solution F, internal standard solution, at this step).

5.10.3.2.6 Dilute to volume with DCM for all the above flasks, seal with glass stoppers, and invert several times to homogenize the solutions.

5.10.3.2.7 Label two additional 10 mL volumetric flasks as STD2.5 and STD1. Wet with 1–2 mL DCM.

5.10.3.2.8 Dispense 5 mL of STD5-utility solution into flask STD2.5, and 2 mL of STD5-utility solution into flask STD1.

5.10.3.2.9 Dilute to volume with DCM, seal with glass stoppers, and invert several times to homogenize the solutions.

5.10.3.2.10 Using a 100 µL glass syringe, dispense 100 µL of internal standard solution into flasks STD30, STD20, and STD10. Dispense 200 µL into flasks STD5, STD2.5, and STD1 to give a final concentration of 10 mg/L internal standard.

5.10.3.2.11 Seal with glass stoppers, and invert the flasks several times to homogenize the solutions.

5.10.3.2.12 Transfer the solutions into 2 mL storage vials, and cap with Teflon-lined caps.

5.10.3.2.13 Label each vial with date of preparation, analyst, sample names, and concentrations.

5.10.3.2.14 Weigh each storage vial and record its weight on the label. This weight is used to monitor possible evaporation during storage.

5.10.3.2.15 Store this solution at 0 °C or below.

5.10.3.2.16 Before using, allow the solution to come to room temperature, and shake it well.

5.10.3.2.17 Weigh the vial before opening, and compare the weight with the last weight recorded on the vial. If the weights are consistent, the integrity of the solution can be assumed. If not, investigate and resolve the cause. Do not use the solution if the integrity has been compromised.

5.10.3.3 *Procedure for Oil Standard.* In a 100 mL volumetric flask, weigh 0.500 g of the standard ANS521 crude oil, add 2 mL of surrogate solution (see SOP 1 of this Appendix), and bring to volume with DCM. Add 2 mL of internal standard solution (see SOP 2 of this Appendix). Follow steps 5.10.3.2.11 through 5.10.3.2.17 of this SOP, substituting 40 mL storage vials for the 2 mL vials.

5.10.3.4 *Quality Control/Quality Assurance:*

5.10.3.4.1 Run the six standard solutions using the GC/MS method (SOP 4) on a tuned GC/MS. Use the EnviroQuant software or equivalent to calculate the average Relative Response Factor (RRF) and the relative standard deviation (RSD) of the RRFs for each analyte over the six concentrations. The RRF is defined as:

$$RRF = \frac{\text{area analyte}}{\text{area internal standard}} \times \frac{\text{concentration of internal standard}}{\text{concentration of analyte}} \qquad \text{(Equation 13)}$$

5.10.3.4.2 The RSD of the RRFs for all analytes must be 25% or less according to EPA Method 525.2.

5.10.4 *SOP 4. GC/MS Method for the Analysis of Crude Oil Samples.*

5.10.4.1 *Instrument Specifications:*

5.10.4.1.1 Use an Agilent 6890 GC coupled with an Agilent 5973 mass selective detector (MSD) and an Agilent 6890 series auto sampler or equivalent, equipped with a DB–5 capillary column (30 m, 0.25 mm I.D., and 0.25 µm film thickness) or equivalent, and a split/splitless injection port operating in the splitless mode. Data acquisition occurs either in the SIM (selected ion monitoring) mode for quantitative analysis or in SCAN mode for qualitative analysis. In SIM mode, the dwell time of each ion is set to be 10 milliseconds and the ions are split up into groups by retention time. One way to divide the ions is by retention time grouping as shown in Table SOP 4–1 of this Appendix. The number of ions in each ion group must be constant, yielding the same scan rate for each group.

TABLE SOP 4–1—IONS ASSOCIATED WITH RETENTION TIME GROUPS

Group	Ions
1	57, 66, 128, 136, 142, 152, 156, 166, 170, 184
2	57, 66, 166, 170, 178, 180, 184, 188, 192, 194, 198, 208
3	57, 66, 178, 184, 188, 192, 194, 198, 202, 206, 208, 212, 220, 226

TABLE SOP 4–1—IONS ASSOCIATED WITH RETENTION TIME GROUPS—Continued

Group	Ions
4	57, 66, 192, 198, 202, 206, 208, 212, 216, 220, 226, 230, 234, 245
5	57, 66, 191, 217, 228, 240, 242, 248, 256, 262, 264, 270, 276, 284

5.10.4.1.2 Table SOP 4.2 of this Appendix summarizes the instrumental conditions for crude oil analysis. Use only ultra-high purity helium (99.999% pure) as the carrier gas. In series, connect a moisture trap, an oxygen trap, and an organic trap to the carrier gas line before it enters the column.

