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

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2429

Unfair Labor Practice Proceedings and Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority (FLRA) is engaged in an initiative to make electronic filing or ''eFiling'' available to parties in all cases before the FLRA. Making eFiling available is another way in which the FLRA is using technology to improve the customer-service experience. These eFiling enhancements are expected to increase efficiency by reducing procedural filing errors and processing delays.

DATES: Effective March 23, 2015.

ADDRESSES: Written comments about this final rule can be emailed to *engagetheFLRA@flra.gov* or sent to the Case Intake and Publication Office, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424. All written comments will be available for public inspection during normal business hours at the Case Intake and Publication Office.

FOR FURTHER INFORMATION CONTACT: Gina Grippando, Counsel for Regulatory and Public Affairs, Federal Labor Relations Authority, Washington, DC 20424, (202) 218–7776.

SUPPLEMENTARY INFORMATION: In the first stage of its eFiling initiative, the FLRA enabled parties to use eFiling to file requests for Federal Service Impasses Panel assistance in the resolution of negotiation impasses. See 77 FR 5987 (Feb. 7, 2012). The second stage of the FLRA's eFiling initiative provided parties with an option to use eFiling to electronically file 11 types of documents in cases filed with the FLRA's three-member adjudicatory body, the Authority. Parties may now file such documents. See 77 FR 26430 (May 4, 2012). The third stage of the FLRA's eFiling initiative provided parties with the option to use eFiling to electronically file certain documents involved in representation and unfair labor practice proceedings. See 77 FR 37751 (June 25, 2012).

The fourth stage of the FLRA's eFiling initiative is the subject of this Final Rule. In this stage, parties will be able to use the FLRA's eFiling system to file certain documents involved in unfair labor practice proceedings before the FLRA's Office of Administrative Law Judges. This rule modifies the FLRA's existing regulations to allow eFiling of those documents. As the FLRA's eFiling procedures develop, the revisions set forth in this action may be evaluated and revised further.

Sectional Analysis

Sectional analysis of the amendments and revisions to part 2429, Miscellaneous and General Requirements, are as follows:

Part 2429—Miscellaneous and General Requirements

Section 2429.24(d)

This section is amended to reflect the addition of eFiling as an authorized means of filing documents with the Office of Administrative Law Judges pursuant to paragraph (f)(15) of this section and corrects the person with whom such documents must be filed by replacing appropriate administrative law judge with Chief Administrative Law Judge.

Section 2429.24(f)(15)

This section is added to reflect that documents filed with the Office of Administrative Law Judges are now documents that can be filed using eFiling as an alternative to the filing methods discussed in paragraph (e) of this section.

As described above, this amendment updates the regulations to merely expand the Federal Labor Relations Authority's current electronic filing system. This rule pertains to agency organization, procedure, or practice, and it is exempt from prior notice and public comment pursuant to 5 U.S.C. 553(b)(A).

Executive Order 12866

The FLRA is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 12866.

Executive Order 13132

The FLRA is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 13132.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, *5 U.S.C. 605(b),* the Chairman of the FLRA has determined that this rule, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies only to federal agencies, federal employees, and labor organizations representing those employees.

Unfunded Mandates Reform Act of 1995

This rule change 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 action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in 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.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2429

Administrative practice and procedure, Government employees, Labor management relations.

For the reasons stated in the preamble, the FLRA amends 5 CFR part 2429, as follows:

PART 2429—[AMENDED]

■ 1. The authority citation for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2112(a).

■ 2. Section 2429.24 is amended by revising paragraph (d) and adding paragraph (f)(15) to read as follows:

§ 2429.24 Place and method of filing; acknowledgement.

* * * * *

(d) Unless electronically filed pursuant to paragraph (f)(15) of this section, a document filed with the Office of Administrative Law Judges pursuant to this subchapter shall be submitted to the address for the Chief Administrative Law Judge, as set forth in the appendix.

(f) * * *

(15) Documents submitted to the Office of Administrative Law Judges under 5 CFR part 2423, including answers to complaints, motions, briefs, pre-hearing disclosures, stipulations, and any other documents as permitted by the eFiling system for the Office of Administrative Law Judges.

* * * * *

Dated: February 12, 2015.

Carol Waller Pope,

Chairman.

[FR Doc. 2015–03315 Filed 2–19–15; 8:45 am]

BILLING CODE 6727–01–P

POSTAL SERVICE

39 CFR Part 241

Relocating Retail Services; Adding New Retail Service Facilities

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This final rule revises the Postal Service's current procedures concerning the expansion, relocation, and construction of Post Offices™ to clarify these procedures, and to require the Postal Service to provide more information to communities and elected officials about certain types of projects earlier in the planning phase. Under the final rule, the Postal Service will notify communities and officials, and solicit and consider their input, regarding proposals to relocate retail services or add a new retail service facility. The final rule also will require the Postal Service to provide information about the anticipated new location for relocated services or for a new retail service facility when the Postal Service first gives notice of the proposal.

DATES: *Effective date:* March 23, 2015.

FOR FURTHER INFORMATION CONTACT: Richard Hancock, Real Estate Specialist, U.S. Postal Service®, at *Richard.A.Hancock2@usps.gov* or 919–420–5284.

SUPPLEMENTARY INFORMATION: On October 27, 2014, the Postal Service published a proposed rule (79 FR 63880) to revise the Postal Service's procedures concerning the expansion, relocation, and construction of Post Offices to clarify those procedures, and to require the Postal Service to provide more information to communities and elected officials about certain types of projects earlier in the planning phase. The proposed rule would require the Postal Service to notify communities and officials, and solicit and consider their input, regarding proposals to relocate retail services or add a new retail service facility. As a significant change from the current rule, the proposed rule would require the Postal Service to provide information about the anticipated new location for relocated services or for a new retail service facility when the Postal Service first gives notice of the proposal. The Postal Service established a 30-day comment period and invited comments on the proposed rule. The Postal Service received five responses.

Comments and Response

Below is a summary of the comments, in order of the specific sections of the proposed rule to which they relate.

General Comments; 241.4(a)

One respondent asserted that there is no substantive reason for changing the current rule and that the Postal Service should retain the current rule. The respondent suggested that defining ''customer service facility'' is unnecessary.

We disagree with the comment. The Postal Service Office of Inspector General (OIG) specifically recommended that the Postal Service revise its regulations to enhance transparency and public input. Based on past experience, we agreed with the OIG's recommendation. The current rule does not define ''customer service facility'' and as the Postal Service evolves to adapt to a fast changing marketplace, providing definitions in the new rule will clarify when the new rule applies.

Another respondent commented that the new rule should define ''relocation'' and the definition should state a maximum permitted distance for relocating retail services.

We expect readers of the new rule will understand ''relocation'' to have its ordinary dictionary meaning. We also disagree that the new rule should include an arbitrary distance limitation because such a limitation could prevent appropriately accounting for important factors, such as the setting (urban, suburban, or rural), site conditions (public transit availability, location on a one-way street, etc.) and the proximity of other Postal Service retail locations.

Temporary, Emergency, and Provisional Relocations; 241.4(a)(2)

One respondent suggested that some causes of relocation added to the ''emergency'' category in the proposed rule are inconsistent with a definition of ''emergency'' as a sudden event requiring immediate action. The respondent also expressed concern that expanding the ''emergency'' category increases the universe of relocations that can occur without community input because the new rule, as proposed, provided for the Postal Service to determine when it is prudent to obtain community input on the long-term location after an emergency relocation. The respondent questioned adding examples of relocations arising from safety concerns without limiting those concerns to some specified level of seriousness, and the respondent urged retaining a 180-day limit for both temporary and emergency relocations.

We appreciate the concerns raised in these comments. The current rule lists ''lease termination'' as an example of an event that may require an emergency relocation, but the current rule is silent on lease expirations. Nor does the current rule recognize that some lessors reserve a right during the lease term to require the Postal Service to move to a different location, *e.g.,* a substitute space in the lessor's project. However, the Postal Service believes it is prudent to provide in the final rule for soliciting and considering community input regarding relocations arising from such events. While these events may not be completely unexpected like other events listed as ''emergencies'', their timing is not always predictable. The Postal Service may not know when a lessor will exercise its right to terminate a lease or its right to require the Postal Service to move to different premises. Similarly, a lease may expire unexpectedly when the Postal Service

had believed it would be renewed. Accordingly, the final rule retains the ''temporary'' and ''emergency'' categories, but adds a third category, ''provisional relocations,'' to include relocations made necessary by lease terminations, expirations and lessor-required moves to substitute locations, when the Postal Service has not undertaken the community input process prior to the relocation. However, the final rule requires the Postal Service to undertake the community input process within 180 days following a provisional relocation.

We disagree with the portion of the comment concerning relocations arising from safety concerns. Because a relocation is a significant project, the Postal Service would not undertake a relocation without good cause. We place great importance on the security of the mail and the safety of our customers and personnel. We see no reason to identify arbitrarily a threshold level of risk to persons or the mail.

With regard to applying a 180-day limitation on the duration of a relocation, such a limitation is appropriate for temporary relocations as described in the rule because temporary relocations can be expected to require less than 180 days to fulfill their purposes. In contrast, a 180-day limitation would be arbitrary and imprudent for emergency relocations because the required duration of emergency relocations is not predictable, and the actual required duration may depend on the severity of the event, such as an earthquake. With regard to provisional relocations, the final rule adds a requirement to undertake the community input process within 180 days, which allows time for the Postal Service to tentatively identify potential permanent relocation sites, but assures that provisional relocations will not become permanent without undertaking the community input process.

Engaging Local Officials; 241.4(c)(1)

One respondent urged the Postal Service to revise the new rule to require personal visits to local officials to discuss proposed projects.

The new rule requires the Postal Service to provide local elected officials with a written outline of the Postal Service's proposed project and to offer to discuss the project with the officials. In the Postal Service's experience, not all local officials welcome a personal visit, and a personal visit is not always the best use of scarce resources. Therefore, the new rule permits the Postal Service the flexibility to personally visit officials or to discuss the same information through other forms of communication.

Notifying the Community; 241.4(c)(2)

Another comment expressed concern that without a requirement for the Postal Service to notify lessors when the Postal Service proposes to relocate out of a leased facility, the new rule could deprive some lessors of an opportunity for comment on the proposed relocation.

Under the proposed rule, lessors who reside in the community would receive the same notice as the rest of the community, making a separate notice unnecessary. However, the comment raises concern for lessors that are located outside the community and lease a facility to the Postal Service in the community. Those lessors may be unaware of a notice and, therefore, miss an opportunity to comment. The Postal Service values its business relations as well as its community relations, so the final rule incorporates a requirement to notify lessors, except when the lessor itself has terminated or declined to renew a Postal Service lease and therefore is presumed to anticipate a relocation.

One comment pertained to notifying customers in ''exceptional circumstances,'' *e.g.,* a sparsely populated area without a convenient forum for a public meeting. The proposed rule would have included an option for posting notice in the affected retail service facility in lieu of the current rule's requirement to distribute notification cards to customers. The comment expressed concern that some customers could miss the notice.

While the proposed rule incorporated flexibility for notifications in these exceptional circumstances, we agree that in sparsely populated areas some customers may visit the affected retail service facility only infrequently and miss the notice. Therefore, the final rule requires the Postal Service to mail notice to customers in such exceptional circumstances.

Presentations to Community; 241.4(c)(3)

One respondent agreed that the public will benefit from the new rule's requirement for the Postal Service to include the proposed relocation site in the information provided to a community about a proposed relocation, but then asserted that the new rule is a step backwards for community input because it requires the Postal Service to advance the planning process to site selection before presenting the relocation proposal to the community. This respondent also objected to permitting the Postal Service to identify a relocation ''area'' and asserted that the new rule will not change current Postal Service practice.

We disagree with these comments. Some communities and elected officials, as well as the Office of Inspector General, strongly suggested that communities could not effectively provide input on a proposed relocation decision without an understanding of the proposed new location for the retail services. To address that concern, the new rule requires the Postal Service to identify and discuss the proposed new site(s) or area, or both, for the relocated retail services as part of the discussion of the relocation proposal, which is a significant change from current practice. Necessarily then, under the new rule the Postal Service must tentatively identify a relocation site or area, or both, before presenting the proposal to the community. However, the requirement to identify a potential site and then obtain community input before committing to that site can create a conundrum for the Postal Service in some markets. For example, in some markets, identifying only one proposed site during the community input process could undercut the Postal Service's bargaining position with that site's landlord, which could force the Postal Service to agree to an unfairly high rent. As another example, in markets where landlords are rapidly leasing the available spaces that are suitable for a retail postal facility, a tentatively identified site may no longer be available for lease at the conclusion of the community input process. Accordingly, for proposed relocations and for additions of retail service facilities, the new rule permits the Postal Service to identify more than one site and/or area, which allows the Postal Service to mitigate those identification risks, while also giving the community an opportunity to voice its preference among the proposed sites or areas. The Postal Service then would consider that community input before selecting a specific location.

Considering Comments and Appeals; 241.4(c)(4)

One comment advocated extending the public comment period, noting that 15 days is not enough time for a public comment period.

We agree that the current rule's 15-day comment period following the public meeting is too brief. Therefore, the new rule provides a 30-day period following the public meeting for the community and their elected officials to appeal the Postal Service's tentative decision proposing to relocate retail

services or add a retail service facility and to comment on the proposal.

One respondent objected that the new rule calls for comments on whether the Postal Service proposal is the optimal solution for the ''identified need,'' asserting that phrase likely means the Postal Service's needs, not the ''global needs'' of the community or the need for service furthering the ''broader public or common good.''

As set forth by Congress in 39 U.S.C. 101, 403 and 404(b), the Postal Service's mission is to provide, on a self-sufficient basis without tax support, universal postal services efficiently and economically. The new rule will help focus comments, and the Postal Service's consideration of the comments, on the matters that are relevant to the Postal Service's mission.

Two comments sought a more elaborate appeal process, with one suggesting the Postal Service create public project files to serve as the basis for appeals and a second respondent arguing that the new rule should require a review of the public's comments and appeals by someone who had no prior involvement in the project and who is insulated from career repercussions.

The purpose of the new rule is to incorporate consideration of community input into Postal Service decisions to relocate retail services or add a retail service facility, not to create an adversarial process pitting community input against Postal Service objectives. The final rule requires the Postal Service to present project information to the community, its local elected officials, and when applicable, a lessor, and solicit and consider their input. Such input presumably will reflect the concerns important to those parties, but it cannot be expected to reflect the operational and business factors the Postal Service must also take into account. Ultimately, it is the Postal Service that is responsible for fulfilling its statutory obligations to provide efficient and economical universal postal services. The final rule provides for the Postal Service to make an informed decision by requiring consideration of community input.

Another comment argued that the new rule should give priority to remaining at the same site or at least in the downtown area.

An arbitrary requirement to give priority to remaining at the same site could thwart a project that would more efficiently and economically provide services to the community. The new rule, like the current rule, focuses on retail services in the community, not at a particular site, in furtherance of the Postal Service's statutory obligation to provide universal service efficiently and economically.

Effect on Other Obligations and Policies; 241.4(d)

One respondent urged the Postal Service to revise the new rule to mirror the procedures under 39 U.S.C. 404(d) that apply to a Postal Service decision to close or consolidate a Post Office. Specifically, the respondent argued for adopting those same requirements for notifying communities, for separate public meetings, and for public comment periods. Another respondent suggested that the new definition, ''retail service facility,'' does not comport with 39 U.S.C. 404(d). Another comment suggested the ''retail service facility'' definition should expressly exclude consolidations of postal facilities.

This final rule pertains only to relocations of retail services and additions of retail service facilities. It is separate from the rules that apply to discontinuances of Post Offices, which can have a significantly greater effect on a community. Accordingly, this final rule, including its definitions, does not adopt the requirements for discontinuances under 39 U.S.C. 404(d).

The new rule requires posting notice in the affected postal facility and issuing a news release outlining the proposal to one or more news media serving the community. In the case of a relocation, posting notice in the affected postal facility should be sufficient in most instances to alert the customers who visit the postal facility, and they are the customers who likely would be most affected by the relocation. In contrast, customers who use the USPS® Web site may be unaffected by a relocation because the Web site offers all the retail postal services they would purchase at a physical retail location.

The new rule permits the Postal Service to present the proposal either as part of the agenda of a scheduled community meeting, or at a separate meeting scheduled by the Postal Service. Such flexibility is appropriate to allow the Postal Service to accommodate local officials' preference. Although in our experience presentations at regular community meetings often are well attended, to further ensure community members are aware of the presentation and have an opportunity for input, the new rule bolsters notice and comment period requirements. Where the current rule requires 7 days' advance notice of the meeting, the new rule increases the requirement to 15 days' advance notice, to be published in local news media and posted in the affected facility. Where the current rule requires a 15-day public comment period following the public meeting, the new rule requires a 30-day public comments and appeals period.

Three respondents contended that the new rule should expressly adopt a position that the National Historic Preservation Act requires the Postal Service to engage in the Section 106 consultation process at the time the Postal Service considers relocation.

The Postal Service highly values its historic properties and follows the requirements of Sections 106, 110, and 111 of the National Historic Preservation Act and its implementing regulations. As the new rule states, those requirements are independent of the requirements set forth in the rule for community input regarding relocations and adding retail service facilities. Because the National Historic Preservation Act and its implementing regulations sufficiently express their requirements, there is no need to restate those requirements in the final rule.

Summary

To continue operating on a self-funding basis without tax dollars and to fulfill its statutory obligations, the Postal Service must make efficient and economical use of its postal facilities. As a result, the Postal Service will have an ongoing need to relocate retail services and to add retail service facilities to account for factors such as population shifts and growth, and a dynamic marketplace with changing customer needs and evolving technologies and retail servicing options. Accordingly, the Postal Service is publishing this final rule to clarify the rule's application and procedures for relocating retail services and adding retail service facilities. At the same time, this final rule also responds to concerns that communities and their elected officials should have information about the proposed new location for relocated retail postal services in order to comment effectively on a proposal to relocate those services. This final rule provides for additional transparency, clarity, and opportunity for soliciting and considering public input as the Postal Service pursues its mission to efficiently and economically provide universal postal services to the nation.

List of Subjects in 39 CFR Part 241

Organization and functions (Government agencies), Retail service facilities.

Accordingly, the Postal Service amends 39 CFR part 241 as set forth below.

PART 241—ESTABLISHMENT CLASSIFICATION, AND DISCONTINUANCE

■ 1. The authority citation for Part 241 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 410, 1001.

■ 2. Revise § 241.4 to read as follows:

§ 241.4 Relocating retail services; adding new retail service facilities.

(a) *Application.* (1) Except as otherwise provided, this section applies when the Postal Service makes a tentative decision to relocate all retail services from a retail service facility to a separate existing physical building, or to add a new retail service facility for a community. As used in this section, ''retail services'' means the single-piece mail services offered to individual members of the public on a walk-in basis at a retail service facility, and a ''retail service facility'' is a physical building where Postal Service employees provide such retail services.

(2) The rules of this paragraph (a)(2) apply to temporary additions of retail service facilities, temporary or emergency relocations of retail services, and to provisional relocations of retail services.

(i) The Postal Service may implement temporary additions or relocations without undertaking the process in paragraph (c) of this section when necessary to support Postal Service business for holidays, special events, or overflow business. Temporary additions and relocations normally will be limited to 180 days in duration. Any additional incremental time periods of up to 180 days each must be approved by the vice president, Facilities or his designee.

(ii) The Postal Service may implement emergency relocations without first undertaking the process in paragraph (c) of this section when the Postal Service determines relocation is required to protect Postal Service business due to events such as earthquakes, floods, fire, potential or actual OSHA violations, safety factors, environmental causes, other business disrupting events, or as necessary to protect employees, customers, or the security of the mail. Following an emergency relocation, as soon as the Postal Service determines it is feasible to identify the long-term location for the retail services, the Postal Service will make a tentative decision to remain in the emergency relocation site on a long-term basis, to return to the original retail service facility (if feasible), or to relocate to another site. Unless the decision is to return to the original retail service facility, the Postal Service then will follow the process in paragraph (c) of this section with respect to collecting and considering community input on a proposal to implement that decision.

(iii) The Postal Service may implement provisional relocations in connection with lease terminations or expirations, or in connection with a lessor exercising a right to require the Postal Service to move to alternate premises, when the Postal Service has not already undertaken the process in paragraph (c) of this section for such relocations. Not later than 180 days following a provisional relocation, the Postal Service will make a tentative decision to remain in the provisional relocation site on a long-term basis or to relocate to another site. After that decision, the Postal Service will follow the process in paragraph (c) of this section with respect to collecting and considering community input on a proposal to implement that decision.

(3) This section applies to tentative decisions described in paragraphs (a)(1) and (a)(2) made on or after March 23, 2015. The rules under § 241.4 in effect prior to that date shall apply to projects described in paragraph (a) of this section undertaken prior to that date.

(b) *Purpose.* The purpose of this section is to provide opportunities for community members and their elected local officials to appeal Postal Service tentative decisions described in paragraphs (a)(1) and (a)(2) of this section and to give input on proposals for implementing those decisions (each a ''proposal''), and to require the Postal Service to consider any appeals and input in arriving at final decisions to proceed with, modify, or cancel proposals.

(c) *Collecting and considering community input.* When the Postal Service makes a tentative decision described in paragraphs (a)(1) and (a)(2) of this section, a Postal Service representative will take the following steps:

(1) *Identify the community and engage local elected officials.* The Postal Service representative will identify the community the Postal Service anticipates would be affected by implementing the proposal, taking into account such factors as the Postal Service determines are appropriate for the proposal. The Postal Service representative then will deliver to one or more local elected public officials a written outline of the proposal and offer to discuss the proposal with them. The Postal Service representative may elect to conduct that discussion either in person or using any other appropriate communication tool, including electronic communications. If the officials accept the offer, then the Postal Service representative will identify the need and outline the proposal that is under consideration to meet it, explain the process by which the Postal Service will solicit and consider input from the affected community, and solicit input from the local officials regarding the proposal.

(2) *Notify the community and arrange for public presentation.* The Postal Service will send an initial news release outlining the proposal to one or more news media serving the community and, if the community has a retail service facility, then the Postal Service also will post a copy of the information given to local officials or the news release in the public lobby of that retail service facility. If the proposal concerns relocating retail services from a leased facility, then, using the most current notice address information in the Postal Service's file for the site, the Postal Service will deliver to the lessor a copy of the information given to local officials, provided, however, that no such notice will be required when the lessor has terminated the Postal Service's lease or has declined to renew the Postal Service lease on terms acceptable to the Postal Service. Additionally, the Postal Service representative will ask the local officials to place a Postal Service presentation of the proposal on the regular agenda of the next scheduled public meeting, or will schedule a separate Postal Service public meeting concerning the proposal. At least 15 days prior to the meeting, the Postal Service will advertise the date, time, and location of the public meeting in a local news medium and, if the community has an existing retail service facility, then the Postal Service also will post in the public lobby of that retail service facility a notice of the date, time, and location of the public meeting.

(3) *Present the proposal to the community.* At the public meeting, the Postal Service will identify the need, *e.g.,* to replace an expiring lease or to serve a new population center; identify the tentative decision, *e.g.,* to relocate retail services or add a retail service facility; outline the proposal to meet the need; invite questions; solicit written input on the proposal; and provide an address to which the community and local officials may send written appeals of the tentative decision and comments on the proposal for a period of 30 days following the public meeting. Under exceptional circumstances that would prevent a Postal Service representative from attending or conducting a public meeting to present the proposal within a reasonable time, the Postal Service, in

lieu of a public meeting, will mail written notification of the tentative decision and the proposal to customers within the community and post a notice of the proposal in the retail service facility that would be affected by the proposal, seeking their written input on the proposal and providing an address to which the community and local officials may send written appeals of the tentative decision and comments on the proposal during the 30 days following that notification. An example of exceptional circumstances would be a proposal that would be implemented in a sparsely populated area remote from the seat of local government or any forum where the public meeting reasonably could be held.

(i)(A) If the proposal concerns relocation, then the Postal Service will:

(*1*) Discuss the reasons for relocating;

(*2*) Identify the site or area, or both, to which the Postal Service anticipates relocating the retail services; and

(*3*) Describe the anticipated size of the retail service facility for the relocated retail services, and the anticipated services to be offered at that site or in that area.

(B) The Postal Service may identify more than one potential relocation site and/or area, for example, when the Postal Service has not selected among competing sites.

(ii)(A) If the proposal concerns adding a new retail service facility for a community, then the Postal Service will:

(*1*) Discuss the reasons for the addition;

(*2*) Identify the site or area, or both, to which the Postal Service anticipates adding the retail service facility;

(*3*) Describe the anticipated size of the added retail service facility, and the anticipated services to be offered; and

(*4*) Outline any anticipated construction (*e.g.,* of a stand-alone building or interior improvements to an existing building (or portion thereof) that will be leased by the Postal Service).

(B) The Postal Service may identify more than one potential site and/or area, for example, when the Postal Service has not selected yet among competing sites.

(4) *Consider comments and appeals.* After the 30-day comment and appeal period, the Postal Service will consider the comments and appeals received that identify reasons why the Postal Service's tentative decision and proposal (*e.g.,* to relocate to the selected site, or to add a new retail service facility) is, or is not, the optimal solution for the identified need. Following that consideration, the Postal Service will make a final decision to proceed with, modify, or cancel the proposal. The Postal Service then will inform local officials in writing of its final decision and send an initial news release announcing the final decision to local news media. If the community has a retail service facility, then the Postal Service also will post a copy of the information given to local officials or the news release in the public lobby of that retail service facility. The Postal Service then will implement the final decision.

(5) *Identify any new site or area.* After the public meeting under paragraph (c)(3) of this section, if the Postal Service decides to use a site or area that it did not identify at the public meeting, and this section applies with respect to that new site or area, then the Postal Service will undertake the steps in paragraphs (c)(2) through (4) of this section with regard to the new site or area.

(d) *Effect on other obligations and policies.* (1) Nothing in this section shall add to, reduce, or otherwise modify the Postal Service's legal obligations or policies for compliance with:

(i) Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, Executive Order 12072, and Executive Order 13006;

(ii) 39 U.S.C. 404(d) and 39 CFR 241.3; or

(iii) 39 U.S.C. 409(f);

(2) These are independent policies or obligations of the Postal Service that are not dependent upon a relocation or addition of a retail service facility.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2015–03238 Filed 2–19–15; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2014–0761; FRL 9922–94–Region 8]

Partial Approval and Partial Disapproval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to Wyoming Air Quality Standards and Regulations; Nonattainment Permitting Requirements and Chapter 3, General Emission Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to disapprove a portion of State Implementation Plan (SIP) revisions submitted by the State of Wyoming on May 10, 2011. This submittal revises the Wyoming Air Quality Standards and Regulations (WAQSR) that pertain to the issuance of Wyoming air quality permits for major sources in nonattainment areas. Also in this action, EPA is approving SIP revisions submitted by the State of Wyoming on February 13, 2013, and on February 10, 2014. These submittals revise the WAQSR with respect to sulfur dioxide (SO_2) limits and dates of incorporation by reference (IBR). This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective March 23, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2014–0761. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, or *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Definitions

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

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

(ii) The initials *BACT* mean or refer to Best Available Control Technology.

(iii) The initials *CFR* mean or refer to Code of Federal Regulations.

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

(v) The initials *FIP* mean or refer to Federal Implementation Plan.

(vi) The initials *IBR* mean or refer to incorporation by reference.

(vii) The initials *IAC* mean or refer to the Iowa Administrative Code.

(viii) The initials *LAER* mean or refer to Lowest Achievable Emissions Rate.

(ix) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(x) The initials NO_X mean or refer to nitrogen oxides.

(xi) The initials *NSR* mean or refer to New Source Review.

(xii) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).

(xiii) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xiv) The initials *SIP* mean or refer to State Implementation Plan.

(xv) The initials SO_2 mean or refer to sulfur dioxide.

(xvi) The words *State* or *Wyoming* mean the State of Wyoming, unless the context indicates otherwise.

(xvii) The initials *UGRB* mean or refer to the Upper Green River Basin.

(xviii) The initials *VOC* mean or refer to volatile organic compound.

(xix) The initials *WAQSR* mean or refer to the Wyoming Air Quality Standards and Regulations.

(xx) The initials *WDEQ* mean or refer to the Wyoming Department of Environmental Quality.

I. Background

In this final rulemaking, we are taking final action to disapprove the addition of Chapter 6, Section 13, Nonattainment permit requirements, to the WAQSR submitted by the State of Wyoming on May 10, 2011. This new section incorporated by reference 40 Code of Federal Regulations (CFR) section 51.165 in its entirety, with the exception of paragraphs (a) and (a)(1), into Wyoming's Chapter 6 Permitting Requirements.

On March 27, 2008, EPA promulgated a revised National Ambient Air Quality Standard (NAAQS) for ozone with an 8-hour concentration limit of 0.075 parts per million (''8-Hour Ozone NAAQS''), and effective July 20, 2012, EPA designated the Upper Green River Basin area of Wyoming as ''nonattainment'' for the 8-Hour Ozone NAAQS. For nonattainment areas, states are required to submit SIP revisions, including a nonattainment NSR permitting program for the construction and operation of new or modified major stationary sources located in the nonattainment area. On May 10, 2011, before the formal designation of the Green River Basin Area as nonattainment for the 8-Hour Ozone NAAQS, Wyoming submitted a nonattainment new source review (NSR) permitting program SIP revision to EPA.

Our final disapproval will start a two-year clock under CAA section 110(c)(1) for our obligation to promulgate a federal implementation plan (FIP) to correct the deficiency and the 18-month clock for sanctions, as required by CAA section 179(a)(2). These deadlines will be removed when Wyoming submits and we approve a SIP revision addressing the deficiency.

In this final rulemaking action, we are also taking final action to approve revisions submitted by Wyoming on February 13, 2013, and on February 10, 2014. These revisions to the WAQSR include portions of rulemakings R–20 and R–22(b), respectively, as revisions to Wyoming's SIP. Specifically, Wyoming revised Chapter 3, General Emissions Standards, Section 4, Emission standards for sulfur oxides and Section 9, Incorporation by reference in rulemaking R–20; and then again revised Section 9, Incorporation by reference in rulemaking R–22(b).

II. What are the changes that EPA is taking final action to approve?

With respect to Wyoming's February 13, 2013, and February 10, 2014 submittals, EPA is taking final action to approve revisions to WASQR Chapter 3, General Emissions Standards, Section 4, Emission standards for sulfur oxides, and Section 9, Incorporation by reference. Section 4 covers only sulfur oxide emissions from specific sulfuric acid production processes. These WAQSR changes and additions are consistent with the CAA and EPA regulations.

In our November 4, 2014 proposed action (79 FR 65362), we proposed to approve the following revisions to the WASQR: Chapter 3, General Emissions Standards, section 4, Emission standards for sulfur oxides (in R–20); then subsequently amended (in R–22(b)), section 9, Incorporation by reference.

III. What are the changes that EPA is taking final action to disapprove?

EPA is taking final action to disapprove the portion of Wyoming's May 10, 2011 submittal that adds a new section to the permitting requirements in WAQSR Chapter 6. The new Chapter 6 Section 13, Nonattainment permit requirements, consists of one sentence: ''40 CFR part 51.165 is herein incorporated by reference, in its entirety, with the exception of paragraph (a) and paragraph (a)(1).''

As explained in 79 FR 65362, these changes are not consistent with CAA and EPA regulations. Specifically:

1. CAA section 110(a)(2)(C), which requires each state plan to include ''a program to provide for . . . the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter.''

2. CAA section 172(c)(5), which provides that the plan ''shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section [173].''

3. CAA section 173, which lays out the requirements for obtaining a permit that must be included in the state's SIP-approved permit program. Because language prefaced by phrases such as ''the plan shall provide'' or ''the plan shall require'' does not itself impose requirements on sources, the State's proposed plan revision does not clearly satisfy the requirements of these statutory provisions.

4. CAA section 110(a)(2)(A), which requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state.

5. CAA section 110(i), which (with certain limited exceptions) prohibits States from modifying SIP requirements for stationary sources except through the SIP revision process.

6. CAA section 172(c)(7), which requires that nonattainment plans—including nonattainment NSR programs required by section 172(c)(5)—are required to meet the applicable provisions of section 110(a)(2), including the requirement in section 110(a)(2)(A) for enforceable emission limitations and other control measures.

7. CAA section 110(l), which provides that EPA cannot approve a SIP revision that interferes with any applicable requirement of the Act. As explained above, the addition of Chapter 6, Section 13 to the Wyoming SIP would interfere with section 110(a)(2) and 110(i) of the Act.

8. Nor does the SIP revision comply with the requirements of 40 CFR 51.165 as the plan fails to impose the regulatory requirements on individual sources, as required by the regulatory provisions.

We provided a detailed explanation of the basis of approval and disapproval in our proposed rulemaking (see 79 FR 65362). We invited comment on all aspects of our proposal and provided a

30-day comment period. The comment period ended on December 4, 2014.

IV. Response to Comments

We received two comment letters during the public comment period. One comment letter was submitted by Bruce Pendery of the Wyoming Outdoor Council and one was submitted by Todd Parfitt, Director of the Wyoming Department of Environmental Quality.

Bruce Pendery of the Wyoming Outdoor Council

Comment: The comment was in reference to WAQSR Chapter 6 Section 13, nonattainment NSR permits for major sources locating in nonattainment areas. The comment stated that ''. . . the State's proposed SIP revision is deficient because while it establishes requirements for *plans* it does not establish unambiguous and enforceable emission limits on *sources* that would be subject to the regulation. These shortcomings fail to meet the regulatory requirement to impose emission requirements for sources and also does not meet the requirements of section 110(a)(2)(A) of the Clean Air Act. In addition, the State's submission does not specify the procedures it will use to reduce emissions from major sources in nonattainment areas, bringing into question the enforceability of offset requirements. This violates section 110(i) of the Clean Air Act.''

Response: For the reasons explained in 79 FR 65362, we agree with the commenter that the addition of the sentence ''40 CFR part 51.165 is herein incorporated by reference, in its entirety, with the exception of paragraph (a) and paragraph (a)(1)'' in Chapter 6 Section 13, Nonattainment permit requirements, does not meet the requirements of CAA section 110(a)(2)(A) and CAA section 110(i).

Todd Parfitt, Director of the Wyoming Department of Environmental Quality

Comment: EPA's failure to timely approve Wyoming's plan effectively transferred new source permitting authority in the Upper Green River Basin (UGRB) nonattainment area from Wyoming to Region 8. In the absence of EPA-approved provisions, the Wyoming Department of Environmental Quality (WDEQ) has remained unable to permit new sources in the UGRB area.

Response: We disagree. First, Wyoming has a SIP-approved minor NSR permit program and under that program can issue minor NSR permits within the UGRB, so we presume that the comment is intended to refer only to new major sources and major modifications locating in the UGRB. Second, Wyoming has a SIP-approved Prevention of Significant Deterioration (PSD) program and under that program can issue permits in the UGRB ozone nonattainment area for new major sources of pollutants other than nitrogen oxides (NO_X) and volatile organic compounds (VOCs), as ozone precursors, and modifications that are major for pollutants other than NO_X or VOCs, as ozone precursors, so we also presume that the comment is intended to refer only to new major sources of NO_X and VOCs and modifications that are major with respect to NO_X and VOCs in the UGRB nonattainment area.

Given this, EPA Region 8 has not assumed authority to permit new major sources of NO_X and VOCs and modifications that are major with respect to NO_X and VOCs in the UGRB nonattainment area. For EPA to have that authority, we would have had to issue a FIP under section 110(c)(1) of the CAA, and we have not done so or even proposed to do so; in fact, our proposal notice stated that the disapproval would *start* the two-year clock for EPA's obligation to promulgate a FIP.

Under 40 CFR 52.21(k), it is expected that the State will issue permits in accordance with Appendix S to 40 CFR part 51 until EPA has approved a SIP submittal meeting the requirements of part D of title I of the CAA (in particular, a SIP submittal meeting the plan requirements that are set out in 40 CFR 51.165 as applicable to ozone nonattainment areas). If WDEQ has not been granted sufficient authority by the Wyoming legislature to issue permits under Appendix S prior to approval of a SIP revision, this would be a serious concern that should be addressed by the legislature, and this concern would exist in the period after designation regardless of how long it would take EPA to approve a nonattainment NSR program into the SIP. However, the comment did not provide any information to cause us to think that WDEQ lacks such authority. Even if it did, section 110(l) does not have an exception that allows EPA to approve a SIP revision that interferes with applicable requirements of the Act solely on the grounds that the State has been granted insufficient authority by its legislature to act in the interim prior to SIP approval.

Finally, the comment did not identify any owners or operators that have been unable to construct a new major source or major modification in the UGRB nonattainment area due to WDEQ's alleged lack of authority to issue permits. Nor did any owners or operators comment on our proposed disapproval. We also note that in order to meet nonattainment NSR requirements in the Sheridan coarse particulate matter (PM_{10}) nonattainment area, Wyoming has had a construction ban in place and approved into the SIP for over twenty years (See WAQSR, Chapter 6, Section 2(c)(ii)(B)). While the facts and circumstances of the UGRB ozone nonattainment area may be different than those of the Sheridan PM_{10} nonattainment area, the comment does not explain why the State has a concern in the UGRB that it does not in Sheridan.

Comment: EPA's disapproval of Wyoming's plan is arbitrary and capricious. It is arbitrary and capricious for an agency to respond to the same situation in a different way without any rational explanation. ''Here, the Region 8 Administrator proposes to disapprove Wyoming's plan for including language that was already approved, and has been proposed to be approved, by the administrator of Regions 7 and 10.''

The commenter references: Approval and Promulgation of Implementation Plans; Idaho, 79 FR 11711 (March 3, 2014) (approving portions of Idaho's plan that incorporated 40 CFR 51.165 by reference, without excluding any of the language referring to ''the plan''); Approval and Promulgation of Implementation Plans; Iowa, 79 FR 27763 (May 15, 2014) (approving portions of Iowa's SIP revisions that incorporate language from 40 CFR 51.165, including the phrase ''plan shall provide'' three times and the phrase ''the plan shall require'' five times); Approval and Promulgation of Implementation Plans; Alaska Nonattainment New Source Review, 79 FR 65366 (November 4, 2014) (proposing to approve Alaska's SIP revisions that incorporate portions of 40 CFR 51.165 by reference, including the phrase ''plan shall provide that'' two times and the phrase ''all plans shall use'' one time). The commenter states that the Region 7 Administrator approved Iowa's plan as a direct final rule because ''the Agency views [it] as a noncontroversial revision amendment.

The commenter states EPA may not declare that its own regulations, when incorporated by states in Region 7 and 10, are approvable for use in a SIP, but, when incorporated by a state in Region 8, are ambiguous, and therefore, do not contain enforceable emission limitations. The commenter concludes that EPA should approve Wyoming's submittal in accordance with these previous actions.

Response: We disagree that Wyoming's submittal is approvable and with the commenter's contention that

disapproval of Wyoming's submittal is inconsistent with EPA's approval of other SIP submissions. With respect to approval of the submittal, we noted in our proposal that, under section 110(l), EPA cannot approve any SIP revision that would interfere with any applicable requirement of the CAA. The comment does not dispute this basis for disapproval. We also noted in our proposal that certain provisions incorporated by Wyoming fail to specify procedures for determining the location of offsets and therefore violate section 110(i) of the CAA, because the provisions as incorporated would allow Wyoming to define and modify those procedures without going through the SIP revision process. The comment does not dispute this basis for disapproval, either. Furthermore, we noted that the State's incorporation by reference of language stating ''the plan *may* provide'' failed to create an enforceable obligation and also created ambiguity as to whether the SIP would actually include the provisions, thus violating the requirements in 110(a)(2)(A) regarding enforceability and the requirement in 110(a)(2)(C) to have a nonattainment NSR permit program as specified in part D of Title I, specifically sections 172(c)(5) and 173. The comment does not dispute the ambiguity of the language stating ''the plan *may* provide.'' Finally, we stated that the violation of sections 110(a)(2) (specifically 110(a)(2)(A) and (C)) and 110(i)) would interfere with applicable requirements of the Act and therefore we could not approve the submittal. The comment does not dispute that 110(a)(2)(A), 110(a)(2)(C), and 110(i) are applicable requirements and that approval of Wyoming's submittal would interfere with those requirements with respect to the language regarding the permissible location of offsets and the optional provisions prefaced by ''the plan may provide.'' Therefore, even if we agreed that our approval of other SIP submittals was inconsistent with our disapproval of Wyoming's submittal—which we do not—the deficiencies identified above would not allow us to approve the Wyoming submittal.

Second, EPA notes that we take numerous actions every year on SIP submittals, each of which by itself can be voluminous and contain many technical and legal issues. On occasion, it is possible that EPA may have approved portions of SIP submittals that do not meet all the requirements of the Act because EPA did not notice that a particular issue was implicated by the SIP submittal.[1] That this unfortunately and occasionally happens does not require that EPA must subsequently approve all SIP submittals that contain the same issue. To the contrary, section 110(l) contains no exception that allows EPA to approve a SIP revision that interferes with applicable requirements of the CAA merely because in some other action EPA has failed to notice a similar issue with a similar SIP revision. Thus, even if the comment has characterized the other notices correctly—which EPA does not agree it has—, EPA cannot approve Wyoming's SIP revision on the basis of those actions. If Wyoming is concerned about EPA's approval of those submittals, the State could have commented on those EPA actions or petitioned EPA to address any alleged errors in EPA's approval. However, it is not a remedy to the alleged inconsistencies to violate 110(l) and approve a SIP revision that interferes with applicable requirements of the Act. In other words, the comment's request that we approve the Wyoming submittal in fact requests that EPA take an action that is arbitrary and capricious.

Generally speaking, EPA's requirements for SIPs with respect to construction of new and modified sources, including the Part D nonattainment NSR permit program, are contained in 40 CFR part 51, subpart I, and specifically, in 40 CFR 51.160 through 51.166. The requirements for SIPs for nonattainment areas are found in 51.165, but this section does not stand alone and is part of a series of sections that together, comprise the requirements for approvable SIP provisions (*e.g.,* 51.161 spells out the requirements for public notice and comment; 51.164 the requirements for stack heights and dispersion techniques). The provisions of subpart I are not written in the form of an implementable permitting rule which applies to the owner or operator of sources who wish to construct or modify, but rather they are requirements that a state must meet in order to get its permitting rules approved as part of the SIP. In contrast to the requirements for nonattainment NSR, there are both SIP PSD requirements in 40 CFR 51.166 and a federal PSD program in 40 CFR 52.21, the latter being a permitting rule with enforceable source obligations that meets the requirements of 40 CFR 51.166. For a variety of reasons, many states incorporate 40 CFR 52.21 into state rules as the state PSD program. However, EPA does not have a similar implementable nonattainment NSR permitting rule that can be directly incorporated by reference into state rules. As a result, some states have incorporated by reference all or parts of 40 CFR 51.165 into state rules for purposes of nonattainment NSR, but such states generally integrate the portions of 51.165 into the states' existing permit program in such a way that there is a nonattainment NSR permitting program with enforceable provisions. In particular, the permit programs for Alaska, Idaho, and Iowa cited by the commenter take this approach, as we detail below.

In the case of Wyoming's submittal, the submittal fails to integrate the incorporation by reference of 51.165 into the State's permit program. Under Wyoming's SIP, the general construction permit program (*i.e.* minor NSR and certain procedures and requirements that are common to minor NSR and PSD) is set forth in WAQSR, Chapter 6, Section 2, and the PSD program is set forth in WAQSR, Chapter 6, Section 4. Notably, Wyoming's submittal containing the incorporation by reference of 51.165 did not even modify Section 2. Thus, there is no indication in Wyoming's permit program in Section 2 that any permit should be governed by the federal rules in 40 CFR 51.165. This creates several specific issues that we next discuss, but the overarching problem is that Wyoming's permit program fails, because it lacks any connection to Section 13, to impose nonattainment NSR requirements in the UGRB.

First, WAQSR, Chapter 6, Section 2(c)(v) provides that approval to construct cannot be granted until the permit applicant demonstrates that the facility will employ best available control technology (BACT). This conflicts with the requirement for nonattainment NSR that the facility be subject to the lowest achievable emission rate (LAER), which is determined by a different and generally speaking more stringent standard than BACT. Section 2 does not contain any provision stating that LAER instead of BACT should apply in the UGRB as to ozone precursor emissions. Thus, the submittal's incorporation by reference of 51.165 without corresponding updates to Section 2 fails to impose an enforceable obligation to meet the LAER requirement.

Second, in the case of the Sheridan PM_{10} nonattainment area, which was designated after the 1990 CAA Amendments, the State met nonattainment NSR requirements by imposing a construction ban on new

[1] With respect to the particular notices cited by the commenter, none of them discuss the issues identified in our proposal notice.

major sources of PM_{10} and modifications that are major with respect to PM_{10}. See 59 FR 60902 (Nov. 29, 1994). This is imposed in the SIP and integrated into the permit program through Section 2(c)(ii)(B), which contains the details of the construction ban. In contrast, Section 2 is devoid of any mention that different requirements should apply in the UGRB. This creates two conflicts. First, there is no enforceable obligation in the permit program to satisfy nonattainment NSR requirements in the UGRB. In fact, under Section 2 the only requirements that apply in the UGRB are minor NSR or PSD, depending on applicability. Second, even if the State's incorporation by reference of 51.165 could be understood to create a permit program, 51.165 contains generally applicable requirements that on their face apply in all nonattainment areas and are not limited to the UGRB. Thus there would be two conflicting sets of requirements in the Sheridan PM_{10} nonattainment area: One a construction ban and the other a permission to construct if certain requirements (LAER, offsets, etc.) are met.

Third, Chapter 6, Section 2(k) sets forth certain categories of sources that are entirely exempt from the obligation to get approval for construction. However, Section 2(k) correctly recognizes that the PSD program does not allow for source category-based exemptions and therefore states that, notwithstanding these exemptions: ''any facility which is a major emitting facility pursuant to the definition in Chapter 6, Section 4 [*i.e.* PSD] shall comply with the requirements of both Chapter 6, Sections 2 and 4.'' There is no corresponding provision for the incorporation by reference of 51.165 in Section 13. However, like PSD, the nonattainment NSR program does not allow for source category-based exemptions. Furthermore, Chapter 6, Section 2(k) states that any facility which is major under a state's definition must comply with the PSD program. There is no mention that certain facilities in the UGRB must comply with the provisions of Section 13.

The nonattainment NSR programs cited by the commenter do not contain the same approvability issues in Wyoming's May 10, 2011 SIP submittal discussed above. In 79 FR 65366 (November 4, 2014), EPA Region 10 proposed to approve the Alaska Part D nonattainment NSR rules based on a finding that the Alaska nonattainment NSR rules in 18 AAC 50, Article 3, Section 311 ''Nonattainment area major stationary source permits'' and 18 AAC 50.040(i) (incorporating by reference text from 40 CFR 51.165) met the requirements of the CAA and EPA's regulations for SIP nonattainment NSR rules. 79 FR 65366. EPA Region 10 noted that 18 AAC 50.311 had previously been approved into the Alaska SIP on August 14, 2007 (72 FR45378) and had not been revised since that time. EPA further explained that the primary changes proposed for approval in the SIP revision were updating the effective dates of the federal regulations previously adopted by reference in the Alaska SIP for purposes of Alaska's Part D nonattainment NSR program.

Unlike the Wyoming rule, which simply incorporates by reference the planning requirements of 40 CFR 51.165 and does not link the federal permitting requirements directly to Wyoming's existing state permitting rules, Alaska has adopted a complete state permitting rule that includes provisions that are specifically applicable to sources locating in nonattainment areas, including state provisions specifying the permissible location of offsets (see 18 AAC 50.311).[2] This provision makes clear that no source may commence construction of a major stationary source, a major modification, or a ''PAL'' major modification of a nonattainment pollutant in a nonattainment area without obtaining a construction permit from the Alaska Department of Environmental Conservation. 18 AAC 50.311 also specifies what must be included in an application for a Part D nonattainment NSR permit, such as a demonstration that emissions of the nonattainment pollutant will be controlled to a rate that represents the LAER, and documentation that proposed emission offsets will be sufficient, enforceable, and occur by the time the new or modified source begins operation. Finally, that provision also specifies that the permit can only be issued if the applicant demonstrates to the Alaska Department of Environmental Conservation that the permitting requirements of 40 CFR 51.165 that have been incorporated by reference in Alaska's rules will be met. The Alaska incorporation by reference provision at 18 AAC 50.040(i) explicitly states that it is adopting the text of the identified provisions of 40 CFR 51.165 ''setting out provisions that a state implementation plan shall or may contain.'' This makes clear that the incorporated provisions of 40 CFR 51.165, including those specifying that a ''state plan may contain . . .'', are requirements of Alaska's Part D nonattainment NSR permitting program.

Because Alaska's reliance on 40 CFR 51.165 as part of its Part D nonattainment NSR program is part of an overall construction permitting program that imposes additional requirements on new and modified major sources located in nonattainment areas, and because Alaska's incorporation by reference of text from 40 CFR 51.165 is clear with respect to the intent of Alaska to adopt the permitting requirements as Alaska law applicable to sources locating in nonattainment areas, the Alaska program does not contain the issues identified above for Wyoming's incorporation by reference of 40 CFR 51.165.

Idaho's SIP approved Part D nonattainment NSR rules currently incorporate by reference 40 CFR 51.165 (as well as all of 40 CFR part 51, subpart I) into IDAPA 58.01.01.107.03.[3] As was the case in 79 FR 11711 (March 3, 2014), Idaho annually updates its adoption by reference of these EPA rules and EPA Region 10 has proposed to approve the State's July 1, 2013, update to this incorporation by reference.

Idaho has adopted a complete state permitting rule that includes provisions that are specifically applicable to sources locating in nonattainment areas, including state provisions specifying the permissible location of offsets (see IDAPA 58.01.01.200 through 228 and specifically 204 (PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN NONATTAINMENT AREAS). These provisions make clear that no source may commence construction of a new major facility or a major modification in a nonattainment area without obtaining a construction permit from the Idaho Department of Environmental Quality. IDAPA 58.01.01.204 also points to IDAPA 58.01.01.202 for application requirements and to IDAPA 58.01.01.209 for administrative processing requirements. In addition, IDAPA 58.01.01.204 clearly states that ''The intent of Section 204 is to incorporate the federal nonattainment NSR rule requirements.'' IDAPA 58.01.01.204 then goes on in subsection .01 to specify exactly which provisions from 40 CFR 51.165 are incorporated by reference for the purposes of Section 204. The effect of the statement of intent and the identification of specific provisions makes clear that these provisions of 40 CFR 51.165 are

[2] A memorandum with details of the Alaska program is provided in the docket for this action.

[3] A memorandum with details of the Idaho program is provided in the docket for this action.

requirements of Idaho's Part D nonattainment NSR permitting program.

Because Idaho's reliance on 40 CFR 51.165 as part of its Part D nonattainment NSR program is part of an overall construction permitting program that imposes additional requirements on new and modified major sources located in nonattainment areas, and because Idaho's incorporation by reference of specific provisions from 40 CFR 51.165 at IDAPA 58.01.01.204 is clear with respect to the intent of Idaho to adopt the permitting requirements as state law applicable to sources locating in nonattainment areas, the Idaho program does not contain the issues identified above for Wyoming's incorporation by reference of 40 CFR 51.165.

Iowa's SIP approved Part D nonattainment NSR rules were previously adopted by rule into Iowa Administrative Code (IAC) 567–22.5(455B). In an effort to streamline administrative rules and make them more user-friendly, Iowa consolidated the nonattainment NSR provisions into IAC 567.31 (Chapter 31, Nonattainment Areas) in its submittal acted on by EPA in 79 FR 27763 (May 15, 2014). In that submittal, the provisions of the previous approved rule were retained by the Iowa Department of Natural Resources, and were simply relocated to Chapter 31. The relocated rules for the most part mirror language in 40 CFR 51.165, with some modifications by the State. In fact, the public notice for Iowa's rulemaking states: ''The federal regulations include many instructions to the states that could be confusing for businesses if the federal regulations were adopted by directly referencing the federal regulations.''

Iowa has adopted a complete state permitting rule that includes provisions that are specifically applicable to sources locating in nonattainment areas. Specifically, IAC 567–22.5(455B) (as revised in 79 FR 27763) and 567–31.1(455B) clearly state that no source may commence construction of a new major facility or a major modification in a nonattainment area without obtaining a construction permit from the Iowa Department of Natural Resources. IAC 567–22.1(1)(455B) (Permits Required for New or Existing Stationary Sources) also requires compliance with 567–22.5(455B) and IAC 567–31.3(455B) for permits prior to construction in nonattainment areas, and IAC 567–20.1 (Scope of Title—Definitions—Forms—Rules of Practice) is linked to requirements for areas designated as nonattainment.

Because Iowa's language mirroring that in 40 CFR 51.165 is part of an overall construction permitting program that imposes additional requirements on new and modified major sources located in nonattainment areas, the Iowa program does not contain the issues identified above for Wyoming's incorporation by reference of 40 CFR 51.165.

EPA has reviewed the SIPs cited by the commenter. While some of them may have instances of language that are problematic, none of them appear to have the same approvability flaws that we have identified with Wyoming's submittal.[4] In particular, none of them fail to create an enforceable nonattainment NSR permitting program that we have described here. And in any case, under section 110(k)(3) we must either approve or disapprove Wyoming's submittal, and under section 110(l) we cannot approve it. Therefore we must disapprove.

Comment: EPA's proposed action depends on a strained interpretation of the CAA. The commenter states that once a state submits its SIP to EPA, EPA's reviewing authority is limited to determining whether the SIP includes the requirements specified in Section 110(a)(2), and that EPA may not substitute its own judgment for that of the state. The commenter states that EPA proposes to find that Wyoming's plan is not enforceable because Wyoming's incorporation by reference of federal regulations includes language such as ''the plan shall provide'' and ''the plan shall require''. The commenter states that EPA claims that this imbues Wyoming's plan with such ambiguity that it fails to create enforceable obligations for sources in contravention of the ''enforceable emissions limitations'' requirement of Section 110(a)(2)(A), and that this is a strained and illogical interpretation of carefully drafted federal regulations that were meant to provide specific guidance to states in issuing permits in nonattainment areas. According to the commenter, any member of the regulated community who sees that Wyoming's regulations fully incorporate the federal regulations will understand that their operations are subject to the limits and restrictions imposed by the federal regulations.

Response: We disagree. First, the commenter incorrectly characterizes 40 CFR 51.165 as ''federal regulations that were meant to provide specific guidance to States in issuing permits in nonattainment areas.'' Instead, 40 CFR 51.165 contains the minimum *requirements* (not ''guidance'') for states to meet *in plan provisions* (not ''in issuing permits'') for nonattainment areas. See 40 CFR 51.165(a). To use the commenter's words, 51.165 is ''carefully drafted'' to define these minimum requirements while allowing state plans to vary from them so long as the minimum requirements are met. For example, 51.165(a)(1) provides that states may vary from the specific definitions in 51.165(a)(1) if the state demonstrates that the replacement definitions will be at least as stringent as all respects.

We also disagree that the distinction between the minimum plan requirements for a permitting program and the permitting program itself is ''illogical.'' The actual program that a state adopts may meet the minimum plan requirements in any number of ways. Wyoming should be familiar with this distinction: As discussed above, the State chose to impose a construction ban in the Sheridan PM_{10} nonattainment area instead of creating a full nonattainment NSR permit program. And for the State's PSD program, the State properly did not incorporate by reference 51.166, but instead adopted language from federal rules. See WAQSR, Chapter 6, Section 4.

The commenter inaccurately describes phrases such as ''the plan shall provide'' or ''the plan shall require'' as ''isolated.'' In fact, virtually every source obligation in 51.165(b) is prefaced by such a phrase. These are not ''isolated'' instances; they are ubiquitous.

We also disagree that it is ''strained'' to be concerned with the enforceability of the language that was incorporated. Faced with a lawsuit for violation of nonattainment NSR requirements, an owner or operator would naturally defend themselves by pointing out that the language literally does not impose requirements on owners and operators; instead it imposes requirements on state plans. While perhaps that defense would not always be successful, we do not think that Congress intended ''enforceable'' in section 110(a)(2)(A) to mean ''potentially enforceable depending on whether a court will agree with the plaintiff's theory that the provision should not be read to mean what it literally says.'' In other words, SIP provisions should not unnecessarily create defenses that make enforceability a matter of chance. Furthermore, we note that violations of nonattainment NSR program requirements can expose owners and operators to civil and criminal penalties. In such cases, courts have applied higher standards and

[4] As we did not propose any action on the SIPs cited by commenter, we are not making any determination in this final action with regards to those SIPs.

resolved ambiguities in favor of defendants. With respect to the comment's unsupported argument that any member of the regulated community would necessarily understand the state's intent to impose obligations on owners and operators, our response is first, that the literal language of the rule as incorporated does not support that intent. Second, the failure to integrate nonattainment NSR requirements into the permitting program, as detailed above, could create confusion.

Finally, we are not ''substituting our judgment for that of the state.'' The State has not provided any binding interpretation of the provisions that would render them enforceable. If that were possible to do and the State had done so, this interpretation could have been incorporated into the plan and potentially resolved at least some of the issues. In response to the comment regarding our limited review authority, we reiterate: ''The EPA may not approve any plan revision 'if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of [the Clean Air Act].' '' *Oklahoma* v. *EPA,* 723 F.3d 1201, 1207 (10th Cir. 2013) (quoting section 110(l) of the Act). We note that the commenter is also mistaken in asserting that EPA is limited to review for compliance specifically with section 110(a)(2) of the Act [5]—instead under 110(l) EPA must ensure compliance with all applicable requirements of the Act. In addition, the SIP revision interferes with sections 110(a)(2)(A) and 110(a)(2)(C).

Comment: The commenter states that EPA should not threaten the State of Wyoming with the loss of tens of millions of dollars in highway funding. According to the commenter, this is an extreme response to a disagreement over the proper method of incorporation by reference of federal regulations. The commenter states that, in response to its earlier commitment in a settlement, EPA now threatens Wyoming with highway sanctions. The commenter then details a number of serious concerns with highways.

Response: We disagree that starting the sanctions clock is inappropriate. We noted in our proposal that, under section 179(a) of the CAA, our proposed disapproval would, if finalized, trigger the sanctions clock. The conditions that trigger the sanctions clock are set out in sections 179(a)(1) through (4). In this case, finalizing our disapproval creates the condition in 179(a)(2): Disapproval under section 110(k) of a submission for an area designated nonattainment (in this case the UGRB) based on the submission's failure to meet one or more of the elements required by the Act that are applicable to the area (in this case, nonattainment NSR provisions identified above). When this condition is met, 179(a) requires the Administrator to apply one of the sanctions in 179(b) (highway and offset sanctions) unless the deficiency has been corrected within 18 months, and to apply the other sanction in 179(b) if the deficiency is not corrected within the following six months. EPA's approach to the sequencing of sanctions is set forth in the Order of Sanctions Rule. See 40 CFR 52.31. Despite its tone, the comment does not dispute this point about the nondiscretionary operation of the Act and therefore provides no relevant reason that the sanctions clock should not be started by our disapproval. With respect to the comment's concerns with the state highways, we recognize those as serious. However, Congress decided that certain means of highway funding should be contingent on avoiding the circumstances in section 179(a), which Wyoming can do by developing an approvable submittal.

We also disagree with the comment's characterization of EPA's action. First, the comment inaccurately characterizes EPA as ''threatening'' highway sanctions. As explained above, section 179(a) of the Act requires that the sanctions clock start after EPA's disapproval of a required element of a nonattainment plan. As a simple matter of proper notice to the public, EPA had the responsibility in our proposal to inform the public of this potential consequence of our proposed disapproval. There was no ''threat'' involved in stating the basic nondiscretionary operation of the CAA. The comment also without any basis characterizes EPA's action as a ''departure from EPA's more measured response throughout the country when disagreements have arisen in the past.'' The comment did not identify any actions where EPA disapproved a required nonattainment plan element and failed to start the sanctions clock, and in any case the Act requires that the clock be started.

In general, EPA would prefer to work with states to develop approvable submittals instead of disapproving flawed submittals and (in the case of nonattainment plans) triggering clocks for sanctions and FIP obligations. In this case, we were subject to a court-ordered deadline to finalize action on the submittal. We are still happy to work with the State to develop an approvable submittal, and we note that, under the Order of Sanctions Rule, in certain circumstances EPA can stay sanctions if the State has done so even before EPA takes final action on the approvable submittal. See 40 CFR 52.31(d).

V. What action is EPA taking today?

We have fully considered the comments we received, and have concluded that no changes from our proposed rule are warranted. As discussed in our proposal and this notice, our action is based on an evaluation of Wyoming's rules against the requirements of CAA sections 110(a)(2)(C), 110(a)(2)(A), 110(i), 110(l), 172(c)(5), 172(c)(7), 173, regulations at 40 CFR 51.165, and other requirements discussed in section III of this action.

As described in our proposed rulemaking, and in Section II of this notice, EPA is approving the SIP revisions submitted by Wyoming on February 13, 2013 and February 10, 2014.

As described in our proposed rulemaking, and in Section III of this notice, EPA is disapproving the portion of the SIP revisions submitted by Wyoming on May 10, 2011 that adds Chapter 6, Section 13 to the Wyoming SIP.

We are sensitive to the concerns expressed in the State's comments. We also understand the State's goals in promulgating Chapter 6, Section 13, to have a SIP-approved permit program for sources located in nonattainment areas. We intend to work with the State to develop revised rules that are consistent with the State goals and consistent with the CAA and implementing regulations.

VI. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office

[5] The dicta quoted by the commenter from *Train* v. *NRDC,* 421 U.S. 60 (1975) referring to 110(a)(2) was discussing the 1970 version of the Clean Air Act. Section 110(l) was added in the 1990 Amendments. The applicable requirement in section 110(i) was added in the 1977 Amendments. Applicable requirements for nonattainment NSR programs were added in the 1977 Amendments and revised in the 1990 Amendments.

of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• is certified as not having a significant economic impact in a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

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

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

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

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: January 30, 2015.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart ZZ—Wyoming

■ 2. In § 52.2620, the table in paragraph (c)(1) is amended under Chapter 3 by removing the entry for Section 4 and by adding the entry for Section 9 to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State adopted and effective date	EPA approval date and citation [1]	Explanations
*	*	*	*	*
Chapter 3				
*	*	*	*	*
Section 9	Incorporation by reference	9/12/2013, 11/22/2013	2/20/2015, [*insert Federal Register citation*].	
*	*	*	*	*

[1] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the **Federal Register** cited in this column for that particular provision.

* * * * *

[FR Doc. 2015–03180 Filed 2–19–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0504; FRL–9921–44–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; VOM Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request submitted by the Illinois Environmental Protection Agency (Illinois EPA) on June 10, 2014, to revise the Illinois State Implementation Plan (SIP). The submission amends the Illinois Administrative Code (IAC) by updating the definition of ''volatile organic material (VOM) or volatile organic compound (VOC)'' to add five compounds to the list of exempted compounds. These revisions are based on EPA rulemakings in 2013 which added these compounds to the list of chemical compounds that are excluded from the Federal definition of VOC because, in their intended uses, they make negligible contributions to tropospheric ozone formation.

DATES: This direct final rule will be effective April 21, 2015, unless EPA receives adverse comments by March 23, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0504, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: Aburano.Douglas@epa.gov.*
3. *Fax:* (312)408–2279
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2014–0504. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Douglas Aburano, Section Chief at (312) 353–6960 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Section Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *Aburano.Douglas@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
A. When did the State submit the SIP revision to EPA?
B. Did Illinois hold public hearings on this SIP revision?
II. What is EPA approving?
III. What is EPA's analysis of the SIP revision?
IV. What action is the EPA taking?
V. Statutory and Executive Order Reviews

I. What is the background for this action?

A. When did the State submit the SIP revision to EPA?

The Illinois EPA submitted a revision to the Illinois SIP to EPA for approval on June 10, 2014. The SIP revision updates the definition of VOM or VOC at 35 IAC Part 211, Subpart B, Section 211.7150(a).

B. Did Illinois hold public hearings on this SIP revision?

The Illinois Pollution Control Board held a public hearing on the proposed SIP revision on October 31, 2013. The Board received no comments.

II. What is EPA approving?

EPA is approving an Illinois SIP revision that updates the definition of VOM or VOC at 35 IAC Part 211, Subpart B, Section 211.7150(a) to add (difluoromethoxy) (difluoro)methane (CHF_2OCHF_2 or HFE–134), bis(difluoromethoxy) (difluoro)methane ($CHF_2OCF_2OCHF_2$ or HFE–236cal2), 1-(difluoromethoxy)-2-[(difluoromethoxy) ((difluoro)methoxy]-1,1,2,2-tetrafluoroethane ($CHF_2OCF_2OCF_2CF_2OCHF_2$ or HFE–43–10pccc), 1,2-bis(difluoromethoxy)-1,1,2,2-tetrafluoroethane ($CHF_2OCF_2CF_2OCHF_2$ or HFE–338pcc13), and *trans* 1-chloro-3,3,3-trifluoroprop-1-ene ($CF_3CHCHCl$) to the list of excluded compounds at 35 IAC 211.7150(a). Illinois took this action based on EPA's 2013 rulemakings in which EPA determined these compounds have a negligible contribution to tropospheric ozone formation and thus should be excluded from the definition of VOC codified at 40 CFR 51.100(s). (See 78 FR 9823

(February 12, 2013) and 78 FR 53029 (August 28, 2013)). This action also approves minor administrative changes in alphabetization of compound names and correction of compound condensed structural formulas to 35 IAC 211.7150(a) that refer to compounds previously approved as excluded from the definition of VOM in the Illinois SIP.

III. What is EPA's analysis of the SIP revision?

In 2005, EPA received a petition asking EPA to exempt HCF_2OCF_2H (HFE–134), $HCF_2OCF_2OCF_2H$ (HFE–236cal2), $HCF_2OCF_2CF_2OCF_2H$ (HFE–338pcc13), $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)) from the definition of VOC.[1] Based on the level of reactivity of these chemical compounds, EPA concluded that these compounds make negligible contributions to tropospheric ozone formation (78 FR 9823, February 12, 2013). Therefore on February 12, 2013, EPA amended 40 CFR 51.100(s)(1) to exclude these compounds from the definition of VOC for purposes of preparing SIPs to attain the national ambient air quality standard for ozone under title I of the Clean Air Act (78 FR 9823). EPA's action became effective March 14, 2013. Illinois EPA's SIP revision is consistent with EPA's action amending the definition of VOC at 40 CFR 51.100(s).

In 2011, EPA received a petition asking EPA to exempt *trans* 1-chloro-3,3,3-trifluoroprop-1-ene from the definition of VOC. Based on the level of reactivity of this chemical compound, EPA concluded that this compound makes a negligible contribution to tropospheric ozone formation (78 FR 53029, August 28, 2013). Therefore on August 28, 2013, EPA amended 40 CFR 51.100(s)(1) to exclude this compound from the definition of VOC for purposes of preparing SIPs to attain the national ambient air quality standard for ozone under title I of the Clean Air Act (78 FR 53029). EPA's action became effective September 27, 2013. Illinois EPA's SIP revision is consistent with EPA's action amending the definition of VOC at 40 CFR 51.100(s).

IV. What action is EPA taking?

EPA is approving a revision to the Illinois SIP which is consistent with EPA's 2013 actions revising the definition of VOC. The Illinois SIP revision adds (difluoromethoxy) (difluoro)methane (CHF_2OCHF_2 or HFE–134), bis(difluoromethoxy) (difluoro)methane ($CHF_2OCF_2OCHF_2$ or HFE–236cal2), 1-(difluoromethoxy)-2-[(difluoromethoxy) ((difluoro)methoxy]-1,1,2,2-tetrafluoroethane ($CHF_2OCF_2OCF_2CF_2OCHF_2$ or HFE–43–10pccc), 1,2-bis(difluoromethoxy)-1,1,2,2-tetrafluoroethane ($CHF_2OCF_2CF_2OCHF_2$ or HFE–338pcc13), and *trans* 1-chloro-3,3,3-trifluoroprop-1-ene ($CF_3CHCHCl$) to the list of chemical compounds considered exempt from the definition of VOM or VOC at 35 IAC 211.7150(a).

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective April 21, 2015 without further notice unless we receive relevant adverse written comments by March 23, 2015. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective April 21, 2015.

V. Statutory and Executive Order Reviews

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

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

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175, nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

[1] Note that EPA uses compound condensed structural formulas that differ from those used by Illinois EPA. Through comparison of HFE numbers and chemical formulas as used by the American Chemical Society, we have determined that EPA and Illinois EPA are referring to the same compounds for the purposes of this rule.

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 30, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.720 is amended by adding paragraph (c)(202) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(202) On June 10, 2014, Illinois submitted revised regulations that are consistent with 40 CFR 51.100(s)(1). The compounds (difluoromethoxy) (difluoro)methane (CHF_2OCHF_2 or HFE–134), bis(difluoromethoxy) (difluoro)methane ($CHF_2OCF_2OCHF_2$ or HFE–236cal2), 1-(difluoromethoxy)-2-[(difluoromethoxy) ((difluoro)methoxy]-1,1,2,2-tetrafluoroethane ($CHF_2OCF_2OCF_2CF_2OCHF_2$ or HFE–43–10pccc), 1,2-bis(difluoromethoxy)-1,1,2,2-tetrafluoroethane ($CHF_2OCF_2CF_2OCHF_2$ or HFE–338pcc13), and *trans* 1-chloro-3,3,3-trifluoroprop-1-ene ($CF_3CHCHCl$) were added to the list of negligibly reactive compounds excluded from the definition of ''Volatile Organic Material (VOM)'' or ''Volatile Organic Compound (VOC)'' at 35 IAC 211.7150(a).

(i) *Incorporation by reference.*

Illinois Administrative Code Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter c: Emission Standards and Limitations for Stationary Sources; Part 211: Definitions and General Provisions; Subpart B: Definitions; Section 211.7150: Volatile Organic Material (VOM) or Volatile Organic Compound (VOC), effective November 27, 2013.