TABLE SOP 4.2—INSTRUMENTAL CONDITIONS FOR CRUDE OIL ANALYSIS

Instrument	Agilent 6890 Series II Gas Chromatograph (GC) with an Agilent 5973MSD and an Agilent 6890 auto sampler, or equivalent.
Column	DB–5 capillary column (30 m, 0.25 mm I.D., and 0.25-µm film thickness) or equivalent.
Carrier Gas	Helium, ultra-high purity grade (99.999%).
Inlet Temperature	300 °C.
Transfer Line (detector) Temperature.	310 °C.
Oven Temperature Program.	50 °C for 4 minutes, then 7 °C/min to 310 °C, hold for 18 minutes.
Flow Rate	Constant flow at 1mL/min. Linear velocity: 36.2 cm/sec.
Injection Volume	1 µL.
Split/Splitless Mode	Splitless.
Total Run Time	59.18 minutes.

TABLE SOP 4.2—INSTRUMENTAL CONDITIONS FOR CRUDE OIL ANALYSIS—Continued

5.10.4.2 *Procedure for preparing the instrument:*

5.10.4.2.1 Lower the injection port temperature and the oven temperature to 50° C or less to avoid oxidation of the column.

5.10.4.2.2 Replace the liner with a clean, silanized liner. Do not touch the liner with bare fingers. A small piece of muffled glass wool may be inserted to protect the column.

5.10.4.2.3 Return the injection port and oven to the appropriate temperatures.

5.10.4.2.4 Wait five minutes after the temperature equilibrates before using the instrument.

5.10.4.3 *Procedure for tuning the MSD:*

5.10.4.3.1 Perform an air/water check. The value reported for the relative abundance of water (m/z 18), nitrogen (m/z 28), oxygen (m/z 32), or carbon dioxide (m/z 44) shall be less than 5% of the base peak for the system to be considered leak free.

5.10.4.3.2 Tune the MSD using the Standard Autotune program and the decafluorotriphenylphosphine (DFTPP) Tune program to reduce instrument variability. The Autotune report file is referenced by the instrument when performing an air/water check and thus must be run at least once per month. Run standards and samples using DFTPP Tune parameters, and retune the instrument using DFTPP Tune at least once per week. The tune programs use three fragment ions of perfluorotributylamine (PFTBA) as a standard for tuning: m/z 69, 219, and 502. Tune reports must meet the following criteria:

5.10.4.3.2.1 Symmetrical peaks;

5.10.4.3.2.2 Mass assignments within ± 0.2 amu's from 69, 219, and 502;

5.10.4.3.2.3 Peak widths within 0.5 ± 0.1 amu's;

5.10.4.3.2.4 Relative abundance is 100% for ion 69, at least 35% for ion 219, and at least 1% for ion 502;

5.10.4.3.2.5 Relative abundances for isotope masses 70, 220, and 503 ± 0.2 amu's are 0.5–1.5%, 2–8%, and 5–15%, respectively; and

5.10.4.3.2.6 Air and water peaks at m/z = 18, 28, 32, and 44 amu's must be very small and consistent with historical values.

5.10.4.4 *Maintaining a log book.* Maintain an instrument logbook, and make entries for each use. Include the following information in the logbook: operator name, helium cylinder tank pressure and outlet pressure, vacuum gauge reading, any maintenance performed on the instrument (such as changing the injection port liner, gold seal, guard column, source cleaning), sequence name, data path, samples in order of injection, method information, GC column number, and the Standard Auto Tune report and DFTPP Tune report.

5.10.4.5 *Running a Solvent Blank:* Following a liner change or at the start of a new run, run an injection of a pure solvent to confirm that the system is free of excessive or interfering contamination. Analyze the solvent in SCAN mode using the same temperature program used for sample analysis. If contamination is present, analyze additional samples of fresh solvent until the interfering contamination is removed.