[FR Doc. 2015–03450 Filed 2–19–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0554; FRL–9923–19–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Emissions Inventories for the Dallas-Fort Worth and Houston-Galveston-Brazoria Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) submitted to meet Emissions Inventory (EI) requirements of the Clean Air Act (CAA) for the Dallas-Fort Worth (DFW) and the Houston-Galveston-Brazoria (HGB) nonattainment areas. EPA is approving the SIP revisions because they satisfy the CAA EI requirements for the DFW and HGB nonattainment areas under the 2008 eight-hour ozone National Ambient Air Quality Standards (NAAQS). EPA is approving the revisions pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: This direct final rule will be effective April 21, 2015 without further notice, unless EPA receives adverse comment by March 23, 2015. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2014–0554, by one of the following methods:

- *www.regulations.gov.* Follow the online instructions.
- *Email:* Ms. Nevine Salem at *salem.nevine@epa.gov.*
- *Mail or delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2014–0554. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Nevine Salem, (214) 665–7222,

salem.nevine@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Salem or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Table of Contents

I. Background
II. EPA's Evaluation
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

A. The 2008 Ozone National Ambient Air Quality Standards (NAAQS) and Emissions Inventory Requirements

On March 12, 2008 EPA revised the eight-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. (73 FR 16436, March 27, 2008). On July 12, 2012 EPA designated nonattainment areas for the 2008 ozone NAAQS (2008 ozone nonattainment areas) (77 FR 30088, May 21, 2012). The DFW and HGB areas were designated as nonattainment areas for the 2008 ozone NAAQS. *Id.* The DFW area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise counties. The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

CAA sections 172(c)(3) and 182(a)(1) require states to develop and submit as a SIP revision an emissions inventory for all areas designated as nonattainment for the ozone NAAQS. 42 U.S.C. 172(c) and 182(a). An emissions inventory is an estimation of actual emissions of air pollutants in an area. Ground-level ozone, O_3, is a gas that is formed by the reaction of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and off-road motor vehicles and engines, and smaller sources, collectively referred to as area sources. The EIs provide data for a variety of air quality planning tasks including establishing baseline emission levels, calculating federally required emission reduction targets, emission inputs into air quality simulation models, and tracking emissions over time. The total EI of VOC and NO_X for an area are summarized from the estimates developed for five general categories of emissions sources: Point, area, on-road mobile, non-road mobile, and biogenic. EPA's proposed 2008 ozone standard SIP requirements rule suggested that states use 2011 as a base year to address EI requirements (78 FR 34178, 34190, June 6, 2013).

B. SIP Revision Submitted on July 16, 2014

Texas adopted a SIP revision addressing the emissions inventory requirements for the DFW and HGB areas on July 2, 2014 and submitted it to EPA on July 16, 2014. Tables 1 and 2 are the DFW and HGB emissions inventories in the SIP revision.

TABLE 1—DFW 2011 EMISSIONS INVENTORY

[tons per day or tpd]

Source type	NO_X	VOC
Point	39.95	29.80
Area	42.64	292.49
On-road Mobile	238.87	98.36
Non-road Mobile	120.61	55.00
Total	442.08	475.65

TABLE 2—HGB 2011 EMISSIONS INVENTORY

[tpd]

Source type	NO_X	VOC
Point	108.44	94.83
Area	21.14	308.73
On-road Mobile	196.21	82.62
Non-road Mobile	121.11	49.93
Total	446.90	536.12

C. CAA Requirements for the SIP Revision

The primary CAA requirements pertaining to the SIP revision submitted by Texas are found in CAA sections 110(l), 172(c)(3) and 182(a)(1). 42 U.S.C. 110(l), 172(c)(3), and 182(a). CAA section 110(l) requires that a SIP revision submitted to EPA be adopted after reasonable notice and public hearing. Section 110(l) also requires that EPA not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. CAA sections 172(c)(3) and 182(a) requires a SIP revision that contains a comprehensive, accurate, current inventory of actual emissions from all sources.

II. EPA's Evaluation

EPA has reviewed the revision for the consistency with the requirements of EPA regulations. A summary of EPA's analysis is provided below. For a full discussion of our evaluation, please see our Technical Support Document (TSD).

CAA sections 172 (c)(3) and 182(a)(1) require a current inventory of actual emissions from all sources of relevant pollutants in the nonattainment areas. EPA Air Emissions Reporting regulations call for states to provide an emissions inventory from all sources every 3 years and required a complete inventory for 2011 (40 CFR 51.30). Additionally, in proposed rulemaking for the 2008 ozone standard we proposed that the states use 2011 as the base year for EI for the reasonable further progress emissions reduction SIP requirement (June 6, 2013, 78 FR 34178,

34190). Texas has developed a 2011 base year emissions inventory for the DFW and HGB nonattainment areas. The 2011 base year emissions includes all point, area, non-road mobile, and on-road mobile source emissions. EPA is approving the emission inventory for DFW and HGB because it contains a comprehensive, accurate, current inventory of actual emissions from all sources in accordance with CAA sections 172(c)(3) and 182(a). Additionally we find that (1) Texas adopted the EI for DFW and HGB after reasonable notice and public hearing and (2) approval would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA in accordance with CAA Section 110(1). A technical support document (TSD) was prepared which details our evaluation. Our TSD may be accessed online at *www.regulations.gov,* Docket No. EPA–R06–OAR–2014–0554.

III. Final Action

We are approving a Texas SIP revision submitted to address the emissions inventory requirements for the DFW and HGB 2008 ozone nonattainment areas. The inventories we are approving are listed in Tables 1 and 2 above.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on April 21, 2015 without further notice unless we receive relevant adverse comment by March 23, 2015. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 9, 2015.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270 (e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding an entry at the end for ''2011 Emissions Inventory for the 2008 Ozone NAAQS.''

The addition reads as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
* *	*	*	* *	*
2011 Emissions Inventory for the 2008 Ozone NAAQS.	Dallas-Fort Worth and Houston-Galveston-Brazoria Ozone Nonattainment Areas.	7/16/2014	2/20/2015 [Insert **Federal Register** citation].	

[FR Doc. 2015–03449 Filed 2–19–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R07–OAR–2014–0900; FRL–9923–14–Region 7]

Approval and Promulgation of Implementation Plans; Attainment Redesignation for Missouri Portion of the St. Louis MO–IL Area; 1997 8-Hour Ozone Standard and Associated Maintenance Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the State of Missouri's request to redesignate the Missouri portion of the St. Louis MO–IL nonattainment area, the ''St. Louis area'' or ''area'' to attainment for the 1997 8-hour National Ambient Air Quality Standards (NAAQS or Standard) for ozone (O_3). The Missouri counties comprising the St. Louis area are Franklin, Jefferson, St. Charles, and St. Louis along with the City of St. Louis. EPA's approval of the redesignation request is based on the determination that the St. Louis area has met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA), including the determination that the St. Louis area has attained the 1997 8-hour O_3 standard. Additionally, EPA is approving the state's plan for maintaining the 1997 O_3 standard in the St. Louis area for 10 years beyond redesignation. In a separate action the state of Illinois submitted a similar redesignation request for the Illinois portion of the St. Louis MO–IL 1997 8-hour O_3 area. On June 12, 2012, the EPA published a document in the **Federal Register** taking final action to address the Illinois portion of the St. Louis area.

DATES: *Effective date:* This final rule is effective on February 20, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2014–0900. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m. excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, KS 66219 at (913) 551–7214 or by email at *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we refer to EPA. This section provides additional information by addressing the following:

Table of Contents

I. What is the background for this rule?
II. Summary of SIP Revisions
III. What action is EPA taking??
IV. Statutory and Executive Order Reviews

I. What is the background for this rule?

On July 18, 1997, EPA promulgated a revised 8-hour O_3 NAAQS of 0.08 parts per million (ppm) (62 FR 38856). EPA published a final rule designating and classifying areas under the 8-hour O_3 NAAQS on April 30, 2004 (69 FR 23857). In that rulemaking, the St. Louis area was designated as nonattainment for the 1997 8-hour O_3 standard and classified as a moderate nonattainment area under subpart 2 of the CAA.

On November 3, 2011, Missouri requested redesignation of the Missouri portion of the St. Louis area to attainment of the 1997 8-hour O_3 standard, and requested approval of the Missouri SIP revision containing a maintenance plan for the Missouri portion of the St. Louis area. Missouri submitted a supplement to this request on April 29, 2014.

On June 9, 2011 (76 FR 33647), EPA issued a final rulemaking determining that the entire St. Louis MO–IL area attained the 1997 8-hour O_3 NAAQS based on three years of complete, quality assured O_3 data for the period of 2008–2010.

On December 31, 2014(79 FR 78755), EPA published a notice of proposed rulemaking (NPR) proposing to approve Missouri's request to redesignate the Missouri portion of the St. Louis area to attainment of the 1997 8-hour O_3 standard, and also proposing to approve Missouri's maintenance plan for the area. The proposed rulemaking provides a detailed discussion and sets forth the basis for determining that Missouri's redesignation request meets the CAA requirements for redesignation to attainment for the 1997 8-hour O_3 NAAQS.

The primary background for this action is contained in EPA's December 31, 2014, proposal to approve Missouri's redesignation request, and in EPA's June 9, 2011, final rulemaking determining that the area has attained the 1997 8-hour O_3 standard based on complete, quality assured monitoring data for 2008–2010. In these rulemakings, we noted that under EPA regulations at 40 CFR 50.10 and 40 CFR part 50, appendix I provides that the 8-hour O_3 standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentration is less than or equal to 0.08 ppm, when rounded at all monitoring sites in the area. See 69 FR 23857 (April 30, 2004). To support the redesignation of the area to attainment of the NAAQS, the O_3 data must be complete for the three attainment years. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is

greater than ninety percent, and no single year has less than seventy five percent data completeness. See 40 CFR part 50, appendix I, 2.3(d). Under the CAA, EPA may redesignate a nonattainment area to attainment if sufficient, complete, quality assured data are available to determine that the area has attained the standard and if it meets the other CAA redesignation requirements in section 107(d)(3)(E).

II. Summary of SIP Revisions

On November 3, 2011, EPA received a SIP revision from the State of Missouri requesting redesignation of the Missouri portion of the St. Louis MO–IL area to attainment for the 1997 8-hour O_3 standard, and approval of the area's maintenance plan. Missouri submitted a supplemental revision on April 29, 2014. The maintenance plan is designed to keep the Missouri portion of the St. Louis area in attainment of the 1997 8-hour O_3 standard through 2025. A more detailed rationale for EPA's proposed action to approve the SIP submissions are explained in the NPR and will not be restated here. The comment period on EPA's proposed rule opened December 31, 2014, the date of its publication in the **Federal Register**, and closed on January 30, 2015. No public comments were received on the NPR.

III. What action is EPA taking?

EPA is approving a request from the State of Missouri to redesignate the Missouri portion of the St. Louis, MO–IL area to attainment of the 1997 8-hour O_3 standard. In addition, EPA is approving as a revision to the Missouri SIP, the State's plan for maintaining the 1997 8-hour O_3 standard through 2025 in the area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule relieves the state of various requirements for this nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: February 9, 2015.

Karl Brooks,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR parts 52 and 81 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. Section 52.1342 is amended by adding paragraph (c) to read as follows:

§ 52.1342 Control strategy: Ozone.

* * * * *

(c) On November 3, 2011 and April 29, 2014, Missouri submitted requests to redesignate the Missouri portion of the St. Louis MO–IL area to attainment of the 1997 8-hour ozone standard. The Missouri portion of the St. Louis MO–IL area includes Jefferson, Franklin, St. Charles, and St. Louis Counties along with the City of St. Louis. As part of the redesignation request, the State submitted a plan for maintaining the 1997 8-hour ozone standard through 2025 in the area as required by Section 175A of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—Section 107 Attainment Status Designations

■ 4. Section 81.326 is amended by revising the entry for ''St. Louis MO–IL'' in the table entitled ''Missouri—1997 8-Hour Ozone NAAQS (Primary and Secondary)'' to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—1997 8-HOUR OZONE NAAQS

[Primary and Secondary]

Designated area	Designation [a]		Category/Classification	
	Date [1]	Type	Date [1]	Type
* *	*	*	*	*
St. Louis, MO–IL				
Franklin County	February 20, 2015	Attainment.		
Jefferson County	February 20, 2015	Attainment.		
St. Charles County	February 20, 2015	Attainment.		
St. Louis City	February 20, 2015	Attainment.		
St. Louis County	February 20, 2015	Attainment.		
* *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 2015–03287 Filed 2–19–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0670; FRL–9922–08]

Dimethenamid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of dimethenamid in or on cottonseed subgroup 20C and cotton, gin byproducts. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 20, 2015. Objections and requests for hearings must be received on or before April 21, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0670, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0670 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 21, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0670, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 25, 2013 (78 FR 63938) (FRL–9901–96), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F8197) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR 180.464 be amended by establishing tolerances for residues of the herbicide dimethenamid (1(*RS*)-2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)acetamide) in or on cottonseed, subgroup 20C at 0.01 parts per million (ppm); cotton, gin byproducts at 1.5 ppm; and cotton, seed, refined oil at 0.02 ppm. Compliance with the tolerance levels is to be determined by measuring only parent. Tolerances would apply to either dimethenamid-P (a 90:10 mixture of S- and R-isomers, a mixture enriched in S-isomer) or dimethenamid (a 50:50 racemic mixture of S- and R-isomers). The enforcement method is not enantiomer specific. That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that a separate tolerance in cotton, seed, and refined oil is not needed. The reason for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

The existing toxicological database is comprised of studies conducted with both dimethenamid, which is a racemic mixture of S- and R-isomers (50:50, S:R), and dimethenamid-P, which is mixture of S- and R-isomers enriched in the S-isomer (90:10, S:R). Both sets of data for dimethenamid and dimethenamid-P show similar toxicity and together are adequate for risk assessment. Because of the similarity of the two mixtures, EPA relies on data for both to assess the hazard of each mixture.

The primary target organ is the liver. The toxicity in 90-day feeding studies in rats showed decreased body weights, increased cholesterol and changes in liver weights along with histopathology showing microscopic effects (centrilobular hypertrophy, periportal eosinophilic inclusions and necrosis) in the liver. Chronic studies in the rat, mouse, and dog showed decreases in body weight and food efficiency as accompanying effects over time. At higher dose levels, liver pathology (hepatic lesions, bile duct hyperplasia, and tumors), stomach hyperplasia, and some indications of kidney effects were noted. Two 21-day dermal toxicity studies in rabbits were conducted and in one of those studies minor skin irritation was observed at all doses tested and a decrease in body weight (bw) gain was also seen at the lowest effect level.

The acute neurotoxicity study resulted in effects such as partially closed eyelids, lacrimation, and slight salivation at the highest dose tested of (600 milligrams/kilograms/body weight (mg/kg/bw)). There were no treatment-related or toxicologically significant findings during the gross examination of rats or in the microscopic examination of neurological tissues. In the subchronic neurotoxicity study, there were no clinical signs seen and no adverse effects seen up to 323/390 mg/kg/bw day. Systemic effects seen were renal pelvic dilation in males (considered incidental) and a trend of higher liver weights in females was found at the lowest dose tested and

were not considered adverse nor were they corroborated with any other guideline studies submitted. There were no liver histopathology or clinical chemistry measurements in the subchronic neurotoxicity study; however, the adversity of this finding is supported by the observation of multiple liver effects (increased cholesterol, increased total serum protein, increased liver weights, and enlarged centrilobular hepatocytes) in the 90-day rat study at doses of 98/119 (Male/Female) milligrams/kilograms/day (mg/kg/day) and above. There was no neurotoxicity observed at higher doses nor in other guideline studies.

Developmental toxicity studies show increased post-implantation loss and minor skeletal variations in the rat, and late resorptions and minor skeletal variations in the rabbit at the highest dose tested (lowest observed adverse effect level: LOAEL, 425 mg/kg/day). In the rabbit, the developmental effects occurred at the same dose as maternal toxicity (LOAEL, 150 mg/kg/day), whereas in the rat, the developmental toxicity occurred at much higher doses than in the dams (LOAEL, 215 mg/kg/day). The chosen no observed adverse effect level (NOAEL) of 75 mg/kg/day is considered protective for effects seen in both studies. The reproduction study resulted in decreases in body weight in both pups and parental animals at the same dose levels. The only other effects noted at the LOAEL of 150 mg/kg/day were increases in liver weights in both male and female parental animals.

A review of the immunotoxicity study resulted in no immunotoxicity effects at the limit dose of 1,167 milligrams/kilograms (mg/kg), although increased absolute and relative liver weights were seen at this dose level. Dimethenamid-P is classified as group ''C'' possible human carcinogen, based on weak evidence for carcinogenicity.

The agency concluded that quantification of cancer risk using a non-linear approach would adequately account for all chronic toxicity (including carcinogenicity) that could result from exposure to dimethenamid based on the following weight of evidence considerations:

1. No statistically significant increase in liver tumors (only an increasing trend for liver tumors in one sex (male) and one species (rat)).
2. No evidence of carcinogenicity in male or female mice.
3. Equivocal evidence for mutagenicity.
4. The POD of 5 mg/kg/day used for human health risk assessment is 15-fold lower than the dose (75 mg/kg/day) that caused the liver tumors and thus considered protective for cancer.

Specific information on the studies received and the nature of the adverse effects caused as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in document titled, ''Dimethenamid/Dimethenamid-P. Human Health Risk Assessment for Proposed New Use on Cottonseed Subgroup 20C.,'' on pg. 42–48, in docket ID number EPA–HQ–OPP–2013–0670.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological POD and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for Dimethenamid/Dimethenamid-P used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR DIMETHENAMID/DIMETHENAMID-P FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	NOAEL = 200 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 2.0 mg/kg/day. aPAD = 2.0 mg/kg/day.	Acute Neurotoxicity. LOAEL = 600 mg/kg/day based on lacrimation, salivation, irregular and accelerated respiration, slight tremors, reduced exploration, unsteady gait, and significantly reduced rearing.
Acute dietary (Females 13–49 years of age).	NOAEL = 75 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.75 mg/kg/day. aPAD = 0.75 mg/kg/day.	Developmental Rabbit Study Maternal. LOAEL = 150 mg/kg/day based on abortions (not considered acute effect). Developmental; LOAEL = 150 mg/kg/day based on post-implantation loss.
Chronic dietary (All populations)	NOAEL = 5 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.05 mg/kg/day. cPAD = 0.05 mg/kg/day.	Chronic/Carcinogenicity Rat Study. LOAEL = Male/Female; 36/49 mg/kg/day based on decreased body weight and body weight gain in both sexes, increased food conversion ratios in females, and increased microscopic hepatic lesions in both sexes.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR DIMETHENAMID/DIMETHENAMID-P FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Incidental oral short-term and intermediate-term (1 to 6 months).	NOAEL = 10 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Subchronic/Chronic Oral Dog Studies. Chronic NOAEL = 10 mg/kg/day. Chronic LOAEL = 48.7 mg/kg/day. Subchronic NOAEL = 4.72 mg/kg/day. Subchronic LOAEL = 33.6 mg/kg/day based on decreased body weight in females, increased relative to body liver weight in both sexes, increased periportal cytoplasmic vacuolation in liver in both sexes, and dilation of liver sinusoids in females.
Dermal short-term (1 to 30 days) and intermediate-term (1–6 months).	NOAEL = 300 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	21-Day Dermal Rabbit Study. LOAEL = 500 mg/kg/day based on decreased body weight gain only (non-specific).
Inhalation short-term (1 to 30 days).	NOAEL = 10 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE= 100	Subchronic/Chronic Oral Dog Studies. Chronic NOAEL = 10 mg/kg/day. Chronic LOAEL = 48.7 mg/kg/day. Subchronic NOAEL = 4.72 mg/kg/day. Subchronic LOAEL = 33.6 mg/kg/day based on decreased body weight in females, increased relative to body liver weight in both sexes, increased periportal cytoplasmic vacuolation in liver in both sexes, and dilation of liver sinusoids in females.
Cancer (Oral, dermal, inhalation).	''C'' Possible human carcinogen. The chronic RfD is considered protective of the cancer effects.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to dimethenamid-P and/or dimethenamid, EPA considered exposure under the petitioned-for tolerances as well as all existing dimethenamid tolerances in 40 CFR 180.464 which are established for either of the herbicides dimethenamid-P (an enriched S-isomer with 90:10 mixture of the S- and R-isomers) or dimethenamid (a 50:50 racemic mixture of the S- and R-isomers). Therefore, EPA assessed dietary exposures from dimethenamid-P and/or dimethenamid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for dimethenamid and dimethenamid-P. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). The acute dietary analysis was conducted for dimethenamid and/or dimethenamid-P assuming tolerance level residues, default processing factors, and 100% crop treated (CT) information.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 CSFII. The chronic dietary exposure assessment was conducted for dimethenamid and/or dimethenamid-P assuming tolerance level residues, default processing factors, and 100% CT information.

iii. *Cancer.* As discussed in Unit III.A, EPA has concluded that cancer dietary risk concerns due to long-term consumption of dimethenamid residues are adequately addressed by the chronic dietary exposure analysis using the reference dose; therefore, a separate cancer dietary exposure analysis was not performed.

iv. *Anticipated residue and percent crop treated (PCT) information.* Tolerance level residues and 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for dimethenamid-P and/or dimethenamid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of dimethenamid-P and/or dimethenamid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Surface Water Concentration Calculator (SWCC) and the Pesticide Root Zone Model for Ground Water (PRZM–GW), estimated drinking water concentrations (EDWCs) were calculated for the parent compound plus its ethanesulfonic acid and oxanilic acid degradates, which are residues of concern in drinking water as follows: For acute exposures, EDWCs are estimated to be 73 parts per billion (ppb) for surface water and 153 ppb for ground water; for chronic exposures, EDWCs for non-cancer assessments are estimated to be 27 ppb for surface water and 140 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

Because there was little difference between the maximum EDWCs for acute and chronic exposures, the maximum water concentration value of 153 ppb was used to assess the contribution to drinking water for both the acute and chronic dietary risk assessments.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Although there are no currently registered uses of dimethenamid that could result in residential exposures, dimethenamid-P is currently registered for the following uses that could result in residential exposures: Turf grass, ornamentals, and tree plantations. Only short-term residential exposures to dimethenamid-P are expected based on the 2012 Residential Standard Operating Procedures (SOPs). Potential exposure/risk scenarios identified for residential handlers include:

- Mixing/loading/applying liquid formulations to lawns/turf with a hose-end and/or backpack sprayer, and a manually-pressurized hand wand.
- Mixing/loading/applying liquid formulations to garden/trees with a sprinkler can and a hose-end sprayer.
- Mixing/loading/applying granular formulations to lawns/turf with a push-type rotary sprayer and a belly grinder.
- Mixing/loading/applying granular formulations to garden/trees with a shaker can/cup, a spoon or by hand dispersal.

The scenarios, routes of exposure, and lifestages of potential post-application exposure include:

- Physical activities on turf: Adults (dermal) and children 1 to <2 years old (dermal and incidental oral).
- Mowing: Adults (dermal) and children 11 to <16 years old (dermal).
- Golfing: Adults (dermal), children 11 to <16 years old (dermal), and children 6 to <11 years old (dermal).
- Contact with Treated Gardens and Trees: Adults (dermal) and children 6 to <11 years old (dermal). The values used for aggregate assessment are based on the worst-case residential exposure estimates via the inhalation (adult male) and oral (child 1 < 2 years old) routes.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no concern for increased qualitative and/or quantitative susceptibility following *in utero* (rats and rabbits) and pre-and post-natal exposure (rats). The NOAEL and LOAEL values for the fetal/pup effects observed in the developmental study and effects seen in the reproduction studies occurred at the same doses or higher than those which caused maternal toxicity. The rabbit developmental study was used as an acute dietary endpoint for females 13–49 years of age. The POD selected for risk assessment are protective of effects seen in these guideline studies. Therefore, the acute and chronic dietary risk assessments are protective of potential fetal/offspring effects.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA SF to 1X. That decision is based on the following findings:

i. The toxicity database for dimethenamid and dimethenamid-P is complete.

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

iii. There is no evidence that dimethenamid or dimethenamid-P results in increased susceptibility *in utero* in rat or rabbit prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues which results in very high-end estimates of dietary exposure. The dietary drinking water assessment, which included parent plus its ethanesulfonic acid and oxanilic acid degradates, utilizes values generated by model and associated modeling parameters which are designed to provide health protective, high-end estimates of water concentrations. These assessments will not underestimate the exposure and risks posed by dimethenamid-P and/or dimethenamid residues of concern.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to dimethenamid-P and/or dimethenamid residues of concern will occupy 1.3% of the aPAD for infants <1 year of age, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to dimethenamid-P and dimethenamid residues of concern from food and water will utilize 17% of the cPAD for infants <1 year of

age, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Dimethenamid-P is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to dimethenamid-P.

Dermal and inhalation exposures to handlers were not aggregated because the toxicity endpoints for these exposure routes are not based on common toxicity effects in/of the liver. Dermal effects (bw gain) were considered to be non-specific. EPA aggregated the worst-case residential exposure estimates via the inhalation (adult male) and oral (child 1 < 2 years old) routes.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOEs of 2,200 for adults and 1,100 for children 1–2 years old. Because EPA's LOC for dimethenamid-P is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, dimethenamid-P is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for dimethenamid-P.

5. *Aggregate cancer risk for U.S. population.* As indicated in Unit III.A., EPA has concluded that the chronic RfD would be protective of any cancer effects. Based on the results of the chronic aggregate risk assessment, EPA concludes there is no risk of concern for cancer effects from exposure to dimethenamid and dimethenamid-P.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement method is available for determining residues of dimethenamid in plant commodities. The Gas Chromatography/Nitrogen-Phosphorus Detector (GC/NPD) method (AM–0884–0193–1) has been validated by the Agency and submitted for publication in the Food and Drug Administration (FDA) Pesticide Analytical Manual (PAM), Volume II. The limit of quantitation (LOQ; determined as the lowest level of method validation, LLMV) is 0.01 ppm. This method is not enantiomer specific.

B. International Residue Limits

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

The Codex has not established a MRL for dimethenamid or dimethenamid-P in/on members of cottonseed subgroup 20C and cotton, gin byproducts.

C. Revisions to Petitioned-For Tolerances

A separate tolerance in cotton, seed, refined oil is not needed since the exaggerated rate processing study demonstrates that the petitioned-for tolerance in/on cottonseed subgroup 20C (0.01 ppm) will be adequate to cover potential residues of dimethenamid in refined oil.

V. Conclusion

Therefore, tolerances are established for residues of the herbicide dimethenamid, 1(*RS*)-2-chloro-*N*-[(1-methyl-2-methoxy) ethyl]-*N*-(2, 4-dimethylthien-3-yl) acetamide, applied as either the 90:10 or 50:50 S:R isomers, in or on cottonseed subgroup 20C at 0.01 ppm and cotton, gin byproducts at 1.5 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between

the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 10, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.464, add alphabetically the following commodities to the table in paragraph (a) to read as follows:

§ 180.464 Dimethenamid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cotton, gin byproducts	1.5
Cottonseed subgroup 20C ...	0.01
* * * * *	

* * * * *

[FR Doc. 2015–03458 Filed 2–19–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0574; FRL–9920–62]

Bacillus Subtilis Strain IAB/BS03; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the fungicide *Bacillus subtilis* strain IAB/BS03 in or on all food commodities when used in accordance with label directions and good agricultural practices. Investigaciones y Aplicaciones Biotechnologicas (IAB, S.L.) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus subtilis* strain IAB/BS03.

DATES: This regulation is effective February 20, 2015. Objections and requests for hearings must be received on or before April 21, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0574 is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0574 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 21, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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

objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0574, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of September 12, 2013 (78 FR 56185) (FRL–9399–7), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 3F8177) by IAB, S.L. (Investigaciones y Aplicaciones Biotecnologicas S.L.), Avda, Paret del Patriarca 11–B, Ap. 30, 46113 Moncada (Valencia) Spain. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus subtilis* strain IAB/BS03. That document referenced a summary of the petition prepared by the petitioner IAB, S.L., at *http://www.regulations.gov* which was not available in the docket due to an administrative error.

In the **Federal Register** of December 3, 2014 (79 FR 71713) (FRL–9919–58), EPA reopened the comment period on this petition (PP 3F8177) for 30 days to allow comments on the petition. Two comments received in response to the notice of filing. EPA's response is located in Unit III. D.

III. Final Rule

A. EPA's Safety Determination

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

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure to *Bacillus subtilis* strain IAB/BS03. EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A full explanation of the data upon which EPA relied and a summary of its risk assessment based on that data can be found within October 15, 2014 document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Bacillus subtilis* strain IAB/BS03.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

Based upon that evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Bacillus subtilis* strain IAB/BS03. Therefore, EPA is establishing an exemption from the requirement of a tolerance for residues of *Bacillus subtilis* strain IAB/BS03 in or on all food commodities when used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes for the reasons contained in the document entitled, ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Bacillus subtilis* strain IAB/BS03'' and because the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), which is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party.

The Codex has not established a MRL for *Bacillus subtilis* strain IAB/BS03.

D. Response to Comments

Two general comments were filed opposing the establishment of any tolerance or exemption. The Agency recognizes that some individuals believe that no residue of pesticides should be allowed on foods; however, under the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute. Based on the available information, EPA has determined that the use of *Bacillus subtilis* strain IAB/BS03 is safe.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive

Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 4, 2015.

Jack E. Housenger,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.1329 to subpart D to read as follows:

§ 180.1329 Bacillus subtilis strain IAB/BS03, exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Bacillus subtilis* strain IAB/BS03 in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2015–03465 Filed 2–19–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, and 175

[Docket No. PHMSA–2009–0095 (HM–224F)]

RIN 2137–AE44

Hazardous Materials: Transportation of Lithium Batteries

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule; extension of compliance date.

SUMMARY: PHMSA is extending for modes of transportation other than air the mandatory compliance date of a final rule published on August 6, 2014, under Docket No. HM–224F from February 6, 2015, until August 7, 2015. This extension is made in response to formal comments received from multiple stakeholders outlining challenges faced by the regulated community in fully implementing the provisions of the final rule by the February 6, 2015 mandatory compliance date.

DATES: The compliance date for the final rule published August 6, 2014, at 79 FR 46012, is extended until August 7, 2015.

FOR FURTHER INFORMATION CONTACT: Vincent Babich or Steven Webb Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: On August 6, 2014 [79 FR 46012], PHMSA in consultation with the Federal Aviation Administration (FAA) published a final rule under Docket No. PHMSA–2009–0095 (HM–224F) modifying requirements governing the transportation of lithium cells and batteries. The final rule revised hazard communication and packaging provisions for lithium batteries to harmonize the Hazardous Materials Regulations (HMR; CFR parts 171–180) with applicable provisions of the United Nations (UN) Model Regulations, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the International Maritime Dangerous Goods (IMDG) Code. In the August 6, 2014 final rule, PHMSA authorized a mandatory compliance date of February 6, 2015 (six months after publication in the **Federal Register**) for shippers to incorporate the new requirements into standard operating procedures and complete training of affected personnel.

The Retail Industry Leaders Association, the Food Marketing Institute, the National Retail Federation, and the Rechargeable Battery Association submitted a joint request for an extension of six months to the current mandatory compliance date. These groups contend that the six month transitional period adopted in the final rule did not provide sufficient time to comply with the new requirements and has proven extremely challenging for the retail industry to implement in particular for surface transportation. The request notes that ''generally, the new regulations require that domestic ground shipments of products with lithium batteries adhere to shipping standards previously only required for international air and sea transportation''. The groups further note that the detailed information necessary for compliance, such as the specific

number of lithium cells or batteries contained in a package and whether a package contains lithium ion or lithium metal cells or batteries, as required by § 173.185(c)(3), does not currently exist in any format that the retail sector can access and utilize. In addition the requestors state that tens of thousands of consumer products may be impacted by the rule, and estimate that to date, the necessary information has been obtained from retail suppliers for less than 25% of the affected products. Furthermore, they relate that since August 2014, retail businesses and their suppliers have been working diligently to develop information technology (IT) systems and business processes to identify consumer products impacted by the regulation. Systematic solutions are being developed but will take additional time to implement. They estimate that a minimum of six additional months is necessary to identify all affected products and build the IT infrastructure necessary to effectively implement the regulations. Finally, the commenters point out that the new provisions require the developing, tracking, and implementing of training programs for hundreds of thousands of employees to enable them to execute the nuanced marking and labeling requirements of the final rule.

PHMSA appreciates the additional information submitted and has reviewed the information in conjunction with the information considered during the rulemaking process. Based on this review, PHMSA believes the additional arguments and justification provided by the commenters have merit and that an extension of the mandatory compliance date for modes of transportation other than aircraft is warranted. PHMSA recognizes that the primary focus of the HM–224F final rulemaking as outlined in published notices preceding the final rule was to align the requirements of the HMR for air transportation of lithium batteries with those of the ICAO Technical Instructions. PHMSA believes that maintaining the February 6, 2015 compliance date for air transport is appropriate and important for aviation safety and is therefore maintaining the February 6, 2015 effective date for offering, acceptance, and transportation by aircraft. Therefore, in consultation with the FAA and consistent with the information set forth in the joint request, this extension does not apply to transportation by aircraft. In the event an air carrier becomes aware of a non-compliant shipment offered to it, the air carrier should report the incident to the FAA in addition to taking specific actions required by the regulations as to that shipment. For questions regarding reporting of such incidents, carriers may contact the nearest FAA Regional or Field Security Office by telephone or electronically.

In summary, in response to commenters' requests PHMSA is extending the mandatory compliance date for the final rule published under Docket No. HM–224F on August 6, 2014, until August 7, 2015 for all modes other than transportation by aircraft to allow additional time to implement the requirements of the rule. The mandatory compliance date of February 6, 2015 remains in effect with respect to offering, acceptance and transportation by aircraft.

Issued in Washington, DC, on February 13, 2015 under authority delegated in 49 CFR 1.97.

Timothy P. Butters,

Acting Administrator.

[FR Doc. 2015–03500 Filed 2–19–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2014–0059; FXES11130900000C2–156–FF09E42000]

RIN 1018–BA64

Endangered and Threatened Wildlife and Plants; Reinstatement of Final Rules for the Gray Wolf in Wyoming and the Western Great Lakes in Compliance With Court Orders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with court orders that reinstate the regulatory protections under the Endangered Species Act of 1973, as amended (ESA), for the gray wolf *(Canis lupus)* in Wyoming and the western Great Lakes. Pursuant to the U.S. District Court for the District of Columbia court order dated September 23, 2014, this rule reinstates the April 2, 2009 (74 FR 15123), final rule regulating the gray wolf in the State of Wyoming as a nonessential experimental population. Gray wolves in Montana, Idaho, the eastern third of Washington and Oregon, and north-central Utah retain their delisted status and are not impacted by this final rule. In addition, pursuant to the U.S. District Court for the District of Columbia court order dated December 19, 2014, this rule reinstates the March 9, 1978 (43 FR 9607), final rule as it relates to gray wolves in the western Great Lakes including endangered status for gray wolves in all of Wisconsin and Michigan, the eastern half of North Dakota and South Dakota, the northern half of Iowa, the northern portions of Illinois and Indiana, and the northwestern portion of Ohio; threatened status for gray wolves in Minnesota; critical habitat for gray wolves in Minnesota and Michigan; and the rule promulgated under section 4(d) of the ESA for gray wolves in Minnesota.

DATES: This action is effective February 20, 2015. The September 23, 2014, court order reinstated the April 2, 2009, final rule designating the gray wolf in Wyoming as a nonessential experimental population immediately upon its filing. The court order regarding wolves in the western Great Lakes had legal effect immediately upon its filing on December 19, 2014. The Director has further determined, pursuant to 5 U.S.C. 553(d), that the Service has good cause to make this rule effective upon publication.

ADDRESSES: This final rule is available:

- Electronically at *http://www.regulations.gov* in Docket No. FWS–R6–ES–2014–0059;
- From U.S. Fish and Wildlife Service, Mountain-Prairie Region Office, Ecological Services Division, 134 Union Blvd., Lakewood, CO 80228; telephone 303–236–7400; or
- From U.S. Fish and Wildlife Service, Midwest Region Office, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437; telephone 612–713–5360.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: For information on wolves in Wyoming, contact Mike Jimenez, Northern Rocky Mountains Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, P.O. Box 8135, Missoula, MT 59807; by telephone 307–330–5631. For information on wolves in the western Great Lakes, contact Laura Ragan, Regional Listing Coordinator, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437; by telephone 612–713–5350. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2012, we published a final rule to remove the gray wolf in Wyoming from the Federal List of Endangered and Threatened Wildlife (77 FR 55530; ''2012 delisting rule''). Additional background information on the gray wolf in Wyoming and on this decision, including previous Federal actions, can be found in our 2012 delisting rule.

Lawsuits challenging our 2012 delisting rule were filed. On September 23, 2014, the U.S. District Court for the District of Columbia vacated and set aside our 2012 delisting rule (*Defenders of Wildlife* et al. v. *Salazar,* et al., and *The Humane Society of the United States,* et al., v. *U.S. Fish and Wildlife Service,* et al., 1:12–cv–01833–ABJ) and reinstated our April 2, 2009 (74 FR 15123), final rule to govern management of gray wolves in Wyoming pursuant to the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*).

The decision reinstates Federal protections that were in place prior to our 2012 delisting rule. Therefore, gray wolves in Wyoming are once again classified as an experimental population (59 FR 60252, November 22, 1994; 70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(i) and (n)). Thus, take of wolves may be authorized only by one of these experimental population rules or by a permit obtained under section 10 of the ESA.

As a result of the court's decision, all of Wyoming except the Wind River Indian Reservation again operates under the 1994 nonessential experimental population rule (50 CFR 17.84(i)). The rule allows significant management flexibility, but does not allow the State to assume authority for wolf management. Thus, at present, the Service will continue to be the lead management agency for wolves throughout most of Wyoming. The Wind River Indian Reservation can again operate under the 2005 nonessential experimental population rule, as amended in 2008 (50 CFR 17.84(n)). Under the 2005 rule, States and Tribal entities can assume management authority over wolves if they obtain approved management plans from the Service and comply with all other applicable procedures. We notified all State, Federal, and Tribal partners of the court's September 23, 2014, decision and its impact shortly after the court issued its order. The Service and the State of Wyoming also took steps, such as press releases and agency Web site postings, to ensure the public was aware of the court's order.

On December 28, 2011, we published a final rule to remove the gray wolf in the western Great Lakes from the Federal List of Endangered and Threatened Wildlife (76 FR 81666; ''2011 delisting rule''). Additional background information on the gray wolf in the western Great Lakes and on this decision, including previous Federal actions, can be found in our 2011 delisting rule.

A lawsuit challenging the 2011 delisting rule was filed on February 12, 2013. On December 19, 2014, the U.S. District Court for the District of Columbia vacated and set aside our 2011 delisting rule (*The Humane Society of the United States,* et al., v. *Jewell,* 2014 U.S. Dist. LEXIS 175846 (D.D.C. Dec. 19, 2014) and reinstated the rule in effect prior to the 2011 delisting rule, namely, the rule regarding Reclassification of the Gray Wolf in the United States and Mexico, with Determination of Critical Habitat in Michigan and Minnesota (43 FR 9607; Mar. 9, 1978).

The decision reinstates Federal protections that were in place prior to our 2011 delisting rule. Therefore, wolves in all of Wisconsin and Michigan, the eastern half of North Dakota and South Dakota, the northern half of Iowa, the northern portions of Illinois and Indiana, and the northwestern portion of Ohio are once again classified as endangered, and wolves in Minnesota are once again classified as threatened. The decision also reinstates the formerly designated critical habitat at 50 CFR 17.95(a) for gray wolves in Minnesota and Michigan and the regulations promulgated under section 4(d) of the ESA at 50 CFR 17.40(d) for the gray wolf in Minnesota. Thus, take of wolves in those areas may be authorized only by the section 4(d) rule for wolves in Minnesota or by a permit obtained under section 10 of the ESA.

Administrative Procedure

To comply with the September 23, 2014, court order, we must reinstate our:

- April 2, 2009, rule (74 FR 15123), and
- Section 10(j) rules (59 FR 60252, November 22, 1994; 70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(i) and (n)).

To comply with the December 19, 2014, court order, we must reinstate our:

- March 9, 1978, rule (43 FR 9607),
- Critical habitat designation for gray wolves in Minnesota and Michigan, and
- Section 4(d) rule for gray wolves in Minnesota.

Therefore, the Director has determined, pursuant to 5 U.S.C. 553(b), that prior notice and opportunity for public comment are impractical and unnecessary.

Effects of the Rule

Per the September 23, 2014 court order, any and all gray wolves in Wyoming are listed as a nonessential experimental population under section 10(j) of the ESA (50 CFR 17.84(i) and (n)). These regulations are the same as those in the regulations that were removed per our 2012 delisting rule (77 FR 55530). Although not required by the court, for consistency, we are placing the reinstated regulations at the specific paragraph designations they previously occupied in the Code of Federal Regulations prior to our issuance of the 2012 delisting rule. In order to accommodate this placement, we are moving regulations governing the Topeka shiner (*Notropis topeka =tristis*) nonessential experimental population that were placed in § 17.84(n) via a final rule that published July 17, 2013 (78 FR 42702); these regulations will now be located at § 17.84(d). This is purely an organizational action and has no effect on the implementation of any of the regulations.

Per the December 19, 2014, court order, any and all gray wolves in all of Wisconsin and Michigan, the eastern half of North Dakota and South Dakota, the northern half of Iowa, the northern portions of Illinois and Indiana, and the northwestern portion of Ohio are listed as an endangered species under the ESA. Any and all wolves in Minnesota are listed as a threatened species under the ESA. The reinstated regulations at 50 CFR 17.95 designate critical habitat for gray wolves in Minnesota and Michigan, and the reinstated regulations at 50 CFR 17.40(d) govern the regulation of gray wolves in Minnesota. The provisions of these regulations are the same as those in the regulations that were removed per our 2011 delisting rule (76 FR 81666). Although not required by the court, for consistency, we are placing the reinstated regulations at the specific paragraph designations they previously occupied in the Code of Federal Regulations prior to our issuance of the 2011 delisting rule. In order to accommodate this placement, we are moving regulations promulgated under section 4(d) of the ESA for the straight-horned markhor (*Capra falconeri megaceros*) that were placed at § 17.40(d) via a final rule that published October 7, 2014 (79 FR 60365); these regulations will now be located at § 17.40(n). This is purely an organizational action and has no effect on the implementation of any of the regulations.

Because of previous rulemaking actions pertaining to gray wolves, the result of this recent court action is that gray wolves in all of Wisconsin, Michigan, North Dakota, South Dakota, Iowa, Illinois, Indiana, and Ohio are hereby listed as endangered (50 CFR 17.11(h)). Wolves in Minnesota are listed as threatened (50 CFR 17.11(h)).

This rule does not affect the status of gray wolves in Montana, Idaho, the eastern third of Washington and Oregon, and north-central Utah. Wolves in these areas retain their delisted status and will continue to be managed by the States.

This rule does not affect the gray wolf's Appendix II status under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h), the entries for ''Markhor, straight-horned'' and ''Wolf, gray'' under MAMMALS and the second entry for ''Shiner, Topeka'' under FISHES in the List of Endangered and Threatened Wildlife are revised to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Markhor, straight-horned.	*Capra falconeri megaceros.*	Afghanistan, Pakistan.	Entire	T	15, 841	NA	17.40(n)
*	*	*	*	*	*		*
Wolf, gray	*Canis lupus*	Holarctic	U.S.A.: All of AL, AR, CA, CO, CT, DE, FL, GA, IA, IN, IL, KS, KY, LA, MA, MD, ME, MI, MO, MS, NC, ND, NE, NH, NJ, NV, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, and WV; and portions of AZ, NM, OR, UT, and WA as follows: (1) Northern AZ (that portion north of the centerline of Interstate Highway 40); (2) Northern NM (that portion north of the centerline of Interstate Highway 40); (3) Western OR (that portion of OR west of the centerline of Highway 395 and Highway 78 north of Burns Junction and that portion of OR west of the centerline of Highway 95 south of Burns Junction); (4) Most of Utah (that portion of UT south and west of the centerline of Highway 84 and that portion of UT south of Highway 80 from Echo to the UT/WY Stateline); and (5) Western WA (that portion of WA west of the centerline of Highway 97 and Highway 17 north of Mesa and that portion of WA west of the centerline of Highway 395 south of Mesa). Mexico.	E	1, 6, 13, 15, 35	17.95(a)	NA
Wolf, gray	*Canis lupus*	Holarctic	U.S.A. (MN)	T	35	17.95(a)	17.40(d)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Wolf, gray [Northern Rocky Mountain DPS].	*Canis lupus*	U.S.A. (MT, ID, WY, eastern WA, eastern OR, and north central UT).	U.S.A. (WY—see § 17.84(i) and (n)).	XN	561, 562	NA	17.84(i) 17.84(n)
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Shiner, Topeka	*Notropis topeka = tristis*.	U.S.A. (IA, KS, MN, MO, NE, SD).	U.S.A. (MO—specified portions of Little Creek, Big Muddy Creek, and Spring Creek watersheds in Adair, Gentry, Harrison, Putnam, Sullivan, and Worth Counties; see 17.84(d)(1)(i))	XN	.....	NA	17.84(d)
*	*	*	*	*	*		*

■ 3. Amend § 17.40 by:

■ a. Redesignating paragraph (d) as paragraph (n); and, in newly redesignated paragraph (n)(1), removing ''(d)(2)'' and adding in its place ''(n)(2)''; and

■ b. Adding paragraph (d) to read as set forth below.

§ 17.40 Special rules—mammals.

* * * * *

(d) Gray wolf (*Canis lupus*) in Minnesota.

(1) *Zones.* For purposes of these regulations, the State of Minnesota is divided into the following five zones:

(i) Zone 1—4,488 square miles. Beginning at the point of intersection of United States and Canadian boundaries in Section 22, Township 71 North, Range 22 West, in Rainy Lake, then proceeding along the west side of Sections 22, 27, and 34 in said Township and Sections 3, 10, 15, 22, 27 and 34 in Township 70 North, Range 22 West and Sections 3 and 10 in Township 69 North, Range 22 West; then east along the south boundaries of Sections 10, 11, and 12 in said Township; then south along the Koochiching and St. Louis counties line to Highway 53; thence southeasterly along State Highway 53 to the junction with County Route 765; thence easterly along County Route 765 to the junction with Kabetogama Lake in Ash River Bay; thence along the south boundary of Section 33 in Township 69 North, Range 19 West, to the junction with the Moose River; thence southeasterly along the Moose River to Moose Lake; thence along the western shore of Moose Lake to the river between Moose Lake and Long Lake; thence along the said river to Long Lake; thence along the east shore of Long Lake to the drainage on the southeast side of Long Lake in NE\1/4\, Section 18, Township 67 North, Range 18 West; thence along the said drainage southeasterly and subsequently northeasterly to Marion Lake, the drainage being in Sections 17 and 18, Township 67 North, Range 18 West; thence along the west shoreline of Marion Lake proceeding southeasterly to the Moose Creek; thence along Moose Creek to Flap Creek; thence southeasterly along Flap Creek to the Vermilion River; thence southerly along the Vermilion River to Vermilion Lake; thence along the Superior National Forest boundary in a southeasterly direction through Vermilion Lake passing these points: Oak Narrows, Muskrat Channel, South of Pine Island, to Hoodo Point and the junction with County Route 697; thence southeasterly on County Route 697 to the junction with State Highway 169; thence easterly along State Highway 169 to the junction with State Highway 1; thence easterly along State Highway 1 to the junction with the Erie Railroad tracks at Murphy City; thence easterly along the Erie Railroad tracks to the junction with Lake Superior at Taconite Harbor; thence northeasterly along the North Shore of Lake Superior to the Canadian Border; thence westerly along the Canadian Border to the point of beginning in Rainy Lake.

(ii) Zone 2—1,856 square miles. Beginning at the intersection of the Erie Mining Co. Railroad and State Highway 1 (Murphy City); thence southeasterly on State Highway 1 to the junction with County Road 4; thence southwesterly on County Road 4 to the State Snowmobile Trail (formerly the Alger-Smith Railroad); thence southwesterly to the intersection of the Old Railroad Grade and Reserve Mining Co. Railroad in Section 33 of Township 56 North, Range 9 West; thence northwesterly along the Railroad to Forest Road 107; thence westerly along Forest Road 107 to Forest Road 203; thence westerly along Forest Road 203 to the junction with County Route 2; thence in a northerly direction on County Route 2 to the junction with Forest Road 122; thence in a westerly direction along Forest Road 122 to the junction with the Duluth, Missable and Iron Range Railroad; thence in a southwesterly direction along the said railroad tracks to the junction with County Route 14; thence in a northwesterly direction along County Route 14 to the junction with County Route 55; thence in a westerly direction along County Route 55 to the junction with County Route 44; thence in a southerly direction along County Route 44 to the junction with County Route 266; thence in a southeasterly direction along County Route 266 and subsequently in a westerly direction to the junction with County Road 44; thence in a northerly direction on County Road 44 to the junction with Township Road 2815; thence westerly along Township Road 2815 to Alden Lake; thence northwesterly across Alden Lake to the inlet of the Cloquet River; thence northerly along the Cloquet River to the junction with Carrol Trail-State Forestry Road; thence west along the Carrol Trail to the junction with County Route 4 and County Route 49; thence west along County Route 49 to the junction with the Duluth, Winnipeg and Pacific Railroad; thence in a northerly direction along said Railroad to the

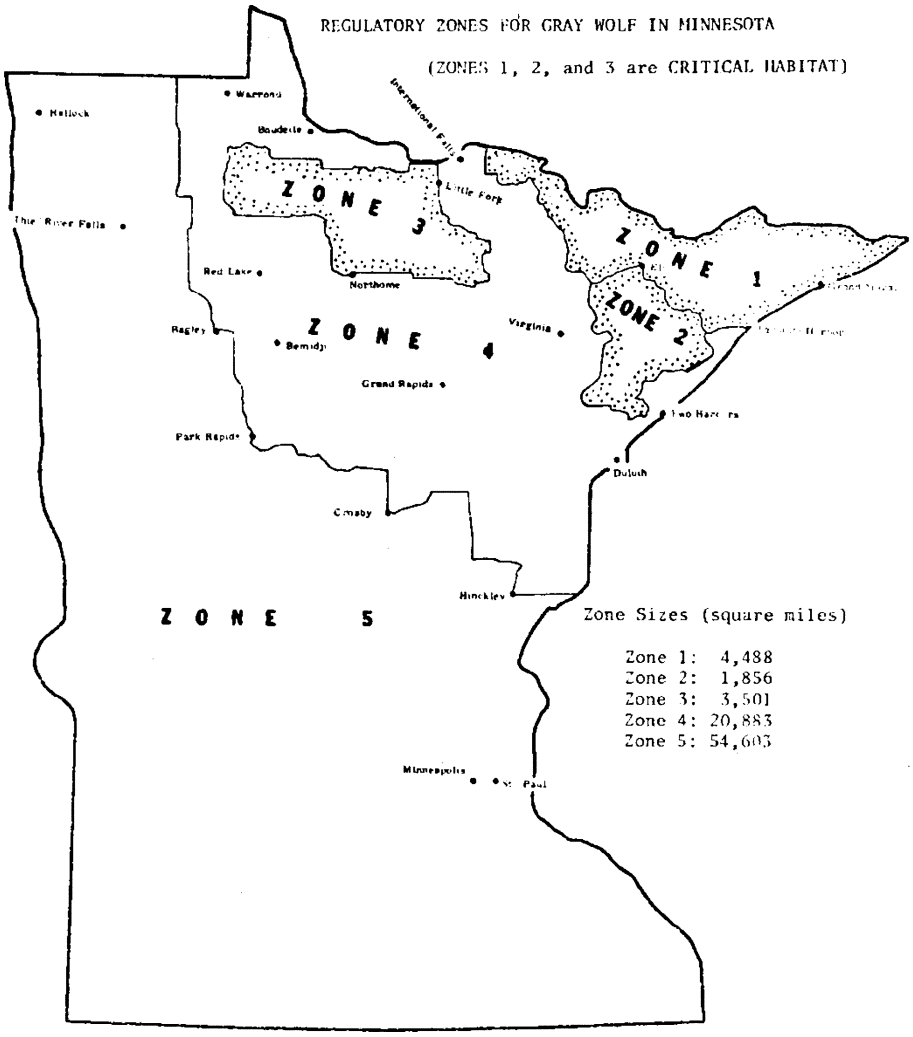
junction with the Whiteface River; thence in a northeasterly direction along the Whiteface River to the Whiteface Reservoir; thence along the western shore of the Whiteface Reservoir to the junction with County Route 340; thence north along County Route 340 to the junction with County Route 16; thence east along County Route 16 to the junction with County Route 346; thence in a northerly direction along County Route 346 to the junction with County Route 569; thence along County Route 569 to the junction with County Route 565; thence in a westerly direction along County Route 565 to the junction with County Route 110; thence in a westerly direction along County Route 110 to the junction with County Route 100; thence in a north and subsequent west direction along County Route 100 to the junction with State Highway 135; thence in a northerly direction along State Highway 135 to the junction with State Highway 169 at Tower; thence in an easterly direction along the southern boundary of Zone 1 to the point of beginning of Zone 2 at the junction of the Erie Railroad Tracks and State Highway 1.

(iii) Zone 3—3,501 square miles. Beginning at the junction of State Highway 11 and State Highway 65; thence southeasterly along State Highway 65 to the junction with State Highway 1; thence westerly along State Highway 1 to the junction with State Highway 72; thence north along State Highway 72 to the junction with an un-numbered township road beginning in the northeast corner of Section 25, Township 155 North, Range 31 West; thence westerly along the said road for approximately seven (7) miles to the junction with SFR 95: Thence westerly along SFR 95 and continuing west through the southern boundary of Sections 36 through 31, Township 155 North, Range 33 West, through Sections 36 through 31, Township 155 North, Range 34 West, through Sections 36 through 31, Township 155 North, Range 35 West, through Sections 36 and 35, Township 155 North, Range 36 West to the junction with State Highway 89, thence northwesterly along State Highway 89 to the junction with County Route 44; thence northerly along County Route 44 to the junction with County Route 704; thence northerly along County 704 to the junction with SFR 49; thence northerly along SFR 49 to the junction with SFR 57; thence easterly along SFR 57 to the junction with SFR 63: Thence south along SFR 63 to the junction with SFR 70; thence easterly along SFR 70 to the junction with County Route 87; thence easterly along County Route 87 to the junction with County Route 1; thence south along County Route 1 to the junction with County Route 16; thence easterly along County Route 16 to the junction with State Highway 72; thence south on State Highway 72 to the junction with a gravel road (un-numbered County District Road) on the north side of Section 31, Township 158 North, Range 30 West; thence east on said District Road to the junction with SFR 62; thence easterly on SFR 62 to the junction with SFR 175; thence south on SFR 175 to the junction with County Route 101; thence easterly on County Route 101 to the junction with County Route 11; thence easterly on County Route 11 to the junction with State Highway 11; thence easterly on State Highway 11 to the junction with State Highway 65, the point of beginning.

(iv) Zone 4—20,883 square miles. Excluding Zones 1, 2 and 3, all that part of Minnesota north and east of a line beginning on State Trunk Highway 48 at the eastern boundary of the state; thence westerly along Highway 48 to Interstate Highway 35; thence northerly on I–35 to State Highway 23, thence west one-half mile on Highway 23 to State Trunk Highway 18; thence westerly along Highway 18 to State Trunk Highway 65, thence northerly on Highway 65 to State Trunk Highway 210; thence westerly along Highway 210 to State Trunk Highway 6; thence northerly on State Trunk Highway 6 to Emily; thence westerly along County State Aid Highway (CSAH) 1, Crow Wing County, to CSAH 2, Cass County; thence westerly along CSAH 2 to Pine River; thence northwesterly along State Trunk Highway 371 to Backus; thence westerly along State Trunk Highway 87 to U.S. Highway 71; thence northerly along U.S. 71 to State Trunk Highway 200; thence northwesterly along Highway 200, to County State Aid Highway (CSAH) 2, Clearwater County; thence northerly along CSAH 2 to Shevlin; thence along U.S. Highway 2 to Bagley; thence northerly along State Trunk Highway 92 to Gully; thence northerly along CSAH 2, Polk County, to CSAH 27, Pennington County; thence along CSAH 27 to State Trunk Highway 1; thence easterly on Highway 1 to CSAH 28, Pennington County; thence northerly along CSAH 28 to CSAH 54, Marshall County, thence northerly along CSAH 54 to Grygla; thence west and northerly along Highway 89 to Roseau; thence northerly along State Truck Highway 310 to the Canadian border.

(v) Zone 5—54,603 square miles. All that part of Minnesota south and west of the line described as the south and west border of Zone 4.

(vi) Map of regulatory zones follows:



(2) *Prohibitions.* The following prohibitions apply to the gray wolf in Minnesota.

(i) *Taking.* Except as provided in this paragraph (d)(2)(i) of this section, no person may take a gray wolf in Minnesota.

(A) Any person may take a gray wolf in Minnesota in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota without a permit if such action is necessary to:

(*1*) Aid a sick, injured or orphaned specimen; or

(*2*) Dispose of a dead specimen; or

(*3*) Salvage a dead specimen which may be useful for scientific study.

(C) Designated employees or agents of the Service or the Minnesota Department of Natural Resources may take a gray wolf without a permit in Minnesota, in zones 2, 3, 4, and 5, as delineated in paragraph (d)(l) of this section, in response to depredations by a gray wolf on lawfully present domestic animals: Provided, that such taking must occur within one-half mile of the place where such depredation occurred and must be performed in a humane manner: And provided further, that any young of the year taken on or before August 1 of that year must be released.

(D) Any taking pursuant to paragraph (d)(2)(i)(A), (d)(2)(i)(B), or (d)(2)(i)(C) of this section must be reported in writing to the Twin Cities Ecological Service Field Office, 4101 American Boulevard East, Bloomington, Minnesota, 55425, or by facsimile (612) 725–3609 within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(E) Any employee or agent of the Service or the Minnesota Department of Natural Resources, when operating under a Cooperative Agreement with the Service signed in accordance with section 6(c) of the Endangered Species Act of 1973, who is designated by the Service or the Minnesota Department of Natural Resources for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota to carry out scientific research or conservation programs.

(ii) *Export and commercial transactions.* Except as may be authorized by a permit issued under § 17.32, no person may sell or offer for sale in interstate commerce, import or export, or in the course of a commercial activity transport, ship, carry, deliver, or receive any Minnesota gray wolf.

(iii) *Unlawfully taken wolves.* No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, a gray wolf taken unlawfully in Minnesota, except that an employee or agent of the Service, or any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his official duties, possess, deliver, carry, transport,

or ship a gray wolf taken unlawfully in Minnesota.

(3) *Permits.* All permits available under § 17.32 (General Permits—Threatened Wildlife) are available with regard to the gray wolf in Minnesota. All the terms and provisions of § 17.32 apply to such permits issued under the authority of this paragraph (d)(3).

■ 4. Amend § 17.84 by:

■ a. Redesignating paragraph (n) as paragraph (d); and, in newly redesignated paragraph (d):

■ i. In paragraph (d)(1)(i), removing ''(n)(5)'' and adding in its place ''(d)(5)'';

■ ii. In paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii), removing ''(n)(3)'' each time that appears and adding in its place ''(d)(3)'';

■ iii. In paragraph (d)(2)(iv), removing ''(n)(2)(iii)'' and adding in its place ''(d)(2)(iii)'', and

■ b. Adding paragraphs (i) and (n) to read as set forth below.

§ 17.84 Special rules—vertebrates.

* * * * *

(i) Gray wolf *(Canis lupus).* (1) The gray wolves (wolf) identified in paragraph (i)(7) of this section are nonessential experimental. These wolves will be managed in accordance with the respective provisions of this paragraph (i).

(2) The Service finds that reintroduction of nonessential experimental gray wolves, as defined in paragraph (i)(7) of this section, will further the conservation of the species.

(3) No person may take this species in the wild in an experimental population area except as provided in paragraphs (i)(3), (7), and (8) of this section.

(i) Landowners on their private land and livestock producers (*i.e.,* producers of cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service) who are legally using public land (Federal land and any other public lands designated in State and tribal wolf management plans as approved by the Service) may harass any wolf in an opportunistic (the wolf cannot be purposely attracted, tracked, waited for, or searched out, then harassed) and noninjurious (no temporary or permanent physical damage may result) manner at any time, provided that such harassment is nonlethal or is not physically injurious to the gray wolf and is reported within 7 days to the Service project leader for wolf reintroduction or agency representative designated by the Service.

(ii) Any livestock producers on their private land may take (including to kill or injure) a wolf in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service), provided that such incidents are reported within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service, and livestock freshly (less than 24 hours) wounded (torn flesh and bleeding) or killed by wolves must be evident. Service or other Service-authorized agencies will confirm if livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iii) Any livestock producer or permittee with livestock grazing allotments on public land may receive a written permit, valid for up to 45 days, from the Service or other agencies designated by the Service, to take (including to kill or injure) a wolf that is in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service), provided that six or more breeding pairs of wolves have been documented in the experimental population area and the Service or other agencies authorized by the Service has confirmed that the livestock losses were caused by wolves and has completed agency efforts to resolve the problem. Such take must be reported within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service. There must be evidence of freshly wounded or killed livestock by wolves. Service or other Service-authorized agencies will investigate and determine if the livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iv) Potentially affected States and tribes may capture and translocate wolves to other areas within an experimental population area as described in paragraph (i)(7) of this section, provided the level of wolf predation is negatively impacting localized ungulate populations at an unacceptable level. Such translocations cannot inhibit wolf population recovery. The States and tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or tribal wolf management plans. These plans must be approved by the Service before such movement of wolves may be conducted.

(v) The Service, or agencies authorized by the Service, may promptly remove (place in captivity or kill) any wolf that the Service or agency authorized by the Service determines to present a threat to human life or safety.

(vi) Any person may harass or take (kill or injure) a wolf in self defense or in defense of others, provided that such take is reported within 24 hours to the Service reintroduction project leader or Service-designated agent. The taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) The Service or agencies designated by the Service may take wolves that are determined to be ''problem'' wolves. Problem wolves are defined as wolves that in a calendar year attack livestock (cattle, sheep, horses, and mules or as defined by State and tribal wolf management plans approved by the Service) or wolves that twice in a calendar year attack domestic animals (all domestic animals other than livestock). Authorized take includes, but is not limited to, nonlethal measures such as: Aversive conditioning, nonlethal control, and/or translocating wolves. Such taking may be done when five or fewer breeding pairs are established in an experimental population area. If the take results in a wolf mortality, then evidence that the mortality was nondeliberate, accidental, nonnegligent, and unavoidable must be provided. When six or more breeding pairs are established in the experimental population area, lethal control of problem wolves or permanent placement in captivity will be authorized but only after other methods to resolve livestock depredations have been exhausted. Depredations occurring on Federal lands or other public lands identified in State or tribal wolf management plans and prior to six breeding pairs becoming established in an experimental population area may result in capture and release of the female wolf and her pups at or near the site of capture prior to October 1. All wolves on private land, including female wolves with pups, may be relocated or moved to other areas within the experimental population area if continued depredation occurs. Wolves attacking domestic animals other than livestock, including pets on private land, two or more times in a calendar year will be relocated. All chronic problem wolves (wolves that depredate on domestic animals after being moved once for previous domestic animal depredations) will be removed from the wild (killed or placed in captivity). The following three criteria will be used in determining the status of problem wolves within the nonessential experimental population area:

(A) There must be evidence of wounded livestock or partial remains of a livestock carcass that clearly shows that the injury or death was caused by wolves. Such evidence is essential since wolves may feed on carrion that they found and did not kill. There must be reason to believe that additional livestock losses would occur if no control action is taken.

(B) There must be no evidence of artificial or intentional feeding of wolves. Improperly disposed of livestock carcasses in the area of depredation will be considered attractants. Livestock carrion or carcasses on public land, not being used as bait under an agency-authorized control action, must be removed or otherwise disposed of so that it will not attract wolves.

(C) On public lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments must have been followed.

(viii) Any person may take a gray wolf found in an area defined in paragraph (i)(7) of this section, provided that the take is incidental to an otherwise lawful activity, accidental, unavoidable, unintentional, not resulting from negligent conduct lacking reasonable due care, and due care was exercised to avoid taking a gray wolf. Such taking is to be reported within 24 hours to a Service or Service-designated authority. Take that does not conform with such provisions may be referred to the appropriate authorities for prosecution.

(ix) Service or other Federal, State, or tribal personnel may receive written authorization from the Service to take animals under special circumstances. Wolves may be live-captured and translocated to resolve demonstrated conflicts with ungulate populations or with other species listed under the Act, or when they are found outside of the designated experimental population area. Take procedures in such instances would involve live-capture and release to a remote area or placement in a captive facility, if the animal is clearly unfit to remain in the wild. Killing of wolves will be a last resort and is only authorized when live-capture attempts have failed or there is clear endangerment to human life.

(x) Any person with a valid permit issued by the Service under § 17.32 may take wolves in the wild in the experimental population area, pursuant to terms of the permit.

(xi) Any employee or agent of the Service or appropriate Federal, State, or tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf from the wild within the experimental population area, if such action is for:

(A) Scientific purposes;

(B) To relocate wolves to avoid conflict with human activities;

(C) To relocate wolves within the experimental population areas to improve wolf survival and recovery prospects;

(D) To relocate wolves that have moved outside the experimental population area back into the experimental population area;

(E) To aid or euthanize sick, injured, or orphaned wolves;

(F) To salvage a dead specimen that may be used for scientific study; or

(G) To aid in law enforcement investigations involving wolves.

(xii) Any taking pursuant to this section must be reported within 24 hours to the appropriate Service or Service-designated agency, which will determine the disposition of any live or dead specimens.

(4) Human access to areas with facilities where wolves are confined may be restricted at the discretion of Federal, State, and tribal land management agencies. When five or fewer breeding pairs are in an experimental population area, land-use restrictions may also be employed on an as-needed basis, at the discretion of Federal land management and natural resources agencies to control intrusive human disturbance around active wolf den sites. Such temporary restrictions on human access, when five or fewer breeding pairs are established in an experimental population area, may be required between April 1 and June 30, within 1 mile of active wolf den or rendezvous sites and would apply only to public lands or other such lands designated in State and tribal wolf management plans. When six or more breeding pairs are established in an experimental population area, no land-use restrictions may be employed outside of national parks or national wildlife refuges, unless wolf populations fail to maintain positive growth rates toward population recovery levels for 2 consecutive years. If such a situation arose, State and tribal agencies would identify, recommend, and implement corrective management actions within 1 year, possibly including appropriate land-use restrictions to promote growth of the wolf population.

(5) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of the regulations in paragraph (i) of this section or in violation of applicable State or tribal fish and wildlife laws or regulations or the Endangered Species Act.

(6) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in this paragraph (i).

(7) The sites for reintroduction are within the historic range of the species:

(i) The nonessential experimental population area includes all of Wyoming.

(ii) All wolves found in the wild within the boundaries of this paragraph (i)(7) will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph (i)(7) of this section) would take on the status for wolves in the area in which it is found unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for examination and genetic testing by the Service or Service-designated agency. Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be an experimental wolf, it may be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area, it may be relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service-approved plans for that area or will be marked and released near its point of capture.

(D) If the animal is determined not to be a wild gray wolf or if the Service or agencies designated by the Service determine the animal shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes, or of being an animal raised in captivity, it may be returned to captivity or killed.

(8) The reintroduced wolves will be monitored during the life of the project, including by the use of radio telemetry and other remote sensing devices as appropriate. All released animals will be vaccinated against diseases and parasites prevalent in canids, as appropriate, prior to release and during subsequent handling. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or Service-designated agencies and given

appropriate care. Such an animal will be released back into its respective reintroduction area as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity or euthanize it.

(9) The Service does not intend to reevaluate the ''nonessential experimental'' designation. The Service does not foresee any likely situation that would result in changing the nonessential experimental status until the gray wolf is recovered and delisted in the northern Rocky Mountains according to provisions outlined in the Act.

* * * * *

(n) Gray wolf (*Canis lupus*). (1) The gray wolves (wolf) identified in paragraph (n)(9)(i) of this section are a nonessential experimental population. These wolves will be managed in accordance with the respective provisions of this paragraph (n) in the boundaries of the nonessential experimental population (NEP) areas within any State or Tribal reservation that has a wolf management plan that has been approved by the Service, as further provided in this paragraph (n). Furthermore, any State or Tribe that has a wolf management plan approved by the Service can petition the Secretary of the Department of the Interior (DOI) to assume the lead authority for wolf management under this rule within the borders of the NEP areas in their respective State or reservation.

(2) The Service finds that management of nonessential experimental gray wolves, as defined in this paragraph (n), will further the conservation of the species.

(3) Definitions of terms used in paragraph (n) of this section follow:

Active den site—A den or a specific above-ground site that is being used on a daily basis by wolves to raise newborn pups during the period April 1 to June 30.

Breeding pair—An adult male and an adult female wolf that, during the previous breeding season, produced at least two pups that survived until December 31 of the year of their birth.

Designated agent—Includes Federal agencies authorized or directed by the Service, and States or Tribes with a wolf management plan approved by the Director of the Service and with established cooperative agreements with us or Memoranda of Agreement (MOAs) approved by the Secretary of the DOI. Federal agencies, States, or Tribes may become ''designated agents'' through cooperative agreements with the Service whereby they agree to assist the Service to implement some portions of this rule. If a State or Tribe becomes a ''designated agent'' through a cooperative agreement, the Service will help coordinate their activities and retain authority for program direction, oversight, and guidance. States and Tribes with approved plans also may become ''designated agents'' by submitting a petition to the Secretary to establish an MOA under this rule. Once accepted by the Secretary, the MOA may allow the State or Tribe to assume lead authority for wolf management and to implement the portions of their State or Tribal plans that are consistent with this rule. The Service oversight (aside from Service law enforcement investigations) under an MOA is limited to monitoring compliance with this rule, issuing written authorizations for wolf take on reservations without approved wolf management plans, and an annual review of the State or Tribal program to ensure the wolf population is being maintained above recovery levels.

Domestic animals—Animals that have been selectively bred over many generations to enhance specific traits for their use by humans, including use as pets. This includes livestock (as defined below) and dogs.

Intentional harassment—The deliberate and pre-planned harassment of wolves, including by less-than-lethal munitions (such as 12-gauge shotgun rubber-bullets and bean-bag shells), that are designed to cause physical discomfort and temporary physical injury but not death. The wolf may have been tracked, waited for, chased, or searched out and then harassed.

In the act of attacking—The actual biting, wounding, grasping, or killing of livestock or dogs, or chasing, molesting, or harassing by wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of livestock or dogs is likely to occur at any moment.

Landowner—An owner of private land, or his/her immediate family members, or the owner's employees who are currently employed to actively work on that private land. In addition, the owner(s) (or his/her employees) of livestock that are currently and legally grazed on that private land and other lease-holders on that private land (such as outfitters or guides who lease hunting rights from private landowners), are considered landowners on that private land for the purposes of this regulation. Private land, under this regulation, also includes all non-Federal land and land within Tribal reservations. Individuals legally using Tribal lands in States with approved plans are considered landowners for the purposes of this rule. ''Landowner'' in this regulation includes legal grazing permittees or their current employees on State, county, or city public or Tribal grazing lands.

Legally present—A person is legally present when:

(i) On his or her own property;

(ii) Not trespassing and has the landowner's permission to bring his or her stock animal or dog on the property; or

(iii) Abiding by regulations governing legal presence on public lands.