5.10.4.6 *Checking the DFTPP Tune:* Prior to running the first calibration standard, verify the instrument tune conditions by running a 10 ng/µL DFTPP check standard to check the mass measuring accuracy of the MS, the resolution sensitivity, the baseline threshold, and the ion abundance ranges. Run the standard using the DFTPP method provided with the instrument. Each of the criteria identified in Table SOP 4.2 of this Appendix must be met before using the instrument for analysis:

TABLE SOP 4.3—ION ABUNDANCE CRITERIA FOR DFTPP

Mass, M/z	Relative to mass	Relative abundance criteria	Purpose of checkpoint
51	442	10–80% of the base peak	Low mass sensitivity.
68	69	<2% of mass 69	Low mass resolution.
70	69	<2% of mass 69	Low mass resolution.
127	442	10–80% of the base peak	Low-mid mass sensitivity.
197	198	<2% of mass 198	Mid mass resolution.
198	442	Base peak or >50% of 442	Mid mass resolution and sensitivity.
199	198	5–9% of mass 198	Mid mass resolution and isotope ratio.
275	442	10–60% of the base peak	Mid-high mass sensitivity.
365	442	>1% of the base peak	Baseline threshold.
441	443	Present and < mass 443	High mass resolution.
442	442	Base peak or >50% of 198	High mass resolution and sensitivity.
443	442	15–24% of mass 442	High mass resolution and isotopic ratio.

5.10.4.7 Calibrating *with a Multiple-Point Calibration Curve.* A 5- or 6-point calibration curve is obtained by running 5 or 6 working standards (see SOP 3) on the tuned GC/MS instrument. Calculate the relative response factor (RRF) for each compound relative to its corresponding deuterated internal standard as indicated in Table SOP 4.3 of this Appendix. The relative standard deviation (RSD) of the RRFs for each compound must be less than 25%. Run an independently prepared check standard immediately after the calibration standards to validate the accuracy of the calibration curve.

5.10.4.8 *Running Samples.* Once the calibration curve has been validated, samples can be analyzed. Dispense 1,000 µL of sample extract into labeled auto-sampler vials. Add

20 µL of the internal standard solution (see SOP 2 of this Appendix) to the extract using a syringe or a positive displacement pipettor. Run a check standard every 10 samples to ensure the consistency of the instrument. The RRF for each compound in the check standard must be within 25% of the average RRF obtained in the initial calibration.

5.10.4.9 *Quantification:* Once a calibration table has been generated, quantify each data file using the ''Calculate and Generate'' function in the MS ChemStation software, or equivalent software. Review individual peak integration manually to ensure proper baseline integration. The quantification of a compound is based on the peak area of the primary ion (Q Ion) indicated in Table SOP 4.4 of this Appendix.

TABLE SOP 4.4—TARGET COMPOUND LIST

Compound name	Quantitation ion	Reference compound for response factor	Internal standard for quantitation
N D34 C16	66	N D34 C16	D34 n C16 Q Ion 66.
n-C14	57	n C14.	
n-C15	57	n C15.	
n-C16	57	n C16.	
N D34 C17	66	N D34 C17.	
n-C17	57	n C17.	
Pristane	57	Pristane.	
n-C18	57	n C18.	
Phytane	57	Phytane.	
n C19	57	n C19.	
N D42 C20	66	N D42 C20	D42 n C20 Q Ion 66.
n C20	57	n C20.	
n C21	57	n C21.	
n C22	57	n C22.	
n C23	57	n C23.	
N D50 C 24	66	N D50 C 24.	
n C24	57	n C24.	
n C25	57	n C25.	
n C26	57	n C26.	
n C27	57	n C27.	
n C28	57	n C28.	
n C29	57	n C29.	
N D62 C30	66	N D62 C30	D62 n C30Q Ion 66.
n C30	57	n C30.	
n C31	57	n C31.	
N D66 C32	57	N D66 C32.	
n C32	57	n C32.	
n C33	57	n C33.	
n C34	57	n C34.	
n C35	57	n C35.	
D8 Naphthalene	136	D8 Naphthalene	D8 Naphthalene Q Ion 136.
Naphthalene	128	Naphthalene.	
D10 1-Methylnaphthalene	152	D10 1-Methylnaphthalene.	
C1 Naphthalene *	142	C1 Naphthalene.	
C2 Naphthalene *	156	C2 Naphthalene.	
C3 Naphthalene *	170	C3 Naphthalene.	
C4 Naphthalene *	184	C3 Naphthalene.	
D10 Anthracene	188	D10 Anthracene	D10 Anthracene Q Ion 188.
D10 Phenanthrene	188	D10 Phenanthrene.	
Phenanthrene	178	Phenanthrene.	
C1 Phenanthrene *	192	C1 Phenanthrene.	
C2 Phenanthrene *	206	C2 Phenanthrene.	
C3 Phenanthrene *	220	C2 Phenanthrene.	
C4 Phenanthrene *	234	C2 Phenanthrene.	
Fluorene	166	Fluorene.	
C1 Fluorene *	180	Fluorene.	
C2 Fluorene *	194	Fluorene.	
C3 Fluorene *	208	Fluorene.	
Dibenzothiophene	184	Dibenzothiophene.	
C1 Dibenzothiophene *	198	Dibenzothiophene.	
C2 Dibenzothiophene *	212	Dibenzothiophene.	
C3 Dibenzothiophene *	226	Dibenzothiophene.	
Naphthobenzothiophene (NBT)	234	Naphthobenzothiophene.	
C1 NBT *	248	Naphthobenzothiophene.	
C2 NBT *	262	Naphthobenzothiophene.	
C3 NBT *	276	Naphthobenzothiophene.	
Fluoranthene	202	Fluoranthene.	
D10 Pyrene	212	D10 Pyrene.	
Pyrene	202	Pyrene.	
C1 Pyrene *	216	Pyrene.	
C2 Pyrene *	230	Pyrene.	
D12 Chrysene	240	D12 Chrysene	D12 Chrysene Q Ion 240.
Benzo(a)anthracene/Chrysene *	228	Chrysene.	
C1 Chrysene *	242	Chrysene.	

TABLE SOP 4.4—TARGET COMPOUND LIST—Continued

Compound name	Quantitation ion	Reference compound for response factor	Internal standard for quantitation
C2 Chrysene *	256	Chrysene.	
C3 Chrysene *	270	Chrysene.	
C4 Chrysene *	284	Chrysene.	
5α-androstane	245	5α-androstane	5α-androstane Q Ion 245
Coprostane	219	Coprostane.	
Hopane	191	Hopane.	

* Summed compounds; draw an integration line underneath all peaks with selected ion.

5.10.4.10 Equation 14 of this Appendix is used to calculate the concentration of analytes in units of μg/g oil added:

$$Concentration\ of\ analyte\ (\mu g / g\ oil) = \frac{100 \times A_{analyte} \times C_{istd}}{A_{istd} \times RRF} \qquad \text{(Equation 14)}$$

where:

$A_{analyte}$ = the peak area of the analyte,
C_{istd} = the concentration of the internal standard,
A_{istd} = the area of the internal standard,
RRF = the relative response factor, and
100 is the conversion factor to convert mg/L DCM to μg/g oil added.

5.10.4.11 If some analytes are not commercially available, the RRFs of other compounds (usually the parent compound) are used to quantify those analytes. For example, the RRF of C3-naphthalene may be used to calculate the concentrations of C3- and C4-naphthalenes. See Table SOP 4.4 of this Appendix for details. The quantification of these alkylated PAHs is relative because it is assumed that the molecular ions of the alkylated PAHs have the same RRFs as the parent compound ions. Nevertheless, these relative concentrations are useful for monitoring the fate of these compounds during the course of any analysis, as long as their concentrations are measured in a consistent way throughout the analysis.

5.10.4.12 Concentration calculations for all target compounds are performed using EnviroQuant software or equivalent. Data for each sample can be printed directly using a customized report template. Data can also be automatically entered into a spreadsheet within the EnviroQuant software.

5.10.5 *Quality Assurance/Quality Control.* The following criteria must be met before any samples are analyzed:

5.10.5.1 Air/water check to verify the system is leak free.

5.10.5.2 AutoTune and DFTPP Tune pass all criteria.

5.10.5.3 DFTPP check standard passes all criteria.

5.10.5.4 Solvent blank scan indicates the GC/MS system is free of interfering contamination.

5.10.5.5 Prepare and monitor a control chart of a standard oil analysis. Concentrations of the analytes in the control chart must be no more than 25% different from their historical averages.