Livestock—Cattle, sheep, horses, mules, goats, domestic bison, and herding and guarding animals (llamas, donkeys, and certain breeds of dogs commonly used for herding or guarding livestock). Livestock excludes dogs that are not being used for livestock guarding or herding.

Noninjurious—Does not cause either temporary or permanent physical damage or death.

Opportunistic harassment—Harassment without the conduct of prior purposeful actions to attract, track, wait for, or search out the wolf.

Private land—All land other than that under Federal Government ownership and administration and including Tribal reservations.

Problem wolves—Wolves that have been confirmed by the Service or our designated agent(s) to have attacked or been in the act of attacking livestock or dogs on private land or livestock on public land within the past 45 days. Wolves that we or our designated agent(s) confirm to have attacked any other domestic animals on private land twice within a calendar year are considered problem wolves for purposes of agency wolf control actions.

Public land—Federal land such as that administered by the National Park Service, Bureau of Land Management, USDA Forest Service, Bureau of Reclamation, Department of Defense, or other agencies with the Federal Government.

Public land permittee—A person or that person's employee who has an active, valid *Federal land*-use permit to use specific Federal lands to graze livestock, or operate an outfitter or guiding business that uses livestock. This definition does not include private individuals or organizations who have Federal permits for other activities on public land such as collecting firewood, mushrooms, antlers, or Christmas trees; logging; mining; oil or gas development; or other uses that do not require livestock. In recognition of the special and unique authorities of Tribes and their relationship with the U.S. Government, for the purposes of this rule, the definition includes Tribal

members who legally graze their livestock on ceded public lands under recognized Tribal treaty rights.

Remove—Place in captivity, relocate to another location, or kill.

Research—Scientific studies resulting in data that will lend to enhancement of the survival of the gray wolf.

Rule–Federal regulations—''This rule'' or ''this regulation'' refers to this final NEP regulation.

Stock animal—A horse, mule, donkey, llama, or goat used to transport people or their possessions.

Unacceptable impact—Impact to ungulate population or herd where a State or Tribe has determined that wolves are one of the major causes of the population or herd not meeting established State or Tribal management goals.

Ungulate population or herd—An assemblage of wild ungulates living in a given area.

Wounded—Exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a wolf bite.

(4) *Allowable forms of take of gray wolves.* The following activities, only in the specific circumstances described under this paragraph (n)(4), are allowed: Opportunistic harassment; intentional harassment; take on private land; take on public land except land administered by National Parks; take in response to impacts on wild ungulate populations; take in defense of human life; take to protect human safety; take by designated agents to remove problem wolves; incidental take; take under permits; take per authorizations for employees of designated agents; take for research purposes; and take to protect stock animals and dogs. Other than as expressly provided in this rule, all other forms of take are considered a violation of section 9 of the Act. Any wolf or wolf part taken legally must be turned over to the Service unless otherwise specified in this paragraph (n). Any take of wolves must be reported as outlined in paragraph (n)(6) of this section.

(i) *Opportunistic harassment.* Anyone may conduct opportunistic harassment of any gray wolf in a noninjurious manner at any time. Opportunistic harassment must be reported to the Service or our designated agent(s) within 7 days as outlined in paragraph (n)(6) of this section.

(ii) *Intentional harassment.* After we or our designated agent(s) have confirmed wolf activity on private land, on a public land grazing allotment, or on a Tribal reservation, we or our designated agent(s) may issue written take authorization valid for not longer than 1 year, with appropriate conditions, to any landowner or public land permittee to intentionally harass wolves. The harassment must occur in the area and under the conditions as specifically identified in the written take authorization.

(iii) *Take by landowners on their private land.* Landowners may take wolves on their private land in the following two additional circumstances:

(A) Any landowner may immediately take a gray wolf in the act of attacking livestock or dogs on his or her private land, provided the landowner provides evidence of livestock or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agent(s) are able to confirm that the livestock or dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed in order to preserve physical evidence that the take was conducted according to this rule. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

(B) A landowner may take wolves on his or her private land if we or our designated agent issued a ''shoot-on-sight'' written take authorization of limited duration (45 days or less), and if:

(*1*) This landowner's property has had at least one depredation by wolves on livestock or dogs that has been confirmed by us or our designated agent(s) within the past 30 days; and

(*2*) We or our designated agent(s) have determined that problem wolves are routinely present on that private property and present a significant risk to the health and safety of other livestock or dogs; and

(*3*) We or our designated agent(s) have authorized lethal removal of problem wolves from that same property. The landowner must conduct the take in compliance with the written take authorization issued by the Service or our designated agent(s).

(iv) *Take on public land.* Any livestock producer and public land permittee (see definitions in paragraph (n)(3) of this section) who is legally using public land under a valid Federal land-use permit may immediately take a gray wolf in the act of attacking his or her livestock on the person's allotment or other area authorized for his or her use without prior written authorization, provided that that producer or permittee provides evidence of livestock recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agent(s) are able to confirm that the livestock were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed, in order to preserve physical evidence that the take was conducted according to this rule. The take of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(A) At our or our designated agent(s)' discretion, we or our designated agent(s) also may issue a shoot-onsight written take authorization of limited duration (45 days or less) to a public land grazing permittee to take problem wolves on that permittee's active livestock grazing allotment if:

(*1*) The grazing allotment has had at least one depredation by wolves on livestock that has been confirmed by us or our designated agent(s) within the past 30 days; and

(*2*) We or our designated agent(s) have determined that problem wolves are routinely present on that allotment and present a significant risk to the health and safety of livestock; and

(*3*) We or our designated agent(s) have authorized lethal removal of problem wolves from that same allotment.

(B) The permittee must conduct the take in compliance with the written take authorization issued by the Service or our designated agent(s).

(v) *Take in response to wild ungulate impacts.* If wolf predation is having an unacceptable impact on wild ungulate populations (deer, elk, moose, bighorn sheep, mountain goats, antelope, or bison) as determined by the respective State or Tribe, a State or Tribe may lethally remove the wolves in question.

(A) In order for this provision to apply, the State or Tribes must prepare a science-based document that:

(*1*) Describes the basis of ungulate population or herd management objectives, what data indicate that the ungulate population or herd is below management objectives, what data indicate that wolves are a major cause of the unacceptable impact to the ungulate population or herd, why wolf removal is a warranted solution to help restore the ungulate population or herd to State or Tribal management objectives, the level and duration of wolf removal being proposed, and how ungulate population or herd response to wolf removal will be measured and control actions adjusted for effectiveness;

(*2*) Demonstrates that attempts were and are being made to address other identified major causes of ungulate herd or population declines or the State or Tribe commits to implement possible remedies or conservation measures in addition to wolf removal; and

(*3*) Provides an opportunity for peer review and public comment on their proposal prior to submitting it to the Service for written concurrence. The State or Tribe must:

(*i*) Conduct the peer review process in conformance with the Office of Management and Budget's Final Information Quality Bulletin for Peer Review (70 FR 2664, January 14, 2005) and include in their proposal an explanation of how the bulletin's standards were considered and satisfied; and

(*ii*) Obtain at least five independent peer reviews from individuals with relevant expertise other than staff employed by a State, Tribal, or Federal agency directly or indirectly involved with predator control or ungulate management in Idaho, Montana, or Wyoming.

(B) Before we authorize lethal removal, we must determine that an unacceptable impact to wild ungulate populations or herds has occurred. We also must determine that the proposed lethal removal is science-based, will not contribute to reducing the wolf population in the State below 20 breeding pairs and 200 wolves, and will not impede wolf recovery.

(vi) *Take in defense of human life.* Any person may take a gray wolf in defense of the individual's life or the life of another person. The unauthorized taking of a wolf without demonstration of an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) *Take to protect human safety.* We or our designated agent(s) may promptly remove any wolf that we or our designated agent(s) determines to be a threat to human life or safety.

(viii) *Take of problem wolves by Service personnel or our designated agent(s).* We or our designated agent(s) may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of problem wolves. To determine the presence of problem wolves, we or our designated agent(s) will consider all of the following:

(A) Evidence of wounded livestock, dogs, or other domestic animals, or remains of livestock, dogs, or domestic animals that show that the injury or death was caused by wolves, or evidence that wolves were in the act of attacking livestock, dogs, or domestic animals;

(B) The likelihood that additional wolf-caused losses or attacks may occur if no control action is taken;

(C) Evidence of unusual attractants or artificial or intentional feeding of wolves; and

(D) Evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.

(ix) *Incidental take.* Take of a gray wolf is allowed if the take is accidental and incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such take, and such take is reported within 24 hours. Incidental take is not allowed if the take is not accidental or if reasonable due care was not practiced to avoid such take, or it was not reported within 24 hours (we may allow additional time if access to the site of the take is limited), and we may refer such taking to the appropriate authorities for prosecution. Shooters have the responsibility to identify their target before shooting. Shooting a wolf as a result of mistaking it for another species is not considered accidental and may be referred to the appropriate authorities for prosecution.

(x) *Take under permits.* Any person with a valid permit issued by the Service under § 17.32, or our designated agent(s), may take wolves in the wild, pursuant to terms of the permit.

(xi) *Additional take authorization for agency employees.* When acting in the course of official duties, any employee of the Service or our designated agent(s) may take a wolf or wolf-like canid for the following purposes:

(A) Scientific purposes;

(B) To avoid conflict with human activities;

(C) To further wolf survival and recovery;

(D) To aid or euthanize sick, injured, or orphaned wolves;

(E) To dispose of a dead specimen;

(F) To salvage a dead specimen that may be used for scientific study;

(G) To aid in law enforcement investigations involving wolves; or

(H) To prevent wolves or wolf-like canids with abnormal physical or behavioral characteristics, as determined by the Service or our designated agent(s), from passing on or teaching those traits to other wolves.

(I) Such take must be reported to the Service within 7 days as outlined in paragraph (n)(6) of this section, and specimens are to be retained or disposed of only in accordance with directions from the Service.

(xii) *Take for research purposes.* We may issue permits under § 17.32, or our designated agent(s) may issue written authorization, for individuals to take wolves in the wild pursuant to approved scientific study proposals. Scientific studies should be reasonably expected to result in data that will lend to development of sound management of the gray wolf, and lend to enhancement of its survival as a species.

(xiii) *Take to protect stock animals and dogs.* Any person legally present on private or public land, except land administered by the National Park Service, may immediately take a wolf that is in the act of attacking the individual's stock animal or dog, provided that there is no evidence of intentional baiting, feeding, or deliberate attractants of wolves. The person must be able to provide evidence of stock animals or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agents must be able to confirm that the stock animals or dogs were wounded, harassed, molested, or killed by wolves. To preserve evidence that the take of a wolf was conducted according to this rule, the person must not disturb the carcass and the area surrounding it. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

(5) *Federal land use.* Restrictions on the use of any Federal lands may be put in place to prevent the take of wolves at active den sites between April 1 and June 30. Otherwise, no additional land-use restrictions on Federal lands, except for National Parks or National Wildlife Refuges, may be necessary to reduce or prevent take of wolves solely to benefit gray wolf recovery under the Act. This prohibition does not preclude restricting land use when necessary to reduce negative impacts of wolf restoration efforts on other endangered or threatened species.

(6) *Reporting requirements.* Except as otherwise specified in paragraph (n) of this section or in a permit, any take of a gray wolf must be reported to the Service or our designated agent(s) within 24 hours. We will allow additional reasonable time if access to the site is limited. Report any take of wolves, including opportunistic harassment, to U.S. Fish and Wildlife Service, Montana Ecological Services Office (585 Shepard Way, Suite 1, Helena, Montana 59601, 406–449–5225; facsimile 406–449–5339), or a Service-designated agent of another Federal, State, or Tribal agency. Unless otherwise specified in paragraph (n) of this section, any wolf or wolf part taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of the regulations in paragraph

(n) of this section or in violation of applicable State or Tribal fish and wildlife laws or regulations or the Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in this section.

(9) The sites for these experimental populations are within the historic range of the species as designated in paragraph (i)(7) of this section:

(i) The nonessential experimental population area includes all of Wyoming.

(ii) All wolves found in the wild within the boundaries of this experimental area are considered nonessential experimental animals.

(10) Wolves in the experimental population areas will be monitored by radio-telemetry or other standard wolf population monitoring techniques as appropriate. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or our designated agent(s) and given appropriate care. Such an animal will be released back into its respective area as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity or euthanize it.

(11) *Memoranda of Agreement (MOAs).* Any State or Tribe with gray wolves, subject to the terms of this paragraph (n), may petition the Secretary for an MOA to take over lead management responsibility and authority to implement this rule by managing the nonessential experimental gray wolves in that State or on that Tribal reservation, and implement all parts of their approved State or Tribal plan that are consistent with this rule, provided that the State or Tribe has a wolf management plan approved by the Secretary.

(i) A State or Tribal petition for wolf management under an MOA must show:

(A) That authority and management capability resides in the State or Tribe to conserve the gray wolf throughout the geographical range of all experimental populations within the State or within the Tribal reservation.

(B) That the State or Tribe has an acceptable conservation program for the gray wolf, throughout all of the NEP areas within the State or Tribal reservation, including the requisite authority and capacity to carry out that conservation program.

(C) A description of exactly what parts of the approved State or Tribal plan the State or Tribe intends to implement within the framework of this rule.

(D) A description of the State or Tribal management progress will be reported to the Service on at least an annual basis so the Service can determine if State or Tribal management has maintained the wolf population above recovery levels and was conducted in full compliance with this rule.

(ii) The Secretary will approve such a petition upon a finding that the applicable criteria are met and that approval is not likely to jeopardize the continued existence of the endangered gray wolf, as defined in § 17.11(h).

(iii) If the Secretary approves the petition, the Secretary will enter into an MOA with the Governor of that State or appropriate Tribal representative.

(iv) An MOA for State or Tribal management as provided in this section may allow a State or Tribe to become designated agents and lead management of nonessential experimental gray wolf populations within the borders of their jurisdictions in accordance with the State's or Tribe's wolf management plan approved by the Service, except that:

(A) The MOA may not provide for any form of management inconsistent with the protection provided to the species under this rule, without further opportunity for appropriate public comment and review and amendment of this rule;

(B) The MOA cannot vest the State or Tribe with any authority over matters concerning section 4 of the Act (determining whether a species warrants listing);

(C) The MOA may not provide for public hunting or trapping absent a finding by the Secretary of an extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved; and

(D) In the absence of a Tribal wolf management plan or cooperative agreement, the MOA cannot vest a State with the authority to issue written authorizations for wolf take on reservations. The Service will retain the authority to issue these written authorizations until a Tribal wolf management plan is approved.

(v) The MOA for State or Tribal wolf management must provide for joint law enforcement responsibilities to ensure that the Service also has the authority to enforce the State or Tribal management program prohibitions on take.

(vi) The MOA may not authorize wolf take beyond that stated in the experimental population rules but may be more restrictive.

(vii) The MOA will expressly provide that the results of implementing the MOA may be the basis upon which State or Tribal regulatory measures will be judged for delisting purposes.

(viii) The authority for the MOA will be the Act, the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), and the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), and any applicable treaty.

(ix) In order for the MOA to remain in effect, the Secretary must find, on an annual basis, that the management under the MOA is not jeopardizing the continued existence of the endangered gray wolf as defined in § 17.11(h). The Secretary or State or Tribe may terminate the MOA upon 90 days notice if:

(A) Management under the MOA is likely to jeopardize the continued existence of the endangered gray wolf as defined in § 17.11(h); or

(B) The State or Tribe has failed materially to comply with this rule, the MOA, or any relevant provision of the State or Tribal wolf management plan; or

(C) The Service determines that biological circumstances within the range of the gray wolf indicate that delisting the species is not warranted; or

(D) The States or Tribes determine that they no longer want the wolf management authority vested in them by the Secretary in the MOA.

■ 5. Amend § 17.95(a) by adding an entry for ''Gray Wolf (*Canis lupus*)'' in the same alphabetical order in which this species appears in the table in § 17.11(h) to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Gray Wolf (*Canis lupus*)

Michigan. Isle Royale National Park.

Minnesota. Areas of land, water, and airspace in Beltrami, Cook, Itasca, Koochiching, Lake, Lake of the Woods, Roseau, and St. Louis Counties, with boundaries (4th and 5th Principal meridians) identical to those of zones 1, 2, and 3, as delineated in § 17.40(d)(l).

* * * * *

Dated: February 11, 2015.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–03503 Filed 2–19–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604–1758–02]

RIN 0648–XD779

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the trip limit for the commercial sector of Atlantic migratory group Spanish mackerel in the southern zone to 1,500 lb (680 kg) of Spanish mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Spanish mackerel resource.

DATES: The rule is effective 6 a.m., local time, February 20, 2015, until 12:01 a.m., local time, March 1, 2015, unless changed by subsequent notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or email: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Framework Amendment 1 to the FMP (79 FR 69058, November 20, 2014) increased the commercial annual catch limit (equal to the commercial quota) to 3.33 million lb (1.51 million kg) for the Atlantic migratory group of Spanish mackerel. The Atlantic EEZ is divided into a northern and southern zone for management purposes of Atlantic migratory group Spanish mackerel. The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, Florida, boundary. The northern and southern zones will have their own quotas as of March 1, 2015, the beginning of the next fishing year, with implementation of Amendment 20B to the FMP (80 FR 4216, January, 27, 2015).

For the southern zone, seasonally variable trip limits are based on an adjusted commercial quota of 3.08 million lb (1.40 million kg). The adjusted commercial quota is calculated to allow continued harvest in the southern zone at a set rate for the remainder of the current fishing year, February 28, 2015, in accordance with 50 CFR 622.385(b)(2). As specified at 50 CFR 622.385(b)(1)(ii)(B), beginning December 1, annually, the trip limit is unlimited on weekdays and limited to 1,500 lb (680 kg) of Spanish mackerel per day on weekends. As specified at 50 CFR 622.385(b)(1)(ii)(C), after 75 percent of the adjusted commercial quota of Atlantic migratory group Spanish mackerel is taken until 100 percent of the adjusted commercial quota is taken, Spanish mackerel in or from the EEZ in the southern zone may not be possessed on board or landed from a permitted vessel in amounts exceeding 1,500 lb (680 kg) per day.

NMFS has determined that 75 percent of the adjusted commercial quota for Atlantic group Spanish mackerel has been harvested. Accordingly, the 1,500-lb (680-kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 6 a.m., local time, February 20, 2015, until 12:01 a.m., local time, March 1, 2015, unless changed by subsequent notification in the **Federal Register**.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Atlantic migratory group Spanish mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.385(b)(1)(ii)(C) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirements to provide prior notice and the opportunity for public comment on this temporary rule. Such procedures are unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the Atlantic migratory group Spanish mackerel resource because the capacity of the commercial fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 17, 2015.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–03532 Filed 2–17–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 34
Friday, February 20, 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.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 515

[Docket No. FHWA–2013–0052]

RIN 2125–AF57

Asset Management Plan

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA proposes to establish a process for the development of a State asset management plan in accordance with section 1106 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), to improve or preserve the condition of the assets and the performance of the National Highway System (NHS) as they relate to physical assets. In this document ''asset management plan'' and ''risk-based asset management plan'' are used interchangeably. An asset management plan is a key management tool for highway infrastructure owners. State departments of transportation (State DOT) increasingly use asset management plans to make decisions about where and when to invest State and Federal funds in highway infrastructure improvements to achieve and sustain a desired state of good repair over the life cycle of the assets at minimum practicable cost. The development and implementation of an asset management plan also is an important part of the overall MAP–21 framework for enhancing the management and performance of transportation highway infrastructure funded through the Federal-aid highway program (FAHP). The asset management plan required by section 1106 of MAP–21 will provide States with critical data and identify investment and management strategies to improve or preserve the condition of the assets and the performance of the NHS. Under section 1106, the plan must include strategies leading to a program of projects that would make progress toward achievement of the State targets for asset condition and performance of the NHS in accordance with section 1203(a) of MAP–21, and supporting progress toward the achievement of the national goals identified in section 1203(a).

While the primary purpose of this proposed rule is to address asset management plan requirements in section 1106, this proposed rule also would address other MAP–21 requirements that relate to asset management. The proposed rule defines the minimum standards that States would use in developing and operating highway bridge and pavement management systems as required by section 1203(a) of MAP–21. Also, this proposed rule would address the requirements in section 1315(b) of MAP–21 by requiring States to conduct statewide evaluations to determine if reasonable alternatives exist to roads, highways, or bridges that repeatedly require repair and reconstruction activities from emergency events. The proposed rule would require State DOTs to take these evaluations into account in their asset management plans for facilities that are included in the plans.

DATES: Comments must be received on or before April 21, 2015. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 8:30 a.m. and 4:00 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.
- *Instructions:* You must include the agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Nastaran Saadatmand, Office of Asset Management, 202–366–1336, *nastaran.saadatmand@dot.gov* or Ms. Janet Myers, Office of the Chief Counsel, 202–366–2019, *janet.myers@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days this year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at *https://www.federalregister.gov*.

Executive Summary

I. Purpose of the Regulatory Action

This regulatory action would establish a process that States DOTs would use to develop a State asset management plan, in accordance with section 1106(a) of MAP–21, codified as 23 U.S.C. 119. Asset management, as defined in 23 U.S.C. 101(a)(2), is ''a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based on quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the life cycle of the assets at minimum practicable cost.'' Asset management plans are an important highway infrastructure management tool to improve and preserve the condition of assets and system performance. Asset management plans help agencies answer five core questions:

(1) What is the current status of our assets?

(2) What is the required condition and performance of those assets?

(3) Are there critical risks that must be managed?

(4) What are the best investment options available for managing the assets?

(5) What is the best long-term funding strategy?

The need for effective asset management practices nationwide stems from a combination of challenges facing the State DOTs and FHWA. First, the nature of the FAHP has changed over the last several decades. Whereas the FAHP once primarily funded major new-location infrastructure projects, today the FAHP primarily focuses on preserving existing infrastructure through preventative maintenance and reconstruction. This work is complicated by the variable effects of increased usage, infrastructure age, and deterioration and damage from environmental conditions, including extreme weather. Second, funding needs for the FAHP far exceed available Federal funding. Making sound investment decisions is more important in an environment of financial scarcity. Third, the expectations of Congress and the general public have changed since the early days of the FAHP. Today, both expect highly transparent, accountable, data-driven decisionmaking about the investment of FAHP funds. The asset management requirements of 23 U.S.C. 119, together with the performance measures and targets established under 23 U.S.C. 150(c) and (d), will create national minimum requirements for practices that will help State DOTs and FHWA address these challenges.

State DOTs are required to develop and implement asset management plans for the NHS to improve or preserve the condition of the assets and the performance of the NHS relating to physical assets. 23 U.S.C. 119(e)(1). State asset management plans must include strategies leading to a program of projects that would: (1) Make progress toward achievement of the State targets for asset condition and performance of the NHS in accordance with 23 U.S.C. 150(d), and (2) support progress toward the achievement of the national goals identified in 23 U.S.C. 150(b). 23 U.S.C. 119(e)(2).

State DOTs' asset management plans must include a minimum scope (*i.e.,* the NHS) and certain minimum contents (*e.g.,* a financial plan) (see 23 U.S.C. 119(e)(4)). However, FHWA encourages State DOTs to exceed the minimum plan scope and contents because asset management plans can help State DOTs make better data-driven investment decisions on a statewide basis. For example, all State DOTs, at a minimum, would develop an asset management plan for the NHS regardless of ownership; but, State DOTs may choose to go beyond that minimum and include other public roads within their asset management plans at their option. Also, State DOTs must include, at a minimum, a summary listing of the pavement and bridge assets on the NHS; however, State DOTs would be encouraged, but not required, to include all highway infrastructure assets within the right-of-way (ROW).

Under the proposed rule, the State DOT would be required to include measures and targets for all assets included in the asset management plan. Performance measures can be used for a number of purposes in asset management. For example, an agency may use performance measures to evaluate a range of potential solutions to a transportation need, to track the impacts of investments, and to provide accountability to the public. Performance measures are an integral part of a data-driven, performance-based approach to asset management. Agencies develop targets related to their performance measures to guide their resource allocation and program delivery. Targets may represent the desired future in a relatively long-term context, taking into account existing baseline conditions, budget constraints, and longer-term goals. Alternatively, agencies may use targets to measure the interim progress on a measure, in a relatively short-term context, as agencies implement their transportation program. For NHS pavement and bridge assets, which the State is required to include in its asset management plan, the State DOT's plan would include the national measures for bridge and pavement condition established by FHWA (see FHWA's related NPRM on Performance Management Measures for Bridges and Pavement, RIN 2125–AF53), and the targets the State DOT develops for those measures. Those measures and targets will be established pursuant to requirements under 23 U.S.C. 150(c) and (d). If a State DOT has pre-existing measures and targets for pavements and bridges on the NHS and wishes to continue to include those in its plan as part of its asset management effort, it may do so. However, those pre-existing measures and targets cannot and will not substitute for the national measures under 23 U.S.C. 150(c) or the required section 150(d) State targets for those national measures either in the required asset management plan or other provisions under title 23. For any additional assets the State DOT decides to include in its asset management plan, the State DOT would develop its own measures and targets.

These proposed regulations would ensure that State DOTs establish and follow a set of processes to identify the investment strategies included in the asset management plans. These processes relate to performing analyses at the program level, including performance gap analysis, life-cycle cost analysis, and risk analysis. The intention is all State DOTs will use asset management to undertake a strategic and systematic process of effectively operating, maintaining, upgrading, and expanding physical assets throughout their life cycles in order to achieve and sustain a desired state of good repair. The goal is better decisionmaking that is based upon quality information and well-defined objectives, and considers risks to the assets and system performance as part of the decisionmaking process.

In addition to the asset management plan process required under 23 U.S.C. 119(e)(8), this proposed rule addresses other requirements established in 23 U.S.C. 150 and in section 1315(b) of MAP–21. This proposed rule would define the minimum standards that States would use in developing and operating highway bridge and pavement management systems required under 23 U.S.C. 150(c)(3)(A)(i). This proposed rule would require States to address the requirements in MAP–21 section 1315(b) by conducting evaluations to determine if reasonable alternatives exist to roads, highways, or bridges that repeatedly require repair and reconstruction activities from emergency events. The proposed rule would require States to take these evaluations into account in their asset management plans to the extent those assets are included in the asset management plan.

II. Summary of the Major Provisions of the Regulatory Action in Question

Section 515.001 would clarify that the purposes of the proposed rule are to: (1) Establish the processes that a State DOT would be required to use to develop its asset management plan, as required under 23 U.S.C. 119(e); (2) establish the minimum content requirements that apply to the development of an asset management plan; (3) set forth the minimum standards for a State DOT to use in developing and operating bridge and pavement management systems as required under 23 U.S.C. 150(c)(3)(A)(i); (4) describe the statutory penalties for a State DOT's failure to develop and implement an asset management plan in accordance with 23 U.S.C. 119 and the requirements established through this rulemaking; and (5) establish the requirements for State DOTs to conduct periodic evaluations to determine if reasonable alternatives exist to roads,

highways, or bridges that repeatedly require repair and reconstruction activities due to emergency events.

Section 515.003 specifies that the proposed rule would be applicable to all State DOTs.

Section 515.005 includes definitions for certain terms that would be applicable to the proposed regulations. With respect to the definition of *asset management,* the proposed rule uses the definition of this term found at 23 U.S.C. 101(a)(2).

Section 515.007 proposes the processes that State DOTs would be required to use in developing their asset management plans. These processes align with the minimum content elements that the statute (23 U.S.C. 119) requires to be included in the asset management plan, and also align with the contents the proposed rule would require in asset management plans under section 515.009. These processes take a broad look at the NHS as a network.

Under the proposed section 515.007, State DOTs would use the following processes to develop their asset management plans:

First, each State DOT would be required to establish a process for conducting a performance gap analysis and to identify strategies to close gaps. A performance gap analysis identifies deficiencies that may be hindering achievement of the State DOT's targets for asset condition and the State's desired system performance as it relates to physical assets on the NHS. As previously indicated, if the State DOT chooses to include other public roads or assets in the asset management plan, then the State DOT would be required to conduct a performance gap analysis for those other roads and assets as well.

Second, each State DOT would be required to establish a process for conducting life-cycle cost analysis for an asset class or asset sub-groups at the network level. Life cycle cost analysis is used to develop a strategic treatment plan for the whole life of assets. The strategic treatment plan considers application of all possible treatments during the asset's life (*i.e.* preservation, rehabilitation, and reconstruction along with routine and corrective maintenance). This strategic treatment plan is used not only to make the assets serviceable, but to extend the service life of assets beyond their design life. This approach produces cost savings, a benefit of asset management. For purposes of this rule, ''life-cycle cost analysis'' would be defined as the cost of managing an asset class or asset sub-group for its whole life, from initial construction to the end of its service life.[1] A ''life-cycle cost analysis'' would mean a process to estimate the cost of managing an asset class, or asset sub-group over its whole life with consideration for minimizing cost while preserving or improving the condition.

Third, to ensure the asset management plan is risk-based, as required by 23 U.S.C. 119(e)(1), each State DOT would be required to establish a process for undertaking a risk management analysis for assets in the plan. As part of this process, State DOTs would identify and assess risks (*e.g.,* extreme weather) that can affect asset condition or the effectiveness of the NHS as it relates to physical assets. The process for risk management analysis would have to include addressing the risks to assets and to the highway system associated with current and future environmental conditions, including extreme weather events, climate change, and seismic activity, in order to provide information for decisions about how to minimize their impacts and increase asset and system resiliency. The process for risk management analysis also would be required to take into account, for assets in the plan, the results of the State DOT's evaluation of roads, highways, and bridges that have repeatedly required repair or reconstruction due to emergency events, as proposed in section 515.019 of this rule. For assets in the asset management plan, State DOTs would be required to develop an approach to address and monitor high-priority risks to assets and the performance of the system.

Fourth, each State DOT would be required to establish a process for developing a financial plan covering a 10-year period. The process would include a method to determine estimated costs of expected future work and estimated available funding.

Fifth, each State DOT would be required to establish a process for developing investment strategies to improve or preserve the condition of the assets and the performance of the NHS, and leading to a program of projects that would make progress toward achievement of the State targets for asset condition and performance of the NHS established pursuant to 23 U.S.C. 150(d) and supporting the progress toward achievement of the national goals identified in 23 U.S.C. 150(b). 23 U.S.C. 119(e)(1)–(2).

Finally, each State DOT would be required to use pavement and bridge management systems to analyze the condition of Interstate highway pavements, non-Interstate NHS pavements and NHS bridges, and to determine optimal management and investment strategies. Pavement and bridge management systems can support an agency's asset management practices by supporting the development of strategic performance objectives for the pavement and bridge assets and related highway systems. There are three major components to pavement and bridge management systems. Those are a system to regularly collect condition data; a computer database to sort and store the data; and an analysis program to evaluate repair, preservation, maintenance, and other management strategies and identify cost effective project options. State DOTs typically use commercially available software for the database and analysis components. State DOTs will be required to operate these systems under 23 U.S.C. 150(c)(3)(A)(i). The FHWA also proposes the minimum standards each State DOT would need to meet in developing these management systems. These minimum standards would govern collecting, processing, storing, and updating data; forecasting deterioration; comparing cost benefit for alternative work types; identifying short and long range budget needs; determining optimal strategies on identified potential projects to manage pavements and bridges; and recommending programs and schedules for implementation.

Section 515.009 proposes the minimum content requirements that would be applicable to State DOT asset management plans. The proposed content of the plans, described below, would be derived largely from the application of the processes FHWA proposes under section 515.007.

First, this section of the proposed rule would describe the requirement for the State DOT to develop and implement an asset management plan to achieve and sustain a state of good repair over the life cycle of the assets, and to improve or preserve the condition of the NHS in accordance with 23 U.S.C. 119(e)(1)–(2). Pursuant to 23 U.S.C. 119(e)(4)(A), the State DOT would be required to include NHS highway pavements and bridges regardless of the ownership of the relevant NHS facility. The State DOT would be encouraged, but not required, to include in its asset management plan all other highway infrastructure assets within the NHS ROW, as well as

[1] The FHWA interprets ''life-cycle cost analysis,'' as used in 23 U.S.C. 119(e)(4)(D), as intended to be consistent with life-cycle planning and life-cycle cost analysis as used in asset management. The definition proposed in this rulemaking is not intended to be the same as the definition in 23 U.S.C. 106(f), which focuses on life-cycle cost analysis in design.

highway infrastructure assets from other public roads.

Second, each State DOT would be required, at a minimum, to include the following information in its asset management plan:

• Asset management objectives, which should align with the agency's mission. The objectives must be consistent with the purpose of asset management, which is to achieve and sustain a desired state of good repair over the life cycle of the assets at a minimum practicable cost.

• Measures and targets designed to achieve and sustain a desired state of good repair over the life cycle of the assets at minimum practicable cost. This would include, at a minimum, the national measures that address the condition of pavements on the Interstate System, the condition of pavements on the NHS (excluding the Interstate), and the condition of bridges on the NHS. The FHWA will establish the national measures, pursuant to 23 U.S.C. 150(c)(3)(A)(ii)(I)–(III), in new regulations at 23 CFR part 490.[2] The State DOT also must include the targets the State DOT establishes pursuant to 23 U.S.C. 150(d) for the required national measures (State DOTs would report on the required targets as provided in 23 CFR part 490, once promulgated). Under the proposed rule, the State DOT would have the option of including other NHS assets and non-NHS assets in its plan. If the State does so, it would have to establish measures and targets for those assets. In addition, the State DOT may use other measures and targets for NHS pavements and bridges that the State DOT has established through pre-existing or new asset management efforts. However, such other measures and targets for pavements and bridges on the NHS cannot and will not substitute for the required national measures and related State targets either in the required asset management plan or under other provisions of title 23. All requirements of this part would apply to all assets, measures, and targets in a State DOT's asset management plan.

• A summary listing of the pavement and bridge assets on the NHS, including at a minimum a description of the condition of those assets for: Interstate pavement, non-Interstate NHS pavement, and NHS bridge assets. The FHWA proposes that each State DOT use these three categories in order to be consistent with the categories of performance measures that would be established under 23 U.S.C. 150(c)(3)(A)(ii). These requirements would apply regardless of what entity owns the NHS asset.

• Performance gap identification developed using the process the State DOT adopts pursuant to section 515.007.

• Life-cycle cost analysis developed using the process the State DOT adopts pursuant to section 515.007.

• Risk management analysis for assets and the highway network included in the plan, and including for those assets a summary of the results of the MAP–21 section 1315(b) statewide periodic evaluations; financial plan; and investment strategies. This analysis is developed using the process the State DOT adopts pursuant to section 515.007.

Third, asset management plans would be required to cover a minimum 10-year period. The FHWA proposes this time period because MAP–21 calls for asset management plans to evaluate investment options on a life-cycle basis. If the time period covered by the plan is too short, it likely will result in the adoption of short-term solutions that may not be truly cost-effective. If the time period is too long, the State DOT may have little certainty about financial resources available in the later years of the plan. This would hinder the usefulness of the plan as a realistic guide for investment decisions. The proposed 10-year period is consistent with feedback received during the outreach activities carried out in anticipation of this rulemaking.

Fourth, each State DOT would be required to discuss in its asset management plan a set of investment strategies leading to an immediate program of projects, as described in 23 U.S.C. 119(e)(2). The State DOT should include projects consistent with its investment strategies in its Statewide Transportation Improvement Program (STIP), and select projects from the STIP to support its efforts to achieve the State's targets for asset condition and performance of the NHS.

Finally, FHWA proposes to require each State DOT to make its asset management plan available to the public, and encourages the State DOTs to do so in a format that is easily accessible.

Section 515.011 proposes a process that would enable a State DOT to phase in the development of its asset management plan. The FHWA recognizes that a phase-in approach would help give State DOTs adequate time to develop and apply the analytical processes required under proposed section 515.007. The phase-in approach also takes into consideration the likely timing of the performance management rulemaking proceedings for pavement and bridge conditions under 23 U.S.C. 150 (RIN 2125–AF53). The proposed phase-in would permit a State DOT to submit its initial asset management plan using best available information in each required analysis area, omit certain analyses, and exclude the 23 U.S.C. 150(c) measures and the related State DOT section 150(d) targets. However, the State DOT would be required to include in its initial plan a description of the asset management plan development processes the State DOT proposes to use pursuant to section 515.007. Inclusion of the proposed processes in the initial plan will permit FHWA to use the initial plan to review and certify the State DOT's processes as required by 23 U.S.C. 119(e)(6). The proposed rule also would require the State DOT to include in its initial plan its own measures and targets for assets covered by the plan. Under the proposed rule, not later than 18 months after the effective date of the final rulemaking for pavement and bridge condition measures pursuant to 23 U.S.C. 150, State DOTs would have to amend their asset management plans to incorporate complete analyses carried out using certified processes and the section 150 measures and targets. Under the proposed rule, FHWA could extend the 18-month deadline for submitting an amended plan as needed to provide 12 months between the time FHWA certifies the State DOT's processes under 23 U.S.C. 119(e)(6)(A) and the date the amended plan is due. The FHWA could grant the extension only if it determines the State DOT's initial plan meets the requirements of proposed section 515.011.

Section 515.013 proposes the process by which a State DOT would submit its asset management plan development processes to FHWA for certification pursuant to 23 U.S.C. 119(e)(6), and its asset management plan for an FHWA consistency determination under section 119(e)(5).

Section 515.015 discusses the penalties for a State DOT that does not develop and implement an asset management plan consistent with 23 U.S.C. 119 and the requirements of this proposed rule.

Section 515.017 describes how a State DOT may integrate asset management into its organizational mission, culture, and capabilities at all levels.

Section 515.019 proposes that the State DOT conduct a periodic statewide evaluation not less than every 4 years of the State's existing roads, highways, and

[2] The proposed rule, ''National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program'' (RIN 2125–AF53), is available on the docket for review.

bridges that required repair and reconstruction activities due to emergency events. The purpose is to determine if there are reasonable alternatives to any of these roads, highways, and bridges as required under section 1315(b) of MAP–21. The proposed rule would require State DOTs to complete the evaluation for assets included in the asset management plan not later than 2 years after the issuance of a final rule. The State DOT would be required to complete the evaluation of the rest of the affected roads, highways, and bridges in the State within 4 years of the final rule. For facilities that are included in the asset management plan, State DOTs would need to include a summary of the results and consider the results of these evaluations in their risk management analyses included in the plan.

III. Costs and Benefits

The costs and benefits were estimated for implementing the requirement for States to develop a risk-based asset management plan and to use pavement and bridge management systems that comply with the minimum standards proposed by this NPRM.

Based on information obtained from nine State DOTs, the total nationwide costs for all States to develop their asset management plans and for four States [3] to acquire and install pavement and bridge management systems would be $43.2 million discounted at 3 percent and $36.7 million discounted at 7 percent.

The FHWA lacks data on the economic benefits of the practice of asset management as a whole. The field of asset management has only become common in the past decade and case studies of economic benefits from overall asset management have not been published. We specifically request that commenters submit data on the quantitative benefits of asset management and reference any studies focusing on the economic benefits of overall asset management.

While FHWA lacks data on the overall benefits of asset management, there are examples of the economic savings that result from the most typical component sub-sets of asset management, pavement and bridge management systems. Using an Iowa DOT study [4] as an example of the potential benefits of applying a long-term asset management approach using a pavement management system, the costs of developing the asset management plans and acquiring pavement management systems were compared to determine if the benefits of the proposed rule would exceed the costs. The FHWA estimates the total benefits for the 50 States, the District of Columbia, and Puerto Rico of utilizing pavement management systems and developing asset management plans to be $453.5 million discounted at 3 percent and $340.6 million discounted at 7 percent.

Based on the benefits derived from the Iowa DOT study and the estimated costs of asset management plans and acquiring pavement management systems, the ratio of benefits to costs would be 10.5 at a 3 percent discount rate and 9.3 at a 7 percent discount rate. The estimated benefits do not include the potential benefits resulting from savings in bridge programs. The benefits for States already practicing good asset management decisionmaking using their pavement management systems will be lower, as will the costs. If the requirement to develop asset management plans only marginally influences decisions on how to manage the assets, benefits are expected to exceed costs. The FHWA requests comments on these estimates.

	Discounted at 3 percent	Discounted at 7 percent
Total Benefits for 52 States	$453,517,289	$340,580,916
Total Cost for 52 States	$43,159,635	$36,701,377
Benefit Cost Ratio	10.5	9.3

Background

Asset Management in General

Historically, construction and expansion of roads, bridges, and other transportation infrastructure in the United States have been a central focus of transportation agencies. Highway infrastructure development peaked with the construction of the Interstate Highway System. Today, significant portions of our highway assets are deteriorating because of increased usage, environmental impacts, and aging. As a result, it is becoming increasingly necessary to focus on meeting the demands of maintenance, preservation, and reconstruction of existing infrastructure. As State DOTs and other public sector owners of highway infrastructure are faced with increased system and budgetary needs at a time when resources are limited, asset management is critical now more than ever.

In recent years, most transportation agencies have experienced reduced funding coupled with a loss of purchasing power. In addition, the fact that the transportation system is aging and becoming more costly to maintain has become a great concern. Federal, State, and local governments are under increasing pressure to balance their budgets and, at the same time, respond to public demands for quality services. Along with the need to invest in America's future, this leaves transportation agencies with the task of managing the current transportation systems as cost-effectively as possible, while managing potential risks to system performance.

The Asset Management Plan requirement included in MAP–21 is in line with international best practices that were initiated abroad as the public sector in many countries experienced a reduction in resources available to maintain their assets in a state-of-good-repair. States in the U.S. have incorporated some elements of the asset management framework. However, despite the obvious benefits stemming from the use of an asset management framework, it has not yet been adopted by all States. The FHWA believes the disconnect results from States' current practices. As an example, in many State DOTs the pavement management analysis is done at the State DOT's central office. The output is then forwarded to the district/regional offices that make the final decisions and have a lot of flexibility in what projects to take on. As a result, the projects are selected by field personnel whose expertise is in addressing immediate needs. The concept of project selection

[3] There are currently four States that don't currently have pavement and bridge management systems that meet the standards of the proposed rule.

[4] Smadi, Omar, Quantifying the Benefits of Pavement Management, a paper from the 6th International Conference on Managing Pavements, 2004.

based on an asset life cycle is unknown to many of them. Another major factor that results in some district/regional offices deviating from the recommendations made by the pavement management system is the lack of confidence in the quality of pavement data used in the analysis. An additional issue is the general resistance to changing from a worst-first approach to a life-cycle cost approach. Asset management is a business process and a decisionmaking framework for achieving and sustaining a desired state of good repair over the life cycle of the assets at minimum practicable cost. Asset management uses an extended time horizon, draws from economics, as well as engineering analyses, and considers a broad range of assets. An asset management approach also incorporates the economic assessment of trade-offs between alternative investment options, both at the project level and at the network or system level, and helps transportation agencies make cost-effective investment decisions. In addition, asset management helps ensure that the transportation system is financially sustainable. Asset management increases infrastructure resiliency against natural hazards (such as extreme weather events or seismic activities) and reduces or eliminates the impacts of potential threats to asset and system performance. A key feature of asset management is that it requires a statement of explicit, clearly defined goals that reflect customer expectations and considerations unique to each State DOT. These goals often address system performance and condition targets designed to achieve a state of good repair.

All State DOTs currently manage their transportation network along with its assets; however, few apply risk-based asset management principles in their investment decisionmaking processes. For example, although most States conduct risk analyses at the project level, risk assessment and management at the program level is often a missing component of current management practices. Congress has recognized the importance of risk analysis in asset management by expressly requiring the State asset management plan to be risk-based. 23 U.S.C. 119(e)(1). State DOTs must carefully analyze the impact on the long-term performance of the highway network when making decisions regarding funding distribution, especially when funding is reduced for one program and diverted to meet the pressing needs of another program. The impact of these tradeoffs could become very costly if appropriate analyses are not conducted prior to decisionmaking.

Although risk-based asset management is a relatively new concept to transportation agencies, most State DOTs have many of the elements necessary to initiate asset management, including pavement and bridge management systems that monitor conditions, measure performance, predict trends, and recommend candidate projects and preservation treatments. Asset management brings a particular perspective to how an agency conducts its existing planning and programming procedures and reaches decisions. It suggests principles and techniques to apply in policymaking, planning, project selection, program tradeoffs, program delivery, data gathering, and management system application. Most importantly, it uses an effective communication tool—the asset management plan—to document how decisions regarding investment strategies are made, what actions are taken to improve or preserve the condition of the assets and system performance, how risks to system performance are managed, and how the costs of maintaining assets throughout their lives are considered. For State DOTs, development of a risk-based asset management plan will facilitate the communication between decisionmakers and stakeholders and assure the public that appropriate steps are taken when making transportation investment decisions.

DOT Outreach Efforts

In developing these proposed regulations, FHWA conducted Web conferences, face-to-face meetings, made presentations at national conferences, and held teleconferences with stakeholders, including State DOTs. These sessions were intended to provide opportunities for stakeholders to discuss experiences, potential strategies for developing and implementing risk-based asset management within the context of MAP–21, and concerns with the MAP–21 asset management requirements. In general, these consultations included:

—Web conference on September 28, 2012, with the American Association of State Highway and Transportation Officials (AASHTO) Subcommittee on Asset Management;
—Web conference on October 17, 2012, with representatives from the AASHTO Standing Committee on Planning and representatives from the Standing Committee on Highways;
—Face-to-face meeting in Pittsburgh, PA on November 17, 2012, with the AASHTO Subcommittee on Asset Management;
—Web conference on October 25, 2012, with the Asset Management Expert Task Group; and
—Presentations that included information on the MAP–21 Asset Management requirements were held at the following events:
○ National Pavement Preservation Conference, Nashville, TN, August 2012;
○ International Forum on Traffic Records, Biloxi, MS, October 2012; and
○ Transportation Research Board Meeting, Bridge Management Committee, January 2013.

At each of these outreach sessions, some participants expressed that States be provided with flexibility in the development of their asset management plans so that they can properly address any issues that are unique to their State. The burden associated with developing a risk-based asset management plan (*e.g.,* potential organizational restructuring, modification of decisionmaking processes, documentation of processes, and increases in staffing) was another concern. In addition, there were questions about the inclusion or exclusion of highways that are on the NHS, but maintained by municipalities or turnpike authorities.

General Discussion of the Proposal

This proposal is intended to implement 23 U.S.C. 119(e)(8), which requires the Secretary to establish, by regulation, the process States must use to develop their asset management plans. The proposed regulations would ensure that State DOTs follow a set of processes to identify the investment strategies included in the asset management plan. These processes relate to performing analyses at the program level including performance gap analysis, life-cycle cost analysis, and risk analysis. The intention is that investment strategies included in the asset management plans are developed based on a thorough assessment of the NHS infrastructure operation, preservation, and improvement needs, while minimizing the whole life costs of assets and understanding the potential risks to system performance. While the best practice is to perform inclusive gap and risk analyses encompassing all the national performance goal areas for the NHS (see 23 U.S.C. 150(b)), for the purpose of asset management plan development pursuant to 23 U.S.C. 119, the focus of these analyses should be on determining deficiencies and risks to physical asset conditions and system

performance as it relates to physical assets.

Link to Performance Management

The overarching purpose of asset management is to achieve a desired state of good repair over the life cycle of assets at a minimum practicable cost. Development and implementation of a State asset management plan for NHS pavements and bridges is an important part of NHS performance management as envisioned in MAP–21. In 23 U.S.C. 119(e)(2), Congress provides that a State asset management plan shall include strategies leading to a program of projects that would make progress toward achievement of the State targets for asset condition and performance of the NHS in accordance with 23 U.S.C. 150(d), and supporting the progress toward the achievement of the national goals identified in 23 U.S.C. 150(b). Section 119(b)(3) specifies that the purpose of the National Highway Performance Program (NHPP) ''. . . shall be . . . to ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets established in an asset management plan of a State for the National Highway System.'' Accordingly, the asset management plan developed pursuant to 23 U.S.C. 119(e) will serve as both a resource and a ''road map'' for the State's efforts to achieve and sustain a state of good repair over the life cycle of the assets, and to make progress toward those national goals and the State's targets for pavement and bridge condition established pursuant to 23 U.S.C. 150.[5]

The FHWA recognizes that many State DOTs already use management systems as a critical element in their investment decisionmaking process. Those systems have been developed and refined, in many cases over a long period of time, through the State DOT's continuing evaluation of the effectiveness of investment strategies in improving infrastructure conditions. The FHWA also recognizes that the measures used in these legacy systems for pavement and bridge conditions may not be identical to the national measures FHWA establishes under 23 U.S.C. 150(c). Considering this possibility, FHWA expects State DOTs will choose, and in some cases may be required by State law, to continue to use their legacy systems to assess infrastructure conditions and to develop strategies that will drive their investment decisionmaking. Accordingly, FHWA is proposing to permit State DOTs to include their pre-existing measures and targets for NHS pavement and bridge condition and performance in their plans even after the section 150 measures and targets are established, so long as those non-section 150 measures and targets are treated as supplemental to the section 150 measures and targets. Non-section 150 measures and targets cannot substitute for section 150 national measures and associated State DOT targets under 23 U.S.C. 150(d). The State DOTs will be held accountable for including section 150 measures and targets in their plans and meeting title 23 requirements relating to those section 150 measures and targets. However, a State DOT asset management plan's investment strategies may be influenced by both the section 150 measures and targets and any other measures and targets the State DOT includes in its asset management plan.

The FHWA expects State DOTs with legacy systems will make the changes needed to fully use and support the new national measures and targets once established pursuant to 23 U.S.C. 150. The FHWA understands and appreciates the amount of work required to make these changes. The FHWA is committed to providing technical assistance to State DOTs as they work to improve their ability to reliably predict how their investments can lead to pavement and bridge condition improvements as defined using the new national measures.

Implementation

The FHWA is proposing special phase-in provisions as a part of this rulemaking. The proposed rule would provide a phase-in for both the asset management plans and the MAP–21 section 1315(b) evaluations of roads, highways, and bridges that repeatedly required repair and reconstruction activities. As the expected timelines for completing this rulemaking and the 23 U.S.C. 150 rulemaking become more certain, FHWA will be able to better predict how the timing of each rulemaking affects the other. The FHWA may revise the proposed phase-in approaches to address any timing or other issues resulting from the ultimate timelines and requirements in final rules implementing sections 119 and 150.

The proposed phase-in for section 119 asset management plans would permit a State DOT to submit its initial asset management plan using best available information for each required plan element, and to omit certain analyses. In addition, the State DOT would be permitted to submit its initial plan without the 23 U.S.C. 150 measures and targets unless the State DOT had established its section 150(d) targets for pavement and bridge conditions at least 6 months before the section 515.013(a) deadline in this proposed rule for submitting the initial asset management plan. The State DOT's initial asset management plan would have to include its proposed processes for each required area of analysis in proposed section 515.007, and otherwise meet the requirements in proposed section 515.009, including the identification of investment strategies that support progress toward the national goals in 23 U.S.C. 150(b).

Not later than 18 months after the effective date of the final rulemaking for pavement and bridge condition measures pursuant to 23 U.S.C. 150, a State DOT that used the phase-in option for its initial plan submission would be required to submit an amended plan that includes all section 515.007 analyses performed using FHWA-certified processes. That amended plan also would have to include the State DOT's section 150 measures and targets for NHS pavements and bridges. Under the proposed rule, FHWA could extend the 18-month time period as needed to provide 12 months between the time FHWA certifies the State DOT's processes under 23 U.S.C. 119(e)(6)(A) and the date the amended plan is due. The FHWA could grant the extension only if it determines the State DOT's initial plan meets the requirements of section 515.011 of this proposed rule.

The FHWA considered a number of factors in developing the phase-in proposal for asset management plans. First, the proposal responds to the challenges some State DOTs will face in developing and applying the processes described in proposed section 515.007. Both State DOTs with legacy asset management planning systems and State DOTs new to asset management may face time and resource challenges due to the need to develop and apply new or modified processes.

Second, the phase-in approach is needed to address timing and coordination issues inherent in the process certification and consistency determination provisions of 23 U.S.C. 119. With respect to process certification, FHWA proposes to use the State DOT's initial asset management plan as the basis for the certification of the State DOT's asset management plan

[5] In addition to these national measures for pavement and bridge conditions under section 150(c)(3)(ii)(I)–(III), FHWA will establish performance measures for the performance of the Interstate System and the performance of the NHS (excluding the Interstate System) as required by 23 U.S.C. 150(c)(3)(ii)(IV)–(V). The FHWA will propose the national measures as part of separate rulemakings pursuant to section 150 (RIN 2125–AF54 and RIN 2125–AF53).

development processes under section 119(e)(6)(A). Permitting State DOTs to submit their initial asset management plans using best available information for each required plan element would allow State DOTs to obtain FHWA-certification of their plan development processes before they undertake analyses using the processes.

There also is a potential implementation issue with regard to FHWA consistency determinations under 23 U.S.C. 119(e)(5). The issue relates to the availability of the 23 U.S.C. 150 national performance measures and the related targets that State DOTs must include in their asset management plans. Investment strategies in an asset management plan, and the underlying analytical work such as performance gap analysis, are highly affected by the selected performance targets. There is a substantial probability that the FHWA performance management rulemaking under 23 U.S.C. 150, and the subsequent State DOT target-setting under section 150(d)(1), will not be completed in time for the State DOTs to include their section 150(d) targets in a fully developed asset management plan prior to the first required FHWA consistency determination. The first determination is required for the second fiscal year after this rule is final. Absent this consistency determination, the Federal share on the State DOT's NHPP projects would be reduced to 65 percent. The consistency determination also demonstrates the State DOT has an ''approved plan'' under the NHPP obligation transition provision in MAP–21 section 1106(b).

The phase-in proposal would permit FHWA to determine the State DOT's initial plan is consistent with 23 U.S.C. 119 and the final rule if it satisfies the plan requirements in proposed section 515.011. The State DOTs would have up to 18 months after the effective date of the final rulemaking for pavement and bridge condition measures pursuant to 23 U.S.C. 150 to amend their asset management plans to include the section 150 measures and the targets the State DOTs establish for those measures, and to include analyses prepared using FHWA-certified processes. The FHWA could extend the amendment deadline for up to 12 months to ensure the State DOT has a reasonable amount of time after FHWA certifies the State DOT's processes to complete the required analyses and incorporate the section 150 measures and targets into its plan. This 18-month period is consistent with the 18-month deadline in the MAP–21 section 1106(b)(1) transition provision governing obligations of NHPP funds in the absence of an approved asset management plan and 23 U.S.C. 150(d) targets. The extension proposal is consistent with the transition provision's extension authority in MAP–21 section 1106(b)(2).

It may be helpful to give an example to illustrate how the timing of the proposed asset management plan phase-in would work. If the final rule on asset management were issued on January 15, 2015, then—

(1) State DOTs would have to submit their initial asset management plans not later than January 15, 2016.

(2) Not later than April 14, 2016, the FHWA would notify a State DOT whether FHWA certifies the State DOT's processes.

(3) The reduced Federal share provision would be effective on October 1, 2016 (beginning of the second fiscal year after the rule is final), so the first consistency review required under 23 U.S.C. 119(e)(2) would occur on August 31, 2016. Unless the State DOT submitted an amended plan prior to that date, FHWA would base the first consistency determination on the State DOT's initial asset management plan.

(4) If the State DOT used the phase-in provision proposed in section 515.011 to submit an initial plan, the State DOT would be required to submit a plan with all required analyses and other elements, including 23 U.S.C. 150 measures and targets for pavement and bridges not later than 18 months after the effective date of the final rulemaking for pavement and bridge condition measures pursuant to 23 U.S.C. 150. The FHWA could extend the 18-month time period as needed to provide 12 months between the time FHWA certifies the State DOT's processes under 23 U.S.C. 119(e)(6)(A) and the date the amended plan is due. The FHWA could grant the extension only if it determines the State DOT's initial plan meets the requirements of proposed section 515.011. Thus, if the effective date of the section 150 rule on pavement and bridge measures is April 15, 2015, the 18-month period would end on October 15, 2016. However, under this timing example, if the certification of the State DOT's processes occurred on April 14, 2016, and the State DOT's initial plan met section 515.011 requirements, FHWA could extend the due date for an amended plan to April 14, 2017, to permit the State DOT to incorporate section 150 measures and targets and complete the required analyses using FHWA-certified processes.

For the section 1315(b) evaluation, FHWA proposes a phase in that would require State DOTs to complete the evaluation of assets included in the State DOT's asset management plan within 2 years after the effective date of a final rule. The State DOT would have to complete the evaluation for the rest of the affects roads, highways, and bridges not later than 4 years after the effective date of the final rule. This phase-in approach would permit State DOTs to focus their resources first on completing the section 1315(b) evaluation for assets they include in their asset management plans. The FHWA believes this approach is consistent with the emphasis Congress placed on the condition and performance of the NHS in MAP–21.

The FHWA specifically requests comments on whether these proposed phase-in approaches are desirable and workable.

Section-by-Section Discussion of the Proposal

Section 515.001 Purpose

This section is included to clarify that the purpose of the proposed regulations is to: (1) Establish the processes that a State DOT would use to develop its asset management plan, as required under 23 U.S.C. 119(e)(8); (2) establish the minimum content requirements that would apply to the development of an asset management plan; (3) set forth the minimum standards a State DOT would use in developing and operating bridge and pavement management systems as required under 23 U.S.C. 150(c)(3)(A)(i); (4) describe the statutory penalties for a State DOT's failure to develop and implement an asset management plan in accordance with 23 U.S.C. 119 and the requirements established by this rulemaking; and (5) establish that State DOTs would be required to conduct periodic statewide evaluations to determine if reasonable alternatives exist to roads, highways, or bridges that repeatedly require repair and reconstruction activities due to emergency events.

Section 515.003 Applicability

This section establishes that the proposed regulations would be applicable to all State DOTs.

Section 515.005 Definitions

This section includes proposed definitions for certain terms that are applicable to the proposed regulations. The terms the FHWA defines in this section are terms that FHWA believes need a common understanding for the effective implementation of the regulations. The FHWA invites comments on these proposed definitions and suggestions for any additional terms that should be defined.

First, the FHWA proposes to define the term *asset* to make clear what items are subject to an asset management plan. The FHWA proposes that it mean all physical highway infrastructure (*e.g.,* pavements, highway bridges, tunnels) located within the ROW corridor of a highway.

Second, the FHWA proposes to define the terms *asset condition* and *performance of the NHS* in order to help distinguish the concept of performance as used in this rulemaking from the concept used in 23 U.S.C. 150(c)(3)(ii)(IV)–(V). Note that 23 U.S.C. 119(e)(2) provides that State asset management plans shall include strategies leading to a program of projects that would make progress toward achievement of the State targets for asset condition and performance of the NHS in accordance with 23 U.S.C. 150(d). It is the FHWA's intent that, for purposes of this proposed rule, the term *condition* refers to the physical condition of assets; whereas, the term *performance* refers to the effectiveness of the NHS in providing for the safe and efficient movement of people and goods where it can be affected by physical assets. Within this context, examples of improving the NHS performance may include, but are not limited to, widening along a portion of the NHS to alleviate congestion, improving drainage on another portion of the NHS to address safety concerns during rain storms, or seismic retrofitting bridges in areas prone to earthquakes to increase system resilience. The term *performance* for purposes of this rule is not intended to define performance for purposes of 23 U.S.C. 150, which will be defined in the related rule implementing that provision.[6]

Third, the FHWA proposes to define the term *asset management* as it is in 23 U.S.C. 101(a)(2). Under 23 U.S.C. 101(a)(2), *asset management* means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the life cycle of the assets at minimum practicable cost. For purposes of asset management, the FHWA interprets replacement activities to include initial construction, reconstruction, resurfacing, and upgrade activities.

Fourth, the FHWA proposes to define the term *asset management plan,* which State DOTs would be required to develop under this proposed rulemaking. An asset management plan that is developed in accordance with the various contents, processes, and other requirements in these proposed regulations should serve the functions prescribed in this proposed definition. The term as used in this proposed rule refers to the risk-based asset management plan that is required under 23 U.S.C. 119(e).

Fifth, the FHWA proposes to define the term *bridge* to make clear that bridges required to be included in a State DOT's asset management plan under this part are those subject to the National Bridge Inspection Standards in 23 CFR part 650. The definition proposed here is the same definition as at 23 CFR 650.305.

Sixth, the FHWA proposes to define the term *investment strategy.* This proposed definition is intended to clarify that the investment strategies result from evaluations of funding options and anticipated effects of the options on condition and performance of the physical assets.

Seventh, the FHWA proposes to define the terms *life-cycle cost* and *life-cycle cost analysis.* The terms are intended to clarify that life cycle costs in the asset management context includes the costs of managing an asset over its whole life. The inclusion of these definitions in this proposed rule would make it clear that the definition of ''life-cycle cost analysis'' in 23 U.S.C. 106(f) would not apply in the asset management context.

Eighth, the FHWA proposes to define the term *performance gap* as simply meaning the gap between actual condition and performance of the NHS and the desired condition and performance of the NHS.

Ninth, the FHWA proposes to define the terms *risk* and *risk management* as merely referring to potential positive or negative effects of uncertainty or variability of events on agency objectives and the means by which the agency manages this uncertainty. It is the FHWA's belief that effective risk management helps State DOTs increase system resiliency against threats and capitalizes on opportunities.

Tenth, the FHWA proposes to define the term *STIP* in order to ensure consistency with 23 CFR part 450.

Finally, the FHWA proposes to define the term *work type* in order to refer to the range of actions a State DOT may take in managing an asset. The proposed definition includes actions to improve the state of good repair of highways and bridges, as well as to improve other aspects of their performance.

Section 515.007 Asset Management Plan Development Process

This section proposes minimum processes State DOTs would be required to use in developing their asset management plans. This section also proposes standards and outcomes the State DOT plan development processes would have to satisfy. The State DOTs would include descriptions of their processes in their asset management plans, and those processes would be subject to FHWA certification. The State DOT would use the processes to produce information it needs to develop the full plan contents required under 23 U.S.C. 119(e)(4) and in this proposed rule.

First, as required by 23 U.S.C. 119(e)(4), the FHWA proposes that State DOTs must establish a process for conducting performance gap analysis to identify deficiencies that may be hindering achievement of State DOTs' targets for condition and system performance as related to the physical assets. This process would include performance targets, gaps in the existing condition and desired condition of assets, gaps in the NHS effectiveness as it relates to the physical assets in providing for the safe and efficient movement of people and goods, and strategies to close these gaps. A State DOT would conduct a performance gap analysis for its NHS to meet requirements in 23 U.S.C. 119. As with the other required analyses under this proposed rule, if a State DOT chooses to include other public roads in the asset management plan, then the State DOT would conduct a performance gap analysis for those roads as well. States would develop the plan's recommended investment strategies based on the result of this gap analysis and other analyses required for the asset management plan.

Second, as required by 23 U.S.C. 119(e)(4), the FHWA proposes that each State DOT establish a process for conducting life-cycle cost analysis for asset classes or asset sub-groups at the network level. The State DOT would define the network level. The FHWA proposes that State DOTs have the flexibility to conduct life-cycle cost analyses on asset classes (*i.e.,* a group of assets with the same characteristics and function) or asset sub-groups (*i.e.,* a group of assets within an asset class with the same characteristics and function) in recognition of the inherent differences in various types of assets. For example, a concrete pavement will

[6] The related rule, ''National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program'' (RIN 2125–AF53), is available on the docket for review.

have a different life-cycle cost than an asphalt pavement. The proposed rule would allow a State DOT to propose excluding one or more asset sub-groups from its life-cycle cost analysis if the State DOT can demonstrate to FHWA the exclusion of the sub-group would have no material adverse effect on the development of sound investment strategies due to the limited number of assets in the sub-group, the level of cost impacts associated with managing the assets in the sub-group, or other supportable grounds. The FHWA would consider this proposal as part of its certification review under 23 U.S.C. 119(e)(6). Life-cycle cost analysis is critical because it enables State DOTs to make informed decisions in developing investment strategies.

Third, FHWA proposes that each State DOT establish a process for developing a risk management analysis for assets in the plan. This process would include identification, assessment, evaluation, and prioritization of risks that can affect the assets in the plan, including NHS condition, effectiveness, and system performance as it relates to operation of its physical assets. This includes addressing risks to those assets in the plan that are evaluated pursuant to section 1315(b) of MAP–21 because they have required repair and reconstruction activities on two or more occasions due to emergency events. In addition, the risk management analysis would have to include an approach for addressing the risks that the State DOT determines to be high-priority risks. Relevant risks may include risks to assets and the system associated with current and future environmental conditions, including extreme weather events, climate change, and seismic activity.

Fourth, as required by 23 U.S.C. 119(e)(4), the FHWA proposes that each State DOT establish a process for developing a financial plan. The FHWA proposes that the financial plan would be required to identify annual costs over a minimum period of 10 years. In addition, the FHWA proposes the State DOT's process would have to produce a financial plan that addresses certain minimum components, including: The estimated cost of expected future work to implement investment strategies contained in the asset management plan; the estimated funding levels that are expected to be reasonably available to address the costs of future work types; identification of anticipated funding sources; and an estimate of the value of the agency's pavement and bridge assets and the needed investment to maintain the value of these assets. The purpose is to ensure that the adopted strategies are not only affordable, but that assets will be preserved and maintained with no risks of financial shortfall. In addition, having an estimate of asset value will enable agencies to predict the level of investment needed to ensure their systems will be financially sustainable. Also, the FHWA proposes that asset management plans cover a minimum period of 10 years to ensure that the decisionmaking process identifies investment strategies that advance toward a long-term physically and financially sustainable system.

Fifth, as required by 23 U.S.C. 119(e)(4), the FHWA proposes that each State DOT establish a process for developing investment strategies to: (1) Achieve and sustain a state of good repair, (2) improve or preserve the condition of the assets and the performance of the NHS, and (3) lead to a program of projects that would make progress toward achievement of the State targets for asset condition and performance of the NHS in accordance with 23 U.S.C. 150(d), and support progress toward the achievement of the national goals identified in 23 U.S.C. 150(b). The FHWA proposes that the State DOT's process for identifying investment strategies must address the following minimum components: Performance gap analysis required under section 515.007(a)(4); life-cycle cost analysis for asset classes or asset sub-groups resulting from the process required under 515.007(a)(5); risk management analysis resulting from the process required under 515.007(a)(6); and anticipated available funding and estimated cost of expected future work types associated with various candidate strategies based on the financial plan required under 515.007(b)(7). Investment strategies are necessary for State DOTs to know how they will best use their available resources for optimal system performance.

The FHWA proposes minimum standards each State DOT would use in developing and operating bridge and pavement management systems to analyze bridge and pavements data for the condition of Interstate highway pavements, non-Interstate NHS pavements, and NHS bridges. The use of these systems is required under 23 U.S.C. 150(c)(3)(A)(i). Also, Congress declared the use of bridge management systems to be in the vital interest of the United States in 23 U.S.C. 144(a)(2)(C). These standards would govern collecting, processing, storing, and updating data; forecasting deterioration; developing and comparing benefit-cost analyses for alternative work types; identifying short and long range budget needs; determining optimal strategies on identified potential projects to manage pavements and bridges; and recommending programs and schedules for implementation. The standards proposed by the FHWA are consistent with minimum standards included in the management systems most widely used by State DOTs. The FHWA specifically requests comments on whether the specified standards for bridge and pavement management systems are appropriate or whether any additional standards should be included.

The interaction of these proposed processes and related requirements is illustrated by a chart which is available on the rulemaking docket.

The final step in the asset management plan development process is the development of the plan itself. Accordingly, the FHWA proposes to require specifically that each State DOT develop an asset management plan pursuant to the prescribed processes, which includes conducting the necessary analyses pursuant to those processes. An asset management plan brings the results of these analyses together in a single plan and demonstrates how selection of investment strategies is influenced by analyses of cost effectiveness, system resiliency, financial stability, and desired system condition and performance. The rule proposes to require the head of the State DOT to approve the asset management plan.

Section 515.009 Asset Management Plan Content Requirements

This proposed section sets forth minimum content requirements that would apply to a State DOT asset management plan. Under this section of the proposed rule, the results of the development processes proposed in section 515.007 would inform the strategic decisions described in the plan. Consistent with the definition of asset management in 23 U.S.C. 101(a), asset management plans would describe how the State DOT will carry out ''a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based on quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the life cycle of the assets at minimum practicable cost.'' As required by 23 U.S.C. 119(e)(2), asset management plans would describe the State DOT's selected strategies to improve or preserve the condition of the

assets and the performance of the NHS and leading to a program of projects that would make progress toward achievement of the State targets for asset condition and performance of the NHS in accordance with 23 U.S.C. 150(d), and support progress toward the achievement of the national goals identified in 23 U.S.C. 150(b).

Each asset management plan would address management of pavements on the Interstate System, pavements on the NHS (excluding the Interstate System), and bridges on the NHS in accordance with 23 U.S.C. 119(e)(4)(A). As provided in 23 U.S.C. 119(e)(3), State DOTs are encouraged, but not required, to include all highway infrastructure assets within the NHS ROW in the plan. State DOTs also are encouraged to include the highway infrastructure assets from other public roads in their asset management plans and to manage such other assets consistent with the asset management plan. As previously noted, if a State DOT elects to include such other assets, all of the analysis and plan content requirements proposed in this rulemaking would apply. The FHWA seeks comment on whether States should be required to include tunnels in the asset management plans.

In section 515.009, FHWA proposes the minimum contents required in a State DOT's asset management plan would include those required under 23 U.S.C. 119. First, the plans would have to include the State DOT's asset management objectives. The objectives are to be consistent with the purpose of asset management, which is to achieve and sustain a desired state of good repair over the life cycle of the assets at a minimum practicable cost. An agency's objectives would set the context and direction for developing its asset management plan. These directions would be different from one agency to another, depending on past experience and its level of maturity in developing an asset management plan.

Second, State DOT's would be required to include measures and targets for the assets in their plans. The measures and targets would be used to show progress toward improving or preserving the condition of the various types of assets in the plan. At a minimum, State DOTs would need to include the 23 U.S.C. 150(c) national measures for pavement and bridge condition and performance, and the associated State targets developed pursuant to section 150(d), in their asset management plans once those measures and targets are established. However, FHWA recognizes that many States already have asset management plans, or elements of it in place that use measures and targets other than those that will be established pursuant to section 150. Given the level of effort required to substantially revise such plans, FHWA believes it is important to provide State DOTs with some flexibility to use and adapt those ''legacy'' plans. Accordingly, FHWA proposes to allow State DOTs to include non-section 150 measures and targets for NHS bridges and pavements in their plans so long as such measures do not substitute for the section 150 measures and targets. Non-section 150 measures and targets may be used to supplement the section 150 measures and targets, but such use would not relieve the State DOT from its responsibilities to meet title 23 requirements relating to section 150 measures and targets.

Third, the State DOTs would have to include in the plan a summary listing of the pavement and bridge assets, including those on the NHS, and a description of their condition: This includes the State DOT's Interstate pavement, non-Interstate NHS pavement, and NHS bridge assets. The FHWA proposes that State DOTs use these three categories in order to be consistent with the categories of condition and performance measures that will be established under 23 U.S.C. 150(c)(3)(A)(ii). The summary list would have to include a description of the condition of the assets in the plan. Where applicable, the description of condition would be informed by the results of the evaluation required under proposed section 515.019 of this rule. It is the State DOTs' responsibility to include all NHS pavements and bridge data regardless of NHS ownership.

In the Transportation Planning NPRM (RIN 2125–AF52), FHWA addresses cooperation among multiple owners and operators for collection of NHS condition and performance data as part of the metropolitan planning agreements. However, these agreements apply to the metropolitan transportation planning process. The FHWA proposes that State DOTs develop a process for a collaborative and coordinated effort among NHS multiple owners within the rural areas in order to obtain the necessary data for development of the asset management plans. The FHWA also considered whether States should coordinate with Metropolitan Planning Organizations (MPO) on the development of the asset management plan. Section 134(h)(2)(D) of title 23, U.S.C., requires MPOs to integrate in the metropolitan transportation planning process the ''goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, as well as any plans developed under chapter 53 of title 49 by providers of public transportation, required as part of a performance-based program.'' As proposed in section 450.306(d)(4)(i) of the Transportation Planning NPRM (RIN 2125–AF52), MPOs would be required to include in the metropolitan planning process the asset management plan developed in accordance with this rulemaking. As a result, FHWA believes that State DOTs should coordinate with MPOs during the development of the asset management plan.

Fourth, the plans would have to include the results of the analyses required under section 515.007. This includes performance gap identification, life-cycle cost analysis, risk management analysis, a financial plan, and investment strategies.

The FHWA also proposes that a State DOT's asset management plan, for the assets in the plan, summarize the results of the evaluations under proposed section 515.019 to determine whether reasonable alternatives exist for roads, highways, or bridges that repeatedly have required repair and reconstruction activities following emergency events. As previously discussed, section 515.019 of this proposed rule would require States to perform those statewide evaluations to fulfill the mandate in section 1315(b) of MAP–21. Proposed section 515.007 also would require the State DOT's risk analysis discussion in the plan to reflect consideration of the section 1315(b) evaluations for assets covered by the plan.

The FHWA proposes that asset management plans cover a minimum period of 10 years to ensure that the plan can support a decisionmaking process that identifies investment strategies that advance toward a long-term physically and financially sustainable system. The FHWA also proposes that asset management plans lead to an immediate program of projects in the STIP. It is the FHWA's view that a State DOT should select such projects from the STIP as part of its efforts to achieve and sustain a state of good repair, to improve or preserve the condition of the assets and the performance of the NHS, to make progress toward achievement of the State's targets for asset condition and performance of the NHS in accordance with 23 U.S.C. 150(d), and to support progress toward the achievement of the national goals identified in section 150(b).

In the proposed rule, the FHWA would require State DOTs to make their asset management plans available to the public, and encourages them to do so in

a format that is easily accessible. The FHWA is proposing this provision because the asset management plan is an effective communication tool. It documents how decisions regarding investment strategies are made, what actions are taken to improve or preserve the condition of the assets and system performance, how risks to system performance are managed, and how the work of maintaining assets throughout their lives is considered. All of these documents provide the public with a wealth of information that can help assess whether transportation investments are being made wisely.

Finally, the proposed regulation would clarify that other title 23 regulations govern the establishment of the performance measures and State targets required by 23 U.S.C. 150, as well as the required reports on progress toward those targets. Inclusion of section 150 measures and targets in the State DOT's asset management plans is required under 23 U.S.C. 119, for purposes of carrying out the asset management planning process. However, use of the measures and targets in the plan would not fulfill the reporting or other requirements under section 150.

Section 515.011 Phase-In of Asset Management Plan Development

In this section, the FHWA proposes to establish a process that will enable State DOTs to phase-in the development of their asset management plans. The FHWA recognizes that State DOTs are at different levels of sophistication and readiness to develop and implement an effective asset management plan. While some States may already have all of the required processes in place and analyses performed, other States may be only beginning to explore asset management. Those States need to have sufficient time to develop and implement the required processes and plans. In addition, there is a timing issue relating to 23 U.S.C. 150 measures and targets that FHWA believes require a phased-in approach. The timing problems affect the ability of State DOTs to include the section 150 measures and targets for NHS pavement and bridges in their initial asset management plans, and also affects the annual FHWA consistency determination required under 23 U.S.C. 119(e)(5). The FHWA believes proposed section 515.011 would resolve these issues.

Section 119(e)(5) sets a deadline for compliance with the asset management plan provisions in 23 U.S.C. 119 by the beginning of the second fiscal year following the FHWA's establishment of the process for developing asset management plans. That process will be established through this rulemaking. Failure to develop and implement an asset management plan consistent with section 119 results in a reduced Federal share for NHPP projects. However, section 119(e)(2) requires asset management plans to include strategies leading to a program of projects that would make progress toward achievement of the States' targets for asset condition and performance of the NHS in accordance with 23 U.S.C. 150(d), and supporting progress toward the national goals identified in section 23 U.S.C. 150(b). The FHWA is establishing the section 150 measures through a separate rulemaking,[7] following which the statute gives State DOTs 1 year to establish their section 150(d) targets. The FHWA rulemaking process under section 150, and the subsequent State DOT establishment of targets under section 150(d), might not be completed in a sufficient amount of time before the asset management plan consistency deadline in 23 U.S.C. 119(e)(5) in order to permit the State DOT to incorporate the section 150 measures and targets in its initial plan. If that is the case, a State DOT would not be able to demonstrate in the first consistency review that its asset management plan includes ''strategies leading to a program of projects that would make progress toward achievement of the State targets for asset condition and performance of the National Highway System in accordance with section 150(d).''

To address the risk that it may not be possible for the State DOTs to fully meet the section 119(e)(2) requirements with the first cycle of plan submissions, the FHWA proposes to permit State DOTs to submit their initial asset management plans based on criteria specified in proposed section 515.011. Under all circumstances, the State DOT's first plan submission would have to include its proposed processes for each required area in proposed section 515.007, State DOT measures and target for assets in the plan, and the State DOT's investment strategies. However, the proposed rule would give State DOTs the option of developing their initial asset management plans, including their investment strategies, using best available information in each required area. Investment strategies in the initial plan would have to satisfy the portion of section 119(e)(2) relating to the national goals in 23 U.S.C. 150(b). However, the plan's strategies would not have to address the section 150(d) targets unless the State DOT has established those targets at least 6 months before the plan submission deadline in section 515.013(a). The proposed rule also would permit a State DOT to omit the analyses for life-cycle costs, risk management, and the financial plan from its initial asset management plan.

The proposed exceptions from the requirements of sections 515.007 and 515.009 would apply only to the initial plan submission. The FHWA proposes to require State DOTs to amend their plans to include all the required analyses using FHWA-certified processes, the 23 U.S.C. 150 measures and targets, and investment strategies consistent with all of the requirements of 23 U.S.C. 119(e)(2), not later than 18 months after the effective date of the final rulemaking for pavement and bridge condition measures pursuant to 23 U.S.C. 150. However, under the proposed rule, FHWA could extend the 18-month time period as needed to provide 12 months between the time FHWA certifies the State DOT's processes under 23 U.S.C. 119(e)(6)(A) and the date the amended plan is due. The purpose of the proposed extension is to permit the State DOT a reasonable amount of time to incorporate section 150 measures and targets and complete the required analyses using FHWA-certified processes. Under the proposed rule, FHWA could grant the extension only if it determines the State DOT's initial plan meets the requirements of section 515.011. The proposed 18-month deadline for submission of an amended plan and the related extension provision mirror the deadline and extension provisions in MAP–21 section 1106(a)–(b), relating to limitations on FHWA's ability to obligate NHPP funds.

Under this proposed phase-in approach, FHWA may determine an initial plan that conforms with proposed section 515.011 meets the consistency requirements under 23 U.S.C. 119(e)(5). The consistency determination would fulfill the ''approved plan'' requirement in the NHPP obligation transition provision in MAP–21 section 1106(b). The amended asset management plan, and any subsequent asset management plan submitted to the FHWA for a consistency determination under section 119(e)(5) or recertification of processes under 23 U.S.C. 119(e)(6)(B), would have to meet all requirements in section 119(e)(2) and proposed sections 515.007 and 515.009 of this rule.

[7] The related rule for pavement and bridge conditions, ''National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program'' (RIN 2125–AF53), is available on the docket for review.

The FHWA specifically requests comment whether this proposed phase-in approach is desirable and workable.

Section 515.013 Process Certification and Plan Consistency Review

In this section, the FHWA proposes the processes by which the State DOTs will submit to FHWA their asset management plan development processes for certification pursuant to 23 U.S.C. 119(e)(6), and their asset management plans for a consistency determination under 23 U.S.C. 119(e)(5). The procedures for process certification and plan consistency determination in proposed section 515.013 are important to the implementation of several provisions relating to Federal-aid funding. First, section 119(e)(5) requires the Secretary to determine for the second fiscal year after the establishment of the Federal requirements that are the subject of this rulemaking, and for each fiscal year thereafter, whether the State has developed and implemented an asset management plan consistent with section 119. The lack of a consistency determination will result in a reduced Federal share for NHPP projects under 23 U.S.C. 119(e)(5).

A second provision affected by process certification and consistency determination is the transition provision in section 1106(b) of MAP–21. The transition provision allows FHWA to obligate NHPP funds for a period of time even though a State DOT does not have an approved asset management plan or has not established performance targets as described in 23 U.S.C. 119 and 23 U.S.C. 150. The transition period expires when the State DOT has met those two requirements, but not later than 18 months after the effective date of the final performance management rulemaking under 23 U.S.C. 150. The FHWA may extend the 18-month transition period if FHWA determines the State DOT has made a good faith effort to establish an asset management plan and the performance targets described in sections 119 and 150. Once the transition period ends, FHWA cannot obligate NHPP funds for projects otherwise eligible under 23 U.S.C. 119(d) unless the State DOT has an approved asset management plan and the required performance targets.

Certification of State DOT Processes

As noted above, 23 U.S.C. 119(e)(6) requires that the FHWA review and certify that the processes used by the State DOTs to develop their asset management plans meet the requirements established through this rulemaking. The FHWA also is required to recertify the State DOT's processes at least every 4 years pursuant to 23 U.S.C. 119(e)(6)(B). In this rule, the FHWA proposes that State DOTs include the necessary asset management plan development processes as part of the initial asset management plan submitted to the FHWA not later than 1 year after the effective date of the final rule on asset management. This time frame is intended to give the State DOTs sufficient time to prepare their processes and other parts of their initial plans, and receive the required FHWA process certification and consistency determination, before the implementation deadline contained in 23 U.S.C. 119(e)(5). That deadline is the beginning of the second fiscal year after the effective date of the final rule establishing the asset management plan development process.

The FHWA would review and respond (*i.e.,* approve or disapprove with comments) to the State DOT's request for certification of the State DOT's processes for plan development within 90 days after the FHWA receives the State DOT's request. Following the year of initial certification, State DOTs would then update their plans and resubmit their processes to the FHWA on October 1 every 4 years for recertification in compliance with section 119(e)(6)(B).

In addition, under proposed section 515.013(d), whenever a State DOT amends its asset management plan, it would be required to submit the amended plan to the FHWA for a new process certification at least 30 days prior to the deadline for the next FHWA's consistency determination (August 31 of each year). Minor technical corrections and revisions with no foreseeable material impact on the accuracy and validity of the analyses and investment strategies in the plan would not require submission to FHWA. If FHWA determines that a State DOT's processes do not meet the requirements of these proposed regulations, the State DOT will have an opportunity to cure the deficiencies, as required under 23 U.S.C. 119(e)(6)(C). The FHWA will send the State DOT a written notice of denial of certification or recertification that specifically identifies and lists the deficiencies. The State DOT will then have 90 days (which FHWA may extend upon request) to correct the deficiencies and resubmit its process to FHWA. If a State DOT's processes have minor deficiencies, then FHWA may proceed to certify the State DOT's processes on the condition that the minor deficiencies are corrected within 90 days of the receipt of the notification of certification. The State DOT must notify FHWA, in writing, once it has corrected the deficiencies.

Consistency Determination

The FHWA proposes to rely on the State DOT's most recently submitted asset management plan in making the annual consistency determination required by 23 U.S.C. 119(e)(5). The first consistency determination would be made by August 31 of the first fiscal year following the effective date of the final rule in this rulemaking. The subsequent consistency determinations would be made by August 31 of each fiscal year thereafter. The FHWA proposes the August 31 date to give a State DOT time to adjust its program in the event the State DOT receives a negative determination and the Federal share is reduced for the next fiscal year. The FHWA requests comments on whether this time period is needed, and whether the proposed 30-day period between the determination and the start of the next fiscal year is sufficient.

Except for the proposed phase-in for initial plans under section 515.011, in order for FHWA to find a plan consistent with the asset management requirements in 23 U.S.C. 119, the plan would need to include the minimum required contents, would have been developed using the State DOT's FHWA-certified processes for the necessary analyses, would include the 23 U.S.C. 150 measures and targets, and would contain strategies meeting the requirements in 23 U.S.C. 119(e)(2).

The purpose of FHWA's receipt of the State-approved asset management plan is to make the process certification and consistency determinations required under 23 U.S.C. 119(e)(5)–(6). The FHWA would not take any action to approve or disapprove a plan beyond the required process certification and consistency determinations. The investment decisions and judgments made by State DOTs in their asset management plans are within the scope of the FHWA asset management plan reviews.

The FHWA specifically requests comments on the proposed process certification and consistency determination processes proposed in section 515.013.

Section 515.015 Penalties

This section discusses the statutory penalties for State DOTs that do not develop and implement an asset management plan consistent with the requirements of 23 U.S.C. 119 and this proposed rule. The penalties that the FHWA is proposing in this section are penalties required by law. First, as mentioned above, 23 U.S.C. 119(e)(5)

reduces the Federal share for NHPP projects to 65 percent if a State DOT does not develop and implement an asset management plan consistent with the requirements of 23 U.S.C. 119 and this proposed rule by the beginning of the second fiscal year after the effective date of the final rule. Second, after the transition period in MAP–21 section 1106(b), the FHWA cannot approve any further projects using NHPP funds if the State DOT has not developed and implemented an asset management plan that is consistent with the requirements of 23 U.S.C. 119 and this proposed rule, and established the performance targets required under 23 U.S.C. 150(d) regarding the condition and performance of the NHS. The transition period ends when the State DOT has a conforming asset management plan and section 150(d) targets, but not later than the date that is 18 months after the effective date of the final rulemaking for pavement and bridge condition measures pursuant to 23 U.S.C. 150(c). Section 1106(b)(2) of MAP–21 provides FHWA with the authority to extend this time period if the State DOT has made a good faith effort to establish an asset management plan and the required performance targets.

The FHWA consistency determination under 23 U.S.C. 119(e)(5), and FHWA obligation decisions for NHPP funds, look at two major elements: Plan development and plan implementation. The FHWA proposes to make the determination whether a plan meets the development requirements based on whether the State DOT has complied with sections 515.007 and 515.009 of the proposed rule. The FHWA believes the plan implementation determination should be focused on whether the plan's investment strategies satisfy the 23 U.S.C. 119(e)(2) requirements (*i.e.,* lead to a program of projects that would make progress toward achievement of the States' targets for asset condition and performance of the NHS in accordance with 23 U.S.C. 150(d), and supporting progress toward the national goals identified in 23 U.S.C. 150(b)). This suggests FHWA will need a method to easily identify projects the State DOT believes meets the section 119(e)(2) requirements. The FHWA requests comments on whether the rule should specify one or more methods State DOTs could use to identify such projects. For example, the rule could leave the method of identification entirely to the State DOT's discretion, or the rule could allow the State DOTs to use one of several options, such as:

(1) A State DOT could identify the projects in its asset management plan.

(2) A State DOT could identify the projects by using an identifying symbol, such as an asterisk or number, in its STIP.

(3) A State DOT could include a summary discussion in its STIP identifying the projects, or program of projects.

(4) The State DOT could submit a list to FHWA by August 31 of each fiscal year identifying the projects authorized during the fiscal year that the State DOT believes demonstrate the State DOT has met the section 119(e)(2) requirements.

(5) The State DOT could include a summary in its STIP of anticipated funding broken down into categories based on the recommended investment strategies in the asset management plan, with enough detail to guide project selection.

The FHWA requests comments on other possible approaches to determining whether a State DOT has implemented its asset management plan. The FHWA also seeks comments on any problems State DOTs might anticipate in identifying projects that meet the requirements of 23 U.S.C. 119(e)(2), and ideas for resolving any anticipated problems.

Section 515.017 Organizational Integration of Asset Management

This section describes practices that State DOTs are encouraged to consider to support the development and implementation of asset management plans. These practices include the establishment of strategic goals, conducting periodic self-assessments, and conducting a gap analysis to determine which areas of the asset management development and implementation process require improvement.

Section 515.019 Periodic Evaluations of Facilities Requiring Repair or Reconstruction Due to Emergency Events

This proposed regulation fulfills the rulemaking requirement in section 1315(b) of MAP–21 and is consistent with the purpose of that section. Section 1315(b) of MAP–21 requires periodic evaluations to determine if reasonable alternatives exist for roads, highways, or bridges that repeatedly require repair and reconstruction activities due to emergency events. The purposes of section 1315(b) are to conserve Federal resources, protect public safety and health, and reduce the need for Federal funds to be expended on repeated repair and reconstruction activities, better protect the environment, and meet transportation needs. Emergency events include extreme weather events, natural disasters, and other catastrophic events that damage roads, highways, or bridges. Examples include floods, hurricanes, earthquakes, tornadoes, tidal waves, severe storms, or landslides.

The threshold for requiring evaluation under the proposed rule would be whether a road, highway, or bridge has required repair or reconstruction on at least two occasions due to emergency events. The proposed rule would define ''emergency event'' to mean a natural disaster or catastrophic failure due to external causes resulting in an emergency declared by the Governor of the State or an emergency or disaster declared by the President of the United States.

The proposed rule would apply only to roads, highways, and bridges that are owned by a State or local governmental entity (*e.g.,* State DOT, State toll authority, city, or county) and are eligible for funding under title 23. These limitations are in recognition of several factors. First, MAP–21 section 1315 contains no clear language requiring inclusion of facilities that received funding from other Federal agencies. It is reasonable to conclude its language was meant to conserve title 23 resources. Second, FHWA believes it would be unreasonably difficult for State DOTs to determine which roads, highways and bridges may have received non-title 23 Federal funding in the past, or might be eligible to receive non-title 23 Federal funding in the future. Finally, as a result of an earlier rulemaking, *Environmental Impact and Related Procedures* NPRM (77 FR 59875, Oct. 1, 2012), the FHWA decided to address the section 1315(b) requirements for States through this rulemaking. The FHWA does not believe it would be appropriate to expand this State-focused rulemaking to address any section 1315(b) requirements for federally owned roads, highways, and bridges.

Under the proposed rule, the State DOT must complete its evaluation for affected highways and bridges on the NHS, and any other assets included in the State DOT's asset management plan, not later than 2 years after the effective date of the final rule established through this rulemaking. The State DOT would have to complete the evaluation for all other roads, highways, and bridges in the State not later than 4 years after the effective date of the final rule in this rulemaking. The State DOT would be required to update the statewide evaluation after every emergency event to the extent the event caused additional facilities to meet the threshold for an alternatives evaluation. The proposed rule would require the State DOT to

review and update the statewide evaluation at least every 4 years after the initial evaluation. State DOTs would be encouraged to establish an evaluation cycle that facilitates consideration of the results of the evaluation in the State DOT's asset management plan and STIP. The proposed rule would require the State DOT to make the evaluation available to FHWA upon request.

The State DOT would be required by proposed sections 515.019, 515.007, and 515.009 to use the results of the evaluation in its asset management plan to the extent the evaluation covers assets in the plan. The State DOT would include a summary of its section 1315(b) evaluation for pavements and bridges on the NHS, and those for any other assets included in the asset management plan at the option of the State DOT, as part of the risk analysis in its asset management plan.

The FHWA received comments from 12 commenters in response to the *Environmental Impact and Related Procedures* NPRM (77 FR 59875, Oct. 1, 2012), implementing section 1315 of MAP–21, who mostly supported including this analysis as part of the asset management plans described in this NPRM. In particular, the FHWA received eight comments on whether this analysis should be included as part of the asset management plans. These commenters were AASHTO, the American Public Transportation Association (APTA), and six State DOTs (Alaska Department of Transportation and Public Facilities (ADOT&PF), Texas DOT, California DOT, North Dakota DOT, Washington State DOT, and Ohio DOT). Of these commenters, only one comment (North Dakota DOT) was opposed to including this analysis as part of the asset management plan, stating that too few States have the ability to immediately implement asset management plans. However, in accordance with 23 U.S.C. 119(e), all States must develop and implement an asset management plan. The asset management plan phase-in provisions proposed under section 515.011, as well as the phase-in proposed in section 515.019, should facilitate the transition for those State DOTs not already using some form of asset management.

Three commenters, ADOT&PF, Texas DOT, and Transportation Transformation Group suggested the FHWA grant the State flexibility with respect to the frequency of the reviews or how the reviews are conducted. The FHWA is proposing the State DOTs perform the evaluations of NHS highways and bridges, and any other assets included in the State DOT asset management plan, within 2 years after the final rule established through this rulemaking. This is to facilitate consideration of the evaluation in the asset management plan. This schedule also recognizes the priority Congress placed on improving and preserving the NHS in MAP–21. For other roads, highways, and bridges, the State DOT would have to complete the evaluation no later than 4 years after the final rule established through this rulemaking. The FHWA does not specify in this NPRM the manner in which the States must conduct these reviews, only that these reviews must be consistent with the mandate in section 1315(b) of MAP–21. The FHWA expects that each State DOT will keep current data regarding facilities that repeatedly require repair and reconstruction following emergency events. If damage due to emergency events occurs to a road, highway, or bridge on two or more occasions, the State DOT would determine if reasonable alternatives exist to reduce the potential for future damage and repair costs and better protect public safety and health and the environment. These evaluations would consider the risk of recurring damage and the cost of future repair under current and future environmental conditions. For purposes of section 1315(b), a reasonable alternative would meet transportation needs as described in relevant and applicable Federal, State, local and tribal plans, including those required under 23 CFR part 450. The FHWA is proposing this approach to conserve Federal resources and to increase the resilience of the transportation system. The proposed approach would help ensure that future project development and funding decisions for these facilities are informed by these evaluations, and therefore meet the intent of section 1315(b) of MAP–21.

The FHWA received four comments (Texas DOT, New York State Metropolitan Transportation Authority, Transportation Transformation Group, and Southeast Pennsylvania Transportation Authority) stating that these evaluations would best be conducted at the State or local level. The FHWA agrees that these evaluations are best conducted at the State or local level. However, with respect to facilities under the jurisdiction of a local public agency, State DOTs are responsible for ensuring that appropriate evaluations are carried-out for those facilities in their State.

Finally, the FHWA received four comments on the factors to be considered as part of this reasonable alternatives analysis. Two of these comments (Texas DOT and APTA) requested that FHWA allow States to determine the factors. Another comment (Advisory Council on Historic Preservation) requested that the FHWA require States to consider the effects on historic properties. The fourth comment (ADOT&PF) proposed some factors that should be considered when assessing the risk of recurring damage, including the severity of damage, cost of a permanent solution, and the maintenance and operations of the current facility and permanent solution. In this NPRM, the FHWA proposes that States take into account the factors specified in 1315(b) of MAP–21 when evaluating whether reasonable alternatives exist for roads, highways, or bridges that repeatedly require repair and reconstruction activities following emergency events. States would be required to evaluate whether reasonable alternatives exist that: Reduce the need for Federal funds to be expended on such repair and reconstruction activities; better protect public safety and health and the environment; and meet transportation needs as described in relevant and applicable Federal, State, local, and tribal plans. States are free to use other factors at their discretion; however, the statutorily required factors must be taken into account. The FHWA declines to include a specific reference in the regulation to historic properties. The proposed regulation calls for consideration of the human and natural environment in the evaluation. That phrase includes a wide range of potential environmental impacts, including those on historic and cultural resources. Including references to some types of human or natural environmental resources, while omitting references to others, could be misinterpreted as intended to give greater weight to the listed resource(s).

The FHWA recognizes MAP–21 section 1315(b) requirements may pose challenges for some State DOTs. The FHWA requests comments on potential alternative methods for meeting the section 1315(b) requirements, and asks for comments on the following specific questions:

(1) Is the amount of time allotted in proposed section 515.019 for the initial evaluation of NHS assets and other assets included in the State DOT asset management plan (2 years), and for all other roads, highways, and bridges (4 years), appropriate? If not, how much time should be allotted?

(2) Is the 4-year general update cycle for the statewide evaluation appropriate? If not, what would be a reasonable cycle for the ongoing periodic evaluation required under section 1315(b)?

(3) Should the FHWA establish a limit to the length of the ''look back'' State DOTs will do in order to determine whether a road, highway, or bridge has been repaired or reconstructed on two or more occasions? If so, what would be an appropriate and feasible length of time?

(4) Should the regulation address the types of data sources that should be considered to determine whether a road, highway, or bridge has been repaired or reconstructed on two or more occasions? If so, what types of data sources would be most appropriate?

(5) Should the rule specify required content for the evaluations in greater detail? If so, what elements ought to be required?

(6) Should the regulation require the State to consider the section 1315(b) alternatives evaluation prior to requesting title 23 funding for a project?

(7) Should the regulation address when and how FHWA would consider the section 1315(b) alternatives evaluation in connection with an FHWA project approval?

Rulemaking Analyses and Notices

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

The FHWA has determined that this action would be a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT's regulatory policies and procedures. This rulemaking implements a congressional mandate that States develop and implement risk-based asset management plans for Interstate highway pavements, non-Interstate NHS highway pavements, and NHS bridges. In addition, State DOTs must meet minimum standards established by the Secretary of Transportation in developing pavement and bridge management systems. This action is considered significant because of the substantial State DOT interest in the requirements for developing risk-based asset management plans, and the proposed minimum standards for the pavement and bridge management systems. In addition, this rulemaking implements section 1315(b) of MAP–21 by requiring States to conduct evaluations to determine if reasonable alternatives exist to roads, highways, or bridges that repeatedly require repair and reconstruction activities from emergency events, and to take these evaluations into account in the asset management plans for facilities that are included in these plans. However, this action is not economically significant within the meaning of Executive Order (EO) 12866.

The FHWA is presenting a Regulatory Impact Analysis (RIA) in support of this NPRM. The RIA estimates the economic impact, in terms of costs and benefits, on State DOTs as required by EO 12866 and EO 13563. This section of the NPRM identifies and estimates costs and benefits resulting from the proposed rule in order to inform policy makers and the public of the relative value of the current proposal. The complete RIA may be accessed in the rulemaking's docket (FHWA–2013–0052).

The costs and benefits were estimated for implementing the requirement for States to develop a risk-based asset management plan and to use pavement and bridge management systems that comply with the minimum standards proposed by this NPRM. For this analysis, the base case is assumed to be the current state of the practice, where most State DOTs already own pavement and bridge management systems, but have not developed risk-based asset management plans.

Estimated Costs of the Proposed Rule

The costs of preparing an asset management plan was estimated based on information obtained from nine State DOTs. Based on that information, FHWA estimates that the total cost of developing the initial plan and three updates for all 50 States, the District of Columbia, and Puerto Rico States, covering a 12 year time period, would be $37.3 million discounted at 3 percent and $31.1 million discounted at 7 percent, an annual cost of $3.1 million and $2.6 million respectively. These estimates may be conservative, since many agencies may already be developing planning documents that could feed into the asset management plans or be replaced by them, therefore saving some costs to the agencies.

An additional cost of $4 million to $6 million in total is estimated for acquiring pavement management systems for all non-complying agencies. There are currently four States that don't currently have pavement and bridge management systems that meet the standards of the proposed rule.

Therefore, the total nationwide costs for all States to develop their initial asset management plans with three updates over the course of 12 years and for the four States to acquire and install pavement management systems would be $43.2 million discounted at 3 percent and $36.7 million discounted at 7 percent.

Estimated Benefits of the Proposed Rule

The FHWA lacks data on the economic benefits of the practice of asset management as a whole. The field of asset management has only become common in the past decade and case studies of economic benefits from overall asset management have not been published. We specifically request that commenters submit data on the quantitative benefits of asset management and reference any studies focusing on the economic benefits of overall asset management.

While FHWA lacks data on the overall benefits of asset management, there are examples of the economic savings that result from the most typical component sub-sets of asset management, pavement and bridge management systems. Pavement and bridge management systems are software and analysis tools whereas asset management is a decisionmaking framework and approach leading to cost effective investment strategies. Pavement and bridge management systems are used to analyze massive amounts of pavement and bridge data. The information from the pavement and bridge management systems is then used to develop the asset management plan.

Taking a study conducted using Iowa DOT data [8] as an example of the potential benefits of applying a long-term asset management approach using a pavement management system, the costs of developing the asset management plans and acquiring pavement management systems are compared to determine if the benefits of the proposed rule would exceed the costs. We estimate the total benefits for the 50 States, District of Columbia, and Puerto Rico of applying pavement management systems and developing asset management plans to be $453.5 million discounted at 3 percent and $340.6 million discounted at 7 percent. The FHWA requests comments on this estimate.

Based on the benefits derived from the Iowa DOT study and the estimated costs of asset management plans and acquiring pavement management systems, the ratio of benefits to costs would be 10.5 at a 3 percent discount rate and 9.3 at a 7 percent discount rate. The estimated benefits do not include the potential benefits resulting from savings in bridge programs. The benefits for States already practicing good asset management decisionmaking using their pavement management systems will be

[8] Smadi, Omar, Quantifying the Benefits of Pavement Management, a paper from the 6th International Conference on Managing Pavements, 2004

lower, as will the costs. If the requirement to develop asset management plans only marginally influences decisions on how to manage the assets, benefits are expected to exceed costs.

Summary of Benefits and Costs of Asset Management Plan Rule

	Discounted at 3 percent	Discounted at 7 percent
Total Benefits for 50 States, District of Columbia, and Puerto Rico	$453,517,289	$340,580,916
Total Cost for 50 States, District of Columbia, and Puerto Rico	$43,159,635	$36,701,377
Benefit Cost Ratio	10.5	9.3

Threshold Analysis

To estimate the threshold benefits necessary from pavement or bridge preservation for the rule to be worthwhile, we use the incremental benefits that can be realized by road users in vehicle operating cost reductions due to improvements in pavement or bridge condition. The estimates used for the user costs in the break-even analysis are based on the numbers derived for the ''Establishment of National Bridge and Pavement Condition Performance Management Measures Regulatory Impact Analysis.'' (See Docket Number FHWA–2013–0053). The FHWA estimated the cost saving per mile of travel on pavement with fair condition versus pavement in poor condition to be $0.01 per vehicle, averaged for the share of trucks and cars on the NHS. Dividing the cost of the rule by this cost, the number of vehicle miles of travel (VMT) to be improved to cover the cost of the rule was estimated. Then taking the ratio of the VMT to be improved to the number of VMT in poor condition and multiplying by number of NHS miles in poor condition, the number of lane miles to be improved to cover the cost of the rule are estimated. To cover the $49.9 million undiscounted cost of the rule, approximately 127 lane miles would have to be improved from poor condition to fair condition to generate user benefits to make the rule worthwhile.

For bridges, FHWA estimated the additional user cost (travel time and vehicle operating costs) of a detour due to a weight restricted bridge. According to NBI, the average detour is equal to 20 miles. The estimated average user cost per truck is $1.69 per mile. Each posted bridge is estimated to impose a detour cost of $33.82 per truck. ($1.69 per VMT × 20 miles). Based on the number of trucks affected by the weight restrictions, it is estimated that two weight restricted bridge postings would have to be avoided to meet the cost of the rule.

The above description of the benefits of asset management is based on the limited data available on the benefits of pavement and bridge management systems, the most typical component sub-sets of asset management. The FHWA does not have sufficient information to estimate total costs and benefits of asset management as a whole. We specifically request that commenters submit information on the quantitative benefits of asset management.

A copy of the FHWA's RIA has been placed in the docket. The FHWA requests comments on the RIA that has been conducted for this rule.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses the obligation of Federal funds to States for Federal-aid highway projects. As such, it affects only States, and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and the FHWA certifies that the proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995) as it would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $151 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

The FHWA has analyzed this NPRM in accordance with the principles and criteria contained in EO 13132. The FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing EO 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This action contains a collection-of-information requirement under the PRA. The MAP–21 requires State DOTs to develop risk-based asset management plans for NHS bridges and pavements to improve or preserve the condition of the assets and the performance of the system. It also requires the Secretary of Transportation to review the processes State DOTs have used to develop their asset management plans, and to determine if States have developed and implemented their asset management plans consistent with the MAP–21 requirements.

In order to be responsive to the requirements of MAP–21, FHWA proposes that State DOTs submit their asset management plans, including the processes used to develop these plans, to FHWA for: (1) Certification of the processes, and (2) a determination that the asset management plans have been developed consistent with the certified processes; however, these plans are not subject to the FHWA approval.

A description of the collection requirements, the respondents, and an estimate of the burden hours per data collection cycle are set forth below:

Collection Title: State DOTs' Risk-Based Asset Management Plan including its processes for the NHS bridges and pavements.

Type of Request: New information collection requirement.

Respondents: 50 States, the District of Columbia, and Puerto Rico.

Frequency: One collection every 4 years.

Estimated Average Burden per Response per Data Collection Cycle: Some early examples of asset management plan burden hours are available. The transportation agencies for Minnesota, Louisiana, and New York are cooperating with the FHWA to produce three early transportation asset management plans. These three States represent three different approaches that illustrate the possible range of costs and level of effort for conducting asset management plans. In addition, the information relative to the burden hours from Colorado DOT is included in the benefit-cost analysis for this proposed rule as required by EO 12866. The result of that analysis indicates that the average burden hours per State for developing the initial asset management plan would be approximately 2,600 hours. However, on average, development of subsequent plans would require less effort because the processes have already been developed. The estimate for updating plans for future submission indicates that approximately 1,300 burden hours per State per data-collection cycle would be required.

The FHWA invites interested persons to submit comments on any aspect of the proposed information collection, including the FHWA's estimate of the burden hours of the proposed information collection. Comments submitted in response to this notice will be summarized or included, or both, in the request for OMB approval of this information collection.

National Environmental Policy Act

Agencies are required to adopt implementing procedures under the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), that establish specific criteria for, and identification of, three classes of actions: Those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). The FHWA's procedures are found in 23 CFR part 771. This proposed action qualifies for categorical exclusions under 23 CFR 771.117(c)(20) (promulgation of rules, regulations, and directives) and 771.117(c)(1) (activities that do not lead directly to construction). The FHWA has evaluated whether the proposed action would involve unusual circumstances and has determined that this proposed action would not involve such circumstances.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under EO 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.* The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under EO 12630.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 12898 (Environmental Justice)

The EO 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* and DOT Order 5610.2(a), 91 FR 27534 (May 10, 2012) (available online at *www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cfm*), requires DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with the EO and the DOT Order in all rulemaking activities. In addition, FHWA has issued additional documents relating to administration of the EO and the DOT Order. On June 14, 2012, FHWA issued an update to its EJ order, FHWA Order 6640.23A, *FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (available online at *www.fhwa.dot.gov/legsregs/directives/orders/664023a.htm*).

The FHWA has evaluated this proposed rule under the EO, the DOT Order, and the FHWA Order. This rule proposes the process under which States would develop and implement asset management plans, which is a document describing how the highway network system will be managed, in a financially responsible manner, to achieve a desired level of performance and condition while managing risks over the life cycle of the assets. The asset management plan does not lead directly to construction. Therefore, the FHWA has determined that the proposed asset management regulations, if finalized, would not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under EO 13045, *Protection of Children from Environmental Health Risks and Safety Risks.* The FHWA certifies that this action would not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under EO 13175, *Consultation and Coordination with Indian Tribal Governments,* and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses obligations of Federal funds to States for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under EO 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* The FHWA has determined that this is not a significant energy action under that order since it is not a significant regulatory action under EO 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 515

Asset management, Transportation, Highways and roads.

Issued on February 10, 2015, under authority delegated in 49 CFR 1.85(a)(1).

Gregory G. Nadeau,

Acting Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to revise title 23, Code of Federal Regulations, by adding a new part 515 to read as follows:

PART 515—ASSET MANAGEMENT PLAN

Sec.
515.001 Purpose.
515.003 Applicability.
515.005 Definitions.
515.007 Process for establishing the asset management plan.
515.009 Asset management plan requirements.
515.011 Phase-in of asset management plan development.
515.013 Process certification and plan consistency review.
515.015 Penalties.
515.017 Organizational integration of asset management.
515.019 Periodic evaluations of facilities requiring repair or reconstruction due to emergency events.

Authority: Sec. 1106, 1203, and 1315(b) of Pub. L. 112–141, 126 Stat. 405; 23 U.S.C. 109, 119(e), 144, 150(c), and 315; 49 CFR 1.85(a).

§ 515.001 Purpose.

The purpose of this part is to:

(a) Establish the processes that a State transportation department (State DOT) must use to develop its asset management plan, as required under 23 U.S.C. 119(e)(8);

(b) Establish the minimum requirements that apply to the development of an asset management plan;

(c) set forth the minimum standards for a State DOT to use in developing and operating highway bridge and pavement management systems under 23 U.S.C. 150(c)(3)(A)(i);

(d) Describe the penalties for a State DOT's failure to develop and implement an asset management plan in accordance with 23 U.S.C. 119 and this part; and

(e) Establish the requirement for State DOTs to conduct periodic evaluations to determine if reasonable alternatives exist to roads, highways, or bridges that repeatedly require repair and reconstruction activities from emergency events.

§ 515.003 Applicability.

This part applies to all State DOTs.

§ 515.005 Definitions.

As used in this part:

Asset means all physical highway infrastructure located within the right-of-way corridor of a highway. The term *asset* includes all components necessary for the operation of a highway including pavements, highway bridges, tunnels, signs, ancillary structures, and other physical components of a highway.

Asset condition means the actual physical condition of an asset in relation to the expected or desired physical condition of the asset.

Asset management means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the life cycle of the assets at minimum practicable cost. Replacement actions may include, but are not limited to, initial construction, reconstruction, resurfacing, and upgrade activities.

Asset management plan means a document that describes how a State DOT will carry out asset management as defined in this section. This includes how the State DOT will make risk-based decisions from a long-term assessment of the National Highway System (NHS), and other public roads included in the plan at the option of the State DOT, as it relates to managing its physical assets and laying out a set of investment strategies to address the condition and system performance gaps. This document describes how the highway network system will be managed to achieve a desired level of condition and performance while managing the risks, in a financially responsible manner, at a minimum practicable cost over the life cycle of its assets. The term *asset management plan* under this part is the risk-based asset management plan that is required under 23 U.S.C. 119(e) and is intended to carry out asset management as defined in 23 U.S.C. 101(a)(2).

Bridge as used in this part, is defined in 23 CFR 650.305, the National Bridge Inspection Standards.

Investment strategy means a set of strategies that result from evaluating various levels of funding to achieve a desired level of condition to achieve and sustain a state of good repair and system performance at a minimum practicable cost while managing risks.

Life-cycle cost means the cost of managing an asset class or asset sub-group for its whole life, from initial construction to the end of its service life.

Life-cycle cost analysis means a process to estimate the cost of managing an asset class, or asset sub-group over its whole life with consideration for minimizing cost while preserving or improving the condition.

Performance of the NHS refers to the effectiveness of the NHS in providing for the safe and efficient movement of people and goods where that performance can be affected by physical assets. This term does not include the performance measures established for performance of the Interstate System and performance of the NHS (excluding the Interstate System) under 23 U.S.C. 150(c)(3)(ii)(A)(IV)–(V).

Performance gap means the gap between the current condition of an asset, asset class, or asset sub-group, and the targets the State DOT establishes for condition of the asset, asset class, or asset sub-group. It also means the gap between the current performance and desired performance of the NHS that can only be achieved through improving the physical assets.

Risk means the positive or negative effects of uncertainty or variability upon agency objectives.

Risk management means the processes and framework for managing potential risks, including identifying, analyzing, evaluating, and addressing the risks to assets and system performance.

Statewide Transportation Improvement Program (STIP) has the same meaning as defined in § 450.104 of this title.

Work type means maintenance, preservation, repair, rehabilitation, and replacement, as well as initial construction, reconstruction, resurfacing, and upgrade.

§ 515.007 Process for establishing the asset management plan.

(a) A State shall develop a risk-based asset management plan that describes how the highway network system, including the NHS, will be managed to achieve a desired level of condition and performance while managing the risks, in a financially responsible manner, at a minimum practicable cost over the life cycle of its assets. The State DOT shall develop and use, at a minimum the following processes to prepare its asset management plan:

(1) A State DOT shall establish a process for conducting performance gap analysis to identify deficiencies hindering progress toward improving and preserving the NHS and achieving and sustaining the desired state of good repair. At a minimum, the State DOT

shall address the following in the gap analysis:

(i) The performance targets for the condition of Interstate highway pavements, non-Interstate NHS highway pavements, and NHS bridges as established by the State DOT under 23 U.S.C. 150(d) once promulgated. If a State DOT decides to include other public roads in the asset management plan, then the desired performance targets for those public roads shall be included as well;

(ii) The gaps, if any, in the effectiveness of the NHS in providing for the safe and efficient movement of people and goods where it can be affected by physical assets;

(iii) The gaps, if any, between the existing condition of the assets, asset classes, or asset sub-groups and the State DOT's performance targets; and

(iv) Alternative strategies to close or address the identified gaps.

(2) A State DOT shall establish a process for conducting life-cycle cost analysis for an asset class (*i.e.,* a group of assets with the same characteristics and function) or asset sub-group (*i.e.,* a group of assets within an asset class with the same characteristics and function) at the network level (network to be defined by the State DOT). As a State DOT develops the life-cycle cost analysis, the State DOT should include future changes in demand; information on current and future environmental conditions including extreme weather events, climate change, and seismic activity; and other factors that could impact whole of life costs of assets. The State DOT may propose excluding one or more asset sub-groups from its life-cycle cost analysis if the State DOT can demonstrate to FHWA the exclusion of the sub-group would have no material adverse effect on the development of sound investment strategies due to the limited number of assets in the sub-group, the level of cost impacts associated with managing the assets in the sub-group, or other supportable grounds. A life-cycle cost analysis process shall, at a minimum, include the following:

(i) Desired condition for each asset class or asset sub-group;

(ii) Identification of deterioration models for each asset class or asset sub-group;

(iii) Potential work types, including the treatment options for the work types, across the whole life of each asset class or asset sub-group with their relative unit cost; and

(iv) A strategy for managing each asset class or asset sub-group by minimizing its life-cycle costs, while achieving the performance targets set by the State DOT for the condition of Interstate highway pavements, non-Interstate NHS highway pavements, and NHS bridges under 23 U.S.C. 150(d).

(3) A State DOT shall establish a process for developing a risk management plan.

This process shall, at a minimum, produce the following information:

(i) Identification of risks that can affect the NHS condition and effectiveness as they relate to the safe and efficient movement of people and goods, including risks associated with current and future environmental conditions, such as extreme weather events, climate change, seismic activity, and risks related to recurring damage and costs as identified through the evaluation carried out under § 515.019;

(ii) An assessment of the identified risks to assets and the highway system included in the plan in terms of the likelihood of their occurrence and their impact and consequence if they do occur;

(iii) An evaluation and prioritization of the identified risks;

(iv) A mitigation plan for addressing the top priority risks;

(v) An approach for monitoring the top priority risks; and

(vi) A summary of the evaluations carried out under § 515.019 that discusses, as a minimum, the results relating to the State's existing pavements and bridges on the NHS, and any other pavement or bridge included in the asset management plan at the option of the State DOT.

(4) A State DOT shall establish a process for the development of a financial plan that identifies annual costs over a minimum period of 10 years. The financial plan shall, at a minimum, include:

(i) The estimated cost of expected future work to implement investment strategies contained in the asset management plan, by State fiscal year and work type;

(ii) The estimated funding levels that are expected to be reasonably available, by fiscal year, to address the costs of future work types. State DOTs may estimate the amount of available funding using historical values where the future funding amount is uncertain;

(iii) Identification of anticipated funding sources; and

(iv) An estimate of the value of the agency's pavements and bridge assets and the needed investment on an annual basis to maintain the value of these assets.

(5) A State DOT shall establish a process for developing investment strategies meeting the requirements in § 515.009(f). This process must describe how the investment strategies are influenced, at a minimum, by the following:

(i) Performance gap analysis required under paragraph (a)(1) of this section;

(ii) Life-cycle cost analysis for asset classes or asset sub-groups resulting from the process required under paragraph (a)(2) of this section;

(iii) Risk management analysis resulting from the process required under paragraph (a)(3) of this section; and

(iv) Anticipated available funding and estimated cost of expected future work types associated with various candidate strategies based on the financial plan required by paragraph (a)(4) of this section.

(b) Each State DOT shall use bridge and pavement management systems to analyze the condition of Interstate highway pavements, non-Interstate NHS pavements, and NHS bridges in accordance with 23 U.S.C. 150(c)(3)(A)(i), for the purpose of developing and implementing the asset management plan required under this part. These bridge and pavement management systems shall include, at a minimum, formal procedures for:

(1) Collecting, processing, storing, and updating inventory and condition data for all NHS bridge and pavement assets;

(2) Forecasting deterioration for all NHS bridge and pavement assets;

(3) Determining the life-cycle benefit-cost analysis of alternative strategies (including a no action decision) for managing the condition of all NHS bridge and pavement assets;

(4) Identifying short- and long-term budget needs for managing the condition of all NHS bridge and pavement assets;

(5) Determining the optimal strategies for identifying potential projects for managing pavements and bridges; and

(6) Recommending programs and implementation schedules to manage the condition of all Interstate highway pavements, non-Interstate NHS highway pavements, and NHS bridge assets within policy and budget constraints.

(c) The head of the State DOT shall approve the asset management plan.

§ 515.009 Asset management plan requirements.

(a) A State DOT shall develop and implement an asset management plan to improve or preserve the condition of the assets and improve the performance of the NHS in accordance with the requirements of this part. If the State DOT elects to include other public roads in its plan, all asset management process and plan requirements in this part shall apply. Asset management

plans must describe how the State DOT will carry out asset management as defined in § 515.005.

(b) An asset management plan shall include, at a minimum, a summary listing of each of the following assets, regardless of ownership:

(1) Pavements on the Interstate System;

(2) Pavements on the NHS (excluding the Interstate System); and

(3) Bridges on the NHS.

(c) In addition to the assets specified in paragraph (b) of this section, State DOTs are encouraged, but not required, to include all other NHS infrastructure assets within the right-of-way corridor. Examples of other assets include tunnels, ancillary structures, and signs. If a State DOT decides to include other such assets on the NHS in its asset management plan, or to include assets on other public roads, the State DOT shall evaluate and manage those assets consistent with the provisions of this part.

(d) The minimum content for an asset management plan under this part includes a discussion of each element in this paragraph (d).

(1) Asset management objectives. The objectives should align with the agency's mission. The objectives must be consistent with the purpose of asset management, which is to achieve and sustain the desired state of good repair over the life cycle of the assets at a minimum practicable cost.

(2) Asset management measures and targets, including those established pursuant to 23 U.S.C. 150 for pavements and bridges on the NHS. The plan must include measures and associated targets the State DOT can use in assessing the condition of the assets and performance of the highway system as it relates to those assets. The measures and targets must be consistent with the objective of achieving and sustaining the desired state of good repair. The State DOT must include the measures established under 23 U.S.C. 150(c)(3)(A)(ii)(I)–(III), once promulgated in 23 CFR part 490, for the condition of pavements on the Interstate System, the condition of pavements on the NHS (excluding the Interstate), and the condition of bridges on the NHS. The State DOT also must include the targets the State DOT has established for the measures required by 23 U.S.C. 150(c)(3)(A)(ii)(I)–(III), once promulgated, and report on such targets in accordance with 23 CFR part 490. The State DOT's process may permit the inclusion of measures and targets for the NHS that the State DOT established through pre-existing management efforts or develops through new efforts if the State DOT wishes to use such additional measures and targets to supplement information derived from the measures and targets required under 23 U.S.C. 150.

(3) A summary listing of the Interstate pavement assets, non-Interstate NHS pavement assets, and NHS bridge assets, including a description of the condition of those assets, regardless of ownership of the pavement and bridge assets. The summary listing must include a description of the condition of those assets based on the performance measures established under 23 U.S.C. 150(c)(3)(A)(ii) for condition, once promulgated. If a State DOT decides to include other public roads in the asset management plan, the State DOT should include a summary listing of these assets as well, including a description of the condition of those assets. Where applicable, the description of condition should be informed by the evaluation required under § 515.019. The processes established by State DOTs shall include a provision for the State DOT to obtain necessary data from other NHS owners in a collaborative and coordinated effort

(4) Performance gap identification.

(5) Life-cycle cost analysis.

(6) Risk management analysis, including the results of the periodic evaluations under § 515.019 for assets included in the plan.

(7) Financial plan.

(8) Investment strategies.

(e) An asset management plan shall cover, at a minimum, a 10-year period.

(f) An asset management plan shall establish and discuss a set of investment strategies leading to a program of projects that would

(1) Achieve and sustain a desired state of good repair over the life cycle of the assets,

(2) Improve or preserve the condition of the assets and the performance of the NHS relating to physical assets,

(3) Make progress toward achievement of the State targets for asset condition and performance of the NHS in accordance with 23 U.S.C. 150(d), and

(4) Support progress toward the achievement of the national goals identified in 23 U.S.C. 150(b).

(g) A State DOT must include in its plan a description of how the analyses required under § 515.007 support the State DOT's strategies. The plan also must describe how the strategies satisfy the requirements in paragraph (f)(1) through (4) of this section.

(h) A State DOT should select such projects for inclusion in the STIP to support its efforts to achieve the goals in paragraphs (f)(1) through (4) of this section.

(i) A State DOT is required to make its asset management plan available to the public, and is encouraged to do so in a format that is easily accessible.

(j) Inclusion of performance measures and State DOT targets established pursuant to 23 U.S.C. 150 in the asset management plan does not relieve the State DOT of any performance management requirements, including 23 U.S.C. 150(e) reporting, established in other parts of this title.

§ 515.011 Phase-in of asset management plan development.

(a) A State DOT may choose a phase-in option for the development of its initial asset management plan, which must be submitted to FHWA by [date 1 year after effective date of final rule] as provided in § 515.013(a). A State DOT may elect to submit its initial plan by following the requirements in this section.

(b) The initial plan shall describe the State DOT's processes for developing its risk-based asset management plan, including the policies, procedures, documentation, and implementation approach that satisfy the requirements of this part. The plan also must contain measures and targets for assets covered by the plan. For other parts of the initial plan, the State DOT shall use the best available information to meet the requirements of §§ 515.007 and 515.009. The investment strategies required by § 515.007(a)(8) must support progress toward the achievement of the national goals identified in 23 U.S.C. 150(b), but are not required to address the State's 23 U.S.C. 150(d) targets for asset condition and performance of the NHS unless the State DOT has established those targets at least 6 months before the plan submission deadline in § 515.013(a). The initial asset management plan may exclude one or more of the necessary analyses with respect to the following required asset management processes:

(1) Life-cycle cost analysis required under § 515.007(a)(5);

(2) The risk management analysis required under § 515.007(a)(6); and

(3) Financial plan under § 515.007(a)(7).

(c) Not later than 18 months after the effective date of the final rulemaking for pavement and bridge condition measures pursuant to 23 U.S.C. 150, a State DOT that used the phase-in option under this section for its initial plan submission shall amend its asset management plan to include analyses performed using FHWA-certified processes and the section 150 measures and State DOT targets for pavements and bridges on the NHS. The FHWA may extend the 18-month time period as

needed to provide 12 months between the time FHWA certifies the State DOT's processes under 23 U.S.C. 119(e)(6)(A) and the date the amended plan is due to give the State DOT adequate time to incorporate section 150 measures and targets and complete the required § 515.007 analyses using FHWA-certified processes. To qualify for an extension, the State DOT's initial plan must meet the initial plan requirements in § 515.011. The State DOT shall submit its amended plan in accordance with the provisions in § 515.013(d). The amended plan must meet all requirements in §§ 515.007 and 515.009. This includes investment strategies that are developed based on the analyses from all processes required under § 515.007, and meet the requirements in 23 U.S.C. 119(e)(2).

§ 515.013 Process certification and plan consistency review.

(a) *Plan deadline.* Not later than [date 1 year after effective date of final rule], the State DOT shall submit a State-approved asset management plan to the FHWA.

(b) *Certification of Processes under 23 U.S.C. 119(e)(6).* The FHWA will treat the State DOT's submission of a State-approved asset management plan as a request for certification of the State's DOT's plan development processes under 23 U.S.C. 119(e)(6). No later than 90 days after the date on which the FHWA receives the State DOT's documentation, the FHWA shall decide whether the State DOT's processes for developing its asset management plan meet the requirements of this part.

(1) If FHWA determines that the processes used by a State DOT to develop and maintain the asset management plan do not meet the requirements established under this part, FHWA will send the State DOT a written notice of the denial of certification or recertification, including a listing of the specific requirement deficiencies.

(2) Upon receiving a notice of denial of certification or recertification, the State DOT shall have 90 days from receipt of the notice to address the requirement deficiencies identified in the notice and resubmit the State DOT's processes to FHWA for review and certification.

(3) The FHWA may extend the State DOT's 90-day period to cure deficiencies upon request.

(4) If FHWA finds that a State DOT's asset management processes substantially meet the requirements of this part except for minor deficiencies, FHWA may certify or recertify the State DOT's processes as being in compliance, but the State DOT must take actions to correct the minor deficiencies within 90 days of receipt of the notification of certification. The FHWA may extend this 90-day period upon request of the State DOT. The State shall notify FHWA, in writing, when corrective actions are completed.

(c) *Determination of consistency under 23 U.S.C. 119(e)(5).* Beginning with the first fiscal year following [effective date of final rule] and in each year thereafter, FHWA will determine not later than August 31 whether the State DOT has developed and implemented an asset management plan consistent with 23 U.S.C. 119. In making the annual consistency determination, the FHWA will consider the most recent asset management plan submitted by the State DOT, as well as any documentation submitted by the State DOT to demonstrate implementation of the plan. The FHWA will review a State DOT's asset management plan to ensure that it was developed with the processes certified under this section and is consistent with other applicable requirements in this part. The State DOT's plan is not otherwise subject to FHWA approval. The FHWA may determine an initial plan is consistent with 23 U.S.C. 119 and the requirements of this part if it is submitted by the deadline in paragraph (a) of this section and complies with § 515.011.

(d) *Plan updates, amendments, and recertification of State DOT processes.* A State DOT shall update and resubmit its asset management plan to the FHWA for a new process certification on October 1 every 4 years following the year of initial certification of the State DOT's processes. Whenever the State DOT amends its asset management plan, it must submit the amended plan to the FHWA for a new process certification and consistency determination at least 30 days prior to the deadline for the next FHWA consistency determination under paragraph (c) of this section. Minor technical corrections and revisions with no foreseeable material impact on the accuracy and validity of the analyses and investment strategies in the plan do not require submission to FHWA.

§ 515.015 Penalties.

(a) Beginning with the second fiscal year after [effective date of final rule] and in each fiscal year thereafter, if a State DOT has not developed and implemented an asset management plan consistent with the requirements of 23 U.S.C. 119 and this part, the maximum Federal share for National Highway Performance Program projects shall be reduced to 65 percent for that fiscal year.

(b)(1) Except as provided in paragraph (b)(2) of this section, if the State DOT has not developed and implemented an asset management plan that is consistent with the requirements of 23 U.S.C. 119 and this part and established the performance targets required under 23 U.S.C. 150(d) regarding the condition and performance of the NHS by the date that is 18 months after the effective date of the final rule required under 23 U.S.C. 150(c), the FHWA will not approve any further projects using National Highway Performance Program funds.

(2) The FHWA may extend the 18-month period if FHWA determines that the State DOT has made a good faith effort to develop and implement an asset management plan and establish the required performance targets.

§ 515.017 Organizational integration of asset management.

(a) The purpose of this section is to describe how a State DOT may integrate asset management into its organizational mission, culture and capabilities at all levels.

(b) A State DOT should establish organizational strategic goals and include the goals in its organizational strategic implementation plans with an explanation as to how asset management will help it to achieve those goals.

(c) A State DOT should conduct a periodic self-assessment of the agency's capabilities to conduct asset management, as well as its current efforts in implementing an asset management plan. The self-assessment should consider, at a minimum, the adequacy of the State DOT's strategic goals and policies with respect to asset management, whether asset management is considered in the agency's planning and programming of resources, including development of the STIP; whether the agency is implementing appropriate program delivery processes, such as consideration of alternative project delivery mechanisms, effective program management, and cost tracking and estimating; and whether the agency is implementing adequate data collection and analysis policies to support an effective asset management program.

(d) Based on the results of the self-assessment, the State DOT should conduct a gap analysis to determine which areas of its asset management process require improvement. In conducting a gap analysis, the State DOT should:

(1) Determine the level of organizational performance effort needed to achieve the objectives of asset management;

(2) Determine the performance gaps between the existing level of performance effort and the needed level of performance effort; and

(3) Develop strategies to close the identified organizational performance gaps and define the period of time over which the gap is to be closed.

§ 515.019 Periodic evaluations of facilities requiring repair or reconstruction due to emergency events.

(a) A State DOT shall conduct a statewide evaluation of the State's existing roads, highways, and bridges eligible for funding under title 23, United States Code, that have required repair and reconstruction activities on two or more occasions due to emergency events, to determine if there are reasonable alternatives to any of these roads, highways, and bridges. The evaluation shall consider the risk of recurring damage and cost of future repair under current and future environmental conditions. For purposes of this section, ''emergency event'' means a natural disaster or catastrophic failure due to external causes resulting in an emergency declared by the Governor of the State or an emergency or disaster declared by the President of the United States.

(b) For purposes of this section, reasonable alternatives include work types that could achieve the following:

(1) Reduce the need for Federal funds to be expended on emergency repair and reconstruction activities;

(2) Better protect public safety and health and the human and natural environment; and

(3) Meet transportation needs as described in the relevant and applicable Federal, State, local, and tribal plans and programs. Relevant and applicable plans and programs include the Long-Range Statewide Transportation Plan, STIP, Metropolitan Transportation Plan, and Transportation Improvement Program that are developed under part 450 of this title.

(c) Not later than [date 2 years after effective date of final rule], the State DOT must complete the evaluation for NHS highways and bridges and any other assets included in the State DOT's asset management plan. The State DOT must complete the evaluation for all other roads, highways, and bridges meeting the criteria for evaluation not later than [date 4 years after effective date of final rule], excluding federally-owned facilities. The State DOT shall update the evaluation after every emergency event to the extent needed to include facilities affected by the event. The State will review and update the evaluation at least every four years after the initial evaluation. In establishing its evaluation cycle, the State DOT should consider how the evaluation can best inform the State DOT's preparation of its asset management plan and STIP.

(d) The State DOT shall include in its asset management plan developed pursuant to §§ 515.007 and 515.009, a summary of the evaluation for any roads, highways, and bridges included in the asset management plan. The results of the evaluation of those assets, including any update following an emergency event, shall be addressed in the asset management plan's risk analysis as provided in § 515.007(a)(6).

(e) The State DOT must make the evaluation available to the FHWA upon request.

[FR Doc. 2015–03167 Filed 2–19–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203, 207, 220, 221, 232, 235, 236 and 241

[Docket No. FR–5805–P–01]

RIN 2502–AJ26

Federal Housing Administration (FHA): Standardizing Method of Payment for FHA Insurance Claims

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

ACTION: Proposed rule.

SUMMARY: This proposed rule is a cost-savings measure to update HUD's regulations regarding the payment of FHA insurance claims in debentures. Section 520(a) of the National Housing Act affords the Secretary discretion to pay insurance claims in cash or debentures. Although HUD has given mortgagees the option to elect payment of FHA insurance claims in debentures in some sections of HUD's regulations, HUD has not paid an FHA insurance claim under these regulations using debentures in approximately 5 years. This proposed rule would amend applicable FHA regulations to bring consistency in determining the method of payment for FHA insurance claims.

DATES: *Comment Due Date:* April 21, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information about: HUD's Single Family Housing program, contact Ivery Himes, Director, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban

Development, 451 7th Street SW., Room 9172, Washington, DC, 20410; telephone number 202–708–1672; HUD's Multifamily Housing program, contact Sivert Ritchie, Multifamily Claims Branch, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6252, Washington, DC 20410–8000; telephone number 202–708–2510. The telephone numbers listed above are not toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to the Housing and Urban Development Act of 1965, the Secretary was required to pay insurance claims on mortgages or loans insured under the National Housing Act in debentures. Section 215 of the Housing and Urban Development Act of 1965 amended Title V of the National Housing Act to add a new section which authorized the Secretary, in his discretion, to pay insurance claims on mortgages or loans insured under any section of the National Housing Act in cash or debentures.[1]

In some of FHA's regulations in 24 CFR, subtitle B, chapter II, HUD has discretionarily provided mortgagees with the ability to request and receive payment of an insurance claim on a loan insured under the National Housing Act in debentures. As a result of these regulations, HUD has needed to maintain an interagency agreement with Treasury, which is the agency responsible for issuing and servicing debentures, costing HUD over $206,000 per year, despite the fact that there are no current debentures being serviced by Treasury for HUD, and HUD has not paid an FHA insurance claim in debentures in approximately 5 years.

II. This Proposed Rule

HUD proposes to use the authority provided in section 520(a) of the National Housing Act to reflect the Secretary's discretion to pay FHA insurance claims in cash or debentures. This change will enable HUD, in the future, to make a fiscally responsible decision about maintaining the costly interagency agreement with Treasury.

This rule proposes to amend the following sections to bring consistency in the payment of FHA insurance claims among FHA programs: §§ 203.400, 203.476, 203.478, 207.259, 220.751, 220.822, 221.762, 232.885, 235.215, 236.265, 241.261, 241.885 and 241.1205. As a result of these changes, § 220.760 will be eliminated because it will be unnecessary.

III. Findings and Certifications

Regulatory Review—Executive Order 13563

Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

The broader purposes of the reform to FHA's regulations regarding Secretarial discretion of the type of FHA insurance claim payment are to eliminate unnecessary spending and bring consistency regarding the payment of insurance claims across all FHA programs. As discussed in the preamble, the interagency agreement with Treasury costs HUD over $206,000 per year, even though HUD currently does not have any debentures for payment of FHA insurance claims in circulation, and has not made a payment in debentures in approximately 5 years for these insurance claims. In addition, different FHA programs treat payment of FHA insurance claims differently, and this proposed rule will simplify the regulations so that the authority to determine the method of claim payment always rests with the Secretary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule only changes the party which has the authority to determine the method of payment of FHA single family, multifamily, and healthcare insurance claims.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

The proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance-Housing in Older, Declining Areas is 14.123; Mortgage Insurance-

[1] Section 520(a) of the National Housing Act (12 U.S.C. 1735d) states: ''Notwithstanding any other provision of this Act with respect to the payment of insurance benefits, the Secretary is authorized, in his discretion, to pay in cash or in debentures any insurance claim or part thereof which is paid on or after the date of the enactment of the Housing and Urban Development Act of 1965 on a mortgage or a loan which was insured under any section of this Act either before or after such date.''

Rental Housing is 14.134; Mortgage Insurance-Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Interest Rate; Mortgage Insurance-Rental Housing in Urban Renewal Areas is 14.139; Supplemental Loan Insurance-Multifamily Rental Housing is 14.151; Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects is 14.155.

Paperwork Reduction Act

This proposed rule reduces information collection requirements already submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development; Mortgage insurance; Reporting and recordkeeping requirements; Solar energy.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 220

Home improvement, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs-health, Loan programs-housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 235

Condominiums, Cooperatives, Grant programs-housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs-housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 241

Home improvement, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR parts 203, 207, 220, 221, 232, 235, 236, and 241 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, 1715u, 1717z–21 and 1735d; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 2. Revise § 203.400, to read as follows:

§ 203.400 Method of payment.

(a) If the application for insurance benefits is acceptable to the Commissioner, payment of the insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

(b) An insurance claim paid on a mortgage insured under section 223(e) of the National Housing Act shall be paid in cash from the Special Risk Insurance Fund.

■ 3. Revise § 203.476(g), to read as follows:

§ 203.476 Claim application and items to be filed.

* * * * *

(g) All property of the borrower held by the lender or to which it is entitled and, if the Commissioner elects to make payments in debentures, all cash held by the lender or to which it is entitled, including deposits made for the account of the borrower and which have not been applied in reduction of the principal loan indebtedness;

* * * * *

■ 4. Revise § 203.478(c), to read as follows:

§ 203.478 Payment of insurance benefits.

* * * * *

(c) *Method of payment.* Payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

* * * * *

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

■ 5. The authority citation for part 207 is revised to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1709(c)(1), 1713, 1715(b) and 1735d; 42 U.S.C. 3535(d).

■ 6. Amend § 207.259 by revising paragraph (a), to read as follows:

§ 207.259 Insurance Benefits.

(a) *Method of payment.* (1) Upon either an assignment of the mortgage to the Commissioner or a conveyance of the property to the Commissioner in accordance with requirements in § 207.258, payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

(2) An insurance claim paid on a mortgage insured under section 223(e) of the National Housing Act shall be paid in cash from the Special Risk Insurance Fund.

* * * * *

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT

■ 7. The authority citation for part 220 is revised to read as follows:

Authority: 12 U.S.C. 1713, 1715b, 1715k and 1735d; 42 U.S.C. 3535(d).

■ 8. Revise § 220.751(a), to read as follows:

§ 220.751 Cross-reference.

(a) All of the provisions of subpart B, part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 220 of the National Housing Act, except § 207.256b Modification of mortgage terms.

* * * * *

§ 220.760 [Removed]

■ 9. Remove § 220.760.

§ 220.822 [Amended].

■ 10. In § 220.822, remove and reserve paragraph (b).

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE—SAVINGS CLAUSE

■ 11. The authority citation for part 221 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715l and 1735d; 42 U.S.C. 3535(d).

§ 221.762 [Amended].

■ 12. In § 221.762, remove and reserve paragraph (a).

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES

■ 13. The authority citation for part 232 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715w, 1735d and 1735f–19; 42 U.S.C. 3535(d).

■ 14. Revise § 232.885(a), to read as follows:

§ 232.885 Insurance benefits.

(a) *Method of payment.* Payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

■ 15. The authority citation for part 235 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z and 1735d; 42 U.S.C. 3535(d).

■ 16. Revise § 235.215, to read as follows:

§ 235.215 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Secretary, the insurance claim shall be paid in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

■ 17. The authority citation for part 236 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–1 and 1735d; 42 U.S.C. 3535(d).

§ 236.265 [Amended].

■ 18. In § 236.265, remove and reserve paragraph (a).

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

■ 19. The authority citation for part 241 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–6 and 1735d; 42 U.S.C. 3535(d).

■ 20. Revise § 241.261, to read as follows:

§ 241.261 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits shall apply to multifamily loans insured under this subpart.

■ 21. Revise § 241.885(a), to read as follows:

§ 241.885 Insurance benefits.

(a) *Method of payment.* Payment of insurance claims shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

* * * * *

■ 22. Revise § 241.1205, to read as follows:

§ 241.1205 Payment of insurance benefits.

All the provisions of § 207.259 of this chapter relating to insurance benefits shall apply to an equity or acquisition loan insured under subpart F of this part.

Dated: January 15, 2015.

Biniam Gebre,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2015–03457 Filed 2–19–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

[Docket ID: OSM–2014–0003; S1D1S SS08011000 SX066A00067F 134S180110; S2D2S SS08011000 SX066A00 33F 13XS501520]

Petition To Initiate Rulemaking; Use of Explosives on Surface Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Decision on petition for rulemaking.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE or OSM), are announcing our final decision on a petition for rulemaking that was submitted by WildEarth Guardians. The petition requested that we revise our current regulations to prohibit visible nitrogen oxide clouds during blasting. The Director has decided to grant the petition in principle, and although we do not intend to propose the specific rule changes requested in the petition, will instead initiate a rulemaking to address this issue as discussed more fully below.

DATES: February 20, 2015.

ADDRESSES: Copies of the petition and other relevant materials comprising the administrative record of this petition are available for public review and copying at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252 SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joshua Rockwell, Division of Regulatory Support, 1951 Constitution Ave. NW., Washington, DC 20240; Telephone: 202–208–2633; Email: *jrockwell@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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IV. What comments did we receive and how did we address them?
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VI. Procedural Matters and Determinations

I. How does the petition process operate?

On April 18, 2014, we received a petition from WildEarth Guardians (petitioner) requesting that OSMRE promulgate rules to prohibit the production of visible nitrogen oxides (NO_X) emissions (including nitric oxide and nitrogen dioxide) during blasting at surface coal mining operations in order to protect the health, welfare, and safety of the public and of mine workers and to prevent injury to persons. WildEarth Guardians submitted this petition pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201(g), which provides that any person may petition the Director of OSMRE to initiate a proceeding for the issuance, amendment, or repeal of any regulation adopted under SMCRA. OSMRE adopted regulations at 30 CFR 700.12 to implement this statutory provision.

In accordance with our regulation at 30 CFR 700.12(c), we determined that WildEarth Guardians' petition set forth ''facts, technical justification and law'' establishing a ''reasonable basis'' for amending our regulations. Therefore, on

July 25, 2014, we published a notice in the **Federal Register** (79 FR 43326) seeking comments on whether we should grant or deny the petition. The comment period closed on September 25, 2014. One hundred nineteen persons submitted comments during the public comment period.

After reviewing the petition and public comments, the Director has decided to grant WildEarth Guardians' petition. Pursuant to 5 U.S.C. 553(e) and section 201(c)(2) of SMCRA, 30 U.S.C. 1211(c)(2), we plan to initiate rulemaking and publish a notice of proposed rulemaking with an appropriate public comment period. Although we are still considering the content of the proposed rule, we expect that it will contain clarifications to our regulations to ensure that operators and surface coal mining regulatory authorities protect people and property from toxic gases and fumes generated by blasting at surface mine sites. However, OSMRE does not intend to propose the petitioner's suggested rule language because the petitioner's language focused solely on nitrogen oxide emissions, instead of all blast-generated fumes and toxic gases.