5.10.5.6 Relative response factors for analytes in the check standards inserted between every 10 samples must be no more than 25 percent different from the average RRF of those same analytes in the calibration curve. Peak shapes must be symmetrical.

5.11 *References for Section 5*

(1) Haines, J.R., E.J. Kleiner, K.A. McClellan, K.M. Koran, E.L. Holder, D.W. King, and A.D. Venosa. 2005. ''Laboratory evaluation of oil spill bioremediation products in salt and freshwater systems.'' J. Ind. Microbiol. Biotech 32: 171–185.

Appendix E to Part 300 [Removed]

■ 17. Remove Appendix E to Part 300.

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Part IV

The President

Proclamation 9228—Martin Luther King, Jr., Federal Holiday, 2015

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Memorandum of January 16, 2015—Expanding Federal Support for Predevelopment Activities for Nonfederal Domestic Infrastructure Assets

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Title 3—

The President

Proclamation 9228 of January 16, 2015

Martin Luther King, Jr., Federal Holiday, 2015

By the President of the United States of America

A Proclamation

A champion for justice, the Reverend Dr. Martin Luther King, Jr., helped awaken our Nation's long-slumbering conscience and inspired a generation. Through a cacophony of division and hatred, his voice rang out, challenging America to make freedom a reality for all of God's children and prophesying a day when the discord of our Union would be transformed into a symphony of brotherhood. His clarion call echoed the promise of our founding—that each of us are created equal—and every day he worked to give meaning to this timeless creed.

Today, we pause to pay tribute to the extraordinary life and legacy of Dr. King, and we reflect on the lessons he taught us. Dr. King understood that equality requires more than the absence of oppression; it requires the presence of economic opportunity. He recognized that ''we are caught in an inescapable network of mutuality, tied in a single garment of destiny.'' In a world full of poverty, he called for empathy; in the face of brutality, he placed his faith in non-violence. His teachings remind us we have a duty to fight against poverty, even if we are wealthy; to care about the child in the decrepit school long after our own children have found success; and to show compassion toward the immigrant family, knowing that we were strangers once, too. Dr. King transformed the concepts of justice, liberty, and equality, and as he led marches and protests and raised his voice, he changed the course of history.

From Dr. King's courage, we draw strength and the resolve to continue climbing toward the promised land. Our Nation has made undeniable progress since his time, but securing these gains requires constant vigilance, not complacency. We have more to do to bring Dr. King's dream within reach of all our daughters and sons. We must stand together for good jobs, fair wages, safe neighborhoods, and quality education. With one voice, we must ensure the scales of justice work equally for all—considering not only how justice is applied, but also how it is perceived and experienced. As Dr. King told us, ''injustice anywhere is a threat to justice everywhere,'' and this remains our great unfinished business.

Through struggle and discipline, persistence and faith, patriots and prophetic leaders like Dr. King have driven our country inexorably forward. In every chapter of our great story, giants of history and unheralded foot soldiers for justice have fought to bridge the gap between our founding ideals and the realities of the time. We will never forget all who endured and sacrificed, or those who gave their lives, so that our children might live in a freer, fairer, and more just society.

In sermons and speeches, Dr. King's voice rang out with a call for us to work toward a better tomorrow. As we honor his legacy, Americans across the country will join one another for a day of service, picking up the baton handed to us by past generations and carrying forward their efforts. As one people, we will show when ordinary citizens come together to participate in the democracy we love, justice will not be denied.

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 January 19, 2015, as the Martin Luther King, Jr., Federal Holiday. I encourage all Americans to observe this day with appropriate civic, community, and service projects in honor of Dr. King and to visit *www.MLKDay.gov* to find Martin Luther King, Jr., Day of Service projects across our country.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of January, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

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Presidential Documents

Executive Order 13688 of January 16, 2015

Federal Support for Local Law Enforcement Equipment Acquisition

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to better coordinate Federal support for the acquisition of certain Federal equipment by State, local, and tribal law enforcement agencies, I hereby order as follows:

Section 1. *Policy.* For decades, the Federal Government has provided equipment to State, local, and tribal law enforcement agencies (LEAs) through excess equipment transfers (including GSA donations), asset forfeiture programs, and Federal grants. These programs have assisted LEAs as they carry out their critical missions to keep the American people safe. The equipment acquired by LEAs through these programs includes administrative equipment, such as office furniture and computers. But it also includes military and military-styled equipment, firearms, and tactical vehicles provided by the Federal Government, including property covered under 22 CFR part 121 and 15 CFR part 774 (collectively, ''controlled equipment'').