II. What is the substance of the petition?

WildEarth Guardians' petition states: ''Too often, blasting at coal mines leads to the production of dangerous levels of nitrogen dioxide emissions, which are seen as orange to red clouds. These clouds of toxic gas represent significant threats to public health and welfare and must be curtailed to prevent injuries to persons as required by SMCRA.'' The petition requests that OSMRE amend our regulations at 30 CFR 816.67 (surface mining) and 817.67 (underground mining) to prohibit visible NO_X emissions during blasting and to require that the operator visually monitor all blasting activities and report all instances of visible emissions of NO_X to the regulatory authority. The petitioner asserts that exposure to low levels of NO_X gases may cause ''irritation of eyes, nose, throat, and lungs.'' According to the petitioner, exposure to high levels of NO_X gases may cause ''rapid burning, spasms, and swelling of the throat and upper respiratory tract issues, as well as death.''

In support of its petition, petitioner cites SMCRA section 102(a), 30 U.S.C. 1202(a), which lists one of SMCRA's goals as ''protect[ing] society and the environment from the adverse effects of surface coal mining operations,'' as well as SMCRA section 515(b)(15)(C)(i)–(ii), 30 U.S.C. 1265(b)(15)(C)(i)–(ii), which states that blasting activities should be limited in order to ''prevent injury to persons. . . and damage to public and private property outside the permit area.''

The petitioner asserts that revisions to our existing regulations are necessary to close a gap with regard to regulation of NO_X emissions. The petitioner requested that we ''remedy this regulatory gap and promulgate explicit and enforceable standards to ensure that when explosives are used at coal mining operations, emissions of nitrogen oxides are controlled to prevent injury to persons and to protect the general health, welfare, and safety of the public and mine workers.''

The petitioner suggested that we revise 30 CFR 816.67 and 817.67 by adding a new paragraph (f) to read:

> (1) Blasting shall be conducted so as to prevent visible emissions of nitrogen oxides, including nitrogen dioxide, and (2) The operator shall visually monitor all blasting activities (through the use of remote surveillance or other acceptable methods for detecting visible emissions) and within 24-hours report in writing any instances of visible emissions of nitrogen oxides to the regulatory authority.

III. What do our current regulations regarding the use of explosives require?

Our current regulations at 30 CFR 816.67 and 817.67 establish a framework for addressing the adverse effects associated with the use of explosives. Paragraph (a) of both sections mirrors the language in SMCRA section 515(b)(15)(C)(i)–(ii), 30 U.S.C. 1265(b)(15)(C)(i)–(ii). It states that blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area. The remaining paragraphs in 30 CFR 816.67 and 817.67 contain specific performance standards for airblast, flyrock, and ground vibration.

In addition, our regulation 30 CFR 843.11(a)(1)(i) requires that an inspector order the cessation of any surface coal mining and reclamation operations if an imminent danger to the health or safety of the public exists.

IV. What comments did we receive and how did we address them?

We received 119 comments on the petition for rulemaking. These comments can be divided into two major groups: Those in favor of the rulemaking (over two-thirds) and those opposed (less than one-third). The comments in favor of the petition generally came from citizens and groups that seek to protect the public and environment. In contrast, those comments opposed generally came from citizens, state regulatory authorities, and organizations related to the explosives, manufacturing, and mining industries.

Those in support of the petition were primarily concerned that our current regulations do not provide for adequate protection from fumes generated by blasting, including, but not limited to, NO_X fumes. Additionally, some of these commenters alleged that not all of the state regulatory authorities are willing to regulate toxic gases produced during blasting. These commenters contend that the lack of regulation by some state regulatory authorities is due to OSMRE's regulatory silence on the specific issue of NO_X emissions.

The comments received from those opposed to the rulemaking expressed concern that the petitioner's suggested rule language would create, ''an unlawful, unnecessary, and unattainable emissions standard under OSMRE's federal regulatory program'' that would effectively prevent operators from coal mining altogether. Several of the comments opposing the petition referred to *In re Permanent Surface Min. Regulation Litig. I, Round II,* 1980 U.S. Dist. LEXIS 17660 at *43–44 (D.D.C., May 16, 1980), which held that we could not regulate fugitive dust from blasting. These commenters contend that this precedent prevents OSMRE from regulating visible NO_X clouds produced by blasting. In addition, the commenters opposing the petition noted that SMCRA and the implementing regulations already contain adequate protection from the effects of blasting; as support for this position, they cite primarily to section 515 of SMCRA, 30 CFR 780.13, 816.61–816.68, 817.61–817.68, part 842, and part 850, as well as the equivalent provisions in the state regulatory programs.

V. What is the Director's decision?

After reviewing the petition and supporting materials, and after careful consideration of all comments received, the Director has decided to grant the petition. However, we do not plan to propose adoption of the specific regulatory changes suggested by the petitioner. Instead, we intend to propose regulatory changes to ensure that operators and regulatory authorities prevent injury to people and damage to property from any harm that could result from *all* toxic gases generated by blasting at coal mines, including NO_X and carbon monoxide (CO).

It is undisputed that when blasting is not properly conducted, it can cause damage to property and injury to people. Despite this fact, during our evaluation of the petition and the comments, we discovered that there is a difference in how the state regulatory

authorities are addressing toxic fumes generated by blasting. Some, but not all, state regulatory authorities have taken permitting or enforcement actions in response to toxic fumes released during blasting. Others, however, are hesitant to act because they believe our regulations, as currently written, are ambiguous as to whether and how toxic gases should be controlled. Likewise, while a number of mine operators and blasters recognize the dangers posed by toxic gases from blasting and take precautions to manage the risks, many do not. We have concluded that the current silence in our regulations on toxic gases released during blasting is no longer acceptable and only perpetuates the disparities between the various practices of the state regulatory authorities. In light of these findings, OSMRE intends to propose a number of changes to our regulations. We plan to propose a definition of ''blasting area'' to help ensure that the areas affected by blasting are properly secured and that the public is adequately protected. We also intend to specify that toxic gases are one of the dangers posed by blasting. We anticipate clarifying that 30 CFR 816.67(a) and 817.67(a) require the proper management of toxic blasting gases in order to protect people and property from the adverse effects of coal mining. Lastly, we expect to propose amendments to the training and testing requirements for certified blasters at 30 CFR 850.13 to ensure that blasters can identify and mitigate the impacts of blast fumes.

We believe that revisions to our regulations, such as those described above, will better (1) ensure a level playing field as described in section 101(g) of SMCRA, 30 U.S.C. 1201(g), which specifies that national standards are essential in order to ensure ''that competition in interstate commerce among sellers of coal produced in different States will not be used to undermine the ability of the several States to improve and maintain adequate standards on coal mining operations within their borders;'' and, most importantly, (2) prevent harm to people and property from blasting associated with surface coal mining operations.

VI. Procedural Matters and Required Determinations

This notice is not a proposed or final rule, policy, or guidance. Therefore, it is not subject to the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, or Executive Orders 12866, 13563, 12630, 13132, 12988, 13175, and 13211. We will conduct the analyses required by these laws and executive orders when we develop a proposed rule.

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554, section 15).

This notice is not subject to the requirement to prepare an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C), because no proposed action, as described in 40 CFR 1508.18(a) and (b), yet exists. This notice only announces the Director's decision to grant the petition and initiate rulemaking. We will prepare the appropriate NEPA compliance documents as part of the rulemaking process.

Dated: February 3, 2015.

Joseph G. Pizarchik,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2015–03407 Filed 2–19–15; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0504; FRL–9921–43–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; VOM Definition

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Illinois State Implementation Plan. The revision amends the Illinois Administrative Code by updating the definition of volatile organic material or volatile organic compound to exclude additional compounds. This revision is in response to EPA rulemakings in 2013 which exempted these chemical compounds from the Federal definition of volatile organic compounds because, in their intended uses, the compounds have a negligible contribution to tropospheric ozone formation.

DATES: Comments must be received on or before March 23, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0504, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: Aburano.Douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Section Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *Aburano.Douglas@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located

in the Rules section of this **Federal Register**.

Dated: December 30, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–03451 Filed 2–19–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0554; FRL–9923–17–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Emissions Inventories for the Dallas-Fort Worth and Houston-Galveston-Brazoria Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas State Implementation Plan (SIP) submitted to meet Emissions Inventory (EI) requirements of the Clean Air Act (CAA) for the Dallas-Fort-Worth (DFW) and the Houston-Galveston-Brazoria (HGB) nonattainment areas. EPA is proposing to approve the SIP revisions because they satisfy the CAA EI requirements for the DFW and HGB nonattainment areas under the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is proposing to approve the revisions pursuant to section 110 and part D of the CAA and EPA's regulations.

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

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Nevine Salem, (214) 665–7222, *salem.nevine@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 9, 2015.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2015–03448 Filed 2–19–15; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 80, No. 34

Friday, February 20, 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 COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD77

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; availability of joint state/tribal hatchery plans and request for comment.

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife and the Jamestown S'Klallam Tribe have submitted three Hatchery and Genetic Management Plans, to be considered jointly, to NMFS pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the 4(d) Rule for salmon and steelhead promulgated under the Endangered Species Act (ESA). The plans specify the propagation of three species of salmon in the Dungeness River watershed of Washington State. This document serves to notify the public of the availability for comment of the proposed evaluation of the Secretary of Commerce (Secretary) as to whether implementation of the joint plan will appreciably reduce the likelihood of survival and recovery of ESA-listed Puget Sound Chinook salmon and Puget Sound steelhead.

This notice further advises the public of the availability for review of a draft Environmental Assessment of the effects of the NMFS determination on the subject joint plans.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on March 23, 2015.

ADDRESSES: Written comments on the proposed evaluation and pending determination should be addressed to the NMFS Sustainable Fisheries Division, 510 Desmond Dr., Suite 103, Lacey, WA 98503. Comments may be submitted by email. The mailbox address for providing email comments is: *DungenessHatcheries.wcr@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Dungeness River hatchery programs. Comment may also be sent via facsimile (fax) to (360) 753–9517.

FOR FURTHER INFORMATION CONTACT: Tim Tynan at (360) 753–9579 or email: *tim.tynan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened, naturally produced and artificially propagated Puget Sound.

Steelhead (*O. mykiss*): Threatened, naturally produced and artificially propagated Puget Sound.

Chum salmon (*O. keta*): Threatened, naturally produced and artificially propagated Hood Canal summer-run.

Bull trout (*Salvelinus confluentus*): Threatened Puget Sound/Washington Coast.

The Jamestown S'Klallam Tribe and the WDFW have submitted to NMFS plans for three jointly operated hatchery programs in the Dungeness River basin. The plans were submitted in January 2013, pursuant to limit 6 of the 4(d) Rule for the listed Puget Sound Chinook salmon evolutionarily significant unit (ESU) and listed Puget Sound steelhead distinct population segment (DPS). The plans reflect refinements of existing plans provided previously and evaluated pursuant to the 4(d) Rule. The hatchery programs release ESA-listed Chinook salmon and non-listed coho and fall-run pink salmon into the Dungeness River watershed. All three programs release fish native to the Dungeness River basin. All of the programs are currently operating.

As required by the ESA 4(d) Rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005), the Secretary is seeking public comment on her pending determination as to whether the joint plans for hatchery programs in the Dungeness River would appreciably reduce the likelihood of survival and recovery of the ESA-listed Puget Sound salmon and steelhead.

Under section 4(d) of the ESA, the Secretary is required to adopt such regulations as she deems necessary and advisable for the conservation of species listed as threatened. NMFS has issued a final ESA 4(d) Rule for salmon and steelhead, adopting in Limit 6 regulations necessary and advisable to harmonize statutory conservation requirements with tribal rights and the Federal trust responsibility to tribes (50 CFR 223.209).

This 4(d) Rule applies the prohibitions enumerated in section 9(a)(1) of the ESA. NMFS did not find it necessary and advisable to apply the take prohibitions described in section 9(a)(1)(B) and 9(a)(1)(C) to artificial propagation activities if those activities are managed in accordance with a joint plan whose implementation has been determined by the Secretary to not appreciably reduce the likelihood of survival and recovery of the listed salmonids. As specified in limit 6 of the 4(d) Rule, before the Secretary makes a decision on the joint plan, the public must have an opportunity to review and comment on the pending determination.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as she deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) Rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 6 of the updated 4(d) Rule (50 CFR 223.203(b)(6)) further provides that the prohibitions of paragraph (a) of the updated 4(d) Rule (50 CFR 223.203(a)) do not apply to activities associated with a joint state/tribal artificial propagation plan provided that the joint plan has been determined by NMFS to be in accordance with the salmon and steelhead 4(d) Rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005).

Dated: February 13, 2015.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–03499 Filed 2–19–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD766

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NMFS, National Oceanic and Atmospheric Administration, NOAA, Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council's District Advisory Panels (DAPs) for Puerto Rico, St. Croix and St. Thomas, USVI, will hold meetings.

DATES AND ADDRESSES: The meetings will be held on the following dates and locations:

Puerto Rico DAP: March 11, 2015, from 1 p.m. to 5 p.m., and March 12, 2015, from 9 a.m. to 4 p.m., at the Verdanza Hotel, Tartak St., Isla Verde, Puerto Rico.

St. Croix, USVI DAP: March 16, 2015, from 1 p.m. to 5 p.m., and March 17, 2015, from 9 a.m. to 4 p.m., at the Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, USVI.

St. Thomas, USVI DAP: March 18, 2015, from 1 p.m. to 5 p.m., and March 19, 2015, from 9 a.m. to 4 p.m., at the Windward Passage Hotel, Charlotte Amalie, St. Thomas, USVI.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION:

The DAPs will meet to discuss the items contained in the following agenda:

—Call to Order;
—Adoption of Agenda;
—Welcome;
—Role of the District Advisory Panel;
—Brief Description of Robert's Rules;
—Review and Comments on the Species Criteria Development by SSC, SEFSC and SERO for the CFMC;
—Alternatives to the Timing for Implementation of Accountable Measures;
—Other Business.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: February 17, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–03531 Filed 2–19–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD765

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council's (CFMC) Outreach and Education Advisory Panel (OEAP) will meet.

DATES: The meeting will be held on March 10, 2015, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at CFMC Office, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The OEAP will meet to discuss the items contained in the following agenda:

March 10, 2015, 9 a.m.–5 p.m.

- Call to Order
- Adoption of Agenda
- OEAP Chairperson's Report:
  - OEAP Members
  - Status of:
    - Island-based FMPs
    - Newsletter
    - Web site
    - 2016 Calendar
    - CFMC Brochure
    - USVI activities: ''Marine Outreach & Education USVI Style''
    - Final Report: Development of Visual Aids to Identify Changes in the Essential Fish Habitats of Some Species in FMPs' Management Units
    - PR Commercial Fisheries Project (PEPCO)—Helena Antoune
    - MREP-Caribbean: Puerto Rico Workshop—Helena Antoune
  - Other Business

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: February 17, 2015.

Tracey L. Thompson,

Acting Deputy Director,Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–03530 Filed 2–19–15; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: Effective Date: 3/23/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 12/05/2014 (79 FR 72171), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of

qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is 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 organization that will provide the service to the Government.
2. The action will result in authorizing a small entity to provide the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

SERVICE

SERVICE TYPE: Custodial Service
SERVICE IS MANDATORY FOR:
U.S. Navy, Naval Air Station Oceana and Naval Auxiliary Landing Field Fentress, U.S. Navy, Dam Neck Annex, 1750 Tomcat Boulevard, Virginia Beach, VA
U.S. Navy, Naval Weapons Station, U.S. Navy, Cheatham Annex, 160 Main Road, Yorktown, VA
U.S. Navy, Norfolk Naval Shipyard and St. Juliens Creek Annex, Cassin Ave. and Hitchcock Street, Portsmouth, VA
MANDATORY SOURCE OF SUPPLY: Didlake, Inc., Manassas, VA
CONTRACTING ACTIVITY: Department of the Navy, Naval Facilities Engineering Command, Mid-Atlantic, Norfolk, VA

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2015–03529 Filed 2–19–15; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, February 27, 2015.

PLACE: Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Natise Allen,

Executive Assistant.

[FR Doc. 2015–03601 Filed 2–18–15; 4:15 pm]

BILLING CODE 6351–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting (amended meeting date).

SUMMARY: EAC is amending the original Sunshine Notice that published on February 6, 2015. Due to an inclement weather forecast, EAC postponed the public meeting that was originally scheduled for Wednesday, February 18, 2015. The public meeting has been rescheduled for Tuesday, February 24, 2015, 10:00 a.m.–1:00 p.m.; U.S. Election Assistance Commission; 1335 East West Highway, EAC Office; Silver Spring, MD, 20910. The EAC public meeting agenda items remain the same.

DATES: Tuesday, February 24, 2015, 10:00 a.m.–1:00 p.m. EST.

ADDRESSES: U.S. Election Assistance Commission, 1335 East West Highway (EAC Office), Silver Spring, MD 20910, (Metro Stop: Silver Spring on the Red Line).

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (301) 563–3961.

SUPPLEMENTARY INFORMATION:

AGENDA ITEMS TO BE DISCUSSED:

- Selection of Chair and Vice-Chair
- Accreditation Decision for Pro V&V
- Briefing and Discussion of Voluntary Voting Systems Guidelines (VVSG 1.1)
- Briefing and Discussion of Program Manuals
- Discussion and Consideration of Roles and Responsibilities Document

Commissioners will meet to select a chair and vice-chair and to discuss the following items: Accreditation Decision for Pro V&V; Briefing and Discussion of Voluntary Voting Systems Guidelines (VVSG 1.1); Briefing and Discussion of Program Manuals; and Discussion and Consideration of Roles and Responsibilities Document. As stated in the original notice, members of the public who wish to speak at the meeting on proposed changes to the Voluntary Voting Systems Guidelines VVSG 1.1 were requested to send a request to participate to the EAC no later than 5:00 p.m. EDT on Thursday, February 12, 2015.

STATUS: This meeting will be open to the public.

Dated: February 18, 2015.

Bryan Whitener,

Director of Communications & Clearinghouse.

[FR Doc. 2015–03608 Filed 2–18–15; 4:15 pm]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2015–0120; FRL–9922–99]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA) to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN); an application for a test marketing exemption (TME), both pending and/or expired; and a periodic status report on any new chemicals under EPA review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document covers the period from December 1, 2014 to December 31, 2014.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before March 23, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0120, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *Rahai.Jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This document provides receipt and status reports, which cover the period from December 1, 2014 to December 31, 2014, and consists of the PMNs and TMEs both pending and/or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. What is the Agency's authority for taking this action?

Section 5 of TSCA requires that EPA periodical publish in the **Federal Register** receipt and status reports, which cover the following EPA activities required by provisions of TSCA section 5.

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals.

IV. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—42 PMNS RECEIVED FROM 12/1/14 TO 12/31/14

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–15–0131 ...	12/8/2014	3/8/2015	CBI	(G) Used in water soluble films ... Used for paper coatings.	(G) Polymer of acetic acid ethenyl ester with pyrrolidone, partially and fully hydrolized.
P–15–0132 ...	12/9/2014	3/9/2015	CBI	(G) Polyester polyol component in a 2K Solventle SS PU system.	(G) Adipic acid, polymer with benzenedicarboxylic acids and alkanediols.
P–15–0133 ...	12/9/2014	3/9/2015	Colonial Chemical, Inc	(G) Emulsifier	(S) Propanaminium, 2,3-dihydroxy-*N,N*-Dimethyl-*N*-(coconut-alkyl)-, 3-sodium hydrogen phosphate ester, chloride*.
P–15–0134 ...	12/10/2014	3/10/2015	Cardolite Corporation	(G) Cashew nutshell liquid based, Solvent free, 100% Solids epoxy hardener for Higher solids epoxy formulations.	(G) Cashew nutshell liquid polymer with formaldehyde and amines.
P–15–0135 ...	12/10/2014	3/10/2015	Cardolite Corporation	(G) Cashew nutshell liquid based, 100% Solids Epoxy Hardener for Higher solids epoxy coating formulation.	(G) Cashew nutshell liquid polymer with formaldehyde and amines.

TABLE I—42 PMNS RECEIVED FROM 12/1/14 TO 12/31/14—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–15–0136	12/11/2014	3/11/2015	CBI	(G) Polymer	(G) Alkylalkenoic acid copolymer.
P–15–0137	12/11/2014	3/11/2015	Allnex USA Inc	(S) Stain blocking primer for architectural coatings.	(G) Fatty acids, polymers with substituted carbomonocycle, substituted heteromonocycle, and alkylamine, substituted alkanoic acid (salts).
P–15–0138	12/11/2014	3/11/2015	CBI	(S) Byproduct used for metals recovery.	(G) Titanium complex.
P–15–0139	12/15/2014	3/15/2015	CBI	(S) Flowback aid in oil and gas applications.; surfactant for use in cleaning products.; surfactant for use in liquid soaps.; surfactant for use in agricultural/crop applications.	(G) D-Glucitol derivative.
P–15–0140	12/15/2014	3/15/2015	CBI	(S) Flowback aid in oil and gas applications.; surfactant for use in cleaning products.; surfactant for use in liquid soaps.; surfactant for use in agricultural/crop applications.	(G) D-Glucitol derivative.
P–15–0141	12/15/2014	3/15/2015	CBI	(S) Flowback aid in oil and gas applications.; surfactant for use in cleaning products.; surfactant for use in liquid soaps.; surfactant for use in agricultural/crop applications.	(G) D-Glucitol derivative.
P–15–0142	12/15/2014	3/15/2015	CBI	(S) Flowback aid in oil and gas applications surfactant for use in cleaning products.; surfactant for use in liquid soaps.; surfactant for use in agricultural/crop applications.	(G) D-Glucitol derivative.
P–15–0143	12/12/2014	3/12/2015	CBI	(G) Component for Metal-Organic Frameworks.	(G) Metallic salt of aromatic carboxylic acids.
P–15–0144	12/15/2014	3/15/2015	CBI	(G) Polymer coating	(G) Polyaromatic amine.
P–15–0145	12/15/2014	3/15/2015	CBI	(G) Coating agent	(G) Substituted Naphthopyran.
P–15–0146	12/16/2014	3/16/2015	CBI	(G) Coating agent	(G) Substituted Naphthopyran.
P–15–0147	12/16/2014	3/16/2015	CBI	(G) Coating agent	(G) Substituted Naphthopyran.
P–15–0148	12/16/2014	3/16/2015	CBI	(G) Coating agent	(G) Substituted Naphthopyran.
P–15–0149	12/17/2014	3/17/2015	CBI	(G) Down well additive	(G) Sulfonated alkylbenzene salts.
P–15–0150	12/17/2014	3/17/2015	Mitsui Chemicals America, Inc.	(G) Contained use	(G) Cyclohexanedicarboxylic acid, dialkyl ester.
P–15–0151	12/18/2014	3/18/2015	CBI	(S) Ultraviolet (UV)-curable ingredient in coating formulation that is applied to various ridged plastic substrates.	(G) Co-polymer of styrene and acrylic esters, propenoate.
P–15–0152	12/18/2014	3/18/2015	CBI	(G) Cured coatings and inks	(G) Urethane acrylate.
P–15–0153	12/18/2014	3/18/2015	CBI	(G) Processing aid for vegetable oil refining for production of biofuel.	(S) Phosphatidylcholine-2-aclhydrolase.
P–15–0154	12/18/2014	3/18/2015	CBI	(G) Textile treatment	(G) Fluoroalkyl acrylate copolymer.
P–15–0155	12/18/2014	3/18/2015	CBI	(S) A non dispersive catalysis used in the formulation of inks and toners.	(S) TRI-.MU.-(2-ethylhexanoat O-O)-Bis (*N,N',N''*-Trimethyl-1,4,7-triazacyclononane-*N,N',N''*) dimanganese*.
P–15–0156	12/19/2014	3/19/2015	3M Company	(S) Reactive polymer in 2 part epoxy adhesive.	(G) Amine modified epoxy resin.
P–15–0157	12/19/2014	3/19/2015	CBI	(G) Copolyester resin for priming and heat sealing.	(G) Polymer with Benzenedicarboxylic acids and Alkanediols.

TABLE I—42 PMNS RECEIVED FROM 12/1/14 TO 12/31/14—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–15–0158	12/22/2014	3/22/2015	CBI	(G) Printing additive	(G) Carbomonocyclic tricarboxylic acid, polymer with Carbomonocyclic dicarboxylic acid, alkanedioic acids, alkanediols, substituted Carbomonocycle, alkyl alkenoate, alkanediols and alkenoic acid, alkyll ester, alkanoate, alkyl peroxide-initiated.
P–15–0159	12/22/2014	3/22/2015	CBI	(G) Printing additive	(G) Carbomonocyclic tricarboxylic acid, polymer with carbomonocyclic dicarboxylic acid, alkanedioic acids, alkanedioll, alkanedioic acid, alkanediol, substituted carbomonocycle, alkyl alkanoate, alkanedioic acid, alkanediols and alkanoic acid, alkyl ester, alkanoate, alkyl peroxide-initiated.
P–15–0160	12/22/2014	3/22/2015	CBI	(G) Printing Additive	(G) Alkyl dicarboxylic acids, polymers with alkenoic acid, alkyl alkenoate, alcohols, alkyl alkenoate and substituted carbomonocycle, alkyl peroxideinitiated.
P–15–0162	12/22/2014	3/22/2015	CBI	(G) Printing additive	(G) Alkyl dicarboxylic acids, polymers with alcohols.
P–15–0163	12/22/2014	3/22/2015	CBI	(G) Printing additive	(G) Carboxypolyalkylene resin, oxidized, polymer with alkenoic acid, alkyl alkenoate, alkenedioic acid, polyalkylene glycol substituted dicarbomonocycle, substituted carbomonocycle, carbomonocyclic dicarboxylic acid and anhydride, alkyl peroxide-initiated.
P–15–0164	12/23/2014	3/23/2015	CBI	(G) Additive	(G) Cyclic peptide derivative.
P–15–0164	12/23/2014	3/23/2015	CBI	(G) Additive	(G) Nitrilo cyclotetracosine.
P–15–0165	12/23/2014	3/23/2015	CBI	(G) Fragrance ingredient for use in fragrances for soaps, detergents, cleaners and other personal care & household products.	(G) Octahydro-4,7-methano-1*H*-indene propanal (isomer mix).
P–15–0166	12/29/2014	3/29/2015	CBI	(G) Binder resin; open non-dispersive use.	(G) Polyester resin.
P–15–0168	12/29/2014	3/29/2015	CBI	(S) Fragrance for fabric softener	(S) 2-Heptanol, 3,6-dimethyl-.
P–15–0168	12/29/2014	3/29/2015	CBI	(S) Fragrance for dishwashing detergent.	(S) 2-Heptanol, 3,6-dimethyl-.
P–15–0168	12/29/2014	3/29/2015	CBI	(S) Fragrance for other household products (ex. All purpose cleaners, bathroom cleaners, kitchen cleaners, toilet cleaners).	(S) 2-Heptanol, 3,6-dimethyl-.
P–15–0168	12/29/2014	3/29/2015	CBI	(S) Fragrance for laundry detergent.	(S) 2-Heptanol, 3,6-dimethyl-.
P–15–0169	12/30/2014	3/30/2015	CBI	(G) Ingredient for metal coating	(G) Polyurea.
P–15–0170	12/31/2014	3/31/2015	CBI	(G) Monomer in resin manufacture for coatings use.	(S) Neononanoic acid, 2-oxiranylmethyl ester*.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE II— 28 NOCS RECEIVED FROM 12/01/14 TO 12/31/14

Case no.	Received date	Commencement notice end date	Chemical
P–14–0823	12/8/2014	12/6/2014	(G) Formaldehyde, polymer with substituted carbomonocycle, alkyl ether.
P–14–0820	12/8/2014	12/7/2014	(G) Formaldehyde, polymer with substituted carbomonocycles, alkyl ether.
P–14–0740	12/8/2014	12/8/2014	(S) D-Glucopyranose, oligomeric, c10-16-alkyl glycosides, polymers with 1,3-dichloro-2-propanol*.
P–14–0741	12/9/2014	11/16/2014	(S) Siloxanes and silicones, di-me, me3-[2-[(1-oxo-2-propen-1-yl)oxy]ethoxy]propyl, [[Dimethyl[3-[2-[(1-oxo-2-propen-1-yl)Oxy]ethoxy]Propyl]silyl]oxy]-terminated, polymers with chlorotrimethylsilane-iso-pr alc.-sodium silicate reaction products*.
P–13–0317	12/9/2014	12/2/2014	(G) Polyetherester.
P–13–0908	12/9/2014	12/2/2014	(G) Polyether polyester Urethane Phosphate.
P–14–0760	12/9/2014	12/4/2014	(G) Styrene-methacrylate copolymer.
P–11–0549	12/9/2014	12/9/2014	(S) 2-Butene, 1,1,1,4,4,4-hexafluoro-, (2z)-*.
P–14–0667	12/10/2014	11/18/2014	(G) Aromatic carboxylic acid.
P–14–0729	12/10/2014	11/21/2014	(G) Carboxylated nitrile rubber.
P–14–0668	12/10/2014	11/26/2014	(G) Aromatic carboxylic acid salt.
P–14–0543	12/10/2014	12/3/2014	(S) Benzoic acid, 2-([1,1′-biphenyl]-4-ylcarbonyl)-*.
P–14–0664	12/11/2014	11/19/2014	(G) 2-Propenoic acid, telomer with alkanediol mono-2-propenoate and sodium phosphinate (1:1), ammonium salt.
P–10–0364	12/11/2014	11/24/2014	(G) Bisphospite nickel cyanoalkyl complex.
P–14–0651	12/11/2014	12/8/2014	(G) Methylenediphenyl diisocyanate (MDI) prepolymer.
P–14–0582	12/12/2014	11/25/2014	(S) Siloxanes and silicones, di-me, bu group- and 3-(2-hydroxyethoxy)propyl group-terminated*.
P–14–0652	12/16/2014	11/19/2014	(G) Perfluoropolyether allyl ether.
P–14–0376	12/16/2014	11/26/2014	(G) Vegetable oil fatty acid, compds. With ethenyl heterocycle -2-ethylhexyl acrylate-2-hydroxyethyl methacrylate- polyalkylene ether methacrylate me ether.
P–14–0438	12/16/2014	12/4/2014	(G) Trialkyl substituted carboxylic acid, mixed esters with alkyl substituted carboxylic acid and polyol.
P–14–0752	12/16/2014	12/4/2014	(G) Acid salts, compounds With [(aminoalkyl)imino]bis[alcohol]-epoxy-cycloalkylamine-polymer-dialcoholamine reaction products.
P–14–0702	12/17/2014	11/21/2014	(G) Perfluoropolyether compound.
P–14–0287	12/17/2014	12/12/2014	(G) Butanedioic acid, mono(mixed hexadecen-1-yl and polyisobutylene) derivs., alkyl esters.
P–14–0633	12/18/2014	11/24/2014	(G) Fatty acids, tall-oil, reaction products.
P–14–0748	12/18/2014	11/24/2014	(G) Alkylpolyglycol ether phosphate ester.
P–14–0778	12/19/2014	12/18/2014	(G) Polyethylene glycol alkyl ethers.
P–14–0267	12/22/2014	11/7/2014	(S) Poly(oxy-1,2-ethanediyl), -[[(3-Isocyanatomethylphenyl)amino]carbonyl]—methoxy-*.
P–13–0866	12/22/2014	12/18/2014	(S) Oils, Aquilaria crassna*.
P–14–0058	12/29/2014	12/9/2014	(G) Alkylphosphinic acid.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit III. To access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: February 11, 2015.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2015–03460 Filed 2–19–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9019–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements Filed 02/09/2015 Through 02/13/2015 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20150035, Final EIS, FHWA, TX, US 69/Loop 49 North Lindale Reliever Route, from IH 20 Southwest of Lindale to US 69 North of Lindale, Review Period Ends: 03/23/2015, Contact: Vernon Webb 903–510–9296.

EIS No. 20150036, Second Final Supplement, BOEM, AK, Chukchi Sea Planning Area, Oil and Gas Lease, Sale 193, Review Period Ends: 03/23/2015, Contact: Tim Holder 703–787–1744.

EIS No. 20150037, Draft EIS, USFS, OR, Granite Creek Watershed Mining Project, Comment Period Ends: 04/06/2015, Contact: Sophia Millar 541–263–1735.

EIS No. 20150038, Final EIS, USFS, ID, Crooked River Valley Rehabilitation Project, Review Period Ends: 04/13/2015, Contact: Jennie Fischer 208–983–4048.

EIS No. 20150039, Draft EIS, USACE, TX, Lower Bois D'Arc Creek Reservoir, Comment Period Ends: 04/21/2015, Contact: Andrew Commer 918–669–7400.

EIS No. 20150040, Final EIS, USFWS, ID, Deer Flat National Wildlife Refuge Comprehensive Conservation Plan, Review Period Ends: 03/23/2015, Contact: Annette de Knijf 208–467–9278.

Amended Notices

EIS No. 20150028, Final EIS, USFS, ID, Clear Creek Integrated Restoration Project, Review Period Ends: 03/16/2015, Contact: Lois Hill 208–935–4258. Revision to FR Notice Published 02/13/2015; Correction to Agency Contact Phone Number should be 208–935–4258.

EIS No. 20150034, Final EIS, USACE, OR, Double-crested Cormorant

Management Plan to Reduce Predation of Juvenile Salmonids in the Columbia River Estuary, Review Period Ends: 03/16/2015, Contact: Robert Winters 503–808–4738. Revision to FR Notice Published 02/13/2015; Correction to Document Status should be Final EIS.

Dated: February 17, 2015.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015–03524 Filed 2–19–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9922–98–Region 6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; Lucite International, Inc. Beaumont Site, Nederland, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the land disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to Lucite International, Inc. for two Class I hazardous injection wells located at their Beaumont site located in Nederland, TX. The company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by Lucite, of the specific restricted hazardous wastes identified in this exemption reissuance, into Class I hazardous waste injection wells WDW–100 & 101 until December 31, 2030, unless EPA moves to terminate this exemption. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. A public notice was issued December 18, 2014. The public comment period closed on February 2, 2015. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

DATES: This action is effective as of February 5, 2015.

ADDRESSES: Copies of the petition reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: February 5, 2015.

William K. Honker,

Director, Water Quality Protection Division.

[FR Doc. 2015–03463 Filed 2–19–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, February 17, 2015, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

The meeting was held by telephone.

Dated: February 17, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–03605 Filed 2–18–15; 4:15 pm]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0349]

Investigating and Reporting Adverse Reactions Related to Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Investigating and Reporting Adverse Reactions Related to Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) Regulated Solely Under Section 361 of the Public Health Service Act and 21 CFR part 1271'' dated February 2015. The draft guidance document is intended to provide manufacturers of human cells, tissues, and cellular and tissue-based products (HCT/Ps) for which no premarket submissions are required because they are not also regulated as drugs, devices, and/or biological products, with recommendations for complying with the requirements for investigating and reporting adverse reactions involving communicable disease in recipients of these HCT/Ps. The draft guidance, when finalized, is intended to supplement section XXII of FDA's guidance entitled ''Guidance for Industry: Current Good Tissue Practice (CGTP) and Additional Requirements for Manufacturers of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)'' dated December 2011 and supersede the guidance entitled ''Guidance for Industry: MedWatch Form FDA 3500A: Mandatory Reporting of Adverse Reactions Related to Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)'' dated November 2005.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 21, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–7800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lori J. Churchyard, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Investigating and Reporting Adverse Reactions Related to Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) Regulated Solely Under Section 361 of the Public Health Service Act and 21 CFR part 1271'' dated February 2015. The draft guidance document is intended provide manufacturers of HCT/Ps, with recommendations for complying with the requirements for investigating and reporting adverse reactions involving communicable disease in recipients of HCT/Ps that are regulated solely under section 361 of the Public Health Service Act (42 U.S.C. 264) and 21 CFR part 1271 (361 HCT/Ps).

The draft guidance, when finalized, is intended to supplement section XXII of FDA's guidance entitled ''Guidance for Industry: Current Good Tissue Practice (CGTP) and Additional Requirements for Manufacturers of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)'' dated December 2011 by providing additional recommendations specific to the responsibilities to investigate complaints of adverse reactions concerning 361 HCT/Ps under §§ 1271.160(b)(2), 1271.320 and 1271.350(a)(1).

The draft guidance, when finalized, is intended to supersede the guidance entitled ''Guidance for Industry: MedWatch Form FDA 3500A: Mandatory Reporting of Adverse Reactions Related to Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)'' dated November 2005. The guidance will provide updated information specific to reporting adverse reactions related to HCT/Ps to supplement the general instructions accompanying the MedWatch mandatory reporting form, Form FDA 3500A.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

The draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 1271 have been approved under OMB control number 0910–0543 and OMB control number 0910–0291.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–03490 Filed 2–19–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than April 21, 2015.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail to the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Radiation Exposure Screening and Education Program OMB No. 0915–xxxx—New.

Abstract: The Radiation Exposure Screening and Education Program (RESEP) is authorized by section 417C of the Public Health Service Act (42 U.S.C. 285a–9). The purpose of RESEP is to assist individuals who live (or lived) in areas where U.S. nuclear weapons testing occurred and who are

diagnosed with cancer and other radiogenic diseases caused by exposure to nuclear fallout or nuclear materials such as uranium. RESEP funds support eligible health care organizations in implementing cancer screening programs; developing education programs; disseminating information on radiogenic diseases and the importance of early detection; screening eligible individuals for cancer and other radiogenic diseases; providing appropriate referrals for medical treatment; and facilitating documentation of Radiation Exposure Compensation Act (RECA) claims.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62). These measures cover the principal topic areas of interest to the Federal Office of Rural Health Policy, including: (a) Demographics for the RESEP program medical user patient population; (b) medical screening activities for cancers and other radiogenic diseases; (c) exposure and presentation types for eligible radiogenic malignant and non-malignant diseases; (d) referrals for appropriate medical treatment; (e) eligibility counseling and referral assistance for the RECA and Energy Employees Occupational Illness Compensation Act programs; and (f) program outreach and education activities. These measures will speak to the Office's progress toward meeting the goals set.

Likely Respondents: Radiation Exposure Screening and Education Program award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to: (1) Review instructions; (2) 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; (3) train personnel and to be able to respond to a collection of information; (4) search data sources; to complete and review the collection of information; and (5) transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Radiation Exposure Screening and Education Program Performance Measures	50	1	50	24	1,200
Total	50	1	50	24	1,200

HRSA specifically requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–03526 Filed 2–19–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than March 23, 2015.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The Secretary's Discretionary Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment Surveys OMB No. 0906–xxxx—New.

Abstract: The purpose of the public health system assessment surveys is to inform the Secretary's Discretionary Advisory Committee on Heritable Disorders in Newborns and Children (Committee) on the ability to add newborn screening for particular conditions within a state, including the feasibility, readiness, and overall capacity to screen for a new condition.

The Committee was established under the Public Health Service Act, 42 U.S.C. 217a: Advisory Councils or Committees. This Committee fulfills the functions previously undertaken by the former Secretary's Advisory Committee on Heritable Disorders in Newborns and Children, established under section 1111 of the Public Health Service Act (PHS), 42 U.S.C. 300b–10, as amended in the Newborn Screening Saves Lives Act of 2008. The Committee is governed by the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees. The purpose of the Committee is to provide the Secretary with recommendations, advice, and technical information regarding the most appropriate application of technologies, policies,

guidelines, and standards for: (a) Effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders; and (b) enhancing the ability of state and local health agencies to provide for newborn and child screening, counseling, and health care services for newborns and children having, or at risk for, heritable disorders. Specifically, the Committee makes systematic evidence-based recommendations on newborn screening for conditions that have the potential to change the health outcomes for newborns.

The Committee tasks an external workgroup to conduct systematic evidence based reviews. The reviews are of rare, genetic conditions and their corresponding newborn screening test(s), confirmatory test(s), and treatment(s). Reviews also include an analysis of the benefits and harms of newborn screening for a selected condition at a population level and an assessment of state public health newborn screening programs' ability to implement the screening of a new condition.

Need and Proposed Use of the Information: HRSA proposes that the data collection surveys be administered by the Committee's external Condition Review Workgroup to all state newborn screening programs in the United States up to twice a year for two conditions. The surveys were developed to capture the following: (1) The readiness of state public health newborn screening programs to expand newborn screening to include the target condition; (2) specific requirements of screening for the condition would hinder or facilitate its implementation in each state; and (3) estimated timeframes needed for each state to complete major milestones toward full newborn screening of the condition.

The data gathered will inform the Committee on the following: (1) Feasibility of implementing population-based screening for the target condition; (2) readiness of state newborn screening programs to adopt screening for the condition; (3) identify gaps in feasibility or readiness to screen for the condition; and (4) identify areas of technical assistance and resources needed to facilitate screening for conditions with low feasibility or readiness.

Likely Respondents: The respondents to the survey will be state newborn screening programs.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. 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. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
INITIAL Survey of the Secretary's Discretionary Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment	59	** 2	118	10.0	1,180
FOLLOW–UP Survey of the Secretary's Discretionary Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment	* 30	** 2	60	2.0	120
Total	89		178		1,300

* Up to 30 states and/or territories will be asked to complete a follow-up survey.
** Up to two conditions may be reviewed per year. Therefore, there will be two initial surveys and two follow-up surveys per year.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–03527 Filed 2–19–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later April 21, 2015.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail to the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Rural Access to Emergency Devices Grant Program OMB No. 0915–xxxx—[New]

Abstract: This program is authorized by the Public Health Improvement Act title IV—Cardiac Arrest Survival Act of 2000, subtitle B-Rural Access to Emergency Devices, section 413, (42 U.S.C. 254c (Note)) and the

Consolidated and Further Continuing Appropriations Act (Pub. L. 113–235). The purpose of this grant program is to: (1) Purchase automated external defibrillators (AEDs) that have been approved, or cleared for marketing, by the Food and Drug Administration; (2) provide defibrillator and basic life support training in automated external defibrillator usage through the American Heart Association, the American Red Cross, or other nationally recognized training courses; and (3) place the AEDs in rural communities with local organizations.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993 (Pub. L.103–62). These measures cover the principal topic areas of interest to the Federal Office of Rural Health Policy, including: (a) The number of counties served by the program; (b) the number of AEDs purchased and placed and the locations of the placements; (c) the number of training sessions and the number of individuals trained; (d) the number of times an AED is used and the outcome; and (e) the number of lay persons and first responders who administer CPR or use an AED on an individual. These measures will speak to the Office's progress toward meeting the set goals.

Likely Respondents: Rural Access to Emergency Devices Grant Program award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. 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. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Access to Emergency Devices Grant Program Performance Measures	12	1	12	4	48
Total	12	1	12	4	48

HRSA specifically requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–03525 Filed 2–19–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Planning Cooperative Agreement Applications: Tribal Self-Governance Program

Office of Tribal Self-Governance

Planning Cooperative Agreement

Announcement Type: New—Limited Competition.

Funding Announcement Number: HHS–2015–IHS–TSGP–0001.

Catalog of Federal Domestic Assistance Number: 93.444.

Key Dates

Application Deadline Date: June 3, 2015.

Review Date: June 10, 2015.

Earliest Anticipated Start Date: July 1, 2015.

Signed Tribal Resolutions Due Date: June 10, 2015.

I. Funding Opportunity Description.

Statutory Authority

The Indian Health Service (IHS) Office of Tribal Self-Governance (OTSG) is accepting limited competition Planning Cooperative Agreement applications for the Tribal Self-Governance Program (TSGP). This program is authorized under Title V of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 458aaa–2(e). This program is described in the Catalog of Federal Domestic Assistance (CFDA), available at *https://www.cfda.gov/,* under 93.444.

Background

The TSGP is more than an IHS program; it is an expression of the government-to-government relationship between the United States and Indian Tribes. Through the TSGP, Tribes negotiate with the IHS to assume Programs, Services, Functions and Activities (PSFAs), or portions thereof, which gives Tribes the authority to manage and tailor health care programs in a manner that best fits the needs of their communities.

Participation in the TSGP is one of three ways that Tribes can choose to obtain health care from the Federal Government for their members. Specifically, Tribes can choose to: (1) Receive health care services directly from the IHS, (2) contract with the IHS to administer individual PSFAs that the IHS would otherwise provide (referred to as Title I Self-Determination Contracting), or (3) compact with the IHS to assume control over healthcare PSFAs that the IHS would otherwise provide (referred to as Title V Self-Governance Compacting or the TSGP). These options are not exclusive and Tribes may choose to combine options based on their individual needs and circumstances. Participation in the TSGP affords Tribes the most flexibility to tailor health care PSFAs to the needs of their communities.

The TSGP is a Tribally-driven initiative and strong Tribal/Federal partnerships are essential for program success. The IHS established the OTSG to implement Tribal Self-Governance authorities. The OTSG: (1) Serves as the primary liaison and advocate for Tribes participating in the TSGP, (2) develops, directs, and implements Tribal Self-Governance policies and procedures, (3) provides information and technical

assistance to Self-Governance Tribes, and (4) advises the IHS Director on compliance with TSGP policies, regulations, and guidelines. Each IHS Area has an Agency Lead Negotiator (ALN), designated by the IHS Director, who has the authority to negotiate Self-Governance Compacts and Funding Agreements. A Tribe should contact the respective ALN to begin the Self-Governance planning process or, if currently an existing Self-Governance Tribe, discuss methods to expand current PSFAs. The ALN shall provide an overview of the TSGP and provide technical assistance on the planning process or expanding current PSFAs.

Purpose

The purpose of this Planning Cooperative Agreement is to provide resources to Tribes interested in entering the TSGP and to existing Self-Governance Tribes interested in assuming new or expanded PSFAs. Title V of the ISDEAA requires a Tribe or Tribal organization to complete a planning phase to the satisfaction of the Tribe. The planning phase must include legal and budgetary research and internal Tribal government planning and organization preparation relating to the administration of health care programs. *See* 25 U.S.C. 458aaa–2(d).

The planning phase helps Tribes make informed decisions about which PSFAs to assume and what organizational changes or modifications are necessary to successfully support those PSFAs. A thorough planning phase improves timeliness and efficiency of negotiations and ensures that the Tribe is fully prepared to assume the transfer of IHS PSFAs to the Tribal health program.

A Planning Cooperative Agreement is not a prerequisite to enter the TSGP and a Tribe may use other resources to meet the planning requirements. Tribes that receive a Planning Cooperative Agreement are not obligated to participate in the TSGP and may choose to delay or decline participation based on the outcome of their planning activities. This also applies to existing Self-Governance Tribes exploring the option to expand their current PSFAs or assume additional PSFAs.

Limited Competition Justification

There is limited competition under this announcement because the authorizing legislation restricts eligibility to Tribes that meet specific criteria. *See* 25 U.S.C. 458aaa–2(e); 42 CFR 137.24–26; *see* also 42 CFR 137.10.

II. Award Information

Type of Award

Cooperative Agreement.

Estimated Funds Available

The total amount of funding identified for the current fiscal year (FY) 2015 is approximately $600,000. Individual award amounts are anticipated to be $120,000. The amount of funding available for competing awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately five awards will be issued under this program announcement.

Project Period

The project period is for 12 months and runs from July 1, 2015 to June 30, 2016.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

Substantial Involvement Description for the TSGP Planning Cooperative Agreement

A. IHS Programmatic Involvement

(1) Provide descriptions of PSFAs and associated funding at all organizational levels (Service Unit, Area, and Headquarters), including funding formulas and methodologies related to determining Tribal shares.

(2) Meet with Planning Cooperative Agreement recipient to provide program information and discuss methods currently used to manage and deliver health care.

(3) Identify and provide statutes, regulations, and policies that provide authority for administering IHS programs.

(4) Provide technical assistance on the IHS budget, Tribal shares, and other topics as needed.

B. Grantee Planning Cooperative Agreement Award Activities

(1) Research and analyze the complex IHS budget to gain a thorough understanding of funding distribution at all organizational levels and to determine which PSFAs the Tribe may elect to assume or expand.

(2) Establish a process by which Tribes may approach the IHS to identify PSFAs and associated funding that may be incorporated into their current programs.

(3) Determine the Tribe's share of each PSFA and evaluate the current level of healthcare services being provided to make an informed decision on new or expanded program assumption(s).

III. Eligibility Information

1. Eligibility

To be eligible for this Limited Competition Planning Cooperative Agreement under this announcement, an applicant must:

A. Be an ''Indian Tribe'' as defined in 25 U.S.C. 450b(e); a ''Tribal Organization'' as defined in 25 U.S.C. 450b(l); or an ''Inter-Tribal Consortium'' as defined at 42 CFR 137.10. However, Alaska Native Villages or Alaska Native Village Corporations are not eligible if they are located within the area served by an Alaska Native regional health entity. *See* Consolidated Appropriations Act, 2014, Public Law 113–76. By statute, the Native Village of Eyak, Eastern Aleutian Tribes, and the Council for Athabascan Tribal Governments have also been deemed Alaska Native regional health entities and therefore are eligible to apply. Those Alaska Tribes not represented by a Self-Governance Tribal consortium Funding Agreement within their area may still be considered to participate in the TSGP.

B. Submit a Tribal resolution from the appropriate governing body of each Indian Tribe to be served by the ISDEAA Compact authorizing the submission of the Planning Cooperative Agreement application. Tribal consortia applying for a TSGP Planning Cooperative Agreement shall submit Tribal Council resolutions from each Tribe in the consortium. Tribal resolutions can be attached to the electronic online application. Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities.

Draft Tribal resolutions are acceptable in lieu of an official signed resolution

and must be submitted along with the electronic application submission prior to the official application deadline date or prior to the start of the Objective Review Committee (ORC) date. However, an official signed Tribal resolution must be received by the Division of Grants Management (DGM) prior to the beginning of the Objective Review. If an official signed resolution is not received by the Review Date listed under the Key Dates section on page one of this announcement, the application will be considered incomplete and ineligible for review or further consideration.

Mail the official signed resolution to the DGM, Attn: Mr. John Hoffman, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852. Applicants submitting Tribal resolutions after or aside from the required online electronic application submission must ensure that the information is received by the IHS/DGM. It is highly recommended that the documentation be sent by a delivery method that includes delivery confirmation and tracking. Please contact Mr. Hoffman by telephone at (301) 443–5204 prior to the review date regarding submission questions.

C. Demonstrate, for three fiscal years, financial stability and financial management capability. The Indian Tribe must provide evidence that, for the three years prior to participation in Self-Governance, the Indian Tribe has had no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribe's Self-Determination Contracts or Self-Governance Funding Agreements with any Federal agency. *See* 25 U.S.C. 458aaa–2; 42 CFR 137.15–23.

For Tribes or Tribal organizations that expended $750,000 or more ($500,000 for FYs ending after December 31, 2003) in Federal awards, the OTSG shall retrieve the audits directly from the Federal Audit Clearinghouse.

For Tribes or Tribal organizations that expended less than $750,000 ($500,000 for FYs ending after December 31, 2003) in Federal awards, the Tribe or Tribal organization must provide evidence of the program review correspondence from IHS or Bureau of Indian Affairs officials. *See* 42 CFR 137.21–23.

Meeting the eligibility criteria for a Planning Cooperative Agreement does not mean that a Tribe or Tribal organization is eligible for participation in the IHS TSGP under Title V of the ISDEAA. *See* 25 U.S.C. 458aaa–2; 42 CFR 137.15–23. For additional information on eligibility for the IHS TSGP, please visit the Eligibility and Funding page on the OTSG Web site, located at: *http://www.ihs.gov/SelfGovernance.*

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required such as Tribal resolutions, proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the ''Estimated Funds Available'' section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the DGM of this decision.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_funding*.

Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single spaced and not exceed five pages).
- Project Narrative (must be single spaced and not exceed ten pages).
  - Background information on the Tribe or Tribal organization.
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Tribal Resolution(s).
- 501(c)(3) Certificate (if applicable).
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Organizational Chart (optional).

Public Policy Requirements: All Federal-wide public policies apply to IHS grants and cooperative agreements with exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate Word document that is no longer than ten pages and must: Be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ x 11″ paper.

Be sure to succinctly address and answer all questions listed under the narrative and place them under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement), and place all responses and required information in the correct section (noted below), or it shall not be considered or scored. These narratives will assist the ORC in becoming familiar with the applicant's activities and accomplishments prior to a cooperative agreement award. If the narrative exceeds the page limit, only the first ten pages will be reviewed. The 10-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget and budget justifications/narratives, and/or other appendix items.

There are three parts to the narrative, including: (1) Part A—Program Information; (2) Part B—Program Planning and Evaluation; and (3) Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information (4 Page Limitation)

Section 1: Needs

Introduction and Need for Assistance

Describe the Tribe's current health program activities, including: how long it has been operating, the programs or services currently being provided, and if the applicant is currently administering any ISDEAA Title I Self-Determination

Contracts or Title V Self-Governance Compacts. Identify the need for assistance and how the Planning Cooperative Agreement would benefit the health activities the Tribe is currently administering.

Part B: Program Planning and Evaluation (4 Page Limitation)

Section 1: Program Plans

Project Objective(s), Work Plan and Approach

State in measurable terms the objectives and appropriate activities to achieve the following Cooperative Agreement Recipient Award Activities:

(a) Research and analyze the complex IHS budget to gain a thorough understanding of funding distribution at all organizational levels and determine which PSFAs the Tribe may elect to assume or expand.

(b) Establish a process to identify PSFAs and associated funding that may be incorporated into current programs.

(c) Determine the Tribe's share of each PSFA and evaluate the current level of health care services being provided to make an informed decision on new program assumption(s).

Describe how the objectives are consistent with the purpose of the program, the needs of the people to be served, and how they will be achieved within the proposed time frame. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

Organizational Capabilities, Key Personnel and Qualifications

Describe the organizational structure of the Tribe and its ability to manage the proposed project. Include resumes or position descriptions of key staff showing requisite experience and expertise. If applicable, include resumes and scope of work for consultants that demonstrate experience and expertise relevant to the project.

Section 2: Program Evaluation

Define the criteria to be used to evaluate planning activities. Describe fully and clearly the methodology that will be used to determine if the needs identified are being met and if the outcomes are being achieved. This section must address the following questions:

(a) Are the goals and objectives measurable and consistent with the purpose of the program and the needs of the people to be served?

(b) Are they achievable within the proposed time frame?

Part C: Program Report (2 Page Limitation)

Section 1: Describe major accomplishments over the last 24 months. Please identify and describe significant health related accomplishments associated with the delivery of quality health services. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress. This section should highlight major program achievements over the last 24 months.

Section 2: Describe major activities over the last 24 months.

Please provide an overview of significant program activities associated with the delivery of quality health services over the last 24 months. This section should address significant program activities including those related to the accomplishments listed in the previous section.

B. Budget Narrative: This narrative must include a line item budget with a narrative justification for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative. Budget should match the scope of work described in the project narrative. The page limitation should not exceed five pages.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 11:59 p.m. Eastern Standard Time (EST) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. Grants.gov will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), DGM Grants Systems Coordinator, by telephone at (301) 443–2114. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically through Grants.gov, a waiver must be requested. Prior approval must be requested and obtained from Ms. Tammy Bagley, Acting Director of DGM, (see Section IV.6 below for additional information). The waiver must: (1) Be documented in writing (emails are acceptable), before submitting a paper application, and (2) include clear justification for the need to deviate from the required electronic grants submission process. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions and the mailing address to submit the application. A copy of the written approval *must* be submitted along with the hardcopy of the application that is mailed to DGM. Paper applications that are submitted without a copy of the signed waiver from the Acting Director of the DGM will not be reviewed or considered for funding. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Paper applications must be received by the DGM no later than 5 p.m., EST, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant per grant cycle. Tribes cannot apply for both the Planning Cooperative Agreement and the Negotiation Cooperative Agreement within the same grant cycle.
- IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the ''Find Grant Opportunities'' link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://*

www.Grants.gov Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant receives a waiver to submit paper application documents, they must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates section on page one of this announcement.

Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from the standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for SAM and Grants.gov could take up to fifteen working days.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this Funding Announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download the application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the OTSG will notify the applicant that the application has been received.
- Email applications will not be accepted under this announcement.

Unique Entity Identifier (UEI) Numbering System

All IHS applicants and grantee organizations are required to obtain a UEI number and maintain an active registration in the SAM database. The UEI number is a unique 9-digit identification number provided to each entity. The UEI number is site specific; therefore, each distinct performance site may be assigned a UEI number. Obtaining a UEI number is easy, and there is no charge. To obtain a UEI number, please contact Mr. Paul Gettys at (301) 443–2114.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), to report information on subawards. Accordingly, all IHS grantees must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its UEI number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration (CCR) and have not registered with SAM will need to obtain a UEI number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for UEI and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_policy_topics.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The ten-page narrative section should be written in a manner that is clear and concise to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (25 Points)

Describe the Tribe's current health program activities, including: How long it has been operating, programs or services currently being provided and if the applicant is currently administering any ISDEAA Title I Self-Determination Contracts or Title V Self-Governance Compacts. Identify the need for assistance and how the Planning Cooperative Agreement would benefit the health activities the Tribe is currently administering.

B. Project Objective(s), Work Plan and Approach (25 Points)

State in measurable terms the objectives and appropriate activities to achieve the following Cooperative Agreement Recipient Award Activities:

(1) Research and analyze the complex IHS budget to gain a thorough understanding of funding distribution at all organizational levels and to determine which PSFAs the Tribe may elect to assume or expand.

(2) Establish a process to identify PSFAs and associated funding that may be incorporated into current programs.

(3) Determine the Tribe's share of each PSFA and evaluate the current level of health care services being provided to make an informed decision on new program assumption(s).

Describe how the objectives are consistent with the purpose of the program, the needs of the people to be served, and how the objectives will be achieved within the proposed time frame. Identify the expected results, benefits, and outcomes or products to be

derived from each objective of the project.

C. Program Evaluation (25 Points)

Define the criteria to be used to evaluate planning activities. Clearly describe the methodologies and parameters that will be used to determine if the needs identified are being met and if the outcomes identified are being achieved. Are the goals and objectives measurable and consistent with the purpose of the program and meet the needs of the people to be served? Are they achievable within the proposed time frame? Describe how the assumption of PSFAs enhances sustainable health delivery. Ensure the measurement includes activities that will lead to sustainability.

D. Organizational Capabilities, Key Personnel and Qualifications (15 Points)

Describe the organizational structure of the Tribe and its ability to manage the proposed project. Include resumes or position descriptions of key staff showing requisite experience and expertise. If applicable, include resumes and scope of work for consultants that demonstrate experience and expertise relevant to the project.

E. Categorical Budget and Budget Justification (10 Points)

Submit a budget with a narrative describing the budget request and matching the scope of work described in the project narrative. Justify all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative.

Additional documents can be uploaded as Appendix Items in Grants.gov.

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria in this funding announcement. The ORC could be composed of both Tribal and Federal reviewers appointed by the OTSG to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Applicants will be notified by DGM, via email, to outline minor missing components (*i.e.,* budget narratives, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval (60 points), and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application submitted. The OTSG will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be ''Approved'', but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2015, the approved but unfunded application may be re-considered by the OTSG for possible funding. The applicant will also receive an Executive Summary Statement from the OTSG within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS Grants Management Official announcing to the Project Director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

- 45 CFR part 75, Uniform Administrative Requirements Cost Principles, and Audit Requirements for HHS Awards.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- 45 CFR part 75, subpart E—Cost Principles.

E. Audit Requirements:

- 45 CFR part 75, subpart F—Audit Requirements.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost

Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *http://www.doi.gov/ibc/services/Indirect_Cost_Services/index.cfm.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Reports must be submitted electronically via GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at: *http://www.dpm.psc.gov.* It is recommended that the applicant also send a copy of the FFR (SF–425) report to the Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Federal Subaward Reporting System (FSRS)

This award may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 subaward obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 subaward obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy Web site at: *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_policy_topics.*

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Jeremy Marshall, Program Official, Office of Tribal Self-Governance, 801 Thompson Avenue, Suite 240, Rockville, MD 20852, Phone: (301) 443–7821, Fax: (301) 443–1050, Email: *Jeremy.Marshall@ihs.gov*, Web site: *www.ihs.gov/selfgovernance*.

2. Questions on grants management and fiscal matters may be directed to: John Hoffman, Grants Management Specialist, Division of Grants Management, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, Phone: (301) 443–5204, Fax: (301) 443–9602, Email: *John.Hoffman@ihs.gov*.

3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Fax: (301) 443–9602, E-Mail: *Paul.Gettys@ihs.gov*.

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: February 10, 2015.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 2015–03206 Filed 2–19–15; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: March 10, 2015.

Time: 8:00 a.m. to 5:20 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols and related data management activities. There will be a brief update on the proposed changes to the gene transfer protocol review process. For more information, please check the meeting agenda at OBA Meetings Page (available at the

following URL: *https://auth.osp.od.nih.gov/sites/default/files/RAC_March_Agenda.pdf.*

Place: National Institutes of Health, Building 35, Conference Room 620/630, 9000, Rockville Pike, Bethesda, MD 20892.

Contact Person: Chris Nice, Program Assistant, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838, *nicelc@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://osp.od.nih.gov/office-biotechnology-activities/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 12, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–03495 Filed 2–19–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurotoxicology and Drugs.

Date: February 18–19, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *selmanom@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative: ARIC Neurocognitive Study.

Date: February 26–27, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 2620, 2620 Jones Street, San Francisco, CA 94133.

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437–3478, *wieschd@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 12, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–03494 Filed 2–19–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5828–N–08]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: February 12, 2015.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

[FR Doc. 2015–03365 Filed 2–19–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2013–N279; 1265–0000–10137–S3]

Deer Flat National Wildlife Refuge, Canyon, Payette, Owyhee, and Washington Counties, ID, and Malheur County, OR; Final Comprehensive Conservation Plan and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that our final comprehensive conservation plan and environmental impact statement (CCP/EIS) for the Deer Flat National Wildlife Refuge (Refuge) is available. In the final CCP/EIS, we describe how we propose to manage the Refuge for 15 years.

DATES: We will complete a record of decision 30 days after publication of this notice.

ADDRESSES: The libraries providing public viewing of the final CCP/EIS are listed under **SUPPLEMENTARY INFORMATION**. You may view, obtain, or request CD–ROM copies of the final CCP/EIS by the following methods.

Web site: http://www.fws.gov/deerflat/refugeplanning.html.

Email: deerflat@fws.gov. Include ''Deer Flat Refuge draft CCP/EIS'' in the subject line of the message.

Fax: Attn: Refuge Manager, 208–467–1019.

U.S. Mail: Deer Flat National Wildlife Refuge, 13751 Upper Embankment Road, Nampa, ID 83686.

In-Person Viewing or Pickup: Call 208–467–9278 to make an appointment during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Refuge Manager, 208–467–9278 (phone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we announce the availability of the Refuge's final CCP/EIS in accordance with National Environmental Policy Act (NEPA) 40 CFR 1506.6(b) requirements. We started this process through a notice published in the **Federal Register** on July 15, 2010 (75 FR 41232). We released the draft CCP/EIS to the public, and requested public comments, in a notice of availability published in the **Federal Register** on March 15, 2013 (78 FR 16526). We completed a thorough analysis of impacts on the human environment in the final CCP/EIS, and responded to public comments.

The CCP will guide us in managing and administering the Refuge for 15 years. Alternative 2, as we described in the Final CCP/EIS, is our preferred alternative.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. 668dd-668ee (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (Refuge System), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

CCP/EIS Alternatives

We evaluated four alternatives for managing Deer Flat Refuge; Alternative 2 is our preferred alternative. Based on feedback on the draft CCP/EIS, some modifications have been made to Alternative 2 and are summarized below. A full description of all alternatives, including changes to our preferred alternative, can be found in the final CCP/EIS at the sources identified in **ADDRESSES**.

Changes to Alternative 2

- A youth waterfowl hunt would be opened in all waterfowl hunt zones.
- Ice fishing would be allowed in Fishing Areas A and B within 200 yards of the dams, subject to areas posted by the Bureau of Reclamation.
- Sailing regattas would be allowed on Lake Lowell in April and May with stipulations.
- Swimming would be encouraged in designated areas, and would continue to be allowed elsewhere in Lake Lowell with stipulations.
- Organized group events (*e.g.,* weddings, reunions) that are not wildlife-dependent would be allowed at the Lower Dam Recreation Area with stipulations.

Other Features of Alternative 2

Under Alternative 2, we would emphasize connecting families to nature by providing access to new recreational facilities and programs on the Refuge such as developing a visitor contact station, new trails, and a platform for fishing and wildlife observation at the Lower Dam Recreation Area. Nearly all existing upland and on-water recreation would continue. Fishing access would be promoted, and wildlife interpretation would be emphasized and integrated into all Refuge visitor activities. Other compatible wildlife-dependent public uses would continue, including wildlife observation, and waterfowl and upland game hunting. Gotts Point would be opened for automobiles after we complete a law enforcement cooperative agreement with Canyon County. Activities would be managed to protect wildlife, reduce conflicts between uses, and increase safety.

Alternative 2 also includes protections and enhancements for Refuge wildlife. Seasonally closed areas and no-wake zones on Lake Lowell would protect heron rookeries, eagle nests, and grebe nesting colonies, and shoreline feeding and nesting habitats. Motorized boats would be allowed in no-wake zones, at speeds that do not create a wake (generally 5 mph or slower). The lake would continue to be closed October 1–April 14 each year. The no-wake zone on the lake's southeast end would expand to include Gotts Point. A no-wake zone would be added in the Narrows, and a 200-yard no-wake zone would be added along the lake's south side between Parking Lots 1 and 8.

Habitat enhancement would increase. We would implement an Integrated Pest Management (IPM) plan to conduct more intensive and targeted invasive species removal and vegetation manipulation. We would increase wildlife and habitat research and assessments, to build a strong scientific base for future management decisions.

On the Snake River Islands Unit, we would increase wildlife inventory and monitoring under Alternative 2, and implement an IPM plan to control invasive species and restore habitat. We would prioritize the islands' management needs and manage accordingly. Management techniques would include prescribed fire and aerial application of herbicide and seed. Island closure dates would be adjusted to better protect nesting geese, wading birds, gulls, and terns.

Existing compatible public uses provided on the islands, including wildlife observation, deer hunting, and hunting for upland species and waterfowl, would continue on more than 1,200 acres. Most of the islands would be open for off-trail/free-roam activities June 15-January 31, including shoreline fishing. Heron and gull-nesting islands (4–6 islands) would be open for free-roam activities July 1-January 31.

Public Availability of Documents

Review the CCP/EIS at the following libraries, and sources under **ADDRESSES**.

- Caldwell Public Library, 1010 Dearborn St, Caldwell, ID 83605.
- Homedale Public Library, 125 W Owyhee Ave, Homedale, ID 83628.
- Lizard Butte District Library, 111 3rd Ave W, Marsing, ID 83639.
- Nampa Public Library, 101 11th Ave S, Nampa, ID 83651.
- Payette Public Library, 24 S 10th St, Payette, ID 83661.
- Ada County District Library, 10664 W Victory Rd, Boise, ID 83709.

Comments

We received comments on the draft CCP/EIS from 170 agencies, organizations, and individuals, and a petition with 426 signatures. We addressed the comments in the final CCP/EIS by making changes and clarifications to Alternative 2 as appropriate. The changes are explained in the final CCP/EIS, in Appendix H Public Involvement.

Dated: February 11, 2015.

Richard Hannan,

Acting Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2015–03523 Filed 2–19–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14XF5020LA FF01R05000 FVRS 8451 01 0000 0; IDI–29793]

Public Land Order No. 7830; Extension of Public Land Order No. 7130; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends Public Land Order No. 7130 for an additional 20-year period. This extension is necessary to continue to protect and reserve the lands for the U.S. Fish and Wildlife Service Grays Lake Refuge Headquarters in Bonneville County, Idaho, which would otherwise expire on March 30, 2015.

DATES: Effective Date: March 31, 2015.

FOR FURTHER INFORMATION CONTACT: Jeff Cartwright, BLM Idaho State Office, 208–962–3680. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach the Bureau of Land Management contact. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension in order to continue to protect and reserve the lands for use as an administrative site—the U.S. Fish and Wildlife Service Grays Lake Refuge Headquarters. The withdrawal extended by this order will expire on March 30, 2035, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1714 (f)), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1714), it is ordered as follows:

Public Land Order No. 7130 (60 FR 16585 (1995)), which transferred jurisdiction of 37.5 acres of public land withdrawn from settlement, sale, location or entry under the public land laws, including the United States mining laws, but not the mineral leasing laws, from the U.S. Forest Service to the U.S. Fish and Wildlife in order to protect the Grays Lake Refuge Headquarters, is hereby extended until March 30, 2035.

Dated: February 7, 2015.

Janice M. Schneider,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2015–03508 Filed 2–19–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2014–0078; MMAA104000]

Outer Continental Shelf, Alaska OCS Region, Chukchi Sea Planning Area, Oil and Gas Lease Sale 193

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability of a Final Second Supplemental Environmental Impact Statement.

SUMMARY: BOEM is announcing the availability of a Final Second Supplemental Environmental Impact Statement (SEIS) for the Chukchi Sea Planning Area, Outer Continental Shelf (OCS) Oil and Gas Lease Sale 193 (Lease Sale 193). The Final Second SEIS (OCS EIS/EA BOEM 2014–669) provides new analysis in accordance with the United States District Court for the District of Alaska (District Court) Order remanding Lease Sale 193 to BOEM. The District Court's order instructs BOEM to address the deficiency in the 2007 Final EIS (OCS EIS/EA MMS 2007–026) identified by the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit). The Ninth Circuit held that the EIS supporting the decision to hold Lease Sale 193 arbitrarily relied on a one billion barrel oil production estimate. The Final Second SEIS provides a revised exploration and development scenario and an accompanying analysis of potential impacts of the proposed action alternatives. The Final Second SEIS identifies Alternative IV (Corridor II Deferral) as BOEM's preferred alternative.

SUPPLEMENTARY INFORMATION: Chukchi Sea OCS Oil and Gas Lease Sale 193 was held in February 2008. The Minerals Management Service (MMS) (predecessor to BOEM) received high bids totaling approximately $2.7 billion and issued 487 leases. The lease sale decision was challenged in the District Court. In 2010, the District Court remanded the case to the agency to remedy deficiencies pertaining to the agency's compliance with the National Environmental Policy Act (NEPA). BOEM released a Final SEIS in August 2011 and the Secretary of the Interior reaffirmed the lease sale in October 2011. In February 2012, the District Court ruled the Department of the Interior had met its NEPA obligations on remand. In April 2012, the plaintiffs appealed the District Court's decision to the Ninth Circuit.

In a January 22, 2014, opinion, the Ninth Circuit found MMS' ''reliance in

the [2007 Final Environmental Impact Statement] on a one billion barrel estimate of total economically recoverable oil was arbitrary and capricious.'' The Ninth Circuit remanded the case to the District Court, which further remanded the matter to BOEM on April 24, 2014.

BOEM has prepared a Final Second SEIS for Lease Sale 193 in accordance with the April 24, 2014, remand order of the District Court. The Final Second SEIS addresses the deficiencies identified in the Ninth Circuit opinion by analyzing the reasonably foreseeable environmental effects of the full range of likely production if oil production were to occur.