The Federal Government must ensure that careful attention is paid to standardizing procedures governing its provision of controlled equipment and funds for controlled equipment to LEAs. Moreover, more must be done to ensure that LEAs have proper training regarding the appropriate use of controlled equipment, including training on the protection of civil rights and civil liberties, and are aware of their obligations under Federal nondiscrimination laws when accepting such equipment. To this end, executive departments and agencies (agencies) must better coordinate their efforts to operate and oversee these programs.

Sec. 2. *Law Enforcement Equipment Working Group.* (a) There is established an interagency Law Enforcement Equipment Working Group (Working Group) to identify agency actions that can improve Federal support for the acquisition of controlled equipment by LEAs, including by providing LEAs with controlled equipment that is appropriate to the needs of their community; ensuring that LEAs are properly trained to employ the controlled equipment they acquire; ensuring that LEAs adopt organizational and operational practices and standards that prevent the misuse or abuse of controlled equipment; and ensuring LEA compliance with civil rights requirements resulting from receipt of Federal financial assistance. The Working Group shall be co-chaired by the Secretary of Defense, Attorney General, and Secretary of Homeland Security. In addition to the Co-Chairs, the Working Group shall consist of the following members:

(i) the Secretary of the Treasury;

(ii) the Secretary of the Interior;

(iii) the Secretary of Education;

(iv) the Administrator of General Services;

(v) the Director of the Domestic Policy Council;

(vi) the Director of the Office of National Drug Control Policy;

(vii) the Director of the Office of Management and Budget;

(viii) the Assistant to the President for Intergovernmental Affairs and Public Engagement;

(ix) the Assistant to the President for Homeland Security and Counterterrorism;

(x) the Assistant to the President and Chief of Staff of the Office of the Vice President; and

(xi) the heads of such other agencies and offices as the Co-Chairs may, from time to time, designate.

(b) A member of the Working Group may designate a senior-level official who is from the member's agency or office and is a full-time officer or employee of the Federal Government to perform the day-to-day Working Group functions of the member. At the direction of the Co-Chairs, the Working Group may establish subgroups consisting exclusively of Working Group members or their designees under this subsection, as appropriate.

(c) There shall be an Executive Director of the Working Group, to be appointed by the Attorney General. The Executive Director shall determine the Working Group's agenda, convene regular meetings, and supervise its work under the direction of the Co-Chairs. The Department of Justice shall provide funding and administrative support for the Working Group to the extent permitted by law and within existing appropriations. Each agency shall bear its own expenses for participating in the Working Group.

Sec. 3. *Mission and Function of the Working Group.* (a) The Working Group shall provide specific recommendations to the President regarding actions that can be taken to improve the provision of Federal support for the acquisition of controlled equipment by LEAs, which may include, to the extent permitted by law:

(i) developing a consistent, Government-wide list of controlled equipment allowable for acquisition by LEAs, as well as a list of those items that can only be transferred with special authorization and use limitations;

(ii) establishing a process to review and approve proposed additions or deletions to the list of controlled equipment developed pursuant to paragraph (i) of this subsection;

(iii) harmonizing Federal programs so that they have consistent and transparent policies with respect to the acquisition of controlled equipment by LEAs;

(iv) requiring after-action analysis reports for significant incidents involving federally provided or federally funded controlled equipment;

(v) developing policies to ensure that LEAs abide by any limitations or affirmative obligations imposed on the acquisition of controlled equipment or receipt of funds to purchase controlled equipment from the Federal Government and the obligations resulting from receipt of Federal financial assistance;

(vi) planning the creation of a database that includes information about controlled equipment purchased or acquired through Federal programs;

(vii) ensuring a process for returning specified controlled equipment that was acquired from the Federal Government when no longer needed by an LEA;

(viii) requiring local civilian government (non-police) review of and authorization for LEAs' request for or acquisition of controlled equipment;

(ix) requiring that LEAs participating in Federal controlled equipment programs receive necessary training regarding appropriate use of controlled equipment and the implementation of obligations resulting from receipt of Federal financial assistance, including training on the protection of civil rights and civil liberties;

(x) providing uniform standards for suspending LEAs from Federal controlled equipment programs for specified violations of law, including civil rights laws, and ensuring those standards are implemented consistently across agencies; and

(xi) creating a process to monitor the sale or transfer of controlled equipment from the Federal Government or controlled equipment purchased with funds from the Federal Government by LEAs to third parties.