The Final Second SEIS is available on BOEM's Web site at *http://www.boem.gov/ak193/.* In keeping with the Department of the Interior's mission to protect natural resources and to limit costs, while ensuring availability of the document to the public, BOEM will primarily distribute digital copies of the Final Second SEIS on compact discs. BOEM has printed and will be distributing a limited number of paper copies. If requested, BOEM will provide a paper copy if copies are still available. You may request a paper copy by calling (907) 334–5200 or the toll free number at 800–764–2627. BOEM has distributed the Final Second SEIS for viewing at the following libraries in Alaska: Alaska Resources Library and Information Service (Anchorage); University of Alaska Anchorage, Consortium Library; Alaska Pacific University, Academic Support Center Library; University of Alaska Fairbanks, Institute of Arctic Biology; University of Alaska Fairbanks, Elmer E. Rasmuson Library; Nellie Weyiouanna Ilisaavik Library, Shishmaref; Katie Tokienna Memorial Library, Wales; Noel Wien Library, Fairbanks; Kaveolook School Library, Kaktovik; Koyuk City Library; Tikigaq Library, Point Hope; Trapper School Community Library, Nuiqsut; downtown Juneau Public Library; University of Alaska Southeast Library, Juneau; Alaska State Library, Juneau; and Kegoyah Kozga Public Library, Nome.

Authority: This Notice of Availability of the Final Second SEIS is in compliance with NEPA, as amended (42 U.S.C. 4231 *et seq.*), and is published pursuant to 43 CFR 46.415.

FOR FURTHER INFORMATION CONTACT: Michael Routhier, Program Analysis Officer and Project Manager, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823 or by telephone at (907) 334–5200.

Dated: February 6, 2015.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–03373 Filed 2–19–15; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–613 (Remand)]

Certain 3G Mobile Handsets and Components Thereof; Commission Determination Not To Review an Initial Determination Granting a Motion of Complainants Interdigital Communications Corp. and Interdigital Technology Corp. To Substitute Parties

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 53) granting a motion of complainants InterDigital Communications Corp. of King of Prussia, Pennsylvania and InterDigital Technology Corp. of Wilmington, Delaware (collectively, ''InterDigital'') to substitute parties. The Notice of Investigation is amended accordingly.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–613 on September 11, 2007, based on a complaint filed by InterDigital on August 7, 2007. 72 FR 51838 (Sept. 11, 2007). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337) (''section 337'') in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain 3G mobile handsets and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,117,004; 7,190,966 (''the '966 patent''); 7,286,847 (''the '847 patent''); and 6,973,579. The Notice of Investigation named Nokia Corporation of Espoo, Finland and Nokia Inc. of Irving, Texas (collectively, ''Nokia'') as respondents. *Id.* The Office of Unfair Import Investigations was named as a participating party. *Id.* On July 18, 2014, the Commission amended the Notice of Investigation (''NOI'') to add Microsoft Mobile OY (''MMO'') as a party. 79 FR 43068 (July 24, 2014).

On August 14, 2009, the ALJ issued his final ID, finding no violation of section 337. On October 16, 2009, the Commission determined to review the final ID in part and terminated the investigation with a finding of no violation. 74 FR 55068 (Oct. 26, 2009).

InterDigital timely appealed the Commission's final determination of no violation of section 337 as to all of the asserted claims of the '966 patent and claim 5 of the '847 patent to the U.S. Court of Appeals for the Federal Circuit. On August 1, 2012, the Federal Circuit reversed the Commission's construction of two claim limitations found in the appealed patents-in-suit, reversed the Commission's determination of non-infringement as to the asserted claims of those patents, and remanded to the Commission for further proceedings. *InterDigital Commc'ns, LLC* v. *Int'l Trade Comm'n.,* 690 F.3d 1318 (Fed. Cir. 2012).

On February 12, 2014, the Commission issued a Notice, Order, and Opinion deciding certain aspects of the investigation and remanding other aspects to the chief administrative law judge (''ALJ''). 79 FR 9277 (Feb. 18, 2014); *see also* Comm'n Op. Remanding Investigation (Feb. 12, 2014); Comm'n Order Remanding Investigation (Feb. 12, 2014). On February 24, 2014, Nokia petitioned for reconsideration of the Commission's remand Order and Opinion. On March 24, 2014, the Commission granted in part the petition for reconsideration and issued a revised remand notice, order, and opinion. 79 FR 17571 (Mar. 28, 2014).

On December 1, 2014, InterDigital filed a motion to substitute InterDigital Communications, Inc. for InterDigital Communications Corp. The motion stated that the Commission investigative

attorney did not oppose the motion. On December 11, 2014, respondents Nokia, Inc. and MMO (collectively ''Respondents'') filed an opposition to the motion.

On January 14, 2014, the ALJ issued the subject ID, granting InterDigital's motion. On January 22, 2015, Respondents filed a petition for review of the subject ID. On January 29, 2015, InterDigital and the IA each filed responses to the petition. On February 10, 2015, Respondents filed a motion for leave to reply to InterDigital's response. On February 11, 2015, InterDigital filed an opposition to the motion.

The Commission has determined not to review the subject ID. The Commission has further determined to not grant Respondents' motion for leave to file a reply.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 13, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–03513 Filed 2–19–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0312]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2014 Survey of State Criminal History Information Systems

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, DOJ, Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at Volume 79, Number 244, page 75837, December 19, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 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 Devon Adams, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531 (email: *Devon.Adams@usdoj.gov;* telephone: 202–514–9157). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Survey of State Criminal History Information Systems.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is no form number. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State Government. This information collection is a survey of State record repositories to estimate the percentage of total state records that are immediately available through the FBI's Interstate Identification Index and the percentage of records that are complete and fingerprint-supported.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 56 respondents will expend approximately 6.2 hours to complete the survey once every two years.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 347 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: February 17, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–03528 Filed 2–19–15; 8:45 am]

BILLING CODE 4410–18–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

NOTICE: Cancellation.

DATE AND TIME: The Legal Services Corporation's Board of Directors and Finance Committee meetings scheduled for February 19, 2015 at 4:00 p.m., EDT, have been canceled. These meetings were noticed in the Friday, February 13, 2015 issue of the **Federal Register**, 80 FR 8110.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: February 18, 2015.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2015–03547 Filed 2–18–15; 11:15 am]

BILLING CODE 7050–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74265; File No. S7–24–89]

Joint Industry Plan; Order Approving Amendment No. 34 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT, LLC, and NYSE Arca, Inc.

February 12, 2015.

I. Introduction

On December 24, 2014, the operating committee (''Operating Committee'' or ''Committee'') [1] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq/UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 608 [3] thereunder, a proposal to amend the Nasdaq/UTP Plan [4] to shorten the maximum time within which Participants must report trades from 90 seconds to 10 seconds, subject to the Participants' obligation to report trades as soon as practicable.

The proposed amendment was published for comment in the **Federal Register** on January 7, 2015.[5] No comment letters were received in response to the Notice. This order approves the proposal.

II. Description of the Proposal

Currently, Section VIII(B) (Transaction Reports) of the Nasdaq/UTP Plan provides that ''Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein. . . . All such Transaction Reports shall be transmitted to the Processor within 90 seconds after the time of execution of the transaction. Transaction Reports transmitted beyond the 90-second period shall be designated as ''late'' by the appropriate code or message.''

The amendment proposes to shorten the maximum time within which Participants must report trades from 90 seconds to 10 seconds, subject to the Participants' obligation to report trades as soon as practicable. It would now require the Participants to ''transmit all Transaction Reports as soon as practicable, but not later than 10 seconds, after the time of execution.'' The amendment would also require each Participant to establish and maintain collection and reporting procedures and facilities reasonably designed to comply with the reporting requirement. This would harmonize the UTP Plan with the amended transaction reporting requirement under the CTA Plan.

III. Discussion

After careful review, the Commission finds that the proposed amendment to the Plan is consistent with the requirements of the Act and the rules and regulations thereunder,[6] and, in particular, Section 11A(a)(1) of the Act [7] and Rule 608 thereunder [8] in that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[9] 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 and transactions in securities. These goals are furthered by the proposed amendment requiring that Participants report trades as soon as practicable, but no later than 10 seconds, following execution (or cancellation, as applicable) as they bring the trade reporting requirement more in line with current industry practice, as the markets have become more automated and more efficient. In addition, the change will make the trade reporting requirement consistent across the two transaction reporting plans for equity securities [10] and FINRA.[11]

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 11A of the Act,[12] and Rule 608 thereunder,[13] that the proposed amendment to Nasdaq/UTP Plan (File No. S7–24–89) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2015–03522 Filed 2–19–15; 8:45 am]

BILLING CODE 8011–01–P

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[1] The Plan Participants (collectively, ''Participants'') are the: BATS Exchange, Inc. (''BATS''); BATS Y-Exchange, Inc.(''BATS Y''); Chicago Board Options Exchange, Incorporated (''CBOE''); Chicago Stock Exchange, Inc. (''CHX''); EDGA Exchange, Inc. (''EDGA''); EDGX Exchange, Inc.(''EDGX''); Financial Industry Regulatory Authority, Inc. (''FINRA''); International Securities Exchange LLC (''ISE''); NASDAQ OMX BX, Inc. (''BX''); NASDAQ OMX PHLX, Inc. (''PHLX''); Nasdaq Stock Market LLC (''Nasdaq''); National Stock Exchange, Inc. (''NSX''); New York Stock Exchange LLC (''NYSE''); NYSE MKT, LLC; and NYSE Arca, Inc. (''NYSE Arca'').

[2] 15 U.S.C. 78k–1.

[3] 17 CFR 240.608.

[4] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (April 19, 2007) 72 FR 20891 (April 26, 2007).

[5] *See* Securities Exchange Act Release No. 73970 (December 31, 2014), 80 FR 910 (''Notice'').

[6] The Commission has considered the proposed amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 17 CFR 240.608.

[9] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[10] The participants of the Consolidated Tape Association (''CTA'') Plan also proposed to amend the trade reporting requirement under the CTA Plan to require that transactions be reported as soon as practicable, but no later than 10 seconds following execution. *See* Securities Exchange Act Release No. 73971 (December 31, 2014), 80 FR 908 (January 7, 2015) (Notice of Filing of SR–CTA–2014–04).

[11] *See* Securities Exchange Act Release No. 69561 (May 13, 2013), 78 FR 29190 (May 17, 2013) (File No. SR–FINRA–2013–013) (order approving FINRA rule to require FINRA members to report over-the counter transactions in Eligible Securities to FINRA as soon as practicable, but no later than 10 seconds following execution).

[12] 15 U.S.C. 78k–1.

[13] 17 CFR 240.608.

[14] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74277; File No. 4–681]

Proxy Voting Roundtable

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: The Securities and Exchange Commission will host a roundtable to explore ways to improve the proxy voting process. The roundtable will focus on universal proxy ballots and retail participation in the proxy process. Roundtable panelists will discuss the state of contested director elections and whether changes should be made to the federal proxy rules to facilitate the use of universal proxy ballots by management and proxy contestants. In addition, panelists will discuss the state law, logistical and disclosure issues presented by a possible universal proxy ballot process. Roundtable panelists also will discuss strategies for increasing retail shareholder participation in the proxy process, including how technology might affect retail participation and whether the format of disclosure could be improved to increase the engagement of shareholders and how the mechanics of voting could be improved to affect retail shareholder participation.

The roundtable discussion will be held in the multi-purpose room of the Securities and Exchange Commission headquarters at 100 F Street NE., Washington, DC, on February 19, 2015 from 9:30 a.m. to approximately 1:00 p.m. The public is invited to observe the roundtable discussion. Seating will be available on a first-come, first-serve basis. The roundtable discussion will also be available via webcast on the Commission's Web site at *www.sec.gov.*

DATES: The roundtable discussion will take place on February 19, 2015. The Commission will accept comments regarding issues addressed at the roundtable until March 31, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–681 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 4–681. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please only use one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Christina Chalk, Senior Special Counsel, Division of Corporation Finance, at 202–551–3440, or Raymond Be, Special Counsel, Division of Corporation Finance, at 202–551–3500, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

By the Commission.

Dated: February 13, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–03509 Filed 2–19–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74264; File No. SR–CTA–2014–04]

Consolidated Tape Association; Order Approving the Nineteenth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan

February 12, 2015.

I. Introduction

On December 24, 2014, the Consolidated Tape Association (''CTA'') Plan participants (collectively the ''Participants'')[1] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 608 thereunder,[3] a proposal to amend the Second Restatement of the CTA Plan (''CTA Plan'').[4] The proposal represents the nineteenth substantive amendment to the CTA Plan (''Nineteenth Amendment to the CTA Plan''), and reflects changes unanimously adopted by the Participants. The Nineteenth Amendment to the CTA Plan (''Amendment'') would reduce the maximum time within which Participants must report trades from 90 seconds to 10 seconds, subject to the Participants' obligation to report trades as soon as practicable. The proposed Amendment was published for comment in the **Federal Register** on January 7, 2015.[5] No comment letters were received in response to the Notice. This order approves the proposed Amendment to the Plan.

II. Description of the Proposal

Currently, Section VIII(a) (Responsibility of Exchange Participants) of the CTA Plan provides that each Participant will ''(i) report all last sale prices relating to transactions in Eligible Securities as promptly as possible, (ii) establish and maintain collection and reporting procedures and facilities such as to assure that under normal conditions not less than 90% of such last sale prices will be reported within that period of time (not in excess of one and one-half minutes) after the time of execution as may be determined by CTA from time to time in light of experience, and (iii) designate as ''late'' any last sale price not collected and reported in accordance with the above-referenced procedures.''

The Amendment proposes to shorten the maximum time within which Participants must report trades from 90 seconds to 10 seconds, subject to the Participants' obligation to report trades as soon as practicable. It also proposes to remove the qualifier that called for trade reports to meet the time requirement not less than 90 percent of the time under normal conditions.

III. Discussion

After careful review, the Commission finds that the proposed Amendment to the Plan is consistent with the requirements of the Act and the rules

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[1] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc., BATS–Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange, LLC, NASDAQ OMX BX, Inc. (''Nasdaq BX''), NASDAQ OMX PHLX, Inc. (''Nasdaq PSX''), Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. and NYSE MKT LLC (formerly NYSE Amex, Inc.).

[2] 15 U.S.C. 78k–1.

[3] 17 CFR 242.608.

[4] See Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 1799 (declaring the CTA Plan effective). The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

[5] *See* Securities Exchange Act Release No. 73971 (December 31, 2014), 80 FR 908 (''Notice'').

and regulations thereunder,[6] and, in particular, Section 11A(a)(1) of the Act[7] and Rule 608 thereunder[8] in that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[9] 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 and transactions in securities. These goals are furthered by the proposed changes requiring that Participants report trades as soon as practicable, but no later than 10 seconds, following execution (or cancellation, as applicable) as they bring the trade reporting requirement more in line with current industry practice, as the markets have become more automated and more efficient. In addition, the change will make the trade reporting requirement consistent across the two transaction reporting plans for equity securities[10] and FINRA.[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[12] and the rules thereunder, that the proposed Amendment to the CTA Plan (File No. SR–CTA–2014–04) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2015–03521 Filed 2–19–15; 8:45 am]

BILLING CODE 8011–01–P

[6] The Commission has considered the proposed amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 17 CFR 240.608.

[9] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[10] The participants of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq/UTP Plan'') also proposed to amend the trade reporting requirement under the Nasdaq/UTP Plan to require that transactions be reported as soon as practicable, but no later than 10 seconds following execution. *See* Securities Exchange Act Release No. 73970 (December 31, 2014), 80 FR 910 (January 7, 2015) (File No. S7–24–89) (Notice of Filing of Amendment No. 34 to the Nasdaq/UTP Plan).

[11] *See* Securities Exchange Act Release No. 69561 (May 13, 2013), 78 FR 29190 (May 17, 2013) (File No. SR–FINRA–2013–013) (order approving FINRA rule to require FINRA members to report over-the-counter transactions in Eligible Securities to FINRA as soon as practicable, but no later than 10 seconds following execution).

[12] 15 U.S.C. 78k–1.

[13] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74279; File No. SR–NASDAQ–2014–102]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Require That a Company Publicly Disclose the Denial of a Listing Application

February 13, 2015.

I. Introduction

On December 11, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require companies to disclose the denial of an initial listing application. The proposed rule change was published for comment in the **Federal Register** on December 30, 2014.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposed Rule Change

In its filing, Nasdaq stated that it processes between 200 and 300 applications each year from companies seeking to list securities on Nasdaq. According to the Exchange, while most applicants meet the listing requirements (or are prepared to take action to meet those requirements before listing) in some cases a company does not meet the requirements and is not willing, or able, to comply. Nasdaq may also deny a listing application based on public interest concerns even though the company meets all quantitative listing requirements.[4] In either case, Nasdaq will inform the company of the outcome, and the company may withdraw its application before the application is formally denied. If the company does not withdraw its application, then the Nasdaq Listing Qualifications Department will issue a written denial to the company.[5] A company denied listing on Nasdaq may appeal the denial to a Listing Qualifications Hearings Panel (''Hearings Panel'').[6]

According to Nasdaq, investors view a company's decision to seek initial listing on the Exchange as a positive development, and companies often publicize their intention to apply for listing.[7] Nasdaq believes that the public is therefore interested in the outcome of an application for initial listing. Nasdaq proposes to require that a company that receives a written determination denying its application for listing must, within four business days, make a public announcement in a press release or other Regulation FD compliant manner about the receipt of the determination and the Nasdaq Rule(s) upon which the determination is based. The company must describe each specific basis and concern identified by Nasdaq in reaching the determination. If the public announcement is not made by the company within the time allotted or does not include all of the required information, Nasdaq will make a public announcement with the required information and, if the company appeals the determination as set forth in Nasdaq Rule 5815, the Hearings Panel will consider the company's failure to make the public announcement in considering whether to list the company. Nasdaq also proposes to clarify in Rule 5205 that a company may withdraw its application for initial listing at any time.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73912 (December 22, 2014), 79 FR 78540 (December 30, 2014) (''Notice'').

[4] *See* Nasdaq Rule 5101 and 5101–1.

[5] *See* Nasdaq Rule 5810.

[6] *See* Nasdaq Rule 5815.

[7] *See* Notice, *supra* note 3.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that full and fair disclosure of information by companies is of critical importance to financial markets and the investing public. According to the Exchange, investors view a company's decision to seek initial listing on the Exchange as a positive development, and companies often publicize their intention to apply for listing. The listing of a company on a national securities exchange such as Nasdaq provides benefits including, among others, potential for increased stock liquidity and capital raising benefits.[10] However, there appears to be no Exchange requirement for the company to publicize when its listing application has been denied and therefore that the company will not be receiving the benefits of an exchange listing.

The Commission believes that the public, including potential future investors, would find a denial of a company's listing application, just as important as the decision to seek an exchange listing which, as noted by Nasdaq, is often publicized. The significance of a denial of listing is also underscored by the existence of both the right to appeal the denial on Nasdaq and the right to obtain Commission review of such appeals. Nasdaq rules provide, as noted above, for due process to appeal a denial of listing.[11] Denial of listings have also been subject to Commission review under section 19(d) of the Exchange Act.[12]

The Commission therefore believes that the proposed rule change will help provide transparency to future, as well as existing, investors about the status of a company's listing application. The Commission also believes that Nasdaq's proposal to require that such disclosure be made by press release, or other Regulation FD compliant manner, will permit companies to disseminate this important information to the public in a broad and inclusive manner and should help to ensure for broad public access to the denial of listing determination and the reasons for the denial.

As described above, the proposal will also clarify in Nasdaq's rules that a company may withdraw its application for initial listing at any time during the review process.[13] The decision to seek listing and submit a listing application is generally a voluntary decision by a company. Consistent with this, it is our understanding that companies seeking listing on Nasdaq are allowed to withdraw their voluntary application at any time during the process. The clarification in Nasdaq's proposal codifies this concept in Nasdaq's rules. The Commission also believes that for, the same reasons noted above, companies should consider any applicable disclosure requirements under the federal securities laws if a company withdraws its listing application with Nasdaq for any reason.

IV. Conclusion

It is therefore ordered pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASDAQ–2014–102) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–03518 Filed 2–19–15; 8:45 am]

BILLING CODE 8011–01–P

[10] Section 18 of the Securities Act of 1933 (''Securities Act'') provides federal preemption of state blue sky laws for securities listed on certain national securities exchanges. 15 U.S.C. 77r. *See also* 17 CFR 230.146.

[11] These appeal provisions have been adopted in accordance with section 6(b)(7) of the Act. 15 U.S.C. 78f(b)(7).

[12] Section 19(d) of the Act provides, among other things, for Commission review of any action self-regulatory organization that, among other things, prohibits or limits any person in respect to access to service offered by such organization. *See* U.S.C. 78s(d).

[13] *See* Notice, *supra* note 3.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74270; File No. SR–NSX–2014–017]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change in Connection With a Proposed Transaction in Which National Stock Exchange Holdings, Inc. Will Acquire Ownership of the Exchange From the CBOE Stock Exchange, LLC

February 13, 2015.

I. Introduction

On December 16, 2014, National Stock Exchange, Inc. (''NSX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to make certain amendments to its corporate governance documents in order to effectuate a proposed transaction (the ''Transaction'') in which the Exchange will become a wholly-owned subsidiary of National Stock Exchange Holdings, Inc., a Delaware corporation (''NSX Holdings''). The proposed rule change was published for comment in the **Federal Register** on January 2, 2015.[4] The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with sections 6(b)(1) and (3) of the Act,[6] which, among other things, require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission also finds that the proposal is consistent with section 6(b)(5) of the Act,[7] which requires that the rules of the exchange 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.

II. Discussion

A. Corporate Structure and Proposed Transaction

Currently, the Exchange is a wholly-owned subsidiary of the CBOE Stock

[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. 73944 (December 24, 2014), 80 FR 85 (SR–NSX–2014–017) (''Notice'').

[5] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(1) and (b)(3).

[7] 15 U.S.C. 78f(b)(5).

Exchange, LLC (''CBSX'').[8] Pursuant to the terms of a Stock Purchase Agreement, dated September 8, 2014, by and among CBSX, NSX Holdings and the Exchange (the ''SPA''), NSX Holdings has agreed to acquire all of the outstanding capital stock of NSX upon the closing of the Transaction (the ''Closing'') in return for cash consideration paid to CBSX.[9] Following the completion of the Transaction, the Exchange will remain a Delaware for-profit stock corporation with authority to issue 1,000 shares of common stock and, at all times, all of the outstanding stock of the Exchange will be owned by NSX Holdings.

The Exchange is, and will remain, registered as a national securities exchange under section 6 of the Act[10] and a self-regulatory organization (''SRO'') as defined in section 3(a)(26) of the Act[11] after the Closing.[12] The Exchange states that it plans to reopen its trading operations as soon as practicable after the Closing and plans to operate the Exchange using its existing trading system pursuant to the rules of the Exchange currently in effect (the ''Exchange Rules'').[13] However, the Exchange states that the re-opening of its marketplace will be subject to additional proposed rule changes filed by the Exchange with the Commission and such proposed rule changes being approved by the Commission.[14] In addition, the Exchange states that the Exchange Rules, all of which remain in full force and effect as of the date of the instant rule filing, will continue to govern the activities of the Exchange up to and after the Closing, and the Exchange will continue to discharge its SRO responsibilities pursuant to the Exchange's registration under section 6 of the Act.[15] Furthermore, assuming consummation of the Transaction, the Exchange noted that NSX Holdings has represented that, at all times, it will ensure that the Exchange has access to sufficient financial resources for it to discharge its SRO responsibilities after the date of the Closing.[16]

The ownership of NSX Holdings, as the new holding company of the Exchange, will be divided among two categories of shareholders.[17] The first category of shareholders will be comprised of 12 individual investors who, in the aggregate, will own approximately 64% of the outstanding shares of NSX Holdings.[18] At the time of the closing of the Transaction, the Exchange has represented that one individual investor may own in the aggregate more than 40% of the outstanding shares of NSX Holdings.[19] According to the Exchange, four of the 12 individual investors in NSX Holdings, owning in the aggregate approximately 60% of the outstanding shares, are securities industry and technology professionals with senior executive managerial experience in areas including capital markets and investment management, exchange operations, electronic trading, and systems architecture and development.[20] The Exchange anticipates that these four individuals will assume senior executive roles in the Exchange's management upon completion of the Transaction.[21] The remaining eight individual shareholders of NSX Holdings own shares in amounts ranging from approximately 0.063% to 1.269%.[22]

The second category of shareholders of NSX Holdings consists of two affiliated entities: Thor Investment Holdings LLC (''Thor'') and TIP–1 LLC (''TIP–1''), each a Delaware limited liability company.[23] Thor will own approximately 16% of the outstanding equity of NSX Holdings, and TIP–1 will own approximately 20% of the outstanding equity of NSX Holdings.[24]

The Exchange notes that there is no commonality or overlap between the 12 individual investors owning approximately 64% of the outstanding shares of NSX Holdings and the individual members of Thor and TIP–1 which own the remaining approximately 36% of the outstanding equity of NSX Holdings.[25] No individual has an ownership interest in both Thor and TIP–1.[26] Furthermore, none of the individual members of Thor or TIP–1 will become an employee of the Exchange, and none of these individual members will have any role in the day-to-day management or operation of the Exchange.[27]

With respect to voting rights, Thor will have the ability to exercise TIP–1's voting rights in NSX Holdings, such that Thor will have the ability to exercise an approximately 36% voting interest of NSX Holdings (Thor's approximately 16% plus TIP–1's approximately 20%).[28] However, Thor will not be able to exercise its voting interest in excess of the 20% voting limitation because of voting limitations contained in the NSX Holdings A&R Certificate.[29]

The Exchange currently has one affiliated entity, NSX Securities LLC (''NSX Securities''). Pursuant to Exchange Rule 2.11(a), NSX Securities provides the outbound routing of orders from the Exchange to other trading centers. NSX Securities operates as a facility (as defined in section 3(a)(2) of the Act)[30] of the Exchange. The Exchange represents that upon the Closing, Exchange Rule 2.11 will remain in full force and effect and the sole change impacting NSX Securities will be the change of ownership of the Exchange (from CBSX to NSX Holdings) as NSX Securities' sole affiliate.[31]

[8] CBSX is the record and beneficial owner of 100 shares of the Exchange, par value $.01 per share, which represents all of the issued and outstanding shares of capital stock of the Exchange. *See* Notice, *supra* note 4, at 86.

[9] For a more detailed explanation of the conditions necessary to effectuate the Closing, *see* Notice, *supra* note 4, at 86, n.8.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78c(a)(26).

[12] *See* Notice, *supra* note 4, at 86.

[13] *See* Notice, *supra* note 4, at 86. The Exchange ceased trading operations as of the close of business on May 30, 2014. *See* Exchange Act Release No. 72107 (May 6, 2014), 79 FR 27017 (May 12, 2014) (SR–NSX–2014–14) (''Cessation of Operations Filing'').

[14] *See* Notice, *supra* note 4, at 86. The Cessation of Operations Filing stated that the Exchange shall file a proposed rule change pursuant to Rule 19b–4 of the Act prior to any resumption of trading on the Exchange pursuant to Chapter XI (Trading Rules) of the Exchange Rules. *See* Notice, *supra* note 4, at 86, n.11.

[15] *See* Notice, *supra* note 4, at 86.

[16] *See* Notice, *supra* note 4, at 86.

[17] *See* Notice, *supra* note 4, at 87.

[18] The Exchange has represented that, pursuant to Rule 6a–2 under the Act, within 10 days of the Closing, the Exchange will amend its Form 1 filed with the Commission. Exhibit K of Form 1, which is applicable only to ''exchanges that have one or more owners, shareholders, or partners that are not also members of the exchange . . .'', requires the Exchange to provide a list of each shareholder that directly owns 5% or more of a class of a voting security of the Exchange. As discussed above, the Exchange has proposed that 100% of the issued and outstanding shares of NSX be directly owned by NSX Holdings. *See* Notice, *supra* note 4, at 87, n.16.

[19] *See* discussion *infra* at 8 regarding exemption from the Concentration Limitation.

[20] *See* Notice, *supra* note 4, at 87.

[21] *See* Notice, *supra* note 4, at 87.

[22] *See* Notice, *supra* note 4, at 87, n.17.

[23] *See* Notice, *supra* note 4, at 87.

[24] *See* Notice, *supra* note 4, at 87. Thor will also have an ownership interest in TIP–1 and will act as its managing member. Thor's management will be vested in a managing member, Thor Managing Member LLC (''Thor MM''), which will have no ownership interest in either Thor or TIP–1. There are three individual members of Thor MM, all of whom are also members of Thor. There are also currently nine individuals who are members of Thor. The Exchange anticipates there will be six members of TIP–1, including Thor. Each such member thereby has an ownership interest in the respective entities' share of the outstanding equity of NSX Holdings. *See* Notice, *supra* note 4, at 87.

[25] *See* Notice, *supra* note 4, at 87.

[26] *See* Notice, *supra* note 4, at 87.

[27] *See* Notice, *supra* note 4, at 87.

[28] *See* Notice, *supra* note 4, at 87.

[29] *See* Notice, *supra* note 4, at 87.

[30] 15 U.S.C. 78(c)(a)(2).

[31] *See* Notice, *supra* note 4, at 86. The Exchange further represented that it, on behalf of NSX Securities, will provide notice to and obtain any

Continued

B. Proposed Rule Changes

Section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file proposed rule changes with the Commission. Although NSX Holdings is not an SRO, certain provisions of its proposed certificate of incorporation and bylaws, are rules of the Exchange, if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, and must be filed with the Commission pursuant to section 19(b)(4) of the Act and Rule 19b–4 thereunder. Accordingly, the Exchange filed with the Commission the following documents in connection with the Transaction: (1) The proposed Second Amended and Restated Certificate of Incorporation of NSX Holdings (the ''NSX Holdings A&R Certificate''); (2) the proposed By-laws of NSX Holdings (the ''NSX Holdings By-laws''); (3) the proposed Second Amended and Restated Certificate of Incorporation of NSX (the ''Exchange A&R Certificate''); and (4) the proposed Third Amended and Restated NSX By-laws (the ''Exchange A&R By-laws'').

1. NSX Holdings Ownership and Voting Limitations

The NSX Holdings A&R Certificate includes certain restrictions on the ability to own and vote shares of stock. These limitations are intended to prevent a stockholder from exercising undue control over the operation of NSX Holdings, and in turn, over the operation of the Exchange. These limitations are generally consistent with ownership and voting limits approved by the Commission for other SROs,[32] and are designed to assure that the Exchange and the Commission are able to carry out their regulatory obligations under the Act.

For example, the NSX Holdings A&R Certificate provides that, subject to certain exceptions, no Person,[33] either alone or with its Related Persons [34] shall be allowed at any time to own beneficially shares of stock of NSX Holdings representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter (''Concentration Limitation'').[35]

Because the Exchange anticipates that one shareholder will own beneficially more than 40% of the outstanding shares of NSX Holdings at the Closing, the Exchange has proposed that a Person (either alone or with their Related Persons) who exceeds the Concentration Limitation as of the filing date of the NSX Holdings A&R Certificate shall be exempt from the Concentration Limitation. The exemption shall not extend beyond May 19, 2015.[36] The Commission believes that the proposed exemption is consistent with the requirements of section 6(b) of the Act.[37] The Commission believes that an exemption for this specific period of time should allow a shareholder sufficient time after the Closing to reduce his or her ownership percentage in order to comply with the Concentration Limitation.

Pursuant to NSX Holdings A&R Certificate, Article Fourth, section C(i)(a), the Concentration Limitation applies unless and until: (i) A Person (either alone or with its Related Persons) intending to acquire such ownership shall have delivered to the Board of Directors of NSX Holdings (the ''Holdings Board'') a notice in writing, not less than 45 days (or such shorter period as the Holdings Board shall expressly consent to) prior to the acquisition of any shares that would cause such Person (either alone or with its Related Persons) to exceed the Concentration Limitation, of its intention to acquire such ownership; (ii) the Holdings Board shall have resolved to expressly permit such ownership; and (iii) such resolution shall have been filed with the Commission under section 19(b) of the Act and shall have become effective thereunder.[38]

The Exchange has provided for additional safeguards that must be satisfied in the event a Person alone or with their Related Persons seeks an exemption from the Concentration Limitation. For example, the Holdings Board shall not adopt any resolution permitting an exemption from the Concentration Limitation unless the Holdings Board first determines that such acquisition of beneficial ownership by such Person (either alone or with its Related Persons) (i) will not impair any of NSX Holdings' or NSX's ability to discharge its responsibilities under the Act and the rules and regulations thereunder, and is otherwise in the best interests of NSX Holdings and its stockholders; (ii) such acquisition of beneficial ownership by such Person (either alone or with its Related Persons) will not impair the Commission's ability to enforce the Act; and (iii) neither such Person nor any of its Related Persons is subject to any statutory disqualification as defined in section 3(a)(39) of the Act.[39]

The NSX Holdings A&R Certificate further provides that, in making such determinations, the Holdings Board may impose such conditions and restrictions on a Person and its Related Persons owning any shares of stock of NSX Holdings entitled to vote on any matter as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of NSX Holdings.[40] In the event that a Person (either alone or with its Related Persons) at any time owns beneficially shares of stock of NSX Holdings in excess of the Concentration Limitation without having first satisfied the requirement of providing timely written notice to the Holdings Board, and the Holdings Board expressly permits such ownership and files the resolution with the Commission pursuant to section 19(b) of the Act,

required consents from FINRA for the NSX change of ownership. *See* Notice, *supra* note 4, at 86.

[32] These provisions are generally consistent with ownership and voting limits approved by the Commission for other SROs. *See e.g.,* Securities Exchange Act Release Nos. 71375 (January 23, 2014) 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039) (order approving proposed business combination involving BATS Global Markets, Inc. and Direct Edge Holdings LLC); 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE–2013–42, SRNYSEMKT–2013–50 and SR–NYSEArca–2013–62) (order approving proposed transaction in which NYSE Euronext will become a wholly owned subsidiary of Intercontinental Exchange Group, Inc.); 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order approving registration application of BYX as a national securities exchange); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order approving registration application of EDGX Exchange, Inc. and EDGA Exchange, Inc.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order approving registration of BATS as a national securities exchange); 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (order approving proposed combination between NYSE Group, Inc. and Euronext N.V.); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving merger of New York Stock Exchange, Inc. and Archipelago, and demutualization of New York Stock Exchange, Inc.); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (File No. SR–NSX–2006–03); 53128 (January 13, 2006), 71 FR 3550 (File No. 10–131) (order approving registration application of NASDAQ as a national securities exchange); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR–CHX–2004–26); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73).

[33] *See* NSX Holdings A&R Certificate, Article Fourth, section B (defining ''Person'').

[34] *See* NSX Holdings A&R Certificate, Article Fourth, section B (defining ''Related Persons'').

[35] *See* NSX Holdings A&R Certificate, Article Fourth, section C(i).

[36] *See* NSX Holdings A&R Certificate, Article Fourth, section C(i). *See also* Notice, *supra* note 4, at 87.

[37] The Commission previously has approved a period of time for the reduction of share ownership concentration. *See* Securities Exchange Act Release No. 45803 (April 23, 2002), 67 FR 21306 (April 30, 2002) (SR–ISE–2002–01) (allowing a temporary exemption, not to extend past a date certain, from ownership concentration limits).

[38] *See* NSX Holdings A&R Certificate, Article Fourth, section C(i)(a).

[39] *See* NSX Holdings A&R Certificate, Article Fourth, section C(i)(b).

[40] *See* NSX Holdings A&R Certificate, Article Fourth, section C(i)(b).

NSX Holdings must call from such Person and its Related Persons that number of shares of stock of NSX Holdings entitled to vote on any matter that exceeds the Concentration Limitation at a price equal to the par value of such shares of stock.[41]

The NSX Holdings A&R Certificate also provides for limitations on ownership of shares by ETP Holders of NSX.[42] As long as NSX remains registered as a national securities exchange under section 6 of the Act, no ETP Holder (either alone or with its Related Persons) shall be permitted to own beneficially shares of stock of NSX Holdings representing in the aggregate more than 20% of the then outstanding votes of NSX Holdings stock entitled to be cast on any matter.[43] If any ETP Holder (either alone or with its Related Persons) at any time owns beneficially shares of stock in excess of such 20% limitation, NSX Holdings shall call from such ETP Holder and its Related Persons that number of shares of stock of NSX Holdings entitled to vote on any matter that exceeds such 20% limitation at a price equal to the par value of such shares of stock.[44]

With respect to voting limitations, Article Fourth, section B(i) of the NSX Holdings A&R Certificate provides that, notwithstanding any other provisions of that document, no Person (either alone or with its Related Persons) as of any record date for the determination of stockholders entitled to vote on any matter, shall be entitled to vote or cause the voting of shares of stock of NSX Holdings, in person or by proxy or through any voting agreement or other arrangement, to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on such matter (the ''Voting Limitation''). If votes have been cast, in person or by proxy or through any voting agreement or other arrangement, by any Person (either alone or with its Related Persons) in excess of the Voting Limitation, NSX Holdings shall disregard such votes in excess of the Voting Limitation.[45] The Voting Limitation (or Nonvoting Agreement Prohibition) shall apply unless and until a Person (and its Related Persons) owning any shares of stock of NSX Holdings entitled to vote on such matter shall have delivered to the Holdings Board a notice in writing, not less than 45 days (or such shorter period as the Holdings Board shall expressly consent to) prior to any vote, of its intention to cast more than 20% of the votes entitled to be cast on such matter or to enter into an agreement, plan or other arrangement that would violate the Nonvoting Agreement Prohibition, as applicable; the Holdings Board shall have resolved to expressly permit such exercise or the entering into of such agreement, plan or other arrangement, as applicable, and such resolution shall have been filed with the Commission pursuant to section 19(b) of the Act and shall have become effective thereunder.[46]

The Commission believes that the proposed restrictions on the ownership and voting of members are consistent with the requirements of section 6(b) of the Act. These restrictions are generally consistent with ownership and voting limits approved by the Commission for other SROs.[47] Moreover, the Commission believes that the proposed ownership and voting limits should reduce the potential that the control of the Exchange by one or a few shareholders would impair the Exchange's ability to carry out its self-regulatory obligations.

2. Jurisdiction; Books and Records; Due Regard

As described above, following the Closing, NSX Holdings will be the sole stockholder of the Exchange. Although NSX Holdings will not carry out any regulatory functions, its activities with respect to the operation of the Exchange must be consistent with, and must not interfere with, the self-regulatory obligations of the Exchange. The NSX Holdings A&R Certificate and the NSX Holdings By-laws therefore include certain provisions that are designed to maintain the independence of the Exchange's self-regulatory functions, enable the Exchange to operate in a manner that complies with the federal securities laws, including the objectives of sections 6(b)[48] and 19(g)[49] of the Act, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.[50]

For example, Article VI of the NSX Holdings By-laws, entitled ''SRO Functions of NSX,'' governs the conduct of NSX Holdings as the holding company for the Exchange with respect to NSX's status and obligations as a registered national securities exchange and an SRO.[51] Among the key provisions are requirements that, for so long as NSX Holdings shall, directly or indirectly, control NSX, the directors, officers, employees and agents of NSX Holdings shall give due regard to the preservation of the independence of the self-regulatory function of NSX and to its obligations to investors and the general public and shall not take actions which would interfere with the effectuation of decisions by the Exchange Board of Directors relating to NSX's regulatory functions (including disciplinary matters) or which would interfere with the Exchange's ability to carry out its responsibilities under the Exchange Act.[52]

Further, NSX Holdings is required to comply with the federal securities laws, and the rules and regulations thereunder, and must cooperate with the Commission and with NSX pursuant to and to the extent of their respective regulatory authority.[53] In addition, the NSX Holdings A&R Certificate and the NSX Holdings By-laws provide that the officers, directors, employees and agents of NSX Holdings, by virtue of their acceptance of such position, shall comply with the federal securities laws and the rules and regulations thereunder; and shall be deemed to agree to cooperate with the Commission and the Exchange in respect of the Commission's oversight responsibilities regarding NSX and the self-regulatory functions and responsibilities of NSX, and NSX Holdings will take reasonable

[41] *See* NSX Holdings A&R Certificate, Article Fourth, section C(i)(c).

[42] *See* Exchange Rule 1.1E.(1) for definition of the term ''ETP.''

[43] *See* NSX Holdings A&R Certificate, Article Fourth, section C(ii).

[44] *See* NSX Holdings A&R Certificate, Article Fourth, section C(ii).

[45] NSX Holdings A&R Certificate, Article Fourth, section B(i) prohibits ''Nonvoting Agreements'' by or among Persons and their Related Persons that would result in shares of stock that would be subject to such agreement not being voted on any matter, or the withholding of any proxy relating to those shares, where the effect of such an agreement would be to enable any Person, either alone or with its Related Persons, to vote or cause the voting of shares representing in the aggregate more than 20% of the then outstanding votes entitled to be cast (the ''Nonvoting Agreement Prohibition''). Any share owner seeking a waiver of the Nonvoting Agreement Prohibition so as to be able to enter into such an agreement would also be required to obtain express permission of the Holdings Board through a duly authorized written resolution that is filed with and approved by the Commission pursuant to section 19(b) of the Act. *See* NSX Holdings A&R Certificate, Article Fourth, section B(i).

[46] *See* NSX Holdings A&R Certificate, Article Fourth, section B(ii).

[47] *See* note 32, *supra.*

[48] 15 U.S.C. 78f(b).

[49] 15 U.S.C. 78s(g).

[50] *See e.g.,* NSX Holdings A&R Certificate, Articles Twelfth through Sixteenth and NSX Holdings By-laws, Article VI.

[51] Articles Twelfth through Sixteenth of the NSX Holdings A&R Certificate contain substantially the same provisions with respect to NSX Holdings' obligations as the controlling entity for the Exchange. *See* Notice, *supra* note 4, at 88, n.34.

[52] *See* NSX Holdings By-laws, Article VI, section 6.1.

[53] *See* NSX Holdings A&R Certificate, Article Fifteenth; NSX Holdings By-laws, Article VI, section 6.6.

steps necessary to cause its officers, directors, employees and agents to so cooperate.[54] Furthermore, NSX Holdings and its officers, directors, employees and agents by virtue of their acceptance of such positions, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission and NSX for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of NSX, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission or the Exchange, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency.[55] NSX Holdings and its officers, directors, employees and agents also agree that they will maintain an agent in the United States for the service of process of a claim arising out of, or relating to, the activities of the Exchange.[56]

In addition, for so long as NSX remains a registered national securities exchange, the books, records, premises, officers, directors, employees and agents of NSX Holdings shall be deemed to be the books, records, premises, officers, directors, employees and agents of NSX for purposes of and subject to oversight pursuant to the Act.[57]

The NSX Holdings By-laws further provide that NSX Holdings' books and records shall be maintained within the United States and shall be at all times subject to inspection and copying by the Commission and by the Exchange, to the extent that such books and records are related to the administration and operation of the Exchange.[58]

The NSX Holdings A&R Certificate and the NSX Holdings By-laws provide that, to the extent that NSX continues to be controlled, directly or indirectly, by NSX Holdings and to the fullest extent permitted by applicable law, all books and records of the Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchange or its successors (including but not limited to disciplinary matters, trading data, trading practices and audit information) that shall come into the possession of NSX Holdings, shall not be made available other than to those officers, directors, employees and agents of NSX Holdings that have a reasonable need to know the contents thereof, and shall be retained in confidence by NSX Holdings, and the officers, directors, employees and agents of NSX Holdings, and not used for any non-regulatory purposes.[59] The NSX Holdings A&R Certificate and the NSX Holdings By-laws, however, specify that the NSX Holdings A&R Certificate and NSX Holdings By-laws, respectively, (including these confidentiality provisions) shall not be interpreted so as to limit or impede the rights of the Commission or the Exchange to access and examine such NSX confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of NSX Holdings to disclose NSX confidential information to the Commission or the Exchange.[60]

The NSX Holdings A&R Certificate and the NSX Holdings By-laws provide that, for so long as NSX remains a registered national securities exchange, before any amendment to or repeal of any provision of the NSX Holdings A&R Certificate or the NSX Holdings By-laws may be effective, those changes must be submitted to the Exchange Board of Directors, and if the amendment is required to be filed with, or filed with and approved by the Commission pursuant to section 19(b) of the Act,[61] such change shall not be effective until filed with, or filed with and approved by, the Commission.[62]

The Exchange submits that the NSX Holdings A&R Certificate and the NSX Holdings By-laws establish an organizational framework that assures that the Commission and NSX will have regulatory jurisdiction and authority over NSX Holdings and its directors, officers, employees and agents, and will preserve the independence and effectiveness of the Exchange in discharging its self-regulatory responsibilities pursuant to the Act.[63] Further, the Exchange represents that these provisions of the NSX Holdings corporate documents will not impair the ability of the Exchange to carry out its functions and responsibilities as a national securities exchange under the Act and the rules and regulations promulgated thereunder, or the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder.[64] The Exchange further states that it will continue to enforce the Act, the Commission's rules thereunder, and the Exchange's own rules, in the same manner as prior to the Transaction, and notes that the Commission will continue to have plenary regulatory authority over NSX.[65]

The Commission finds that these provisions are consistent with the Act, and that they are intended to assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act. The Commission also notes that, even in the absence of these provisions, under section 20(a) of the Act,[66] any person with a controlling interest in the Exchange shall be jointly and severally liable with and to the same extent the Exchange is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, section 20(e) of the Act[67] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, section 21C of the Act[68] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.

3. Board Composition; Committees

Following the completion of the Transaction, the board of directors of the Exchange will continue to be the

[54] *See* NSX Holdings A&R Certificate, Articles Twelfth and Fifteenth; NSX Holdings By-laws, Article VI, section 6.6.

[55] *See* NSX Holdings A&R Certificate, Article Twelfth; NSX Holdings By-laws, Article VI, section 6.7. Additionally, as noted, no individual who is subject to any statutory disqualification as defined in section 3(a)(39) of the Exchange Act may serve as a director or officer of NSX Holdings. *See* Notice, *supra* note 4, at 89, n.39.

[56] *See* NSX Holdings A&R Certificate, Article Twelfth; NSX Holdings By-laws, Article VI, section 6.7.

[57] *See* NSX Holdings A&R Certificate, Article Fourteenth.

[58] *See* NSX Holdings By-laws, Article VI, sections 6.4 and 6.5.

[59] *See* NSX Holdings A&R Certificate, Article Thirteenth and NSX Holdings By-laws, section 6.2.

[60] *See* NSX Holdings A&R Certificate, Article Thirteenth and NSX Holdings By-laws, section 6.3.

[61] 15 U.S.C. 78s(b).

[62] *See* NSX Holdings A&R Certificate, Article Sixteenth and NSX Holdings By-laws, section 7.7(b).

[63] *See* Notice, *supra* note 4, at 89.

[64] *See* Notice, *supra* note 4, at 89.

[65] *See* Notice, *supra* note 4, at 89.

[66] 15 U.S.C. 78t(a).

[67] 15 U.S.C. 78t(e).

[68] 15 U.S.C. 78u–3.

governing body of the Exchange and possess all of the powers necessary for the management of its business and affairs and the execution of its responsibilities as an SRO. In particular, the Exchange A&R By-laws will continue to provide that the Exchange Board shall consist of no fewer than seven or more than 25 directors.[69] In addition, the Exchange Board's composition at all times shall include the Chief Executive Officer of the Exchange, at least 50% Non-Industry Directors [70] (at least one of whom shall be an Independent Director [71]) and such number of ETP Holder Directors [72] as is necessary to comprise at least 20% of the Exchange Board.[73]

In connection with the Closing, the steps to transition the membership on the Exchange Board from the current directors to the post-Closing directors will conform to the requirements set forth in Article III, section 3.7 of the Exchange A&R By-laws. Furthermore, the Exchange A&R By-laws provides that any vacancy occurring in a committee shall be filled by the Chairman of the Board for the remainder of the term, with the approval of the Exchange Board.[74] Each committee shall be comprised of at least three people and may include persons who are not members of the Board; provided, however, that such committee members who are not also members of the Board shall only participate in committee actions to the extent permitted by law.[75]

The Commission finds that these provisions are consistent with the Act, and that they are intended to assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

4. Changes to the Exchange Organizational Documents

In connection with the completion of the Transaction, the Exchange proposes certain amendments in the Exchange A&R Certificate and the Exchange A&R By-laws. In particular, the Exchange proposes to delete the language in Paragraph Fourth of the Exchange A&R Certificate that provides that the Exchange shall at all times be wholly owned by CBSX and replace that provision with one requiring that the Exchange at all times be wholly owned by NSX Holdings.[76]

In addition, with respect to the Exchange A&R By-laws, the Exchange proposes to replace all references to ''CBSX'' with references to ''NSX Holdings.'' [77] Specifically, Article III, section 3.2(c) of the Exchange A&R By-laws will be amended to eliminate any requirements relating to CBSX and will provide that no two or more directors of the Exchange may be partners, officers or directors of the same person or be affiliated with the same person (or affiliated with the same person), unless such affiliation is with a national securities exchange or NSX Holdings.[78] In addition, the Exchange proposes to replace references to CBSX with references to NSX Holdings in section 10.2 of the Exchange A&R By-laws. The provision would provide that no members of the Holdings Board who are not also members of the Exchange Board, or any officers, staff, counsel or advisors of NSX Holdings who are not also officers, staff, counsel or advisors of the Exchange (or any committees of the Exchange), shall be allowed to participate in any meetings of the Exchange Board or any Exchange committee pertaining to the self-regulatory function of the Exchange, including disciplinary matters.[79] The Exchange states that these amendments are intended to prevent any undue influence or any perception of undue influence over the Exchange's self-regulatory functions by NSX Holdings.[80]

In addition, the Exchange proposes to delete section 10.1(b) in the Exchange A&R By-laws, which requires that for so long as CBSX controls the Exchange, the Exchange shall promptly inform the CBSX board of directors, in writing, in the event that the Exchange has, or experiences, a deficiency related to its ability to carry out its obligations as a national securities exchange under the Act, including if the Exchange does not have or is not appropriately allocating such financial, technological, technical and personnel resources as may be necessary or appropriate for the Exchange to meet its obligations under the Act.[81] According to the Exchange, upon the completion of the Transaction, such requirements will no longer apply because CBSX will have no ownership interest in the Exchange.[82]

Finally, the Exchange is proposing certain clarifying amendments, and other non-substantive conforming amendments to the Exchange A&R By-laws that are consistent with the changes described above.[83]

The Commission believes that the proposed changes to the organizational documents of the Exchange are consistent with the Act, and that they are intended to align the Exchange's governance and organizational structure with the proposed ownership by NSX Holdings.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [84] that the proposed rule change (SR–NSX–2014–017), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[85]

Jill M. Peterson,

Assistant Secretary.

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[69] *See* Exchange A&R By-laws, Article III, section 3.2(a).

[70] The term ''Non-Industry Director'' is defined in Article I, section 1.1, para. N of the Exchange A&R By-laws as ''a member of the [NSX] Board who is (i) an Independent Director; or (ii) any other individual who would not be an Industry Director.''

[71] The term ''Independent Director'' is defined in Article I, section 1.1, para. I of the Exchange A&R By-laws as ''a member of the [NSX] Board that the [NSX] Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange, or any ETP Holder or any affiliate of any such ETP Holder, other than as a member of the Board.''

[72] The term ''ETP Holder Director'' is defined in Article I, section 1.1, para. E(2) of the Exchange A&R By-laws as ''a director who is an ETP Holder or a director, officer, managing member or partner of an entity that is, or is an affiliate of, an ETP Holder.''

[73] *See* Exchange A&R By-laws, Article III, section 3.2(b).

[74] *See* Exchange A&R By-laws, Article V, section 5.2.

[75] *See* Exchange A&R By-laws, Article V, section 5.2.

[76] *See* Notice, *supra* note 4, at 89.

[77] *See* Notice, *supra* note 4, at 89.

[78] *See* Notice, *supra* note 4, at 89.

[79] *See* Notice, *supra* note 4, at 90.

[80] *See* Notice, *supra* note 4, at 90.

[81] *See* Notice, *supra* note 4, at 89.

[82] *See* Notice, *supra* note 4, at 89–90.

[83] For a more detailed description of the non-substantive conforming amendments, *see* Notice, *supra* note 4, at 90 and Exhibit 5D to SR–NSX–2014–017.

[84] 15 U.S.C. 78s(b)(2).

[85] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74272; File No. SR–Phlx–2015–15]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Remote Streaming Quote Traders

February 13, 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 February 9, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 507, entitled ''Application for Approval as an SQT or RSQT or RSQTO and Assignment in Options'' to increase the number of Remote Streaming Quote Traders (''RSQTs'') that may be affiliated with a Remote Streaming Quote Trader Organization (''RSQTOs'').

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 the proposed rule change is to amend Phlx Rule 507, entitled ''Application for Approval as an SQT or RSQT or RSQTO and Assignment in Options,'' to increase the number of RSQTs that may be affiliated with RSQTOs. RSQTs are one of several types of Registered Options Traders (''ROTs'') on the Exchange. ROTs are market makers that include Streaming Quote Traders (''SQTs''),[3] RSQTs,[4] Directed Streaming Quote Traders (''DSQTs''), and Directed Remote Streaming Quote Traders (''DRSQTs'').[5]

Rule 507 is one of the numerous rules administered by the Exchange that deal with allocation and assignment of securities. These Rules generally describe the process for: Applying for an appointment as a specialist; allocating classes of options to specialist units and individual specialists; applying for an appointment as an SQT or RQT; as well as continuing performance obligations. The Rules also indicate, among other things, under what circumstances new allocations are made to specialists and assignments are determined for SQTs.[6] The process for applying to be an RSQTO and applying for an assignment in options as an RQST or SQT is set forth in Rule 507. All new applicants for trading privileges will continue to be subject to the process for assignment described in Rule 507. The Exchange considers all applicants for assignment in options using the objective criteria set forth in Exchange Rule 507(b). The objective criteria are used by the Exchange in determining the most beneficial assignment of options for the Exchange and the public. Approved RSQTs have certain electronic quoting obligations via the Exchange's electronic quoting and trading system, as well as restrictions, pertaining to the current market makers on the Exchange.[7] SQTs and RSQTs are subject to performance evaluations to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, efficient quote submission to the Exchange (including quotes submitted through a third party vendor), competition among market makers, observance of ethical standards, and administrative factors.[8]

The Exchange is not proposing to amend the process or procedure for applying to act as a market maker on the Exchange nor the obligations or performance evaluations that are conducted once appointed. The Exchange proposes to amend Rule 507(a) to increase the number of RSQTs that may be affiliated with an RSQTO from three to five RSTQs. The Exchange initially selected three RSQTs when the concept of an RSQTO was adopted because the Exchange believed that up to three RSQTs for each RSQTO organization would strike a proper balance with respect to the anticipated increase to support quoting and trading options in light of competition. The RSQTO concept was initially adopted in 2013.[9] At this time, the Exchange believes the number of RSQTs affiliated with an RSQTO can be increased to allow up to five RSQTs to be affiliated with an RSQTO, without a significant impact on message traffic, while allowing increased competition. The Exchange has allowed up to three RSQTs in the interim two years and at this time believes it has the adequate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Rule 1014(b)(ii)(A).

[4] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Rule 1014(b)(ii)(B).

[5] A DSQT is an SQT and a DRSQT is an RSQT that receives a Directed Order. Exchange Rule 1080(l)(i)(A) defines Directed Order as any customer order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider and delivered to the Exchange via its electronic quoting, execution and trading system.

[6] *See, e.g.,* Supplementary Material .01 to Rule 506 (specialist may not apply for a new allocation for a period of six months after an option allocation was taken away from the specialist in a disciplinary proceeding or an involuntary reallocation proceeding). Specifically, Rule 507 discusses the process of applying for approval as an RSQT or SQT on the Exchange and assignment of options to them. Under Rule 507, RSQTOs are Exchange member organizations while SQTs and RSQTs are Exchange members. Any member organization of the Exchange in good standing that satisfies the RSQTO readiness requirements will be approved as an RSQTO. RSQTOs may also be referred to as Remote Market Maker Organizations (''RMOs'') and RSQTs may also be referred to as Remote Market Markers (''RMMs''). Rule 507(a). No limit is placed on the number of member organizations that may become RSQTOs. Moreover, as many as three RSQT applicants affiliated with an RSQTO may be approved as an RSQT, to the extent that each such RSQT applicant is qualified as an ROT in good standing, and satisfies the five readiness requirements that are set out in Rule 507. There is no limit on the number of qualifying ROTs that may be approved as RSQTs, as long as the applicants are qualified as ROTs in good standing and satisfy the readiness requirements. No limit is placed on the number of member organizations that may become RSQTOs. Moreover, as many as three RSQT applicants affiliated with an RSQTO may be approved as an RSQT, to the extent that each such RSQT applicant is qualified as an ROT in good standing, and satisfies the five readiness requirements that are set out in Rule 507. There is no limit on the number of qualifying ROTs that may be approved as RSQTs, as long as the applicants are qualified as ROTs in good standing and satisfy the readiness requirements.

[7] More than one RSQT may submit a quote in an assigned option, to the extent that each RSQT applies for and is approved as an RSQT affiliated with an RSQTO pursuant to Rule 507. *See* Rule 1014 (b)(ii)(B).

[8] *See* Rule 510.

[9] *See* Securities and Exchange [sic] Release No. 68689 (January 25 [sic], 2013), 78 FR 5518 (January 18 [sic], 2013) (SR–Phlx–2013–03).

capacity to propose the increased number of RSQTs to quote. The Exchange will continue to monitor the number of permitted RSQTs in relation to its capacity. The Exchange notes that the Maximum Number of Quoters (''MNQs'') refers to the maximum number of participants that may be assigned in a particular equity option at any one time. The MNQ level for options trading on the Exchange is 30 for all equity options listed for trading on the Exchange.[10] This rule change will not impact the MNQ. Other options exchanges similarly impose higher limits on the number of total members that may quote electronically.[11] The Exchange represents that it has the system capacity to continue to support quoting and trading options subsequent to the effectiveness of this proposal. The Exchange represents that it has an adequate surveillance program in place for options that are quoted and traded on the Exchange and intends to continue application of those program procedures as necessary. Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, dated June 20, 1994. ISG members coordinate surveillance and investigative information sharing for equity and options markets. Moreover, futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange believes that the proposed rule change increasing the number of RSQTs that may be affiliated with RSQTOs will encourage competition, create additional trading opportunities and outlets and increase the depth of markets.

The Exchange is also proposing to delete rule text in Rule 507 related to RSQTO conversions. The rule text was originally adopted to provide guidance as to the initial manner and timeframe within which members were required to notify the Exchange of the names of the affiliated RSQTs. This language is no longer necessary and the Exchange proposes to delete the rule text.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act [12] in general, and furthers the objectives of section 6(b)(5) of the Act [13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by enabling a greater number of RSQTs to be affiliated with an RSQTO.

The Exchange believes that this proposal does not engender unfair discrimination among specialists, specialist units, SQTs and RSQTs. This proposal to amend Rule 507 will be equally applicable to all members and member organizations at the Exchange. Increasing the number of RSQTs associated with an RSQTO is pro-competitive, because it adds depth and liquidity to the Exchange's markets by permitting additional participants to compete on the Exchange.

The Exchange believes that deleting the language concerning the RSQTO conversion period, which was initially implemented to provide a timeframe to permit member organizations to provide notification to the Exchange of up to three affiliated RSQTs, will clarify the Rule text by removing this language which is no longer necessary and is outdated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal further promotes intra-market competition on the Exchange which should lead to tighter, more efficient markets to the benefit of market participants including public investors that engage in trading and hedging on the Exchange, and thereby make the Exchange a desirable market as compared to other options exchanges and therefore promoted inter-market competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(ii) [sic] of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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–2015–15 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–2015–15. This file

[10] *See* Commentaries .01 to .05 to Rule 507.

[11] The Chicago Board Options Exchange Incorporated (''CBOE'') imposes an upper limit on the aggregate number of Trading Permit Holders that may quote electronically in each product during each trading session (''Class Quoting Limit'' or ''CQL''). The DPM or LMM(s) assigned to the product and Market-Makers who hold an appointment in the product are entitled to quote electronically in those products for as long as they maintain an appointment in those products. All other Market-Makers that request the ability to submit quotes electronically in the subject product will be entitled to quote electronically in that product in the order in which they so request provided the number of Trading Permit Holders quoting electronically in the product does not exceed the CQL. When the number of Trading Permit Holders in the product quoting electronically equals the CQL, all other Trading Permit Holders requesting the ability to quote electronically in that product will be wait-listed in the order in which they submitted the request. The CQL for products trading on the Hybrid Trading System is fifty (50). *See* CBOE Rule 8.3A.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(a)(ii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–15, and should be submitted on or before March 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–03517 Filed 2–19–15; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74278; File No. SR–NYSEArca–2015–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Innovator IBD® 50 Fund Under NYSE Arca Equities Rule 8.600

February 13, 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 30, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On February 12, 2015, the Exchange filed Amendment No. 1 to the proposal.[4] The Commission is publishing this notice, as modified by Amendment No. 1, to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Innovator IBD® 50 Fund. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:[5] Innovator IBD® 50 Fund (''Fund''). The Shares will be offered by Academy Funds Trust (the ''Trust''),[6] an open-end management investment company.[7] The investment adviser to the Fund will be Innovator Management LLC (the ''Adviser''). Penserra Capital Management LLC will be the Fund's sub-adviser (''Sub-Adviser''). Quasar Distributors, LLC (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. U.S. Bank, N.A. (the ''Administrator'' or ''Custodian'') will serve as the administrator, custodian and transfer agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[8] Commentary .06 to Rule

[4] Amendment No. 1 replaces SR–NYSEArca–2015–004 and supersedes such filing in its entirety.

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On October 9, 2014 and on December 19, 2014, the Trust filed with the Commission amendments to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and under the 1940 Act relating to the Fund (File Nos. 333–146827 and 811–22135) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 31248 (September 9, 2014) (File No. 812–14308) (''Exemptive Order'').

[7] The Commission has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF); and 65468 (October 3, 2011), 76 FR 62873 (October 11, 2011) (SR–NYSEArca–2011–51) (order approving Exchange listing and trading of TrimTabs Float Shrink ETF).

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to

8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer. The Adviser is not affiliated with a broker-dealer. The Sub-Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser or the Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or any sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Principal Investments

According to the Registration Statement, the investment objective of the Fund will be to seek long-term capital appreciation. Under normal circumstances,[9] the Fund will invest at least 80% of its net assets in companies included in the IBD® 50 Index (''Index'') and in other assets identified below in this ''Principal Investments'' section. The Fund will generally hold all of the companies included in the Index other than during periods when the Fund is rebalanced due to changes in the constitution of the Index. The Fund, however, will not invest in the Index companies in the same proportion as reflected in the Index. The Fund will be actively managed and will not be an index fund. As a result, the Fund's performance will deviate from the performance of the Index.

The Index is a computer-generated stock index published by Investor's Business Daily® (''IBD®''). IBD® uses proprietary fundamental and technical ratings to compile what IBD® considers the 50 leading growth companies that trade on U.S. national securities exchanges. Companies included in the Index must meet minimum earnings, sales, profit margin, volume and technical requirements. Companies meeting these requirements are included in the Index on a price-weighted basis. This means that stocks with higher prices receive a greater weight in the Index. The Index is rebalanced on the last day of each trading week after the U.S. stock market closes and is published by IBD® on its Web site, *www.investors.com*, and in its Monday print edition.

According to the Registration Statement, unlike the Index's price-weighted basis, the Fund will invest in the companies included in the Index on a conviction basis. This means that the Fund's portfolio manager will overweight the higher ranked companies in the Index and underweight the lower ranked companies. The Fund's portfolio manager anticipates that these higher ranked companies may each represent as much as approximately 3.5% of the Fund's portfolio at the time of investment while the lower ranked companies may each represent as little as approximately 0.5% of the Fund's portfolio at the time of investment.

Under normal circumstances, the Fund will invest in U.S. exchange-traded equities. Typically, the Fund will hold U.S. exchange-traded common stocks as well as U.S. exchange-traded master limited partnerships (''MLPs''),[10] real estate investment trusts (''REITs''),[11] royalty trusts and business development companies (''BDCs''). It will invest primarily in U.S. equity securities but may, to a lesser extent, invest in equity securities of foreign companies in both developed and emerging markets, generally through American depositary receipts (''ADRs'').[12] The Fund may invest in companies of any size.

Non-Principal Investments

According to the Registration Statement, while the Fund, under normal circumstances, will invest at least 80% of its net assets in securities described above, the Fund may invest up to 20% of its net assets in the following securities.

The Fund may invest in money market securities (the types of which are discussed below) for liquidity and cash management purposes or if the Adviser or Sub-Adviser determines that securities meeting the Fund's investment objective and policies are not otherwise readily available for purchase. Money market securities include (i) short-term U.S. government securities; (ii) commercial paper[13] rated in the highest short-term rating category by a nationally recognized statistical ratings organization (''NRSRO''), such as Standard & Poor's or Moody's, or determined by the Adviser or Sub-

codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[9] The term ''under normal circumstances'' means, without limitation, 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.

[10] Most MLPs operate in oil and gas related businesses including energy processing and distribution. The remaining MLPs operate in a variety of businesses including coal, timber, other minerals, real estate, and some miscellaneous businesses.

[11] According to the Registration Statement, REITs, which are pooled investment vehicles that invest in real estate or real estate loans or interests, generally can be classified as ''Equity REITs'', ''Mortgage REITs'' and ''Hybrid REITs''. Equity REITs invest the majority of their assets directly in real property and derive their income primarily from rents and capital gains from appreciation realized through property sales. Mortgage REITs invest the majority of their assets in real estate mortgages and derive their income primarily from interest payments. Hybrid REITs combine the characteristics of both Equity and Mortgage REITs.

[12] ADRs are certificates evidencing ownership of shares of a foreign issuer. Depositary receipts may be sponsored or unsponsored. These certificates are issued by depository banks and generally trade on an established market in the United States. The underlying shares are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depository bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. ADRs are alternatives to directly purchasing the underlying foreign securities in their national markets and currencies. ADRs may be sponsored or unsponsored; however, the Fund will not invest in ADRs that are not U.S. exchange-listed. Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the Intermarket Surveillance Group ('' ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[13] The commercial paper in which the Fund may invest consists of unsecured short-term promissory notes issued by corporations and other entities. Maturities on these issues vary from a few to 270 days.

Adviser to be of comparable quality at the time of purchase; (iii) short-term bank obligations (certificates of deposit [14] time deposits [15] and bankers' acceptances [16]) of U.S. domestic banks, foreign banks and foreign branches of domestic banks, and commercial banks with assets of at least $1 billion as of the end of their most recent fiscal year; (iv) repurchase agreements [17] involving such securities; and (v) money market mutual funds.

The Fund may invest in securities of other investment companies (other than BDCs), including shares of the following: (1) Exchange-traded funds (''ETFs''),[18] unit investment trusts, and closed-end investment companies, each of which will be listed and traded on a U.S. national securities exchange, and (2) non-exchange-listed open-end investment companies.

Investment Restrictions

According to the Registration Statement, the Fund will be classified as a diversified investment company under the 1940 Act.[19]

The Fund intends to qualify as a ''regulated investment company'' for purposes of the Internal Revenue Code of 1986.[20]

According to the Registration Statement, the Fund will not invest 25% or more of the Fund's net assets in securities of issuers in any one industry or group of industries (other than securities issued or guaranteed by the U.S. government or any of its agencies or instrumentalities or securities of other investment companies), except that the Fund may invest 25% or more of its net assets in securities of issuers in the same industry to approximately the same extent that the Index concentrates in the securities of a particular industry or group of industries.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets.[21] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[22]

The Fund will not invest in options, futures contracts or swaps agreements. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. The Fund will not invest in leveraged or inverse leveraged (*e.g.*, 2X, −2X, 3X or −3X) ETFs.

Net Asset Value

According to the Registration Statement, the Administrator will calculate the Fund's net asset value (''NAV'') at the close of regular trading (ordinarily 4:00 p.m. Eastern time) every day the New York Stock Exchange (''NYSE'') is open. The NAV for one Fund Share will be the value of that Share's portion of all of the net assets of the Fund. In calculating its NAV, the Fund generally will value its investment portfolio at market price. If market prices are not readily available or the Fund reasonably believes that they are unreliable, such as in the case of a security value that has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined using methods approved by the Fund's Board of Trustees (''Board'').

In computing the Fund's NAV, the Fund's securities holdings will be valued based on their last readily available market price. Price information on exchange-listed securities, including common stocks, ETFs, unit investment trusts, closed-end investment companies, ADRs, MLPs, REITs, royalty trusts and BDCs will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded. Money market mutual funds will be valued at NAV. Other money market securities generally will be valued on the basis of independent pricing services or quotes obtained from brokers and dealers.

Other portfolio securities and assets for which market quotations are not readily available or determined to not represent the current fair value will be valued based on fair value as determined in good faith in accordance with procedures adopted by the Board and in accordance with the 1940 Act.

Creations and Redemptions of Shares

According to the Registration Statement, the Fund will issue and sell Shares only in ''Creation Unit'' size at the NAV next determined after receipt, on any business day, of an order in proper form. A Creation Unit consists of 25,000 Shares. The size of a Creation Unit is subject to change.

The consideration for purchase of Creation Units of the Fund generally will consist of the in-kind deposit of a designated portfolio of equity securities—the ''Deposit Securities''—per each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and an

[14] Certificates of deposit are interest-bearing instruments with a specific maturity issued by banks and savings and loan institutions in exchange for the deposit of funds.

[15] Time deposits are non-negotiable receipts issued by a bank in exchange for the deposit of funds.

[16] Bankers' acceptances are bills of exchange or time drafts drawn on and accepted by a commercial bank. Corporations use bankers' acceptances to finance the shipment and storage of goods and to furnish dollar exchange. Maturities are generally six months or less.

[17] The Fund will follow certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Adviser.

[18] For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on national securities exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged ETFs (*e.g.*, 2X or 3X).

[19] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[20] 26 U.S.C. 851.

[21] Under the supervision of the Board, the Adviser determines the liquidity of the Fund's investments. In determining the liquidity of the Fund's investments, the Adviser may consider various factors, including (1) the frequency and volume of trades and quotations; (2) the number of dealers and prospective purchasers in the marketplace; (3) dealer undertakings to make a market; and (4) the nature of the security and the market in which it trades (including any demand, put or tender features, the mechanics and other requirements for transfer, any letters of credit or other credit enhancement features, any ratings, the number of holders, the method of soliciting offers, the time required to dispose of the security, and the ability to assign or offset the rights and obligations of the security).

[22] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also*, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

amount of cash—the ''Cash Component''—computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The Cash Component (also referred to as the ''Balancing Amount'') serves the function of compensating for any differences between the NAV per Creation Unit and the Deposit Amount (as defined below). The Cash Component is an amount equal to the difference between the NAV of the Fund Shares (per Creation Unit) and the ''Deposit Amount''—an amount equal to the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.*, the NAV per Creation Unit exceeds the Deposit Amount), the creator will deliver the Cash Component. If the Cash Component is a negative number (*i.e.*, the NAV per Creation Unit is less than the Deposit Amount), the creator will receive the Cash Component.