(b) The Working Group shall engage with external stakeholders, including appropriate State officials, law enforcement organizations, civil rights and civil liberties organizations, and academics, in developing the recommendations required by subsection (a) of this section.

(c) The Working Group shall provide the President with an implementation plan for each of its recommendations, which shall include concrete milestones with specific timetables and outcomes to be achieved.

Sec. 4. *Report.* Within 60 days of the date of this order, the Working Group shall provide the President with any recommendations and implementation plans it may have regarding the actions set forth in section 3(a)(i) and (ii) of this order. Within 120 days of the date of this order, the Working Group shall provide the President with any additional recommendations and implementation plans as set forth in section 3 of this order.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
January 16, 2015.

[FR Doc. 2015–01255
Filed 1–21–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Memorandum of January 16, 2015

Expanding Federal Support for Predevelopment Activities for Nonfederal Domestic Infrastructure Assets

Memorandum for the Heads of Executive Departments and Agencies

The United States is significantly underinvesting in both the maintenance of existing public infrastructure and the development of new infrastructure projects. While there is no replacement for adequate public funding, innovative financing options and increased collaboration between the private and public sectors can help to increase overall investment in infrastructure.

However, a major challenge for innovative infrastructure projects, whether using emerging technologies or alternative financing, is the lack of funding for the phases of infrastructure project development that precede actual construction. Infrastructure projects require upfront costs, commonly known as ''predevelopment'' costs, for activities such as project and system planning, economic impact analyses, preliminary engineering assessments, and environmental review. Although only accounting for a small percentage of total costs, predevelopment activities have considerable influence on which projects will move forward, where and how they will be built, who will fund them, and who will benefit from them. Yet, in light of factors like fiscal constraints, the extent of overall needs, and risk aversion, State, local, and tribal governments tend to focus scarce resources on constructing and developing conventional projects and addressing their most critical infrastructure needs, thereby underinvesting in predevelopment.

Greater attention to the predevelopment phase could yield a range of benefits—for example, providing the opportunity to develop longer-term, more innovative, and more complex infrastructure projects and facilitating assessment of a range of financing approaches, including public-private partnerships. Additional investment in predevelopment costs also may enable State, local, and tribal governments to utilize innovations in infrastructure design and emerging technologies, reduce long-term costs to infrastructure project users, and provide other benefits, such as improved environmental performance and enhanced resilience to climate change.

The Federal Government can meaningfully expand opportunities for public-private collaboration, encourage more transformational projects, and improve project outcomes by encouraging Federal investment in robust predevelopment activities and providing other forms of support, such as technical assistance, to communities during the predevelopment phase.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. *Policy.* It shall be the policy of the Federal Government for all executive departments and agencies (agencies) that provide grants, technical assistance, and other forms of support for nonfederal domestic infrastructure assets, or regulate the development of these infrastructure assets, to actively support nonfederal predevelopment activities with all available tools, including grants, technical assistance, and regulatory changes, to the extent permitted by law and consistent with agency mission. Agencies shall seek to make predevelopment funding and support available, as permitted by law and consistent with agency mission and where it is in the public interest and does not supplant existing public investment, to encourage opportunities for private sector investment. Agencies shall pay particular

attention to predevelopment activities in sectors where State, local, and tribal governments have traditionally played a significant role, such as surface transportation, drinking water, sewage and storm water management systems, landside ports, and social infrastructure like schools and community facilities.

Sec. 2. *Definitions.* For the purposes of this memorandum:

(a) ''Predevelopment activities'' means activities that provide decision-makers with the opportunity to identify and assess potential infrastructure projects and modifications to existing infrastructure projects, and to advance those projects from the conceptual phase to actual construction. Predevelopment activities include:

(i) project planning, feasibility studies, economic assessments and cost-benefit analyses, and public benefit studies and value-for-money analyses;

(ii) design and engineering;

(iii) financial planning (including the identification of funding and financing options);

(iv) permitting, environmental review, and regulatory processes;

(v) assessment of the impacts of potential projects on the area, including the effect on communities, the environment, the workforce, and wages and benefits, as well as assessment of infrastructure vulnerability and resilience to climate change and other risks; and

(vi) public outreach and community engagement.

(b) ''Predevelopment funding'' means funding for predevelopment activities and associated costs, such as flexible staff, external advisors, convening potential investment partners, and associated legal costs directly related to predevelopment activities.

Sec. 3. *Federal Action to Support Predevelopment Activities.* Agencies shall take the following actions to support predevelopment activities:

(a) the Department of Commerce, through the Economic Development Administration's Public Works grants and Economic Adjustment Assistance grants, and consistent with the programs' mission and goals, shall take steps to increase assistance for the predevelopment phase of infrastructure projects;

(b) the Department of Transportation shall develop guidance to clarify where predevelopment activities are eligible for funding through its programs. To further encourage early collaboration in the project development process, the Department of Transportation shall also clarify options for providing early feedback into environmental review processes;

(c) the Department of Homeland Security shall clarify for grantees where predevelopment funding is available through the Hazard Mitigation Grant Program;

(d) the Department of Housing and Urban Development shall clarify for grantees how the Community Development Block Grant program and other Federal funding sources can be used for predevelopment activities;

(e) the Department of Agriculture shall develop guidance to clarify where predevelopment activities are eligible for funding through its programs, including grants for water and waste projects pursuant to 7 CFR 1780.1 *et seq.,* the Special Evaluation Assistance for Rural Communities and Households Program, the Community Facilities Grant program, and the Watershed and Flood Prevention Operations Program. To encourage innovative predevelopment work, the Department of Agriculture shall also train Water and Environmental Programs field staff on predevelopment best practices and prioritize predevelopment in the Department of Agriculture's project development process; and

(f) the other members of the Working Group established in section 3 of my memorandum of July 17, 2014 (Expanding Public-Private Collaboration

on Infrastructure Development and Financing), shall take such steps as appropriate to clarify program eligibilities related to predevelopment activities for nonfederal domestic infrastructure assets.

Sec. 4. *Implementation, Public Education, and Best Practices.* The Departments of Agriculture, Commerce, Labor, Housing and Urban Development, Transportation, Energy, and Homeland Security, and the Environmental Protection Agency shall develop plans for implementing the requirements of this memorandum, providing technical assistance to nonfederal actors engaged in predevelopment activities, and educating grantees and the public on the benefits of predevelopment and the Federal resources available for these activities. These agencies shall also work together to develop a guide for nonfederal actors undertaking nonfederal predevelopment activities that includes best practices on how to evaluate and compare traditional and alternative financing strategies. No later than 60 days after the date of this memorandum, these agencies shall provide these plans and the best practice guide to the Director of the National Economic Council. Subsequently, these agencies shall provide regular updates to the Director of the National Economic Council on their progress in increasing support for predevelopment activities.

Sec. 5. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

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

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

(b) This memorandum 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.

(c) The Secretary of Transportation is hereby authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
Washington, January 16, 2015

[FR Doc. 2015–01256
Filed 1–21–15; 11:15 am]
Billing code 4910–9

FEDERAL REGISTER

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Part V

The President

Notice of January 21, 2015—Continuation of the National Emergency With Respect to Terrorists Who Threaten To Disrupt the Middle East Peace Process

Federal Register
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Thursday, January 22, 2015

Presidential Documents

Title 3—

The President

Notice of January 21, 2015

Continuation of the National Emergency With Respect to Terrorists Who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process. On August 20, 1998, by Executive Order 13099, the President modified the Annex to Executive Order 12947 to identify four additional persons who threaten to disrupt the Middle East peace process. On February 16, 2005, by Executive Order 13372, the President clarified the steps taken in Executive Order 12947.

These terrorist activities continue to threaten the Middle East peace process and to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared on January 23, 1995, and the measures adopted to deal with that emergency must continue in effect beyond January 23, 2015. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
January 21, 2015.

[FR Doc. 2015–01283
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