The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next announced composition of the Deposit Securities is made available.

The identity and number of shares of the Deposit Securities required for a Fund Deposit for the Fund will change as rebalancing adjustments and corporate action events are reflected from time to time by the Sub-Adviser to the Fund with a view to the investment objective of the Fund. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash—*i.e.*, a ''cash in lieu'' amount—to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for transfer, or which may not be eligible for trading by an Authorized Participant (as defined below) or the investor for which it is acting. The Trust also reserves the right to offer an ''all cash'' option for creations of Creation Units for the Fund.[23]

In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, the Administrator, through the NSCC, also will make available on each business day, the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of the Fund.

To be eligible to place orders with the Distributor to create a Creation Unit of the Fund, an entity must be (i) a ''Participating Party,'' *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the ''Clearing Process''), a clearing agency that is registered with the Commission; or (ii) a Depository Trust Company (''DTC'') Participant, and, in each case, must have executed a ''Participant Agreement'' with the Trust, the Distributor and the Administrator with respect to creations and redemptions of Creation Units. A Participating Party and DTC Participant are collectively referred to as an ''Authorized Participant.''

All orders to create Creation Units must be placed for one or more Creation Unit size aggregations of at least 25,000 Shares. All orders to create Creation Units must be received by the Distributor no later than 3:00 p.m., Eastern Time, an hour earlier than the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time) (''Closing Time''), in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Redemption of Shares

According to the Registration Statement, Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day. Orders to redeem Creation Units must be received by the Administrator not later than 3:00 p.m., Eastern Time.

With respect to the Fund, the Administrator, through the NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the list of the names and number of shares of the Fund's portfolio securities (''Fund Securities'') that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units.

Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally will consist of Fund Securities—as announced by the Administrator on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a redemption transaction fee. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder.

If it is not possible to effect deliveries of the Fund Securities, the Fund may in its discretion exercise its option to redeem such shares in cash, and the redeeming beneficial owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions to offset the Trust's brokerage and other transaction costs associated with the disposition of Fund Securities). The Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of the Fund Securities but does not differ in NAV.

Redemptions of Shares for Fund Securities will be subject to compliance with applicable federal and state securities laws and the Fund (whether or not it otherwise permits cash redemptions) reserves the right to redeem Creation Units for cash to the extent that the Fund could not lawfully deliver specific Fund Securities upon redemptions or could not do so without first registering the Fund Securities under such laws. An Authorized

[23] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

Participant or an investor for which it is acting subject to a legal restriction with respect to a particular stock included in the Fund Securities applicable to the redemption of a Creation Unit may be paid an equivalent amount of cash. The Trust also reserves the right to offer an ''all cash'' option for redemptions of Creation Units for the Fund.

The right of redemption may be suspended or the date of payment postponed with respect to the Fund (1) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the NYSE is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Shares' NAV is not reasonably practicable; or (4) in such other circumstance as is permitted by the Commission.

Availability of Information

The Fund's Web site (*www.innovatorfunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[24] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[25]

On a daily basis, the Adviser, on behalf of the Fund, will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities (as applicable) required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket will represent one Creation Unit of the Fund.

Investors can also obtain the Fund's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares and U.S. exchange-listed equity securities, including common stocks, ETFs, unit investment trusts, closed-end investment companies, ADRs, MLPs, REITs, royalty trusts and BDCs will be available via the Consolidated Tape Association (''CTA'') high-speed line, and will be available from the national securities exchange on which they are listed. Intra-day and closing price information relating to the investments of the Fund will be available from major market data vendors and from securities exchanges, as applicable. Price information regarding money market mutual funds will be available from on-line sources and from the Web site for the applicable fund. Price information relating to other money market securities will be available from major market data vendors. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), based on current information regarding the value of the securities and other assets in the Disclosed Portfolio, will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[26] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day. The Portfolio Indicative Value should not be viewed as a ''real-time'' update of the NAV per Share of the Fund, which will be calculated once per day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[27] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange 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. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca

[24] The Bid/Ask Price of Shares of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[25] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[26] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

[27] *See* NYSE Arca Equities Rule 7.12.

Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser, as the Reporting Authority, will 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 Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [28] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

Surveillance

The Exchange represents 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.[29] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying exchange-traded equity securities (including common stocks, ETFs, unit investment trusts, closed-end investment companies, ADRs, MLPs, REITs, royalty trusts and BDCs) with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, underlying exchange-traded equity securities, from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded equity securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[30]

Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) 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; (3) 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; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) 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 (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [31] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying exchange-traded equity securities (including common stocks, ETFs, unit investment trusts, closed-end investment companies, ADRs, MLPs, REITs, royalty trusts and BDCs) 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 and underlying exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded equity securities with other markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing

[28] 17 CFR 240.10A–3.

[29] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[30] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[31] 15 U.S.C. 78f(b)(5).

agreement. Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer. The Adviser is not affiliated with a broker-dealer. The Sub-Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser or the Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or any sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets. The Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. In addition, the Portfolio Indicative Value will be widely disseminated by the Exchange at least every 15 seconds during the Core Trading Session. The Fund's Web site will include a form of the prospectus for the Fund that may be downloaded, as well as additional quantitative information updated on a daily basis. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. On a daily basis, the Adviser, on behalf of the Fund, will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge. Moreover, 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. Trading in Shares of the Fund 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. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that primarily holds equity securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–04, and should be submitted on or before March 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–03519 Filed 2–19–15; 8:45 am]

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[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74271; File No. SR–NYSEArca–2015–06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF's Holdings of Non-U.S. Equity Securities

February 13, 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 February 3, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to change a representation regarding the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF's holdings of non-U.S. equity securities. Shares of the WCM/BNY Mellon Focused Growth ADR ETF have been approved for listing and trading on the Exchange under NYSE Arca Equities Rule 8.600. 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 Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares (''Shares'') of the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF (the ''Fund'') under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of Managed Fund Shares.[5] The Fund's Shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

The Shares are offered by AdvisorShares Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] The investment adviser to the Fund is AdvisorShares Investments, LLC (the ''Adviser''). WCM Investment Management (''WCM'') is the sub-adviser and portfolio manager to the Fund (''Sub-Adviser'').

According to the Registration Statement, and as stated in the Prior Release the Fund's investment objective is long-term capital appreciation above international benchmarks such as the BNY Mellon Classic ADR Index and the MSCI EAFE Index. WCM seeks to achieve the Fund's investment objective by selecting a portfolio of U.S. traded securities of non-U.S. organizations included in the BNY Mellon Classic ADR Index. The BNY Mellon Classic ADR Index predominantly includes American Depositary Receipts (''ADRs'') and in addition includes other Depositary Receipts (''DRs''), which include Global Depositary Receipts (''GDRs''), Euro Depositary Receipts (''Euro DRs'') and New York Shares (''NYSs'').[7]

According to the Prior Release, WCM employs a team approach through Investment Strategy Group, consisting of four senior investment professionals (the ''Portfolio Managers''). This team establishes portfolio guidelines for sector and industry analysis and develops the Fund's portfolio. The Portfolio Managers analyze the major trends in the global economy in order to identify those economic sectors and

[4] *See* Securities Exchange Act Release No. 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR–NYSEArca–2010–57) (the ''Prior Order''). The notice with respect to the Prior Order was published in Securities Exchange Act Release No. 62344 (June 21, 2010), 75 FR 37498 (June 29, 2010) (''Prior Notice'' and, together with the Prior Order, the ''Prior Release'').

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On November 1, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[7] According to the Registration Statement, DRs, which include ADRs, GDRs, Euro DRs and NYSs, are negotiable securities that generally represent a non-U.S. company's publicly traded equity or debt. Depositary Receipts may be purchased in the U.S. secondary trading market. They may trade freely, just like any other security, either on an exchange or in the over-the-counter market. Although typically denominated in U.S. dollars, Depositary Receipts can also be denominated in Euros. Depositary Receipts can trade on all U.S. stock exchanges as well as on many European stock exchanges.

industries that are most likely to benefit. According to the Registration Statement, typical themes incorporated in the Portfolio Managers' investment process include demographics, global commerce, outsourcing, the growing global middle class and the proliferation of technology. A portfolio strategy is then implemented that will best capitalize on these investment themes and subsequent expected growth of the underlying assets. The Fund's portfolio will typically have fewer than 30 companies. All buy and sell decisions are made by the Portfolio Managers. The Fund will under normal circumstances have at least 80% of its total assets invested in ADRs. The Fund also may invest in other equity securities, including common and preferred stock, warrants, convertible securities and master limited partnerships. As stated in the Prior Release, the Fund's portfolio will consist primarily of ADRs and the Fund will not invest in non-U.S. equity securities outside of U.S. markets.

According to the Prior Release, the composition of the Fund's portfolio, on a continual basis, will be subject to the following: (1) Component stocks that in the aggregate account for at least 90% of the weight of the portfolio each shall have a minimum market value of at least $100 million; [8] (2) component stocks that in the aggregate account for at least 70% of the weight of the portfolio each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (3) a minimum of 20 component stocks of which the most heavily weighted component stock shall not exceed 25% of the weight of the portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the portfolio; and (4) each non-U.S. equity security underlying ADRs held by the Fund will be listed and traded on an exchange that has last sale reporting.

As noted above, the Prior Release states that the Fund will not invest in non-U.S. equity securities outside of U.S. markets. The Exchange proposes to amend such statement in the Prior Release to provide that, going forward, the Fund may invest in securities outside of U.S. markets, and that not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (excluding non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Exchange notes that the Commission has previously approved similar percentage limitations for other funds listed on the Exchange under NYSE Arca Equities Rule 8.600.[9]

Such an increase will provide the Fund with the ability to invest to a limited extent in non-U.S. equity securities outside of U.S. markets and therefore will facilitate the Fund's ability to achieve its investment objective of long-term capital appreciation above international benchmarks, as noted above. Except for the change described above, all other representations made in the Prior Release remain unchanged.[10] The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The Exchange represents that the 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.[11] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-listed equity securities (including ADRs) with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and exchange-listed equity securities (including ADRs) from such markets and other entities. The Exchange may obtain information regarding trading in the Shares and exchange-listed equity securities (including ADRs) from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[12] In addition, as stated in the Prior Release, investors have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [13] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. With respect to the representation that the Fund may invest in securities outside of U.S. markets and that not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (excluding non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, the Exchange believes such limitation of assets will not adversely impact investors and serves to protect investors and the public interest for the following reasons. The Commission has previously approved such limitations

[8] This criterion is applied based on market value of securities of the non-U.S. equity securities underlying ADRs held by the Fund.

[9] See Securities Exchange Act Release Nos. 69915 (July 2, 2013), 78 FR 41145 (July 9,2013) (SR–NYSEArca–2013–56) (order approving listing and trading of shares of the PowerShares China A-Share Portfolio under NYSE Arca Equities Rule 8.600); 72665 (July 24, 2014), 79 FR 44236 (July 30, 2014) (SR–NYSEArca–2014–59) (order approving listing and trading of shares of the AdvisorShares Athena High Dividend ETF under NYSE Arca Equities Rule 8.600; 72882 (August 20, 2014) (SR–NYSEArca–2014–58) (order approving listing and trading of shares of PIMCO Short-Term Exchange-Traded Fund and PIMCO Municipal Bond Exchange-Traded Fund under NYSE Arca Equities Rule 8.600); 72853 (August 15, 2014) (SR–NYSEArca–2014–57) (order approving listing and trading of shares of the PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged), PIMCO Global Advantage Bond Exchange-Traded Fund, and PIMCO International Advantage Bond Exchange-Traded Fund under NYSE Arca Equities Rule 8.600); 73331(October 9, 2014), 79 FR 62213 (October 16, 2014) (SR–NYSEArca–2014–104) (notice of effectiveness of proposed rule change relating to use of derivatives by certain PIMCO exchange-traded funds).

[10] *See* note 4, *supra.* All terms referenced but not defined herein are defined in the Prior Release.

[11] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[12] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all of the components of the portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[13] 15 U.S.C. 78f(b)(5).

for other funds listed on the Exchange under NYSE Arca Equities Rule 8.600.[14] Such a representation assures that most applicable exchange-traded assets of the Fund will be assets whose principal market is an ISG member or a market with which the Exchange has a comprehensive surveillance sharing agreement.

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the net asset value (''NAV'') per Share is calculated daily and that the NAV and the Disclosed Portfolio is made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), is disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On a daily basis, the Adviser discloses for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Fund's holdings are disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information is available via the Consolidated Tape Association high-speed line. Price information regarding the Fund's equity investments is available from major market data vendors. The intra-day, closing and settlement prices for exchange-listed equity securities held by the Fund are also readily available from the national securities exchanges trading such securities. Trading in Shares of the Fund 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. Trading in the Shares is subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Web site for the Fund includes a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. In addition, as stated in the Prior Notice, investors have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. As noted above, the Exchange represents that the trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-listed equity securities (including ADRs) with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and exchange-listed equity securities (including ADRs) from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-listed equity securities (including ADRs) from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as stated in the Prior Release, investors have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Adviser represents that the proposed change, as described above, is consistent with the Fund's investment objective, and will further assist the Adviser and Sub-Adviser to achieve such investment objective. Such an increase may further the public interest by providing the Fund with additional flexibility to achieve long-term capital appreciation above international benchmarks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change is designed to broaden the range of securities in which the Fund may invest to include non-U.S. securities, thereby helping the Fund to achieve its investment objective, and will enhance competition among issues of Managed Fund Shares that invest in equity securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A)

[14] *See* Securities Exchange Act Release Nos. 69915 (July 2, 2013), 78 FR 41145 (July 9, 2013) (SR–NYSEArca–2013–56) (order approving listing and trading of shares of the PowerShares China A-Share Portfolio under NYSE Arca Equities Rule 8.600); 72665 (July 24, 2014), 79 FR 44236 (July 30, 2014) (SR–NYSEArca–2014–59) (order approving listing and trading of shares of the AdvisorShares Athena High Dividend ETF under NYSE Arca Equities Rule 8.600; 72882 (August 20, 2014) (SR–NYSEArca–2014–58) (order approving listing and trading of shares of PIMCO Short-Term Exchange-Traded Fund and PIMCO Municipal Bond Exchange-Traded Fund under NYSE Arca Equities Rule 8.600); 72853 (August 15, 2014) (SR–NYSEArca–2014–57) (order approving listing and trading of shares of the PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged), PIMCO Global Advantage Bond Exchange-Traded Fund, and PIMCO International Advantage Bond Exchange-Traded Fund under NYSE Arca Equities Rule 8.600).

of the Act [15] and Rule 19b–4(f)(6)(iii) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–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 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–06 and should be submitted on or before March 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0299]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 24 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted January 10, 2015. The exemptions expire on January 10, 2017.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, (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. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/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.

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.*

II. Background

On December 10, 2014, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (79 FR 73397). That notice listed 24 applicants' case histories. The 24 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, 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 statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 24 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or

without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 24 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, loss of vision, retinal detachment, corneal scarring, retinal scar, amblyopia with refractive error, enucleation, cataract, phthisical, refractive amblyopia, open globe trauma, optic atrophy, amblyopic vision loss, aphakia, optic atrophy, Lasik vision complication, and cyclodialysis. In most cases, their eye conditions were not recently developed. Sixteen of the applicants were either born with their vision impairments or have had them since childhood.

The eight individuals that sustained their vision conditions as adults have had them for a range of four to 44 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 24 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging from 1.5 to 42 years. In the past three years, one of the drivers was involved in a crash and two were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the December 10, 2014, notice (79 FR 73397).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 24 applicants, one of the drivers was involved in a crash and two were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in

interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 24 applicants listed in the notice of December 10, 2014 (79 FR 73397).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 24 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement 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 provide 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, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 24 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Michael L. Boersma (ND)
Marc D. Butler (IL)
Roger P. Dittrich (IL)
Ralph V. Graven (OR)
Dennis R. Grear (SD)
Michael D. Halferty (IA)
Eric C. Hammer (MO)
Thomas F. Hannon (RI)
Robert K. Ipock (NC)
Kennard D. Julien (WA)
Peter M. Kirby (NJ)
William D. Koiner (TX)
Jesse L. Lichtenberger (PA)
David J. Nocton (MN)
Darren W. Pruett (TX)
Frederick E. Schaub (IA)
Michael R. Seldomridge (FL)
Michael G. Somma (NY)
Mark J. Stanley (CA)
Jason E. Thomas (ND)
Michael K. Toodle (NC)
Troy W. Weaver (PA)
Diane L. Wedebrand (IA)
Eddie L. Wilkins (VA)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked 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 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Dated: February 9, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–03240 Filed 2–19–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2015–0014, Notice No. 15–4]

Research and Development Program Forum

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that PHMSA will host a Research and Development Forum on Thursday, April 16, 2015, in Washington, DC. PHMSA will use the forum to present the results of recently completed research projects and to discuss current and future research projects. PHMSA will also be soliciting comments on new research projects which may be considered for inclusion in its strategic plan.

DATES: *Time and Location:* The forum will be held at the DOT Headquarters, 1200 New Jersey Avenue SE., West Building, Conference Center—Oklahoma City Room, Washington, DC 20590 from 9:00 a.m. to 4:00 p.m. EST.

Advanced Meeting Registration: The DOT ask that attendees pre-register for the forum by completing the form at *https://www.surveymonkey.com/r/G623RL5*. Attendees may use the survey monkey form to pre-register for the forum. Failure to pre-register may delay access to the DOT Headquarters building. If participants are attending in person, early arrival is advised to allow time for security checks necessary to obtain access to the building.

Conference call-in and ''live meeting'' capability will be provided for the meeting. Specific information on call-in and live meeting access will be posted when available at *http://phmsa.dot.gov/hazmat*.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Boyle, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–4545.

Supplementary Information on the PHMSA Meeting: The primary purpose of this meeting is to present the results of recently completed actions and to seek comments relative to potential new research projects which may be considered for inclusion in future work. PHMSA will consider comments received for proposed list of new projects identified in the draft agenda. The meeting agenda and event information may be obtained from PHMSA's Web site at *http://phmhqnwas027vg.ad.dot.gov/about/calendar.*

Topics on the agenda for the Research and Development Forum include:

- Short-Term Projects (Funded)
  - Hazardous Materials Automated Cargo Communications for Efficient and Safe Shipments (HM–ACCESS)
  - Lithium Batteries
- Mid-Term Projects (Funding Now)
  - Risks Associated with Chained/Unchained Fireworks
  - Incident Investigation: Food Trucks; Oxygen Cylinders
  - Reactivity of Toxic Inhalation Hazard (TIH) material
  - Classification of Crude Oil
  - Service Life Extension of Composite Cylinders
- Long-Term Projects (Planning Funding) potential projects include:
  - Emerging Packaging and Transport Risks
  - Risk Management Framework
  - Crude Oil Classification, Packaging and Transport
  - Bulk Transport of LNG

○ Design and Testing of Composite Overwrapped Cylinders

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2015–03488 Filed 2–19–15; 8:45 am]

BILLING CODE 4910–60–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 February 3, 2015.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
		MODIFICATION SPECIAL PERMIT GRANTED	
9847–M	FIBA Technologies, Inc. (FIBA) Millbury, MA.	49 CFR 180.209(a), 180.205(c), (f), (g) and (i), 173.302a(b)(2), (3), (4) and (5), and 180.213.	To modify the special permit so that alternative certifications may be authorized for personnel responsible for performing cylinder retesting.
12661–M	United Parcel Service, Inc. Atlanta, GA.	49 CFR 172.202, 172.203(c), (k) and (m), 172.301, 172.400, and 172.302(c).	To modify the special permit to authorize Division 6.2 materials.
15985–M	Space Exploration Technologies Corp. (Space X) Hawthorne, CA.	49 CFR part 172 and 173	To modify the special permit to authorize the transportation of hazardous materials by cargo vessel.
		NEW SPECIAL PERMIT GRANTED	
16039–N	UTLX Manufacturing LLC Alexandria, LA.	49 CFR 173.314(d)	To authorize the manufacture, marking, sale and use of non-DOT specification tank cars for the transportation in commerce of anhydrous ammonia. (mode 2)
16137–N	Diversified Laboratory Repair Gaithersburg, MD.	49 CFR 49 CFR 173.196	To authorize the transportation in commerce of certain infectious substances in special packagings (freezers). (mode 1)
16118–N	Toyota Motor Sales, U.S.A., Inc. Torrance, CA.	49 CFR 173.301(a)(1)	To authorize the transportation in commerce of Hydrogen, compressed in non-DOT specification pressure containers. (modes 1, 2, 3, 4)
16191–N	Solvay Fluorides LLC Houston, TX.	49 CFR 173.205	To authorize the transportation in commerce of Iodine Pentafluoride in a non-DOT specification welded, steel non-bulk packaging designed and constructed in accordance with Section VIII Division 1 of the ASME Code. (modes 1, 2, 3)
16307–N	Croman Corporation White City, OR.	49 CFR 172.101 Hazardous Materials Table Columns (8C) and (9B), 173.242, 175.310.	To authorize the transportation in commerce of certain Class 3 hazardous materials contained in non-DOT specification packaging of up to 500 gallon capacity by 14 CFR part 133 Rotorcraft External Load Operations transporting Class 3 hazardous materials attached to or suspended from a cargo aircraft when other means of transportation is not practicable. (mode 4)
16188–N	UTLX Manufacturing LLC Alexandria, LA.	49 CFR 179.100–4 and 179.100–12(b).	To authorize the manufacture, marking, sale and use of DOT 120J100W and 120J200W tank cars for transportation of Class 3 flammable and combustible liquids. (mode 2)
		EMERGENCY SPECIAL PERMIT GRANTED	
10427–M	Astrotech Space Operations LLC Titusville, FL.	49 CFR 173.61(a), 173.301(g), 173.302(a), 173.336, and 177.848(d).	To modify the special permit to authorize additional launch vehicles and increase the amount of Anhydrous ammonia to 120 pounds. (model 1)
16273–N	Lohman Helicopter, LLC. Kendrick, ID.	49 CFR 172.101 Table Column (9B), 172.200, 172.204(c)(3), 172.300, 173.27(b)(2), 175.75, 178.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT WITHDRAWN			
13359–M	BASF Corporation Florham Park, NJ.	49 CFR 173.301(f)(6), and 173.302a.	To modify the special permit to authorize a UN certified pressure vessel.
10427–M	Astrotech Space Operations, Inc. Titusville, FL.	49 CFR 173.61(a), 173.301(g), 173.302(a), 173.336, and 177.848(d).	To modify the special permit to authorize additional launch vehicles and increase the amount of Anhydrous ammonia to 120 pounds.
NEW SPECIAL PERMIT WITHDRAWN			
16332–N	Nalco Company Naperville, IL	49 CFR 172.302(c), 178.705(c)(1).	To authorize the transportation in commerce of certain existing UN 31A IBCs manufactured of stainless steel and modified with a lid manufactured of Linear Medium Density Polyethylene. (modes 1, 2, 3)
16370–N	ActionSportGames USA Inc. Moorpark, CA.	49 CFR 173.304a	To authorize the transportation in commerce of UN1978 product marked as UN1950 to Denmark. (modes 1,3)
16363–N	CAL FIRE-Office of the State Fire Marshal Sacramento, CA.	49 CFR None provided	To authorize the transportation in commerce of fireworks packaged in alternative packagings.
EMERGENCY SPECIAL PERMIT WITHDRAWN			
16360–N	DynaEnergetics US, Inc. Lakeway, TX.	49 CFR 173.56	To authorize the transportation in commerce of Division 1.2 explosives without classification and approval. (modes 1, 2, 3)
DENIED			
15832–M	Request by Baker Petrolite Corporation (BPC) Sugar Land, TX January 08, 2015. To modify the special permit to authorize an additional tank design.		
14617–M	Request by Western International Gas & Cylinders, Inc. Bellville, TX January 30, 2015. To modify the special permit to add certain DOT 3AL seamless aluminum cylinders manufactured of aluminum alloy 6351, DOT 3BN, and cylinders manufactured in accordance with DOT–SP 9001, 9370, 9421, 9706, 9791, 9909, 10047, 10869 and 11692.		
14569–M	Request by Northland Services Inc. Seattle, WA January 14, 2015. To modify the special permit to segregate Class 1 explosives from other hazardous materials when stowed on deck.		

[FR Doc. 2015–02984 Filed 2–19–15; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, PHMSA, DOT.

ACTION: List of Applications for Special Permits.

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 that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated 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.

DATES: Comments must be received on or before March 23, 2015.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 3, 2015.

Donald Burger,

Chief, General Approvals and Permits.

Application permits No.	Docket No.	Applicant	Regulation(s) affected	Nature of special thereof
16356–N	.....	United Launch Alliance, LLC, Centennial, CO.	49 CFR 172.320, 173.54(a), 173.56(b), 173.57, 173.58, ICAO TI Special Provision A62, ICAO TI Packing Instruction 101.	To authorize the transportation in commerce of not more than 25 grams of solid explosive or pyrotechnic material, including waste containing explosives, that has energy density not significantly greater than that of pentaerythritol tetranitrate, classed as Division 1.4E when packed in a special shipping container. (modes 1, 2, 4)

Application permits No.	Docket No.	Applicant	Regulation(s) affected	Nature of special thereof
16359–N		Department of Defense, Scott AFB, IL.	49 CFR 172.101(k)(6), 172.101(k)(7), 172.101(k)(8), 172.101(k)(9), 172.101(k)(10), 176.84(c)(1), 176.84(c)(2). Notes 14E, 15E, 26E, and 27E, IMDG Code 3.2.1. Column 16, IMDG Code 7.1.3.1.	To authorize the transportation in commerce of Division 1.1, 1.2, 1.3, and 1.4 hazardous materials in cargo transport units that are not closed and are not stowed in accordance with the Hazardous Materials Table or the Dangerous Goods List. (mode 3)
16361–N		The University of Cincinnati, Cincinnati, OH.	49 CFR 173.196	To authorize the transportation in commerce of certain Category A infectious substances in alternative packaging. (mode 1)
16364–N		ExodusDirect LLC, Des Moines, IA.	49 CFR 173.13(a), 173.13(b), 173.13(c)(1)(ii), 173.13(c)(1)(iv), 173.13(c)(2)(iii).	To authorize the manufacture, mark, sale and use of specially designed combination packagings for transportation in commerce of certain materials without hazard labels or placards, with quantity limits not exceeding on liter for liquids or 2.85 kilograms for solids. (modes 1, 2, 3, 4, 5)
16365–N		RDS Manufacturing, Inc., Perry, FL.	49 CFR 177.834(h), 178.700(c)(1).	To authorize the manufacture, mark, sale and use of UN 31B intermediate bulk containers (IBCs) with a capacity not exceeding 119 gallons. Additionally, discharge of flammable liquid hazardous materials from the IBCs without removing them from the vehicle on which they are transported is authorized. (mode 1)
16366–N		Department of Defense, Scott AFB, IL.	49 CFR 171.23(a), 173.302(a), ICAO TI Packing Instruction 200, IMDG Code Packing Instruction 200.	To authorize the transportation in commerce of nitrogen in non-DOT specification cylinders. (modes 1, 3, 4)
16371–N		Volkswagen Group of America (VWGoA), Herndon, VA.	49 CFR 172.102(c)(2), Special Provision A54, ICAO TI Special Provision A99.	To authorize the transportation in commerce of lithium ion batteries each exceeding 35 kg net weight when transported aboard cargo aircraft. (mode 4)
16372–N		Northrop Grumman Systems Corporation, Redondo Beach, CA.	49 CFR 173.301(f), 173.302a(a)(1), 173.304a(a)(2).	To authorize the transportation in commerce of non-DOT specification containers known as heat pipes containing anhydrous ammonia and/or pulse tube coolers containing helium. (mode 1)
16373–N		Stainless Tank & Equipment Co., LLC, Beloit, WI.	49 CFR 178.345–2, 178.346–2, 178.347–2, 178.348–2.	To authorize the manufacture, mark, sale and use of non-DOT specification cargo tank motor vehicles conforming in part with Specification DOT 406, DOT 407, and DOT 412. (mode 1)
16374–N		Bristow U.S. LLC, New Iberia, LA.	49 CFR 172.101 Hazardous Materials Table Column (9A).	To authorize the transportation in commerce of certain hazardous materials which exceed the authorized quantity limitations for passenger-carrying aircraft. (mode 5)
16375–N		Kalitta Charters, LLC, Ypsilanti, MI.	49 CFR 175.700(b)(2)(ii), 175.702(b).	To authorize the carriage of radioactive materials aboard cargo aircraft when the combined transport index exceeds the authorized limit of 200 per aircraft or the separation distance criteria of § 175.702(b) cannot be met. (mode 4)
16377–N		BASF Corporation, Florham Park, NJ.	49 CFR 173.315(a)(1), 173.315(a)(2).	To authorize the transportation in commerce of certain non-DOT specification spherical pressure vessels containing boron trifluoride. (modes 1, 2, 3)
16390–N		J.R. Helicopters LLC, Yakima, WA.	49 CFR 172.101 Hazardous Materials Table Column (9B), 172.200, 172.204(c)(3), 172.200, 172.204(c)(3), 172.301(c), 173.27(b)(2), 175.30(a)(1), 175.75.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operation transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)

Application permits No.	Docket No.	Applicant	Regulation(s) affected	Nature of special thereof
16391–N	.....	Halliburton Company, Houston, TX.	49 CFR 173.201, 173.301(f), 173.302, 173.304a.	To authorize the transportation in commerce of non-DOT specification cylinders used in oil well sampling. (modes 1, 2, 3, 4)
16392–N	.....	Gem Air, LLC, Salmon, ID ..	49 CFR 172.101 Hazardous Materials Table Column (9A), 175.75(b).	To authorize the transportation in commerce of propane aboard passenger-carrying aircraft within or into remote wilderness areas in the United States. (mode 5)
16393–N	.....	Airopack Technology Group BV, Waalwijk, The Netherlands.	49 CFR 171–180, IMDG Code Parts 1 through 7, ICAO TI Parts 1 through 8.	To authorize the manufacture, mark, sale and use of non-DOT non-plastic specification/packagings, conforming in part with DOT Specification 2S, charged with compressed air for the sole purpose of expelling a non-flammable, non-toxic, and non-corrosive (non-hazardous) liquid, paste, powder, or gel, which are not subject to the Hazardous Materials Regulations (HMR), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI), or the International Maritime Dangerous Goods (IMDG) Code. (modes 1, 2, 3, 4, 5)
16394–N	.....	Cellco Partnership, Basking Ridge, NJ.	49 CFR Subparts C through H of Part 172, 173.185(f).	To authorize the transportation in commerce of damaged or defective lithium ion cells and batteries and equipment containing them that originally met the requirements under 49 CFR 173.185(c). (modes 1, 2)
16395–N	.....	Chandler Instruments Company LLC, Broken Arrow, OK.	49 CFR 173.201, 173.301(f), 173.302(a), 173.304.	To authorize the manufacture, mark, sale and use of non-specification DOT cylinders used in oil well sampling. (modes 1, 2, 3, 4)

[FR Doc. 2015–02977 Filed 2–19–15; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Modification of Special Permit

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, PHMSA, DOT.

ACTION: List of application for modification of special permits.

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 that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before March 9, 2015.

ADDRESSES: Send comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue SE., Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal Hazardous Materials Transportation Law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 4, 2015.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
MODIFICATION SPECIAL PERMITS				
10180–M	.....	Fireboy-Xintex, Inc., Grand Rapids, MI.	49 CFR 173.304(a)(2); 173.34(d).	To modify the special permit to authorize fire extinguisher designs.
14146–M	.....	Brunswick Corporation, Lake Forest, IL.	49 CFR 173.220(e)	To modify the special permit to allow a maximum of 120ml flammable liquid fuel in the engine and; exemption from the IMDG Code, Special Provision 961.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14152–M		SAES Pure Gas, Inc., San Luis Obispo, CA.	49 CFR 173.187	To modify the special permit to authorize additional outer packaging and shielding gages.
15885–M		PHI, Inc., Lafayette, LA	49 CFR 172.101 Table Column (9A).	To modify the special permit to authorize additional hazardous materials.
16279–M		Veolia ES Technical Solutions, L.L.C., Flanders, NJ.	49 CFR 173.196(a) and (b).	To modify the and (b) special permit originally issued on an emergency basis to authorize an additional two years.

[FR Doc. 2015–02983 Filed 2–19–15; 8:45 am]

BILLING CODE 4909–60–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 226

Endangered and Threatened Species; Critical Habitat for Endangered North Atlantic Right Whale; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 100217099–4774–02]

RIN 0648–AY54

Endangered and Threatened Species; Critical Habitat for Endangered North Atlantic Right Whale

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: We, the NMFS, propose to replace the critical habitat for right whales in the North Atlantic with two new areas. The areas under consideration as critical habitat contain approximately 29,945 nm^2 of marine habitat in the Gulf of Maine and Georges Bank region (Unit 1) and off the Southeast U.S. coast (Unit 2). We have considered positive and negative economic, national security, and other relevant impacts of the proposed critical habitat. We do not propose to exclude any particular area from the proposed critical habitat.

We are soliciting comments from the public on all aspects of the proposal, including our identification and consideration of impacts of the proposed action. A draft Biological Source Document provides the basis for our identification of the physical and biological features essential to the conservation of the species that may require special management considerations or protection. A draft report was also prepared pursuant to section 4(b)(2) of the Endangered Species Act (ESA) in support of this proposal. Both supporting documents are available for public review and comment.

DATES: Comments on this proposal must be received by April 21, 2015.

ADDRESSES: You may submit comments, identified by the NOAA–NMFS–2014–0085, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0085* click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Assistant Regional Administrator, Protected Resources Division, NMFS, Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: You must submit comments by one of the above methods to ensure that we receive, document, and consider them. 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 to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Mark Minton, NMFS, Greater Atlantic Regional Fisheries Office (GARFO), 978–282–8484, *Mark.Minton@noaa.gov;* Barb Zoodsma, NMFS, Southeast Regional Office, 904–415–3960, *Barb.Zoodsma@noaa.gov;* Lisa Manning, NMFS, Office of Protected Resources, 301–427–8466, *Lisa.Manning@noaa.gov.*

SUPPLEMENTARY INFORMATION:

The Draft Biological Source Document (NMFS 2014a) and Draft ESA Section 4(b)(2) Report (NMFS 2014b) prepared in support of this proposal for critical habitat for the North Atlantic right whale are available on our Web site at *www.greateratlantic.fisheries.noaa.gov,* on the Federal eRulemaking Web site at *http://www.regulations.gov,* or upon request (see **ADDRESSES**).

Background

In 1970, right whales, *Eubalaena* spp. were listed as endangered (35 FR 18319; December 2, 1970). At that time, we considered the northern right whale species (*Eubalaena glacialis*) to consist of two populations; one occurring in the North Atlantic Ocean and the other in the North Pacific Ocean. In 1994, we designated critical habitat for the northern right whale population in the North Atlantic Ocean (59 FR 28805; June 3, 1994). This critical habitat designation includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida. These areas were determined to provide critical feeding, nursery, and calving habitat for the North Atlantic population of northern right whales. This critical habitat was revised in 2006 to include two foraging areas in the North Pacific Ocean—one in the Bering Sea and one in the Gulf of Alaska (71 FR 38277; July 6, 2006).

In 2006, we published a comprehensive right whale status review, which concluded that recent genetic data provided unequivocal support to distinguish three right whale lineages as separate phylogenetic species (Rosenbaum *et al.* 2000): (1) The North Atlantic right whale (*Eubalaena glacialis*) ranging in the North Atlantic Ocean; (2) The North Pacific right whale (*Eubalaena japonica*), ranging in the North Pacific Ocean; and (3) The southern right whale (*Eubalaena australis*), historically ranging throughout the southern hemisphere's oceans. Based on these findings, we published proposed and final determinations listing right whales in the North Atlantic, North Pacific, and southern hemisphere as separate endangered species under the ESA (71 FR 77704, December 27, 2006; 73 FR 12024, March 6, 2008). In April 2008, a final critical habitat designation was published for the North Pacific right whale (73 FR 19000, April 8, 2008).

On October 1, 2009, NMFS received a petition to revise the 1994 critical habitat designation for right whales in the North Atlantic. In response, pursuant to section 4(b)(3)(D), NMFS published a combined 90-day finding and 12-month determination on October 6, 2010, that the petition presented substantial scientific information indicating that the requested revision may be warranted, and that we intended to issue a proposed rule to revise critical habitat for the North Atlantic right whale (75 FR 61690). As noted in that finding, the biological basis and analysis for the 1994 critical habitat designation were based on the North Atlantic population of right whales, and we consider that designation to continue to apply to North Atlantic right whales after they were subsequently listed as a separate species in 2008. At this time, NMFS is proposing to replace the 1994 critical habitat designation for the population of right whales in the North Atlantic Ocean with two new areas of critical habitat for the North Atlantic right whale.

North Atlantic Right Whale Natural History and Status

The following discussion of the life history and reproductive biology and population status of North Atlantic right whales is based on the best scientific data available, including the North Atlantic right whale Status Review Report (NMFS 2006) and the Draft

Biological Source Document (NMFS 2014a).

The North Atlantic right whale (*Eubalaena glacialis*) is a member of the family *Balaenidae* and is closely related to the right whale species that inhabit the North Pacific Ocean (*Eubalaena japonica)* and the Southern hemisphere (*Eubalaena australis*). Right whales are large baleen whales that grow to lengths and weights exceeding 15 meters and 70 tons, respectively. Females are typically larger than males. The distinguishing features of right whales include a stocky body, generally black coloration (although some individuals have white patches on their undersides), lack of a dorsal fin, large head (about ¼ of the body length), strongly bowed margin of the lower lip, and hard white patches of callosities on the head region. Two rows of long (up to approximately eight feet in length) baleen plates hang from the upper jaw with approximately 225 plates on each side. The tail is broad, deeply notched, and all black with smooth trailing edge. Right whales attain sexual maturity at an average age of 8–10 years, and females produce a single calf at intervals of 3 to 5 years (Kraus *et al.* 2001). Their life expectancy is unclear, but individuals have been known to reach 70 years of age (Hamilton *et al.* 1998a, Kenney 2002).

Historically, right whale species occurred in all the world's oceans from temperate to subpolar latitudes. They primarily occur in coastal or shelf waters, although movements over deep waters are known to occur. Right whales are generally migratory, with at least a portion of the population moving between summer feeding grounds in temperate or high latitudes and winter calving areas in warmer waters, though during winter the whereabouts of a portion of the population remain unknown (Waring *et al.* 2013). Right whale populations were severely depleted by historic commercial whaling.

The distribution of North Atlantic right whales in the western North Atlantic Ocean ranges primarily from calving grounds in coastal waters of the southeastern United States to feeding grounds in New England waters and the Canadian Bay of Fundy, Scotian Shelf, and Gulf of St. Lawrence. The minimum number of right whales in the western North Atlantic Ocean is estimated to be at least 444 individuals, based on a census of individual whales identified using photo-identification techniques (Waring *et al.* 2013). Due to the past depletion from which they have not recovered, the continued anthropogenic threats to the species, and the whale's life history, the North Atlantic right whale is in danger of extinction throughout its range.

Waring *et al.* (2013) examined the minimum number alive population index calculated from the individual sightings database, as it existed on 21 October 2011, for the years 1990–2009, and found the data suggest a positive and slowly accelerating trend in population size. These data reveal a significant positive trend in the number of catalogued whales alive during this period, but with significant interannual variation due to apparent losses exceeding gains during 1998–1999. These data reveal a significant increase in the number of catalogued whales with a geometric mean growth rate for the period of 2.6% (Waring *et al.* 2013).

Critical Habitat Identification and Designation

Critical habitat is defined by section 3 of the ESA as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. This definition provides a step-wise approach to identifying areas that may be designated as critical habitat for North Atlantic right whales.

Geographical Areas Occupied by the Species

''Geographical areas occupied'' in the definition of critical habitat is interpreted to mean the entire range of the species at the time it was listed, inclusive of all areas they use and move through seasonally (45 FR 13011; February 27, 1980). Prior to extensive exploitation, the North Atlantic right whale was found distributed in temperate, subarctic, coastal and continental shelf waters throughout the North Atlantic Ocean rim (Perry *et al.* 1999). Considerable sightings data exist documenting use of areas in the western North Atlantic Ocean where right whales presently occur. The current known distribution of North Atlantic right whales is largely limited to the western North Atlantic Ocean. In the western North Atlantic, right whales migrate along the North American coast between areas as far south as Florida, and northward to the Gulf of Maine, the Bay of Fundy, the Gulf of St. Lawrence and the Scotian shelf, extending to the waters of Greenland and Iceland (Waring *et al.* 2011).

Right whales have also been rarely observed in the Gulf of Mexico. The few published sightings (Moore and Clark 1963, Schmidly and Melcher 1974, Ward-Geiger *et al.* 2011) represent either geographic anomalies or a more extensive historic range beyond the sole known calving and wintering ground in the waters of the southeastern United States (Waring *et al.* 2009). Therefore, the Gulf of Mexico is not considered part of the geographical area occupied by the species ''at the time it was listed.''

Our regulations at 50 CFR 424.12(h) state: ''Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.'' Although North Atlantic right whales have been sighted in coastal waters of Canada, Greenland, Iceland, and Norway, these areas cannot be considered for designation. The geographical area occupied by listed North Atlantic right whales that is within the jurisdiction of the United States is therefore limited to waters off the U.S. east coast between Maine and Florida, seaward to the boundary of the U.S. Exclusive Economic Zone.

Physical or Biological Features Essential for Conservation

As noted previously, NMFS produced a Draft Biological Source Document (NMFS 2014a) that discusses our application of the ESA's definition of critical habitat for right whales in detail. The following discussion is derived from that document.

Within the geographical area occupied, critical habitat consists of specific areas on which are found those physical or biological features essential to the conservation of the species (hereafter also referred to as ''essential features'') and that may require special management considerations or protection. Section 3 of the ESA (16 U.S.C. 1532(3)) defines the terms ''conserve,'' ''conserving,'' and ''conservation'' in part to mean: ''To use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.'' Further, our regulations at 50 CFR 424.12(b) for designating critical habitat state that physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection may include: (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, rearing of offspring, germination, or seed dispersal; and generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

For right whales, the 2005 Recovery Plan defines conservation as the use of all methods and procedures necessary to bring right whales to the point at which factors related to population ecology and vital rates indicate that the population may be: (1) Downlisted to threatened, and; (2) ultimately, delisted because it is no longer in danger of extinction throughout all or a significant portion of its range. Important factors related to right whale population ecology and vital rates include population size and trend, range, distribution, age structure, gender ratios, age-specific survival, age-specific reproduction, and lifetime reproductive success.

The 2005 Recovery Plan identifies five major objectives designed to increase population size and vital rates so that North Atlantic right whales may be reclassified to threatened. These objectives include significantly reducing sources of human-caused death, injury and disturbance; developing demographically-based recovery criteria; identifying, characterizing, protecting and monitoring important habitats; monitoring the status and trends of abundance and distribution of the species; and coordinating federal, state, local, international and private efforts to implement the Recovery Plan.

Based on the Recovery Plan's reclassification objectives and criteria for North Atlantic right whales, NMFS has identified four biological behaviors that are critical to the overarching recovery objectives of increased survival and population growth: (1) Feeding, (2) calving, (3) migration and (4) breeding. In the following section, we evaluate whether there are physical and biological features of the habitat areas known to be used for these behaviors that are essential to the species' conservation because they facilitate or are intimately tied to the behaviors. Because these behaviors are essential to the species' conservation, facilitating or protecting each one is considered a key conservation objective for any critical habitat designation for this species.

The Physical and Biological Features of Foraging Habitat That Are Essential to the Conservation of the Species

North Atlantic right whales are filter feeders whose prey consists exclusively of zooplankton, notably the copepod *Calanus finmarchicus.* Right whales forage by filtering large volumes of seawater through open mouths, trapping zooplanktonic organisms on the dense filamentous mat fringing the inner surface of their baleen (Mayo and Marx 1990). Foraging takes place at the surface or at depth depending on the habitat type and where in the water column the prey source aggregates (Mayo and Marx 1990, Baumgartner *et al.* 2003a).

Oceanic waters off New England and Nova Scotia are the primary feeding habitat for right whales during the late winter, spring, summer, and fall. Variation in the abundance and development of suitable food patches appears to modify the general patterns of right whale movement by reducing peak numbers, stay durations, and specific locales (Brown *et al.* 2001, Kenny *et al.* 2001). In particular, large changes in the typical pattern of food abundance can dramatically change the general pattern of right whale habitat use (Kenny *et al.* 2001, Baumgartner 2001). In New England, peak abundance of feeding right whales occurs in Cape Cod Bay beginning in late winter. In early spring (May), peak right whale abundance occurs in Wilkinson Basin to the Great South Channel (Kenney *et al.* 1995). In late June and July, right whale distribution gradually shifts to the Northern Edge of Georges Bank. In late summer (August) and fall, much of the population is found in waters in the Bay of Fundy and around Roseway Basin (Winn *et al.* 1986, Kenny *et al.* 1995, Kenny *et al.* 2001).

A right whale's mass is approximately 10 orders of magnitude larger than that of its prey, and the right whale's life history and reproductive strategies create very high energetic demands. Right whales are very specialized and restricted in their feeding requirements. They must locate and exploit feeding areas where copepods are concentrated into high-density patches. Efficient feeding on prey with high nutritional value is essential to the conservation of the North Atlantic right whale. Efficient feeding is not only important to meet the day-to-day caloric needs of individual right whales, but is important to achieve the overall goal of conservation because of the potential correlation between the abundance and caloric richness of copepods and the calving rates for right whales. Therefore, we conclude that facilitating successful feeding by protecting the physical and biological features that characterize feeding habitat is a key conservation objective that could be supported by designation of critical habitat for the species.

The features of right whale foraging habitat that are essential to the conservation of the North Atlantic right whale are a combination of the following biological and physical oceanographic features:

(1) The physical oceanographic conditions and structures of the Gulf of Maine and Georges Bank region that combine to distribute and aggregate *C. finmarchicus* for right whale foraging, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes;

(2) Low flow velocities in Jordan, Wilkinson, and Georges Basins that allow diapausing *C. finmarchicus* to aggregate passively below the convective layer so that the copepods are retained in the basins;

(3) Late stage *C. finmarchicus* in dense aggregations in the Gulf of Maine and Georges Bank region; and

(4) Diapausing *C. finmarchicus* in aggregations in the Gulf of Maine and Georges Bank region.

1. Physical Oceanographic Features Characteristic of Right Whale Foraging Habitat

Within the Gulf of Maine, right whale foraging activities are concentrated in areas where physical oceanographic conditions and structures, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes operate to concentrate copepods (Wishner *et al.* 1988, Mayo and Marx 1990, Murison and Gaskin 1989, Baumgartner *et al.* 2003a, Jiang, *et al* 2007, Pace and Merrick 2008). The bathymetry of the central Gulf of Maine is dominated by three large, deep basins: Jordan and Georges Basins to the northeast and east, respectively, and Wilkinson Basin in the southwest. The Jordan, Wilkinson, and Georges deep water basins serve as refugia habitat for the essential feature of diapausing copepods (Davis 1987, Meise and O'Reiley 1996, Lynch *et al.* 1998, Johnson *et al.* 2006). The oceanographic features of the Gulf of Maine are very dynamic, with strong currents, sharp frontal gradients, and high mixing rates. Additionally, the Gulf of Maine has a complex and highly variable circulation regime due to varying inflow of Atlantic

Ocean water, interactions between the eastern and western Maine coastal currents, freshwater inflow and temperature fluctuation. Water circulation within the Gulf is strongly influenced by its topography, with counterclockwise flow over Georges, Jordan, and Wilkinson Basins and clockwise circulation over Georges and Brown Banks and Nantucket Shoals (Smith 1989, Brown and Irish 1992, Bisgani and Pettigrew 1994). These physical features have a large effect on the distribution, abundance, and population dynamics of zooplankton populations including *C. finmarchicus* within the Gulf (Durbin 1997).

Major Gulf of Maine and Georges Bank oceanographic features include the Maine Coastal Current (MCC), Georges Bank anti-cyclonic frontal circulation system, the basin-scale cyclonic gyres (Jordan, Georges and Wilkinson), the deep inflow through the Northeast Channel, the shallow outflow via the Great South Channel and the shelf-slope front (Gangopadhyay *et al.* 2003, Pace and Merrick 2008). These features create the conditions that disperse, concentrate and retain copepods within the Gulf of Maine. The prevailing oceanographic features and conditions also create low energy environments within several of the deep ocean basins located within the Gulf of Maine.

Water from the Northwest Atlantic Ocean enters the Gulf of Maine over the Scotian Shelf and through the deep Northeast Channel, where it forms a general counterclockwise circulation pattern. These slope waters entering the Gulf of Maine from the Scotian Shelf are believed to transport considerable numbers of developing copepodites originating from both the Gulf of St. Lawrence and the Scotian Shelf (Plourde and Runge 1993, Greene and Pershing 2000, Conversi *et al.* 2001, Pace and Merrick 2008). Within the Gulf of Maine several smaller scale circulation patterns form over oceanographic features, including some of the deep water basins. Some of this water exits the Gulf of Maine through the Great South Channel, while some continues to the northwest where it flows onto Georges Bank in a clockwise circulation gyre (Chen *et al.* 1995, Durbin 1997).

Due to the strong influence of the Labrador Current, the water of the Gulf of Maine is significantly colder and more nutrient-rich than waters to the south. This relatively fresh, cold water flows to the northeast around the southern end of Nova Scotia, across the mouth of the Bay of Fundy and then flows southward. This water helps drive the Maine Coastal Current (Brooks 1985, Durbin 1997). The cold water inflow from the Nova Scotian Shelf and the Northeast Channel helps drive the primarily counterclockwise circulation of the Gulf, propelling the Maine Coastal Current in a southwesterly direction (Brooks 1985, Durbin 1997). The Maine Coastal Current has two major components, the Eastern Maine Coastal Current off Maine's east coast and the Western Maine Coastal Current off the coasts of western Maine, New Hampshire and Massachusetts. These currents are influenced by fluctuations in river outflow, often enhanced during spring runoff. Lower salinity surface water from spring runoff carried into this region by the Maine Coastal Current can cause strong stratification and increase the rate of horizontal transport, therefore having an impact on the abundance, distribution and population dynamics of *C. finmarchicus* in the Gulf of Maine (Durbin 1997).

The Gulf of Maine's circulation pattern is principally density driven largely because of seasonal temperature changes and salinity gradients. During spring and summer months, water within the Gulf warms, resulting in buoyant, less dense water that expands, setting up a westerly flowing coastal current. The seasonal warming pattern of waters within the Gulf of Maine also results in enhanced stratification of the water column. Warmer, less dense surface water is separated from the colder, more saline dense waters that persist at greater depth throughout the year. The currents in the Gulf of Maine are also strongly influenced by density gradients between high-salinity slope water entering from the Atlantic and fresher waters, which form in the Gulf of Maine or enter from the Scotian Shelf (Brooks 1985). Within the Gulf of Maine, the freshwater inflow from numerous rivers (*e.g.,* the St. John, Penobscot, Kennebec, Androscoggin, and Merrimac Rivers) within the Gulf of Maine watershed contributes to the density driven circulation pattern (Brooks 1985, Xue *et al.* 2000).

There is a distinct seasonal pattern associated with prevailing circulation patterns within the Gulf of Maine. During spring and summer, the surface circulation pattern in the Gulf of Maine is characterized by a predominantly cyclonic (*i.e.,* counterclockwise) circulation pattern with cyclonic and anti-cyclonic (clockwise) gyres over the three main basins and banks. As surface water cools during the fall months, it becomes denser and sinks, mixing with stratified water below and breaking down the stratification of the water column. As the stratification weakens, the counterclockwise circulation pattern within the Gulf of Maine slows until, by late winter, it is no longer evident (Xue *et al.* 2000).

In Cape Cod Bay, the general water flow is counter-clockwise, running from the Gulf of Maine south into the western half of Cape Cod Bay, over to eastern Cape Cod Bay, and back into the Gulf of Maine through the channel between the north end of Cape Cod and the southeast end of Stellwagen Bank, a submarine bank that lies just north of Cape Cod. Similar to the Maine Coastal Current, flow within the bay is driven by density gradients caused by freshwater river run-off from the Gulf of Maine and by a predominantly westerly wind (Franks and Anderson 1992a, 1992b, Geyer *et al.* 1992). Thermal stratification occurs in the bay during the summer months. Surface water temperatures typically range from 0 to 19 °C throughout the year. The circulation pattern in Cape Cod Bay allows for the entrainment of *C. finmarchicus* produced elsewhere.

The Great South Channel becomes thermally stratified during the spring and summer months. Surface waters typically range from 3 to 17 °C between winter and summer. Salinity is stable throughout the year at approximately 32–33 parts per thousand (Hopkins and Garfield 1979). In late-winter/early spring, mixing of warmer shelf waters with the cold Gulf of Maine water funneled through the channel causes a dramatic increase in faunal productivity in the Great South Channel. *C. finmarchicus* are concentrated north of the 100 m isobath at the northern end of the Great South Channel (Wishner *et al.* 1995, Durbin *et al.* 1997, Kenney 2001).

Baumgartner *et al.* (2007) note that several studies have suggested ocean fronts, areas that demarcate the convergence of different water masses, as a possible mechanism for concentrating the copepod, *C. finmarchicus* at densities suitable to support right whale foraging requirements. However, the available information is somewhat contradictory, with some studies finding associations between right whale foraging and oceanic fronts and others finding no evidence of associations (Wishner *et al.* 1995, Beardsley *et al.* 1996, Epstein and Beardsley 2001, Baumgartner el al. 2007). Given the evidence that in some cases oceanic fronts are contributing factors to concentrating copepods and their role is uncertain in other cases, we are identifying oceanic fronts as one of the combination of physical oceanographic features that are essential to right whale conservation. In combination, these features and

mechanisms have been linked to increased copepod densities (Baumgartner *et al.* 2007). Therefore, we identified the following as a physical feature of North Atlantic right whale feeding habitat essential to its conservation: The physical oceanographic conditions and structures of the Gulf of Maine and Georges Bank region that combine to distribute and aggregate *C. finmarchicus* for right whale foraging, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients and temperature regimes.

In addition to the combination of physical oceanographic conditions and structures identified previously, the hydrographic conditions of the deep ocean basins are important because they are conducive to low flow velocities. Within the low velocity environments of the deep ocean basins, the neutrally buoyant diapausing copepods passively aggregate below the convective mixed layer (Lynch *et al.* 1998, Visser and Jónasdóttir 1999, Baumgartner *et al.* 2003a, Pace and Merrick 2008). The ability of copepods within the deep basins in the Gulf of Maine to repopulate the Gulf of Maine is dependent on how well they are retained within the basins during this period of dormancy. Researchers have developed models that predict that the deep basins in the Gulf of Maine are sources of copepods for other areas within the Gulf of Maine (Lynch *et al.* 1998, Johnson *et al.* 2006). These modeling results support the existence of deep resting *C. finmarchicus* populations present in these basins and help to explain their age distribution and abundance in the rest of the Gulf of Maine (Lynch *et al.* 1998, Johnson *et al.* 2006).

Johnson *et al.* (2006) concluded that ''surface waters of the Gulf of Maine both supply the deep Gulf of Maine with *C. finmarchicus* and in turn are supplied with *C. finmarchicus* from deep water.'' Modeling has suggested that endogenous *C. finmarchicus* (*i.e.* offspring of copepods that emerged locally) can re-stock Wilkinson Basin in the western Gulf of Maine, while self-stocking is minimal in Jordan and Georges Basins (Miller *et al.* 1998). Jordan and Georges Basins are restocked by external sources of copepods entering in surface Scotian Shelf and continental slope waters or in the 230-m deep Northeast Channel (Johnson *et al.* 2006). These copepods subsequently enter dormancy in these deep water basins (Lynch *et al.,* 1998, Johnson 2006).

Johnson *et al.* (2006) also examined the influence of environmental forcing and copepod behavior on transport and retention of dormant *C. finmarchicus* in the deep Gulf of Maine. Based on model simulations, they concluded that both transport and retention of *C. finmarchicus* within the Gulf of Maine was high. The copepod transport and retention simulations demonstrate transport of copepods from the eastern Gulf of Maine into the western Gulf of Maine, as well as the recruitment of copepods from slope and Scotian Shelf waters into the eastern Gulf of Maine (Johnson *et al.* 2006). The researchers concluded that while a high proportion of dormant copepods are retained in the Gulf of Maine as a whole, transport within the Gulf of Maine was significant during the summer and fall, and loss from individual basin regions can be high (Johnson *et al.* 2006). Simulation results suggest the Wilkinson Basin region is the most retentive of the three major basins and receives copepods transported from Jordan and Georges Basins.

As noted earlier, Jordan and Georges Basins are themselves recipients of copepods from upstream sources in the Northeast Channel, continental slope water, and Scotian Shelf (Johnson *et al.* 2006). Simulations of population dynamics of *C. finmarchicus* in the Gulf of Maine indicate that the deep basins of the Gulf (*i.e.,* Wilkinson, Jordan and Georges Basins) are capable of supplying copepods to Georges Bank at the onset of the growing season (Lynch *et al.* 1998). Lynch *et al.* (1998) conclude that Jordan and Wilkinson Basins provide habitat for resting stocks of *C. finmarchicus* and that Georges Basin may also serve this function.

Miller *et al.* (1998) provides an individual-based population model of *C. finmarchicus* for the Georges Bank region demonstrating the importance of Georges Basin, as well as Wilkinson and Jordan Basins, as sources of *C. finmarchicus* to Georges Bank. As for specific zones within the Gulf of Maine, Miller *et al.* (1998) point to the Marine Resources Monitoring, Assessment, and Prediction (MARMAP) samples that support Jordan and Wilkinson Basins as sources, and suggest that Georges Basin may also be a contributor. The role of Georges Basin has been debated due to the considerable water movement and relative connection between Georges Basin and the shelf edge (Lynch *et al.* 1998, Pace and Merrick 2008). Recent simulation models combining plankton sampling results of the last two decades and earlier, robust circulation models of the Gulf of Maine, and life history dynamics of *C. finmarchicus* corroborate earlier conclusions about the importance of the Jordan, Wilkinson, and Georges Basins, in addition to the Scotian shelf and its sources, as a copepod source for the Gulf of Maine ecosystem. Li *et al.* (2006) suggest that copepod sources within the Gulf of Maine are sufficient to account for the early *C. finmarchicus* population of Georges Bank, with an increased importance of advected sources later in the year. Models by Lynch *et al.* (1998) support all three deep basins (Jordan, Wilkinson and Georges) as contributors of *C. finmarchicus* to Georges Bank and the Great South Channel. The simulation models of Johnson *et al.* (2006) support the importance of Jordan and Wilkinson Basins in the population dynamics of *C. finmarchicus* within the Gulf of Maine.

Given that low velocity environments are important for aggregating dormant copepods, and given that the best available data indicate that the ability of the Jordan, Wilkinson, and Georges Basins to retain dormant copepods is high, we conclude another physical feature of North Atlantic right whale foraging habitat essential to its conservation is: Low flow velocities in Jordan, Wilkinson, and Georges Basins that allow diapausing *C. finmarchicus* to aggregate passively below the convective layer so that the copepods are retained in the basins.

2. Biological Features Characteristic of Right Whale Foraging Habitat

The biological features of foraging habitat that are essential to the conservation of the North Atlantic right whale are: (1) Late stage *C. finmarchicus* in dense aggregations in the Gulf of Maine and Georges Bank region; and (2) Diapausing *C. finmarchicus* in aggregations in Jordan, Wilkinson, and Georges Basins.

For much of the year, the distribution of the North Atlantic right whale is strongly correlated to the distribution of their prey. Right whale distribution in the Gulf of Maine is largely controlled by zooplankton distribution (Mayo *et al.* 2004, Singer and Ludwig 2005). As discussed in the Biological Source Document (NMFS 2014a), North Atlantic right whales prey primarily on zooplankton, specifically the later juvenile stages (copepodites) of a species of copepod, *C. finmarchicus* (Baumgartner *et al.* 2007). Kenney *et al.* (1986) estimated the minimum caloric intake required by a right whale, using standard mammalian metabolic models. Not only must right whales meet their basal (*i.e.,* resting) metabolic needs but they must obtain an energy surplus in the long-term (Brodie 1975, Sameoto

1983, Kenney *et al.* 1986, Kenney and Wishner 1995). Using estimates of mouth opening area, swimming speed, and daily foraging time, Kenney *et al.*'s (1986) model suggests an average 40 ton right whale's basal energetic requirements range from 7.57 to 2,394 kcal/m^3 or a concentration of 4.67×10^3 to 1.48×10^6/m^3 stage C5 *C. finmarchicus.*

In order to maximize their caloric intake, right whales must target dense layers containing large, energetically rich prey (Wishner *et al.* 1995). The late developmental life stages (stages C4–C5) of the copepod *C. finmarchicus* are generally recognized as the North Atlantic right whale's primary prey (Watkins and Schevill 1976, 1979, Kenney *et al.* 1986, 1995, Wishner *et al.* 1988, 1995, Murison and Gaskin 1989, Mayo and Marx 1990, Beardsley *et al.* 1996, Kenney *et al.* 2001, Baumgartner 2003b). When compared to other copepods, *C. finmarchicus* has a much larger biomass and higher caloric content (Baumgartner *et al.* 2007). Late stage *C. finmarchicus,* especially C5, contain high lipid content and are therefore the most energetically rich zooplankton prey source available to right whales. Baumgartner *et al.* (2003a) found a correlation between right whale diving depths and depth of maximum stage C5 *C. finmarchicus* abundances in Grand Manan Basin in the lower Bay of Fundy. By focusing their foraging efforts on the energetically rich late stage *C. finmarchicus,* right whales are able to maximize their energy intake. If sufficient densities of late stage *C. finmarchicus* become unavailable to feeding right whales, it is uncertain if the remaining developmental stages of *C. finmarchicus* and other prey species (independent of abundance) could provide right whales with the required energetic densities to meet their metabolic and reproductive demands (Kenney *et al.* 1986, Payne *et al.* 1990).

As the principal prey source of right whales, *C. finmarchicus* abundance may play a key role in determining conditions favorable for right whale reproduction (Greene and Pershing 2004) (Kenney *et al.* 2001). Greene *et al.* (2003) linked right whale calving rates to changes in the North Atlantic Oscillation and concurrent changes in the abundance of *C. finmarchicus.* Greene *et al.* (2003) found that major multi-year declines in right whale calving rates have tracked major multi-year declines in *C. finmarchicus* abundance since 1982. Greene *et al.* (2003) also found that calving rates were relatively stable from 1982 to 1992, with a mean rate of 12.4 ± 0.9 (standard error (SE)) calves per year. These researchers note that the stable calving rates were consistent with the relatively high abundance of *C. finmarchicus* observed during the 1980s. From 1993 to 2001, right whale calving rates exhibited two major, multi-year declines, with the mean rate dropping and becoming much more variable at 11.2 ± 2.7 (SE) calves per year. Greene *et al.* (2003) found that these declines coincided with the two precipitous drops in *C. finmarchicus* abundance observed during the early and late 1990s.

In terms of biomass *C. finmarchicus* is the dominant copepod in the Gulf of Maine (Bigelow 1926, Fish and Johnson 1937, Durbin 1996). The annual life cycle of the copepod *C. finmarchicus* includes a relatively complex series of interconnected life stages. Beginning in late spring and early summer (May and June), as seasonal water temperature increases and phytoplankton levels decrease, *C. finmarchicus* C5 undergo a vertical migration to deep waters where they enter a state of dormancy (Bigelow 1927, Davis 1987, Durbin *et al.*1995). Most of the *C. finmarchicus* population can be found in diapause in deep water in the summer and fall (Durbin *et al.* 2000, Baumgartner *et al.* 2003). These dormant, diapausing pre-adult C5 copepodites form dense layers near the bottom of deep basins and continental slope waters. Diapausing *C. finmarchicus* are characterized by their stage of development, deep distribution, large oil sacs on which they rely for energy, and low activity rates (Baumgartner *et al.* 2003a). This behavior may be an adaptive measure for surviving periods of low food availability and/or for reducing predation rates (Davis 1987, Kaartvdet 1996, Dale *et al* 1999, Baumgartner *et al.* 2003a). In late winter, diapausing *C. finmarchicus* emerge from their dormant state and molt to the adult stage, migrating to the phytoplankton rich surface layer (Marshall and Orr 1955, Davis 1987, Baumgartner *et al* 2007). These diapausing copepods serve as one of the primary source populations for the copepods that later form the dense aggregations of late stage *C. finmarchicus* upon which North Atlantic right whales feed.

Given that these dormant, diapausing pre-adult C5 copepodites serve as one of the primary source populations for annual recruitment of the essential feature of late stage *C. finmarchicus* to the waters of the Gulf of Maine and Georges Bank region, and given that the Jordan, Wilkinson, and Georges Basins within the Gulf of Maine support both transport and retention of copepods, another biological feature of North Atlantic right whale feeding habitat essential to its conservation is aggregations of diapausing *C. finmarchicus* in the Jordan, Wilkinson, and Georges Basins.

The Physical and Biological Features of Calving Habitat That Are Essential to the Conservation of the Species

Like most large whales, North Atlantic right whales tend to calve in warm subtropical waters during winter, and migrate to feed in the highly productive cold temperate and subpolar waters in spring and summer (Green and Pershing 2004). The only known calving habitat for North Atlantic right whales occurs along the southeastern U.S. coast (Kraus *et al.* 1986, Knowlton *et al.* 1994, Reeves *et al.* 2001). Recent aerial survey data indicate calving and nursing occur from northeastern Florida and southeastern Georgia as far north as North Carolina (*e.g.,* Good 2008, McClellan *et al.* 2004). Reproductive females, the most valuable portion of this species' population, are sighted in the calving ground off the coast of Florida and Georgia (Fujiwara and Caswell 2001, Garrison 2007, Hamilton *et al.* 2007) and typically arrive during late November and early December after migrating south from feeding grounds in the northeastern United States and Canada. Mothers and newborn calves reside within the southeast through winter and generally depart the calving grounds by the end of March or early April (Reeves *et al.* 2001). Given that the area off the southeastern U.S. is the only known calving ground for North Atlantic right whales, and that the most biologically valuable portion of the species' population is utilizing this habitat, we conclude that facilitating successful calving by protecting the species' calving area is a key conservation objective. Thus, to identify specific areas that may meet the definition of critical habitat, we focused first on specifically defining what constitutes a ''calving'' area for North Atlantic right whales; that is, what are the functions this area provides that promote successful calving and rearing. We then examined these functions and next identified those physical or biological features that are essential to the conservation of the species because they provide calving area functions to the species in these areas.

The physical features of right whale calving habitat that are essential to the conservation of the North Atlantic right whale are: (1) Calm sea surface conditions of Force 4 or less on the Beaufort Wind Scale; (2) Sea surface temperatures from a minimum of 7 °C, and never more than 17 °C; and (3) Water depths of 6 to 28 meters, where

these features simultaneously co-occur over contiguous areas of at least 231 km2 of ocean waters during the months of November through April. When these features are available, they are selected by right whale cows and calves in dynamic combinations that are suitable for calving, nursing, and rearing, and which vary, within the ranges specified, depending on factors such as weather and age of the calves.

As discussed in the Biological Source Document (NMFS 2014a), habitat characteristics common to lower latitude calving areas for large whales include warmer water temperatures, lower average wind speeds, less frequent storms, and lower wave heights compared to conditions at higher latitudes (Garrison 2007). These common calving habitat characteristics for large whales likely provide an energy benefit to both lactating mothers and calves. Female baleen whales do not typically feed during movement to, or the residence period in, the calving ground, and endure a significant energetic cost with reproduction (Garrison 2007). Mother whales fast during part of or throughout lactation, and maternal reserves are heavily exploited for milk production (Oftedal 1997, 2000). Fasting in warm water during lactation is likely more efficient than feeding, or even fasting, in colder water where energy reserves must be spent to keep body temperatures up as discussed later. Warm-water may also aid in the conversion of maternal body fat to high-fat milk, hence contributing to rapid calf growth (Oftedal 2000, Whitehead and Mann 2000).

Females in calmer, shallower waters require less energy for surfacing, and thus reserve energy for calving and nursing. Additionally, newborn animals may have increased survival, and/or lower energy expenditure in warmer, calmer, or less predator-infested waters (Brodie 1975, Lockyer 1987, as cited in Whitehead and Mann 2000, Corkeron and Connor 1999). Calves have been reported to have difficulty surfacing to breathe in extremely rough waters (Thomas and Taber 1984). Further, calves are relatively weak swimmers (Thomas and Taber 1984) and are more likely to be separated from their mothers during storm events and in areas with high winds and waves; separation from the mother for even a short time is likely fatal for newborn calves (Garrison 2007).

Although direct data about thermal tolerances in right whales are lacking (Kenney 2007), warmer water temperatures likely provide a thermoregulatory benefit to calving right whales. As homoeothermic (warm-blooded) animals, right whales expend additional energy for thermoregulation when temperatures are either too cold or too hot compared to some thermal optimum. North Atlantic right whales have a mean blubber thickness of 12.2 cm (range 8 to 22 cm) (3 to 8.6 inches), and the blubber of new mothers is thicker than that of females in late lactation or nulliparious females (*i.e.,* females that have not given birth to a calf yet) (Angell 2006). The thick blubber of parturient females may pose a thermal constraint, and it is expected that new mothers will be more sensitive to warm temperatures (*e.g.,* Atlantic Ocean Gulf Stream water) than to colder temperatures, compared to females in late lactation or nulliparious females (Good 2008). Calves are unlikely to face such constraints (Good 2008) because calves do not have a thick blubber layer; blubber from newborn southern right whale calves in South Africa averaged 5 cm (2 inches) in thickness (Reeb *et al.* 2007). Therefore, newborn calves without the thick blubber layer of adults do not have the same thermal tolerance as adult whales (Garrison 2007). Because of the differences in the thermoregulatory needs of mothers (*i.e.,* preferring waters that are not too warm so as to avoid heat stress) and newborns and calves (*i.e.,* preferring waters that are not too cold so as to avoid cold stress), it is likely that pairs of new mothers (*i.e.* blubber rich) and newborns or calves (*i.e.* blubber poor) on a calving ground have relatively narrow combined thermal tolerances (Garrison 2007).

North Atlantic right whales are observed calving off the southeastern U.S. coast, in an area known as the South Atlantic Bight (SAB). The SAB extends roughly from Cape Hatteras, North Carolina, to West Palm Beach, Florida. The SAB continental shelf varies from 40 to 140 km wide, with a shallow bathymetric slope. In the inner shelf, where the water depth is shallow and friction is large, the current responds almost instantaneously to local wind stress; as a result, water moves in the same direction as the wind (Chen 2000). In the middle and outer shelves, where the water is deep and friction is weak, the wind-driven current flows perpendicular to the wind direction (*i.e.,* Ekman spiral pattern). Average winter wind speeds in the region increase when moving farther offshore. With increasing wind speeds comes a corresponding deterioration in sea state conditions: Wave size increases and the sea surface becomes more turbulent.

Winter sea surface temperatures across the SAB range from 8 °C to 25 °C (Good 2008). Gulf Stream waters typically have temperatures greater than 20 °C during winter, and water closer to shore is cooler, ranging between 8 and 17 °C in the southeastern U.S. during winter months (Garrison 2007). Pulses of warm water frequently move shoreward as the result of Gulf Stream meanders, but a steady tongue of colder water persists directly adjacent to shore and out to the continental shelf break in winter (Stegmann and Yoder 1996, Keller *et al.* 2006). These waters are warmer than those in the northern feeding grounds during winter, yet cooler than the waters located farther offshore the southeastern U.S. that are influenced by the warm waters of the Gulf Stream.

Aerial surveys for calving right whales have been conducted in the southeastern U.S. each winter (December–March) since 1992. Survey effort has varied throughout the area with the core calving area being surveyed most consistently (Keller *et al.* 2006). The bias created by this uneven survey effort can be reduced by standardizing mother-calf sightings by level of survey effort on a spatial scale (*i.e.,* effort-corrected sightings or sightings per unit of effort). Based on effort-corrected sightings data, the densest distribution of observed North Atlantic right whale mother-calf pairs is generally between St. Augustine, Florida, and just south of Savannah, Georgia in waters of the inner shelf of the SAB. Garrison (2007) and Keller *et al.* (2012) assessed habitat correlations and spatial patterns in the distribution of right whale mother-calf pairs using sightings data, satellite derived sea surface temperature, bathymetry, modeled average wind data, and several other spatial variables. The modeling results indicate that sea surface temperature and water depth are significant predictors of calving right whale spatial distribution. Wind intensity did not explain the spatial distribution of calving right whales in these two studies (Garrison 2007, Keller *et al.* 2012). Using the significant predictor variables of sea surface temperature and water depth, these studies showed that peak predicted right whale mother-calf pair sighting rates (95th percentile) occur at water temperatures from 13 to 15 °C and water depths from 10 to 20 m. The 95th percentile of predicted rates of right mother-calf pair sightings accounts for only 43.5 percent of all observed right whale mother-calf pair sightings. The 75th percentile of predicted sighting rates, however, accounts for 91 percent of all observed right whale mother-calf pair sightings and occurs at water

temperatures between 7 and 17 °C and water depths ranging from 6 to 28 m. Predicted sighting rates decline dramatically at water temperatures greater than 17 °C. As calving season progresses from December through February, the model shows the predicted number of right whale sightings extending farther south, following the seasonal latitudinal progression of favorable water temperatures and the seasonal change in the distribution of observed right whale sightings. In the southern portion of the predicted optimal habitat area, the predicted number of right whale sightings are relatively close to shore, confined by both the narrow shelf and the incursion of warm water temperatures influenced by the Gulf stream close to shore (Garrison 2007, Keller *et al.* 2012).

These results are corroborated by Good's (2008) predictive model of optimal right whale calving habitat, which assesses topological and physical conditions associated with the presence of North Atlantic right whale calves in the SAB. The model was used to evaluate the importance of water depth, sea surface temperature, and sea surface roughness in relation to the distribution of right whale mother-calf pairs over a period of 6 years (2000–2005). The model showed that sightings of right whale mother-calf pairs occurred within a narrow range of physical parameters. Over the course of the winter season (December through March), Good's (2008) model showed that the distribution of female right whales and their calves in the SAB is correlated with water depth, sea surface temperature, and surface roughness, with the importance of each variable differing by month. Sightings of mothers and calves occurred within a mean depth range between 13.8 m and 15.5 m where mean sea surface temperature varied between 14.2 and 17.7 °C and mean surface roughness varied from −24.8 dB to −23.3 dB. Higher backscatter values (*e.g.,* −25 dB) reflect a calmer surface, while lower values (*e.g.* −20 dB) indicate rougher, choppier conditions (Good 2008). Sea surface roughness had the strongest correlation with right whale mother-calf pair distribution early in the calving season (December) when most mother-calf pairs were located in waters calmer than the rest of the study area; preferred values widened as the calving season progressed (February/March) when whales occupied rougher surface waters, especially in March. Further, the habitat used by non-calving whales differed from that used by mother-calf pairs with respect to surface roughness and sea surface temperatures. The highest rates (70 to 76 percent) of right whale mother-calf pair sightings occurred in areas predicted as habitat in both 3 and 4 months out of the calving season, which accounts for approximately 86 percent of all observed right whale mother-calf pair sightings. Good's (2008) modeling results are similar to the modeling results reported by Garrison (2007) and Keller *et al.* (2012), confirming bathymetry and sea surface temperature importance to right whale mother-calf pair distribution on the calving ground. Good's (2008) model also shows that sea surface roughness is a significant predictor of right whale mother-calf pair distribution in the SAB.

Together, the sightings data and predictive modeling results show that mother-calf pairs of North Atlantic right whales are observed and are likely to be observed in relatively shallow waters (10–20 m) within a narrow range of water temperatures (7 to 17 °C) (Keller *et al.* 2012, Good 2008), in relatively calm waters (>23.3 dB), and in close proximity to shore (within 60 km of the coast) (Good 2008). The ranges noted in parentheses represent the 75th percentile of right whale mother-calf pair sightings predicted by Garrison (2007) and Keller *et al.* (2012), which also capture the mean ranges of sea surface temperature, sea surface roughness, and water depth associated with right whale mother-calf pair sightings reported by Good (2008). Garrison's (2007) and Keller *et al.*'s (2012) 75th percentile of predicted sighting rates for calving right whales account for the greatest portion of all observed calving right whales (91 percent) and captures the means reported by Good (2008). Additionally, Good's (2008) rates of right whale mother-calf pair sightings in predicted habitat includes the most consistent habitat features over time and accounts for 86 percent or more of all observed right whale mother-calf pair sightings. Therefore, we conclude Garrison's (2007) and Keller *et al.*'s (2012) 75th percentile and Good's (2008) habitat selected in 3 and 4 months are the most appropriate bases for determining the essential features of right whale calving habitat in the southeastern U.S.

Calving right whales can be observed in waters exhibiting some or all of the features described previously within the specified ranges depending on factors such as the weather (*e.g.,* storms, prevailing winds) and age of the calf (*e.g.,* neonate versus more mature calf). For example, early in the calving season mother-calf pair distribution is most strongly correlated with sea surface roughness (Good 2008). Most mother-calf pairs are located in calm waters at this time, consistent with reports that calves have difficulty surfacing to breathe in extremely rough waters (Thomas and Taber 1984), and separation from the mother for even a short time is likely fatal for newborn calves (Garrison 2007). Therefore, mother-calf pairs are likely to select locations with the calmest sea surface conditions to facilitate the needs of the neonate, which is a weak swimmer and needs to remain close to the mother to feed, and the needs of the mother who is fasting and lactating. If weather conditions are persistently poor (*e.g.,* windy and/or stormy conditions), then it is likely the mother may search for and locate conditions more conducive to the needs of a weak-swimming neonate.

Because sea surface roughness has the strongest correlation to mother-calf pair distribution early in the calving season, areas of calm water in which these mother-calf pairs are located may also contain sea surface temperatures and water depths within the preferred ranges; however, as these two features are relatively less important for calf survival than calm water early in the calving season, areas in which mother-calf pairs are located are more likely to contain sea surface temperatures and water depths at the extremities of the preferred ranges (*e.g.,* 17 °C or upper range of values for sea surface temperatures, and 10 m or lower range of values for water depths). Early in the season, these shallow waters have not cooled to the seasonal minimum, yet still provide the necessary thermal balance for both a fasting, lactating, blubber-rich mother and a hungry, weak, blubber-poor neonate. As the calving season progresses and young calves mature and become stronger swimmers, however, calm waters become relatively less important to calf survival. Mother-calf pairs begin occupying rougher surface waters and the distribution of mother-calf pairs begins correlating more strongly with the preferred ranges of sea surface temperatures and water depths.

It is evident from the distribution patterns of mother-calf pairs throughout the calving season (see Garrison 2007, Keller *et al.* 2012, and Good 2008) that calving North Atlantic right whales are moving throughout the SAB to select optimal combinations of sea surface roughness, sea surface temperatures, and water depths depending on factors such as the weather and the age of the calves. Younger, weaker calves are present earlier in the calving season and Good's (2008) model shows that this is

when sea surface roughness had the strongest correlation with right whale mother-calf pair distribution. Therefore, calmer waters are an essential feature for the conservation of the species because they facilitate right whale calf survival. Additionally, the distribution of mother-calf right whale pairs correlates with (1) a narrow sea surface temperature range (7 °C to 17 °C), which provides for the thermal balance needs of both a fasting, lactating, blubber-rich mother and a hungry, weak, blubber-poor neonate; and with (2) a range of water depths (6 to 28 m) that provide for protection from open ocean swell, which increases the likelihood of calf survival. Therefore, waters within these sea surface temperature and depth ranges are essential features for the conservation of the species because they facilitate successful calving, which is essential to the conservation of endangered North Atlantic right whales.

Further illustrated by the modeling results reported by Garrison (2007), Keller *et al.* (2012), and Good (2008) is that the features of sea surface roughness, sea surface temperatures, and water depth are present in the SAB during calving season over large, contiguous areas of ocean waters (at least 231 nm^2), which is the core use area of a mother/calf pair in any given season. As such, mother-calf-pairs can move throughout the SAB to select dynamic, optimal combinations of some or all of these features depending on factors such as the weather and the age of the calves. The ability of mother-calf pairs to move throughout the SAB to use these features also contributes to growth and fitness of young calves. At the end of the calving season, these calves that are only a few months old must be strong enough to complete the lengthy trip back to the northern feeding grounds. It is believed the swimming abilities of young calves is strengthened by mother-calf pairs looping many miles up and down the coast in the calving area (S. Kraus, New England Aquarium, pers. comm. to S. Heberling, NMFS, June 25, 2010). Such transit of mother-calf pairs is evidenced by one tracking study in which a tagged right whale with a young calf covered as much as 30 NM in one 24-hour period (Slay *et al.* 2002) and by annual tracking data of mother-calf pairs (Right Whale Consortium 2010). Therefore, calf survival is facilitated by the presence of the features over large, contiguous areas of the SAB such that mother-calf pairs can move throughout the SAB to select dynamic, optimal combinations of some or all of these features, which are influenced by weather and the age of the calves.

The Physical and Biological Features of Migratory Habitat That Are Essential to the Conservation of the Species

Large-scale migratory movements between feeding habitat in the northeast and calving habitat in the southeast are a necessary component in the life-history of the North Atlantic right whale. A proportion of the population makes this migration annually, and the most valuable life-history stage (calving females) must make this migration for successful reproduction. The subset of the North Atlantic right whale population that has been observed migrating between the northern feeding grounds and southern calving grounds is comprised disproportionately of reproductively mature females, pregnant females, juveniles, and young calves (Ward- Geiger *et al.* 2005; Fujiwara and Caswell 2001; Kraus *et al.* 1986, as cited by Firestone *et al.* 2008). For logistical reasons, survey efforts have also been disproportionally focused in the nearshore area (within 30 nm of shore).

During migratory periods it is difficult to locate and sample marine mammals systematically or to observe them opportunistically, because they surface less frequently and cover large distances in any given day during migration (Hiby and Hammond 1989; Morreale *et al.* 1996; Mate *et al.* 1997; Knowlton *et al.* 2002, as cited by Firestone *et al.* 2008). The space used by right whales during their migrations remains almost entirely unknown (Schick *et al.* 2009). Defining a particular migratory corridor is further complicated by the fact that the available data are largely spatially constrained to nearshore areas (*i.e.,* 30 nm of shore), and consist of opportunistic sightings. Based on the low numbers of whales observed migrating close to shore between foraging and calving habitats, it is apparent that not all right whales migrate within 30 nm of shore. A study by Schick *et al.* (2009), who tracked the movements of two tagged female right whales, also suggests that movement of right whales are much broader and more variable than suggested by results based solely on opportunistic sightings from surveys limited to nearshore areas (see Schick *et al.* (2009)).

Beyond the uncertainty over the location of one or more migratory corridors, we cannot currently identify any specific physical or biological features that define migratory habitat.

Therefore, we have concluded that it is not currently possible to define critical habitat associated with right whale migratory behaviors. The draft Biological Source Document (NMFS 2014a) contains a thorough discussion of the available data we considered in our analysis.

The Physical and Biological Features of Breeding Habitat That Are Essential to the Conservation of the Species

We have concluded that it is not possible to identify essential physical or biological features related to breeding habitat, primarily because we cannot identify areas where breeding occurs. Right whales are known to aggregate in large groups called Surface Active Groups (SAGs). While indicative of courtship and reproductive behavior, not all SAGs are reproductive in nature (Kraus *et al.* 2007). SAGs are observed year round, both in the northeast feeding areas as well as in the southeast calving grounds. SAGS are usually observed opportunistically during directed survey efforts as well as other random sightings.

Between 2002 and 2008, aerial surveys identified half the North Atlantic population in the central Gulf of Maine between November and January (Cole *et al.* 2013). Right whale presence in the central Gulf of Maine during the estimated conception period strongly suggests that this region is a mating ground for the species. However, there has not been any systematic evaluation of the particular physical or biological features that facilitate or are necessary for breeding and reproduction to occur. Therefore, it is also not possible to identify physical or biological features related to breeding and reproduction that are essential to the conservation of the species.

Specific Areas Within the Geographical Area Occupied by the Species

The definition of critical habitat further instructs us to identify specific areas on which are found the physical or biological features essential to the species' conservation. Our regulations state that critical habitat will be defined by specific limits using reference points and lines on standard topographic maps of the area, and referencing each area by the State, county, or other local governmental unit in which it is located (50 CFR 424.12(c)). Our regulations also state that when several habitats, each satisfying requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat (50 CFR 424.12(d)). We identified two ''specific areas'' within the geographical area occupied by the species, at the time of listing, that contain the essential features for right whale foraging and calving habitat. The

following paragraphs describe the methods we used to determine the boundaries for each specific area.

(1) Specific Areas on Which Are Found the Physical and Biological Features of Foraging Habitat (Unit 1)

All of the identified essential features are present within Unit 1 (Figure 1). The physical oceanographic conditions, late stage *C. finmarchicus* aggregations, and aggregations of diapausing *C. finmarchicus* that have been identified as essential features are dynamically distributed throughout this specific area. The specific area includes the large embayments of Cape Cod Bay and Massachusetts Bay and deep underwater basins. The area incorporates state waters from Maine through Massachusetts as well as federal waters, but does not include inshore areas, bays, harbors, and inlets.

While *C. finmarchicus* are found throughout the Gulf of Maine, some regions within the Gulf of Maine show more seasonal variation in abundance and age group distribution than others. Based on 10 years of data collected through the MARMAP program, Meise and O'Reilly (1996) found the total *C. finmarchicus* abundance peaked in early spring (March–April) on the Mixed Georges Bank, Tidal Front Georges Bank and Mass Bay, and in late summer (July–August) in the Northern Gulf of Maine and Scotian-Coastal Gulf of Maine. *C. finmarchicus* abundance peaked in the remaining areas of the Gulf of Maine during May through June. A sharp decrease in overall copepod abundance was found by Meise and O'Reilly (1996) in the months of July through October. During this time period, copepod abundance decreased in all areas except for waters 50–300 m located over Jordan and Wilkinson Basins in the Gulf of Maine and the 200–500 m slope water seaward of Georges Bank. In these areas, densities of stage C5 *C. finmarchicus* exceeded densities of other life stages. Additionally, overall abundance throughout the entire Gulf of Maine increased ten-fold from January through April when diapausing *C. finmarchicus* migrate to the surface to molt, spawn, and are advected to the rest of the Gulf of Maine via depth-associated increased flow and transport (Meise and O'Reilly 1996).

While the seasonal distributions and general patterns of abundance of *C. finmarchicus* within the Gulf of Maine and Cape Cod Bay have been documented, the geographic scales and depths where copepods are sampled only rarely match the fine-scale at which right whales forage (Mayo and Marx 1990, Baumgartner and Mate 2003). Basin-scale zooplankton monitoring schemes have proved ineffective in detecting the high concentrations usually present in the vicinity of actively feeding whales. Furthermore, using direct copepod sampling efforts to identify where dense aggregations occur is also confounded by the fact that sufficient data are not available to establish a specific threshold density of *C. finmarchicus* that triggers feeding. For these reasons, the specific area on which are found dense aggregations of late stage *C. finmarchicus* cannot be defined by relying on data from such efforts to sample copepod aggregations directly throughout the vast Gulf of Maine and Georges Bank region.

Though the means by which right whales locate and exploit food resources is not well understood, the presence of foraging right whales is a reasonable proxy for determining where critical food densities are located (Kenney *et al.* 1995, Baumgartner *et al.* 2003b). The protocol for determining the whale density and residency indicative of feeding behavior was developed by Clapham and Pace (2001) for the Dynamic Area Management (DAM) program. The DAM protocol identifies a sighting of >3 right whales close enough to each other to produce a density of 0.04 right whales/nm^2 as the minimum number and density of right whales that reliably indicates the presence of foraging whales. The DAM protocol was used retrospectively using sighting histories from 1970–2005. Pace and Merrick (2008) identified 7,761 sightings events representing 15,395 whales over the time period. The DAM protocol was then applied to calculate the circular core sightings area and, as necessary, circular zones joined. This provided 1,292 unique ''pseudo-DAM'' events that were subsequently mapped using ARCView GIS software (a ''pseudo-DAM'' event is an aggregation of foraging right whales identified in this retrospective analysis that met the definition of foraging right whales and would have met the DAM trigger if the protocol had been in place at the time). The analyses of right whale sightings data in U.S. Northwest Atlantic waters indicate that foraging habitat is expansive and that *C. finmarchicus* is ubiquitous in the Gulf of Maine and Georges Bank region.

Seasonal movement patterns of right whales and the available literature on the distribution, abundance, and population dynamics of calanoid copepods, indicate that several areas are important for right whale foraging in the Gulf of Maine/Georges Bank region: Cape Cod Bay (January–April), Great South Channel (April–June), western Gulf of Maine (April–May and July–October), northern edge of Georges Bank (May–July), Jordan Basin (August–October), and Wilkinson Basin (April–July). Analyses show that each of these areas has a defined pattern of repeated DAM events and thus whale feeding events, particularly in the past decade when more observations are available due to increased survey coverage, and/or are the source areas that supply the copepod prey to foraging areas (Pace and Merrick 2008).

Cape Cod Bay exhibits high densities of copepods during winter, spring, and, possibly fall, as evidenced by the large numbers of feeding right whales. Of the 17,257 right whale sightings in New England during 1970 through 2005, 7,498 were in Cape Cod Bay. A total of 543 pseudo-DAM events occurred in this area, most during January–April.

The Great South Channel has high copepod concentrations at depth, especially during March–July, as evidenced by the large numbers of feeding right whales, owing to bathymetric features and water circulation patterns. A total of 5,753 right whales were sighted in the area during 1970–2005; this included 344 pseudo-DAM events. Most right whale sightings occurred during April–June, but also in July in some years. Right whale use of the Great South Channel area is not nearly as uniform as in Cape Cod Bay, but is widespread enough to indicate that the Channel is a critical foraging area in almost every year.

The Western Gulf of Maine possesses a complex set of bathymetric features which markedly affect the spatial/temporal concentration of copepods among years. From 1970 through 2005, 1,749 right whale sightings (including 153 pseudo-DAM events) occurred in this area, mostly during April–May and July–October.

The northern edge of Georges Bank has high copepod densities at depth, especially during May–July, as evidenced by the large numbers of feeding right whales, emanating from physical features (*e.g.,* currents and upwelling) which concentrate late-stage copepods during spring and summer. Foraging right whales in this area are thought to be following an eastward progression of dense copepod patch development, which begins in late spring and early summer. A total of 32 pseudo-DAM events have occurred in this area. Recent surveys have documented that Jordan and Wilkinson Basins are also important feeding areas. Wilkinson Basin serves as a foraging area for right whales in spring. The

limited survey sightings effort in Wilkinson Basin during 1970–2005 documented 1,058 individual right whales during this period, including 104 pseudo-DAM events. Surveys have repeatedly found concentrations of right whales in this area during April-July. Right whale surveys conducted in Jordan Basin during the winter of 2004–2005 (perhaps the first winter surveys ever in this Basin) sighted up to 24 foraging right whales at a time (NMFS unpubl. data). The limited survey efforts in the area during 1970–2005 recorded a total 21 pseudo-DAM events. The available data suggest that Jordan Basin is an important right whale foraging area, at least during August–October.

As part of our analysis of areas on which are found the essential foraging features, we considered an analysis of right whale sightings data along the east coast (70 FR 35849, June 25, 2005, NMFS 2007, 72 FR 57104, October 5, 2007). This analysis indicates that endangered large whales rarely venture into bays, harbors, or inlets. Based on this analysis, NMFS (2007) concluded that it is unlikely that right whales spend substantial amounts of time in the coastal waters of Maine, particularly inshore areas such as bays, harbors, or inlets (70 FR 35849, June 25, 2005, NMFS 2007, 72 FR 57104, October 5, 2007). Similarly, right whales are seldom reported in the small bays and harbors along the inside edge of Cape Cod, with the exception of Provincetown Harbor where foraging right whales have been observed. Due to the absence or rarity of foraging right whales in inshore areas, bays, harbors and inlets, we conclude that the essential feature of dense aggregations of late-stage *C. finmarchicus* is not present in the areas shoreward of the boundaries delineated in Table 1a and Table 1b.

Lastly, we considered right whale sightings (and pseudo-DAM events) that have occurred to the south and east of the area described previously. Typically, whales are sighted in these areas in one year, but are not seen again for a number of years and evaluation of data across time series do not demonstrate any predictable repeated presence of whales. As a result, we conclude those areas do not provide predictable foraging habitat which is evident in the Gulf of Maine-Georges Bank region. Most likely, sightings in these areas consist of whales that feed opportunistically while migrating to the Gulf of Maine. This includes the large number of feeding right whales sighted in Block Island Sound in April 2010 and the smaller aggregation observed 2011. The sightings off Rhode Island represents the largest group of right whales ever documented in those waters. However, right whales have not been observed in Block Island Sound in subsequent years and a pattern of repeated annual observations is not evident in these areas.

The large area depicted in Figure 1 encompasses all of the physical oceanographic conditions and structures of the Gulf of Maine and Georges Bank region, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes that combine to distribute and aggregate *C. finmarchicus* for right whale foraging in that region. The essential physical feature of the Gulf of Maine-Georges Bank region important to supporting these aggregations is low flow velocity environments that allow the neutrally buoyant, high lipid content copepods to passively aggregate below the convective mixed layer and be retained for a period of time. As discussed previously, these low flow environments are present in the three deep basins—Wilkinson, Jordan and Georges Basins—within the Gulf of Maine, with boundaries approximated by the 200 m isopleths. Therefore, these basins contain the essential features for right whale foraging habitat.

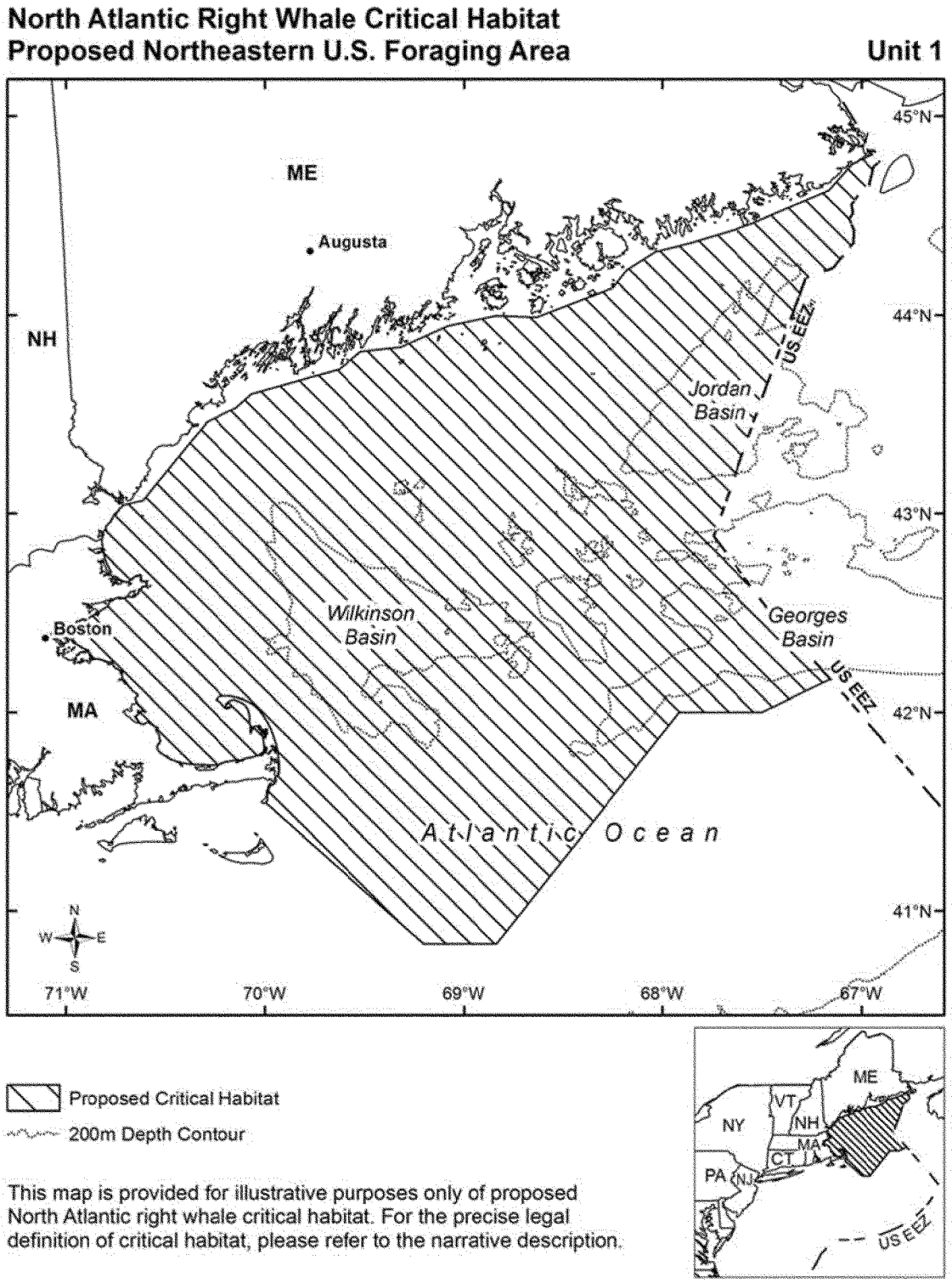


Figure 1: Specific area on which are found the essential features of North Atlantic right whale foraging habitat

Consistent with our regulations (50 CFR 424.12(c)), we have identified one ''specific area'' within the geographical area occupied by the species at the time of listing, that contains the identified physical and biological features of

foraging habitat that are essential to the conservation of North Atlantic right whales. This area encompasses a large area within the Gulf of Maine and Georges Bank region, including the large embayments of Cape Cod Bay and Massachusetts Bay and deep underwater basins. This area also incorporates state waters, except for inshore areas, bays, harbors, and inlets, from Maine through Massachusetts in addition to federal waters.

The specific area on which are found the physical and biological features essential to foraging and thus to the conservation of the North Atlantic right whale include all waters, seaward of the boundary depicted in Figure 1 (for actual coordinates see below). The boundary of the proposed critical habitat for Unit 1 is delineated generally by a line connecting the geographic coordinates and landmarks as follows: From the southern tip of Monomoy Island (Cape Cod) (41°38.39′ N, 69°57.32′ W) extending southeasterly to 40°50′ N, 69°12′ W (the Great South Channel); then east to 40°50′ N 68°50′ W. From this point, the proposed boundary extends northeasterly direction to 42°00′ N, 67°55′ W and then in an easterly direction to 42°00′ N 67°30′ W. From this point, the proposed boundary extends northeast along the northern edge of Georges Bank to the intersection of the U.S.-Canada maritime boundary at 42°10′ N, 67°09.38′ W. The proposed boundary then follows the U.S.-Canada maritime boundary north to the intersection of 44°49.727′ N, 66°57.952′ W. From this point, moving southwest along the coast of Maine, the specific area is located seaward of the Maine exemption line developed for the Atlantic Large Whale Take Reduction Plan to the point (43°02.55′ N, 70°43.33′ W) on the coast of New Hampshire south of Portsmouth, NH. The boundary of the proposed area then follows the coastline southward along the coasts of New Hampshire and Massachusetts along Cape Cod to Provincetown southward along the eastern edge of Cape Cod to the southern tip of Monomoy Island. As noted, the specific area includes the large embayments of Cape Cod Bay and Massachusetts Bay but does not include inshore areas, bays, harbors and inlets. In addition, the specific area does not include waters landward of the 72 COLREGS lines (33 CFR part 80) as described below.

(2) Specific Areas on Which Are Found the Physical Features of Calving Habitat (Unit 2)

The essential features of right whale calving habitat are dynamic in their distributions throughout the South Atlantic Bight in that they vary over both time and space, and their variations do not necessarily correlate with each other. Calving right whales therefore likely select areas containing varying combinations of the preferred ranges of the essential features available within the SAB, as identified previously, depending on factors such as the weather (*e.g.,* storms, prevailing winds) and the age of the calves (*e.g.,* neonate or more mature calf).

In order to identify specific areas that may contain the essential features, we used analyses based on two predictive habitat models (Garrison (2007) and Keller *et al.* (2012), and Good *et al* (2008). These models help identify areas within the SAB where the essential features are likely to be present throughout the calving season.

The Garrison (2007) and Keller *et al.* (2012) models base the spatial extent of potential calving habitat on average environmental conditions at a 4 km x 4 km sampling unit and the resulting use of these areas by calving right whales. These models also reflect the processes observed in the Florida-Georgia region only. From the mean water temperatures between December and March in this region, the models predict calving habitat for right whales in waters typically between 10 and 50 km from shore extending from New Smyrna Beach, Florida north to Cape Fear, North Carolina. The optimal temperature range within the 75th percentile of predicted sighting rates for calving right whales occurs throughout much of the spatial range. Over the course of the entire calving season (December through March) the preferred water depth (6 to 28 m) and sea surface temperature (7 to 17 °C) ranges for calving right whales correspond with predicted sighting rates of calving right whales in the 75th percentile, which accounts for 91 percent of all observed calving right whales. The area containing the 75th percentile of predicted sighting rates for calving right whales extends from approximately Daytona Beach, Florida north to just beyond the Georgia/South Carolina state border. The geographic area included in the 75th percentile of predicted sighting rates encompasses seasonal and annual variability of the distribution of the essential features, particularly sea surface temperatures as evaluated by Garrison (2007) and Keller *et al.* (2012), and provides the broadest availability of contiguous areas of dynamic combinations of the essential features for selection by calving right whales.

Because the models used by Garrison (2007) and Keller *et al.* (2012) selected annual effects, sea surface temperature, and water depth, but not sea state (roughness) or wind conditions and right whale mother-calf distribution, we also considered the results by Good (2008) that predicted potential right whale calving habitat based on sea state roughness as well as sea surface temperature and water depth. Good (2008) calculated the relative density of calf sightings at a 5 km x 5 km sampling unit and measured the habitat conditions where right whale mother-calf pairs were sighted. These calculated habitat values (sea surface temperature, sea surface roughness, and water depth) were used to derive a ''likelihood surface'' of calving habitat to predict potential habitat for each month of the calving season and for all months combined. This combined model provided a measure of temporal continuity by delineating the number of months (December through March) a given area was selected as potential calving habitat. This combined model is the best representation of potential calving habitat both in time and space (Good 2008). Overall, the Good (2008) model predicted the presence of potential right whale calving habitat extending within 40 to 50 km of shore from Cape Lookout, North Carolina south to approximately New Smyrna, Florida. Areas predicted by the model to be potential right whale calving habitat in three or more months accounted for 85 percent or more of all observed right whale mother-calf sightings. Finally, as illustrated by the results of both habitat predictive models and the movements of cow-calf pairs during their time on the calving grounds, the features of sea surface roughness, sea surface temperatures, and water depth in the preferred ranges used by right whales are present in the SAB during calving season over large, contiguous areas (at least 231 nmi^2 of ocean area).

To determine the boundaries of the specific area containing the essential features identified for North Atlantic right whale calving, we overlaid two ArcGIS shape files generated by the habitat models as follows: 1) The 75th percentile reported by Garrison (2007) and Keller *et al.* (2012), and 2) Good's (2008) habitat area selected by at least three of the monthly models. Given that the 75th percentile from Garrison (2007) and Keller *et al.* (2012) and Good's (2008) habitat area selected by at least three of the monthly models account for 91 and 85 percent of all observed right whale mother-calf pair sightings, respectively, and Good's (2008) combined (four month) model is the best representation of potential calving

habitat both in time and space, we believe these predicted habitat areas are the best basis for determining right whale calving habitat in the southeastern U.S.

Based on the information from these models and other information previously described, which we consider to be the best available information, the southeast right whale calving area consists of all marine waters from Cape Fear, North Carolina, southward to 29° N latitude (approximately 43 miles north of Cape Canaveral, Florida) within the area bounded on the west by the shoreline and the 72 COLREGS lines, and on the east by rhumb lines connecting the specific points described below.

Based on the prior discussion and consistent with our regulations (50 CFR 424.12(d)), we identified one ''specific area'' within the geographical area occupied by the species, at the time of listing, that contains the essential features for calving right whales in the southeastern U.S. (Figure 2). This area comprises waters of Brunswick County, North Carolina; Horry, Georgetown, Charleston, Colleton, Beaufort, and Jasper Counties, South Carolina; Chatham, Bryan, Liberty, McIntosh, Glynn, and Camden Counties, Georgia; and Nassau, Duval, St. John's, Flagler, and Volusia Counties, Florida.

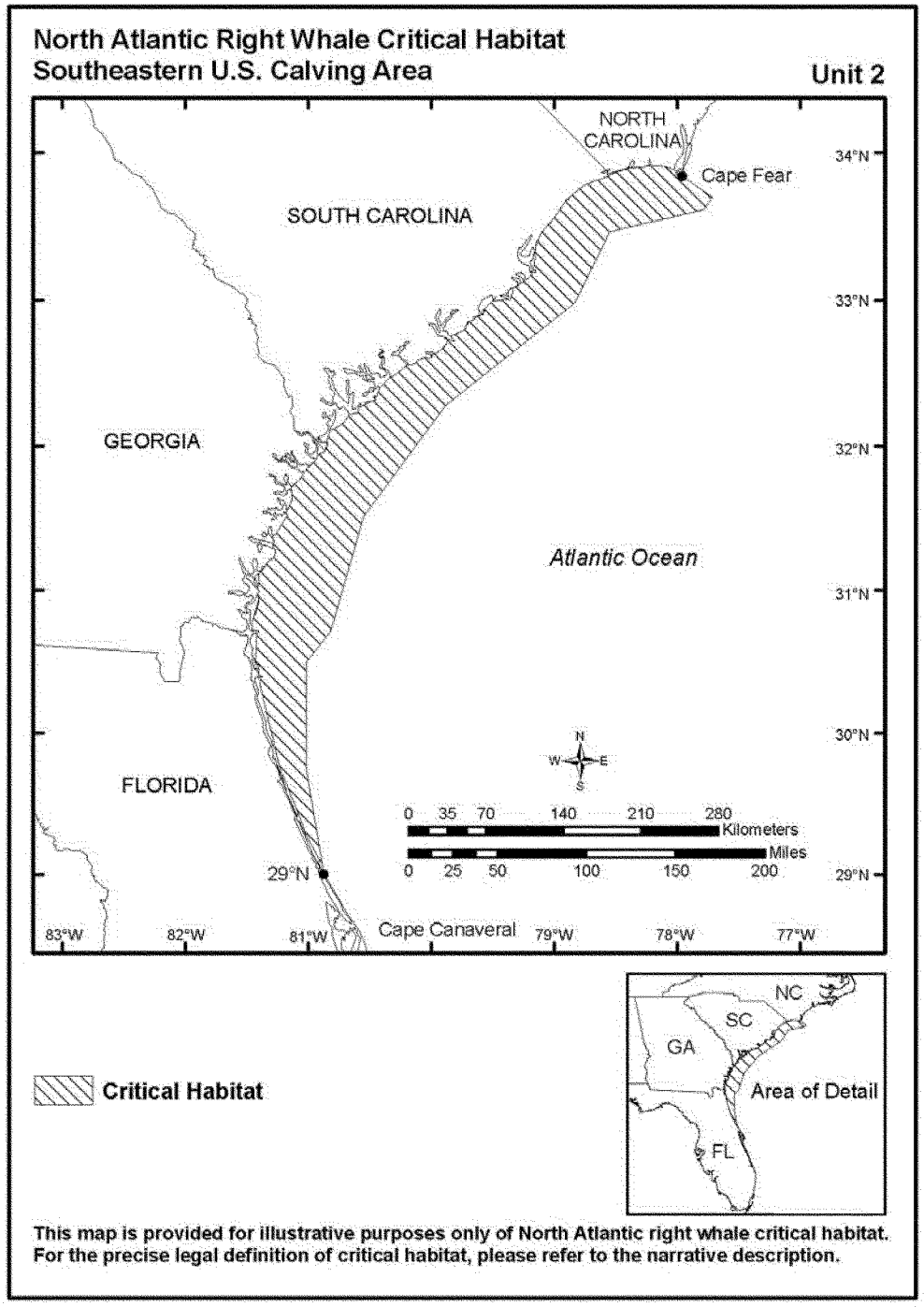


Figure 2. Area considered for designation as North Atlantic right whale southeastern calving critical habitat.

Special Management Considerations or Protection

Specific areas within the geographical area occupied by a species may be designated as critical habitat only if they contain physical or biological features that ''may require special management considerations or protection.'' To meet the definition of critical habitat, it is not necessary that the features currently require special management considerations or protection, only that they *may require* special management considerations or protections. NMFS' regulations define ''special management considerations or protections'' to mean ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species'' (50 CFR 424.02(j)). As noted previously, NMFS produced a Draft Biological Source Document (NMFS 2014a) that discusses our application of the ESA's definition of critical habitat for right whales in detail, including evaluation of whether proposed essential features ''may require special management considerations or protections.'' The following discussion is derived from that document.

(1) Essential Features of Foraging Habitat

As summarized in the following sections, the essential features of right whale foraging habitat may require special management considerations or protections because of possible negative impacts from the following activities and events: (1) Zooplankton fisheries; (2) effluent discharge from municipal outfalls; (3) discharges and spills of petroleum products to the marine environment as a result of oil and gas exploration, development and transportation; and (4) climate change.

Zooplankton Fisheries

The essential foraging habitat features that may be affected by zooplankton fisheries are late stage *C. finmarchicus* copepods in dense aggregations and diapausing *C. finmarchicus* aggregations in Jordan, Wilkinson, and Georges Basins in the Gulf of Maine and Georges Bank region.

While directed zooplankton fisheries have primarily focused efforts on the larger krill species, with the most significant harvests taking place in Antarctica (targeting *Euphasia superba*) and in the Pacific (targeting *Euphasia pacifica*), copepod fisheries have also been permitted, attempted or researched by Canadian and Norwegian interests in North Atlantic waters beginning in the 1990s(NMFS 2014a). In January 2008, the Norwegian Directorate of Fisheries awarded Calanus AS a renewed and expanded license to harvest *C. finmarchicus* in the Norwegian Economic Zone (Calanus® 2008a). In April 2008, the company also entered into a contract with Skretting, the world's largest salmon and trout aquaculture feed production firm, for research and development and subsequent distribution of the Calanus®-derived sea lice deterrent (Calanus® 2008b). Calanus AS is also currently engaged in the development of other uses for *C. finmarchicus* in aquarium feed, health and nutritional products, dietary supplements, flavoring ingredients, bioactive compounds for cosmetics, and pharmaceuticals (Calanus® 2009.)

Several analyses predict the demand for krill will increase, including increased future demands for pharmaceutical and aquaculture products derived from copepods (Nicol and Endo (1997), Payne *et al.* 2001, Suontama 2004). As harvesting technology for *C. finmarchicus* becomes more efficient, demands for *C. finmarchicus* products may increase to the point where zooplankton fishing is economically feasible (Nicol and Endo 1997, Suontama 2004, Piasecki *et al.* 2004).

The essential biological features of foraging habitat in the Gulf of Maine and Georges Bank region may be negatively affected if worldwide demand for *C. finmarchicus* products continues to rise. Therefore, the essential biological features—late stage *C. finmarchicus* copepods in dense aggregations and diapausing *C. finmarchicus* aggregations in Jordan, Wilkinson, and Georges Basins in the Gulf of Maine and Georges Bank region—may require special management considerations or protections.

Sewage Outfalls

Several municipalities from Maine to Massachusetts have waste discharge facilities that empty into the Gulf of Maine. These discharges as well as coastal runoff result in increased nutrient inputs to the ocean. Increased nutrient input in the Gulf of Maine region may result in changes to the overall phytoplankton community structure and enhance nuisance and/or less desirable forage species. These changes may result in changes in productivity and/or changes in the distribution and densities of *C. finmarchicus* populations.

While a single outfall facility may not have a significant impact on the entire Gulf of Maine ecosystem, the cumulative impacts of all sewage outfalls may pose the need for management considerations or protection for *C. finmarchius.* Monitoring results from the Boston outfall in Massachusetts Bay support this concern. In 2000, the Massachusetts Water Resource Authority (MWRA) implemented a new ocean outfall system 15.2 miles offshore in Massachusetts Bay, as part of a Boston Harbor Cleanup program. This new system relocated an estimated 350 million gallons of treated effluent per day from Boston Harbor to the hydrodynamic system of Massachusetts and Cape Cod Bays (PCCS 2005, Bothner and Butman 2007).

In 2002, Provincetown Center for Coastal Studies (PCCS) documented a ''shift from the predominant winter-spring zooplankton resources, *C. finmarchicus,* to the estuarine copepod *Acartia* spp.'' as well as a significant increase in nuisance algae, *Phaeocystis pouchetti,* in Cape Cod Bay (PCCS 2003). PCCS (2005) noted that ''further work may be required to fully assess cumulative or long-term impacts to plankton and higher trophic levels within this dynamic system.''

The MWRA monitoring program further noted that though the structure of the zooplankton community in 2005 was similar to many earlier years, there was a measurable decrease in total zooplankton abundance during 2001 through 2005 compared to the baseline period. Overall lower abundance during the late spring and early summer and during the fall was observed across Massachusetts Bay, but not in the shallower waters of Boston Harbor or Cape Cod Bay (Werme and Hunt 2006).

These observations support the hypothesis that with increased nutrient input and increased primary productivity, Massachusetts Bay plankton communities could shift to being dominated by *Acartia* and other inshore copepods, therefore displacing the high concentrations of offshore copepods such as *C. finmarchicus* from these areas during seasons when they are normally present and serve as a food source for right whales (Werme and Hunt 2006). In addition, increased nutrient input to offshore areas, ''particularly nitrogen, could over-stimulate algal blooms, which would be followed by low levels of dissolved oxygen in the bottom waters when the phytoplankton die, sink, and decompose,'' thereby providing habitat unsuitable for *C. finmarchicus* (Werme and Hunt 2006). We conclude that the essential features of late-stage *C. finmarchicus* in dense aggregations in that region, as well as diapausing *C.*

finmarchicus in Jordan, Wilkinson, and Georges Basins, may require special management considerations or protection due to outfall effluents and other sources of nutrients entering the Gulf of Maine and Georges Bank region.

Oil and Gas Exploration and Development

Currently, there is no oil or natural gas exploration or development activity in the Gulf of Maine and Georges Bank area. Since 1980, all of the area has been under a moratorium on such natural resource development. A leasing moratorium has also been in effect on the Canadian portion of Georges Bank since 1988. The Nova Scotian and Canadian governments extended the moratorium on exploration of eastern Georges Bank through 2015, matching the adjoining U.S. moratorium. Outside the area under the moratorium, oil and gas exploration and production has proceeded in Canadian waters offshore of Nova Scotia.

There is reason to believe that oil or natural gas exploration and development may occur at some point in the future in the specific area proposed for designation as critical foraging habitat for right whales. There is economic interest in opening up new domestic sources for oil and gas, including OCS lands within the specific area proposed for designation as critical foraging habitat for right whales. In addition, emerging deep water drilling technologies now provide the potential to explore deep water basins and other areas within the Gulf of Maine and Georges Bank region.

Activities associated with offshore oil and gas exploration, development, and production include drilling, extraction, and transportation. Oil spills and discharges are associated with all of these activities. Very low concentrations (from less than 1μg/l to 1 mg/l) of oil and petroleum hydrocarbons have been found to have harmful effects on various marine organisms in laboratory tests (Jacobson and Boylan 1973, Johnson 1977, Steele 1977, Kuhnhold *et al.* 1978, Howarth 1987). Sublethal effects from hydrocarbon exposure can occur at concentrations several orders of magnitude lower than concentrations that induce acute toxic effects (Vandermeulen and Capuzzo 1983). Impairment of feeding mechanisms, growth rates, development rates, energetics, reproductive output, recruitment rates and increased susceptibility to disease are some examples of the types of sublethal effects that may occur with exposure to petroleum hydrocarbons (Capuzzo 1987). Early developmental stages of marine organisms, including *C. finmarchicus,* can be especially vulnerable to hydrocarbon exposure. Recruitment failure in chronically contaminated habitats may be related to direct toxic effects of hydrocarbon contaminated sediments (Krebs and Burns 1977, Cabioch *et al.* 1980, Sanders *et al.* 1980, Elmgren *et al.* 1983). A major oil spill could have the potential to engulf dense concentrations of copepods, resulting in smothering and asphyxiation of any organisms coated with oil (NAS 1975). Early life history stages such as eggs and larvae may be particularly susceptible to both acute and chronic effects of oil exposure because even small releases can kill or damage organisms (NRC 2003).

As discussed in the Biological Source Document (NMFS 2014a), both acute and chronic exposure to oil pollution could result in changes to the species composition of phytoplankton communities. It is conceivable that species replacing one another due to differential sensitivities to oil exposure could result in shifts in phytoplankton community structure. Such shifts may then negatively affect the abundance, availability, and density of aggregations of late-stage *C. finmarchicus* on which right whales feed. These shifts also may negatively affect the abundance of diapausing *C. finmarchicus,* which serve as source populations for late-stage *C. finmarchicus.* We conclude that the essential features of late-stage *C. finmarchicus* in dense aggregations in that region, as well as diapausing *C. finmarchicus* in Jordan, Wilkinson, and Georges Basins, may require special management considerations or protection due to impacts associated with oil and gas exploration and development as well as oil spills and discharges entering the Gulf of Maine and Georges Bank region.

Global Climate Change

The projected effects of global climate change include a variety of potential impacts based on a variety of greenhouse gas emissions scenarios, including: Increased average global surface air temperatures; sea level rise, increased global precipitation; and increased atmospheric carbon dioxide concentrations and ocean acidification (IPCC 20142007).

As discussed in detail in the Biological Source Document (NMFS 2014a), there are a number of ways that global climate change may affect the biological and physical features of foraging habitat essential to the conservation of the North Atlantic right whale. The distribution of marine fish and plankton are predominantly determined by climate. The distribution of marine species in U.S. waters is moving northward, and the timing of plankton blooms is shifting (Karl *et al.* 2009). The potential effects of global climate change also include shifts in productivity, biomass, and species composition of zooplankton, including *C. finmarchicus,* which could negatively impact the foraging success of right whales. Inter-annual, decadal, and longer time-scale variability in climate can alter the distribution and biomass of prey available to right whales. For example, decade-scale climatic regime shifts have been related to changes in zooplankton in the North Atlantic (Fromentin and Planque 1996). Decadal trends in the North Atlantic Oscillation (Hurrell 1995) can affect the position of the Gulf Stream (Taylor *et al.* 1998) and other circulation patterns in the North Atlantic that may influence the oceanographic conditions responsible for distributing, aggregating and retaining *C. finmarchicus.*

The predicted range of increase in water temperatures, combined with other factors such as increased precipitation and runoff, may alter seasonal stratification in the northeast coastal waters. Increased stratification of the water column in the Gulf of Maine region could affect copepod abundance and densities by limiting or preventing the exchange of surface and nutrient rich deep water. Increased stratification could affect primary and secondary productivity by altering the composition of phytoplankton and zooplankton (Mountain 2002). This in turn may negatively impact the abundance and distribution of *C. finmarchicus* patches that support right whale foraging and energetic requirements.

Diapausing *C. finmarchicus* populations could also be impacted by predicted climate change-induced changes to the physical oceanographic conditions that create the low-energy environments present within deep ocean basins. The low-flow velocity environments of the deep basins where aggregations of diapausing copepods are found allow the neutrally buoyant, high lipid content copepods to passively aggregate below the convective mixed layer and be retained for a period of time (Lynch *et al.* 1998, Visser and Jónasdóttir 1999, Baumgartner *et al.* 2003, Pace and Merrick 2008). Changes to the physical oceanographic features in the Gulf of Maine region, such as potential increased stratification of the water column, may negatively impact the retention and subsequent emergence and distribution of diapausing copepod source populations in deep ocean basins.

Given these expected negative impacts to the essential features for foraging, NMFS concludes these features may require special management considerations or protections due to climate change.

(2) Essential Features of Calving Habitat

As summarized in the following sections, the essential features of right whale calving habitat may require special management considerations or protections because of possible negative impacts from the following activities and events: Offshore energy development, large-scale offshore aquaculture operations, and global climate change. These activities and their potential broad-scale impacts on the essential features are discussed in detail in the Biological Source Document (NMFS 2014a)

Offshore Energy Development

There is growing interest in diversifying domestic energy sources, including offshore oil and gas exploration and production (including liquid natural gas (LNG) terminals), exploration and development of techniques for mining mineral deposits from the continental shelf, and development and production of offshore energy alternatives in the Atlantic (*e.g.,* wind farms, wave energy conversion) (*e.g.,* see DOE 2008, DOE 2009). Installation and operation of offshore energy development facilities are not likely to negatively impact the preferred ranges of sea surface roughness, sea surface temperatures, or water depths, in that it will not result in lowering or raising the available value ranges for these features. However, installation and operation of these technologies may fragment the large, contiguous areas containing the optimum ranges of all the essential features that are necessary for right whale calving and rearing (NMFS 2014a).

Availability of the essential features may be limited by large arrays or fields of permanent structures that may act as physical barriers and prevent or limit the ability of right whale mothers and calves to move about and find (''select'') the optimal combinations of the essential features. The effective size of offshore energy facilities includes and is increased by all of the associated structures, lines and cables, and activities and noise. There are numerous floating, submerged, and emergent structures, mooring lines, and transmission cables associated with large ocean energy facilities (DOE 2009). Larger whales may have difficulty passing through an energy facility with numerous, closely spaced mooring or transmission lines (DOE 2009). If the density of structures, lines, and cables associated with a facility is sufficiently great and spacing is close, cables could have a ''wall effect'' that could force whales around, or preclude them from using the areas (Boehlert *et al.* 2008).

Therefore, these facilities may limit the availability of the essential features such that right whales are not able to move about, find and use the optimal combinations of the features necessary for successful calving and rearing. These are negative impacts on what makes these features essential to the conservation of the species. Therefore, we conclude the essential features for right whale calving habitat may require special management considerations or protections.

Large-Scale Offshore Aquaculture Operations

Approximately 20 percent of U.S. aquaculture production is based on marine species (NOAA 2010), and there is growing interest in expanding aquaculture operations to offset the increasing demand for seafood (NOAA 2007). Recent advances in offshore aquaculture technology have resulted in several commercial finfish and shellfish operations in more exposed, open-ocean locations (*e.g.,* Hawaii, California) (NOAA 2010). NOAA's 10-year plan (2007) includes establishing new offshore farms in the U.S. Exclusive Economic Zone (EEZ) for finfish, shellfish, and algae.

Large-scale aquaculture operations involve numerous floating or submerged structures and mooring lines, and associated activities and noise. Offshore aquaculture operations utilize large net-pens (*e.g.,* 3000 m^3 capacity) that are partially or fully submerged below the sea surface, and are typically anchored to the sea floor. Partially submerged net-pens typically employ a floating collar that is flexible or strong enough to withstand rough sea conditions and from which the containment net is hung (NOAA 2008). Offshore aquaculture operations typically include aggregations of several net pens and associated structures.

Installation and operation of large-scale offshore aquaculture facilities are not likely to negatively impact the preferred ranges of sea surface roughness, sea surface temperatures, or water depths, in that it will not result in lowering or raising the available value ranges for these features. However, like offshore energy development, the construction and operation of large-scale offshore aquaculture facilities within the specific calving area have the potential to limit the availability of the essential features. Large scale aquaculture facilities could force whales to abandon these areas (Young 2001) by acting as a barrier, or limiting the whales' ability to move about, and find and use the optimal combinations of essential features necessary for successful calving and rearing. Installation and operation of these facilities may also fragment the large contiguous areas containing optimal combinations of the essential features needed for calving and rearing. These are negative impacts on what makes these features essential to the conservation of the species. Therefore, we conclude the essential features for right whale calving habitat may require special management considerations or protections.

Global Climate Change

Global climate change and its potential effects on the environment is a very complex issue. Several of the projected future effects of global climate change are discussed previously.

In the specific area identified as potential right whale calving critical habitat, sea surface temperatures are influenced by the ''Atlantic Multi-decadal Oscillation,'' or AMO. The essential feature of sea surface temperature may be negatively impacted by global climate change, depending on the degree to which the influence of the AMO is reduced. The AMO is an ongoing series of long-duration changes in the sea surface temperature of the North Atlantic Ocean, with cool and warm phases that may last for periods of 20 to 40 years and result in a difference of about 1 °F between extremes (NOAA AOML 2010). The AMO also influences the frequency of hurricanes that originate in the Atlantic Warm Pool (AWP), with fewer major hurricanes and hurricanes making landfall during AMO cool phases.

However, over the next generation, global climate change is projected to be nonlinear, and it is likely that the AMO will have less influence over sea surface temperature oscillations than anthropogenic global climate change in the North Atlantic (Enfield and Serrano 2009). Depending on the degree to which the influence of the AMO is reduced, sea surface temperatures may increase by 1 to 3 °C IPCC AR4 (2014). There is the potential that the preferred temperature range (7 °C to 17 °C) identified for right whales may no longer be available within the specific area, or may become available only within smaller areas co-occurring with the preferred water depth and sea surface conditions, thereby reducing the area available to support the key

conservation objective of facilitating successful calving.

Further, relaxation of the present rate of increase in hurricane activity may never occur (Enfield and Serrano 2009), potentially impacting seasonal sea state conditions in the specific area by increasing the frequency of major hurricanes passing through the specific area. The essential physical features for North Atlantic right whales on their calving grounds are calm sea surface conditions associated with Force 4 or less on the Beaufort Scale. Neonate right whale calves are relatively weak swimmers and are more vulnerable to changes from calm to rough sea state conditions.

We conclude global climate change may result in negative impacts to the preferred ranges identified for the essential features, and to the ability of these features to support successful calving. Therefore, the essential features may require special management considerations or protections to preserve the ability of these features to provide for successful calving and rearing of North Atlantic right whales.

Unoccupied Areas

ESA section 3(5)(A)(ii) defines critical habitat to include specific areas outside the geographical area occupied if the areas are determined by the Secretary to be essential for the conservation of the species. Regulations at 50 CFR 424.12(e) specify that we shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. Our regulations at 50 CFR 424.12(h) also state: ''Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.'' At the present time, the geographical area occupied by listed North Atlantic right whales which is within the jurisdiction of the United States is limited to waters off the U.S. east coast from Maine through Florida, seaward to the boundary of the U.S. Exclusive Economic Zone. As discussed previously, the Gulf of Mexico is not considered part of the geographical area occupied by the species, nor do we consider it an unoccupied area essential to the species' conservation given the rare, errant use of the area by right whales in the past. We have not identified any other areas outside the geographical area occupied by the species that are essential for their conservation and therefore are not proposing to designate any unoccupied areas as critical habitat for the North Atlantic right whale.

Application of ESA Section 4(a)(3)(B)(i) (Military Lands)

Section 4(a)(3)(B)(i) prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP), if we determine that such a plan provides a benefit to the species (16 U.S.C. 1533(a)(3)(B)).

No areas within the specific areas being proposed for designation are covered by INRMPs; therefore, there are no military lands ineligible for designation as critical habitat within the proposed areas of Unit 1 and Unit 2.

Application of ESA Section 4(b)(2)

The foregoing discussion described the specific areas within U.S. jurisdiction that fall within the ESA section 3(5) definition of critical habitat in that they contain the physical and biological features essential to the North Atlantic right whale's conservation that may require special management considerations or protection. Section 4(b)(2) of the ESA requires that we consider the economic impact, impact on national security, and any other relevant impact, of designating any particular area as critical habitat. Additionally, the Secretary has the discretion to consider excluding any area from critical habitat if she determines the benefits of exclusion (that is, avoiding some or all of the impacts that would result from designation) outweigh the benefits of designation based upon the best scientific and commercial data available. The Secretary may not exclude an area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any particular area under any circumstances.

The following discussion of impacts summarizes the analysis contained in our Draft ESA Section 4(b)(2) Report (NMFS 2014b), which identifies the economic, national security, and other relevant impacts that we projected would result from including each of the two specific areas in the proposed critical habitat designation. We considered these impacts when deciding whether to exercise our discretion to propose excluding particular areas from the designation. Both positive and negative impacts were identified and considered (these terms are used interchangeably with benefits and costs, respectively). Impacts were evaluated in quantitative terms where feasible, but qualitative appraisals were used where that is more appropriate to particular impacts. The Draft ESA Section 4(b)(2) Report (NMFS 2014b) is available on NMFS' Greater Atlantic Region Web site at [*www.greater atlantic.fisheries.noaa.gov*].

The primary impacts of a critical habitat designation result from the ESA section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat, and that they consult with NMFS in fulfilling this requirement. Determining these impacts is complicated by the fact that section 7(a)(2) also requires that Federal agencies ensure their actions are not likely to jeopardize the species' continued existence. One incremental impact of designation is the extent to which Federal agencies modify their proposed actions to ensure they are not likely to destroy or adversely modify the critical habitat beyond any modifications they would make because of listing and the jeopardy requirement. When the same modification would be required due to impacts to both the species and critical habitat, the impact of the designation is co-extensive with the ESA listing of the species (*i.e.,* attributable to both the listing of the species and the designation critical habitat). To the extent possible, our analysis identified impacts that were incremental to the proposed designation of critical habitat—meaning those impacts that are over and above impacts attributable to the species' listing or any other existing regulatory protections. Relevant, existing regulatory protections (including the species' listing) are referred to as the ''baseline'' and are also discussed in the Draft Section 4(b)(2) Report.

The Draft ESA Section 4(b)(2) Report describes the projected future federal activities that would trigger section 7 consultation requirements because they may affect the essential features, and consequently may result in economic costs or negative impacts. Additionally, the report describes broad categories of project modifications that may reduce impacts to the essential features, and states whether the modifications are likely to be solely a result of the critical habitat designation or co-extensive with another regulation, including the ESA listing of the species. The report also identifies the potential national security and other relevant impacts that may arise due to the proposed critical habitat designation, such as positive impacts that may arise from conservation of the species and its habitat, state and local

protections that may be triggered as a result of designation, and education of the public to the importance of an area for species conservation.

Economic Impacts

Economic impacts of the critical habitat designation result through implementation of section 7 of the ESA in consultations with Federal agencies to ensure their proposed actions are not likely to destroy or adversely modify critical habitat. These economic impacts may include both administrative and project modification costs; economic impacts that may be associated with the conservation benefits of the designation are described later.

We examined the ESA section 7 consultation record over the last 10 years, as compiled in our Public Consultation Tracking System (PCTS) database, to identify the types of Federal activities that may adversely affect North Atlantic right whale critical habitat. We requested that federal action agencies provide us with information on future consultations if we omitted any future actions likely to affect the proposed critical habitat. No new activities were identified through this process. Of the types of past consultations that ''may affect'' some or all of the essential features in either unit of proposed critical habitat, we determined that no activities would solely affect the essential features. That is, all categories of the activities identified would also require consultation for potential impacts to the listed species.

Five categories of activities were identified as likely to recur in the future and have the potential to affect the essential features:

1. Environmental Protection Agency (EPA) Clean Water Act permitting or management of pollution discharges through the NPDES programs in Unit 1;
2. United States Coast Guard (USCG) authorization or use of dispersants during an oil spill response in Unit 1;
3. U.S. Army Corps of Engineers (USACE) maintenance dredging or permitting of dredge and disposal activities under the Clean Water Act in Unit 2;
4. USACE permitting of marine construction, including shoreline restoration and artificial reef placement under the Rivers and Harbors Act and/or Clean Water Act in Unit 2;
5. The Maritime Administration's permitting of siting and construction of offshore liquefied natural gas facilities in Unit 1.

As discussed in more detail in our Draft ESA Section 4(b)(2) Report (NMFS, 2014b), we determined that two of these federal actions, Water Quality/NPDES related actions and oil spill response activities implemented respectively by the EPA and the USCG, could result in incremental impacts from section 7 consultations related to the proposed critical habitat.

Additionally, we identified four categories of activities that have not occurred in the proposed areas in the past but based on available information and discussions with action agencies, may occur in the future. If they do occur, these activities may adversely affect the essential features. These projected activities are: Oil and gas exploration and development activities, directed copepod fisheries, offshore alternative energy development activities, and marine aquaculture. As with past or ongoing federal activities in the proposed critical habitat areas, these four categories of projected future actions may trigger consultation because they have the potential to adversely affect both the essential features and the whales themselves. Three categories of future activities were judged as being likely to have incremental impacts due to the proposed critical habitat: Oil and gas exploration and development activities (Unit 1), directed copepod fishery (Unit 1), and offshore alternative or renewable energy activities (Unit 2). Consequently, costs of project modifications required through section 7 were considered to be incremental impacts of the proposed designation.

In order to avoid underestimating impacts, we assumed that all projected categories of future actions resulting in incremental impacts to essential features will require formal consultations, in order to estimate both administrative and project modification costs. This assumption likely results in an overestimation of the number of future formal consultations.

Of the ongoing or current activities expected to recur in Unit 1, EPA's activities under the Clean Water Act related to water quality and NPDES programs and the USCG's authorization or use of dispersants during an oil spill response are likely to result in incremental impacts due to effects on the essential features than the species. Based on our analysis of past consultation history we project that over the next ten years, there will be 21 consultations involving Water Quality/NPDES activities. We also project that there will be 6 consultations involving oil spill response.

Of the past or ongoing activities expected to recur in Unit 2, all the federal activities identified as having the potential to adversely affect the essential features also have the potential to adversely affect right whales. These activities are not likely to require additional project modifications to address impacts to essential features beyond those that may be required to address impacts to the whales. Therefore we conclude that the only incremental costs resulting from consultations for these activities are the additional administrative costs associated with analysis of impacts to the essential features.

Consultations resulting from activities affecting the essential features include both administrative and project modification costs. Administrative costs include the cost of time spent in meetings, preparing letters, and in some cases, developing a biological assessment and biological opinion, identifying and designing RPMs, and so forth. For this impacts report, we estimated per-project administrative costs based on IeC 2013. That impacts report estimates administrative costs for different categories of consultations as follows: (1) New consultations resulting entirely from critical habitat designation; (2) new consultations considering only adverse modification (unoccupied habitat); (3) re-initiation of consultation to address adverse modification; and (4) additional consultation effort to address adverse modification in a new consultation. Given that all the consultations we project to result from this proposed rulemaking will be co-extensive consultations on new actions that would be evaluating impacts to the whales as well as impacts to critical habitat, the administrative costs would all be in category 4 above.

As previously mentioned, we assumed that all future activities that may affect the proposed essential features will require formal consultations. Based on IeC 2013, we project that each formal consultation will result in the following additional costs to address critical habitat impacts: $1,400 in NMFS'costs; $1,600 in action agency costs; and $880 in third party (*e.g.,* permittee) costs, if applicable. Annual estimated administrative costs for the projected number of formal consultations representing incremental costs of the critical habitat designation are expected to total approximately $82,296 per year.

Of the four categories of activities that have not occurred in the proposed areas in the past but may occur in the future, and which have the potential to adversely affect the essential features resulting in ESA section 7 consultations, only oil and gas exploration and development and a directed copepod fishery in the proposed foraging area,

and renewable energy activities in the proposed calving area, would result in incremental impacts due to effects on the essential features. However, because these are categories of future activity for which there is no past consultation history and no specific or planned project proposals, we are unable to quantify the number of potential future consultations and thus the incremental administrative costs for these activities.

In our impacts analysis, we assumed that categories of activities that ''may affect'' the proposed essential features may result in the need for some sort of project modification to avoid destruction or adverse modification of critical habitat. Thus, we considered the range of broad categories of modifications we might seek for these activities to avoid negative impacts to the essential features. The cost of project modifications depends on the specific project and the circumstances of the actual project, for example, its size, timing and location. Although we have a projection of the number of future formal consultations, we were unable to identify the exact modification or combinations of modifications that would be required for any future actions. Thus, it is not possible to estimate the costs for project modifications that would be required to address adverse effects that may occur from all projected future agency actions requiring consultation. The same limitation applies to projecting the type, size, scale, and thus cost, of project modifications that may be necessary to avoid jeopardizing the whales' existence—we are only able to identify broad categories of types of potential future project modifications. The same categories of potential project modifications that might be recommended to avoid impacts to the species could also address potential impacts to the essential features. In our analysis, we identified where it is possible that unique modifications could be required to address impacts to critical habitat, above and beyond those needed to address impacts to the whales.

National Security Impacts

Previous critical habitat designations have recognized that impacts to national security result if a designation would trigger future ESA section 7 consultations because a proposed military activity ''may affect'' the physical or biological feature(s) essential to the listed species' conservation. Anticipated interference with mission-essential training or testing or unit readiness, either through delays caused by the consultation process or through expected requirements to modify the action to prevent adverse modification of critical habitat, has been identified as a negative impact of critical habitat designations. (See, *e.g.,* Proposed Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover, 71 FR 34571, June 15, 2006, at 34583; and Proposed Designation of Critical Habitat for Southern Resident Killer Whales; 69 FR 75608, Dec. 17, 2004, at 75633.)

Based on the past consultation history and information submitted by DOD for this analysis, it is unlikely that consultations with respect to DOD activities will be triggered as a result of the proposed critical habitat designation.

On September 21, 2009, and again in November 2010, NMFS sent letters to DOD requesting information on national security impacts of the proposed critical habitat designation, and we received responses from the Navy, United States Marine Corps (USMC), USCG, Department of Homeland Security (DHS), and the Air Force (USAF). We discuss the information contained within the responses thoroughly in the Draft Section 4(b)(2) Report (NMFS 2014b) and summarize the information below.

The Navy noted that several of the areas under consideration for designation as right whale critical habitat overlap with important Navy testing and training or operational areas. The Navy stated that while current activities will not destroy or adversely modify the essential features of right whale critical habitat, national security impacts would result if mitigation measures to protect right whales themselves, currently in place in existing critical habitat, were required for naval activities conducted within the boundaries of the expanded proposed critical habitat. However, measures to protect whales themselves are not an impact of the critical habitat designation.

In 2013, NMFS completed consultation with the Navy on its Atlantic Fleet Training and Testing activities (AFFT) conducted within the expanded areas proposed in this rulemaking as critical habitat and concluded that these activities would not likely jeopardize the continued existence of North Atlantic Right Whales. As part of the 4(b)(2) analysis for this proposed critical habitat designation, NMFS reviewed the AFTT activities conducted within the areas proposed as critical habitat and concluded the Navy's activities would not likely affect the proposed essential features of right whale habitat. U.S. Navy training and testing activities are not likely to affect the physical or biological features essential to foraging in Unit 1, or fragment large, continuous areas of the essential features or alter the optimal ranges of these essential features in Unit 2 such that they are rendered unsuitable for calving, and calf survival.

The USCG considers it unlikely that its exercises, operations, and training associated with National and Homeland Security, separately or in aggregate, would affect the essential features for foraging or calving right whale habitat. The USCG asserted in its response that should new or existing regulations intended to protect the species be applied to the expanded area under consideration for designation as critical habitat, National and Homeland Security impacts would likely result. As with naval actions discussed previously, measures imposed on USCG activities to prevent or minimize harm to whales themselves are not an impact of the critical habitat designation.

The Air Force noted in its reply that while the critical habitat area proposed is heavily used for flight operations, restrictions on flight operations are not currently imposed in critical habitat for right whales. Based on our analysis, Air Force flights in the proposed area are not likely to affect the essential features; therefore, there would be no need for consultations or operation modifications.

Based on a review of the information provided by the Navy, USMC, and USCG, DHS, and USAF, and on our review of the activities conducted by these entities associated with national security within the specific areas proposed for designation as right whale critical habitat, their activities have no routes of potential adverse effects to the proposed essential features and will not require consultation to prevent adverse effects to critical habitat (see Draft Section 4(b)(2) Report, NMFS 2014b). Therefore, based on information available at this time, we do not anticipate there will be national security impacts associated with the proposed critical habitat for the North Atlantic right whale.

Other Relevant Impacts

Other relevant impacts of critical habitat designations can include conservation benefits to the species and to society, and impacts to governmental and private entities. Our Draft Section 4(b)(2) Report (NMFS 2014b) discusses conservation benefits of designating the two specific areas, and the benefits of

conserving the right whale to society, in both ecological and economic metrics.

As discussed in the Draft Section 4(b)(2) Report (NMFS 2014b) and summarized here, large whales, including the North Atlantic right whale, currently provide a range of benefits to society. Given the positive benefits of protecting the physical and biological features essential to the conservation of the right whale, this protection will in turn contribute to an increase in the benefits of this species to society in the future as the species recovers. While we cannot quantify nor monetize these benefits, we believe they are not negligible and would be an incremental benefit of this designation. However, although the features are essential to the conservation of right whales, critical habitat designation alone will not bring about the recovery of the species. The benefits of conserving right whales are, and will continue to be, the result of several laws and regulations.

We identified in the Draft Section 4(b)(2) Report (NMFS 2014b) both consumptive (*e.g.,* commercial and recreational fishing) and non-consumptive (*e.g.,* wildlife viewing) activities that occur in the areas proposed as critical habitat. Commercial and recreational fishing are components of the economy related to the ecosystem services provided by the resources within the proposed right whale critical habitat areas. The essential features provide for abundant fish species diversity. Commercial fishing is the largest revenue generating activity occurring within the proposed critical habitat area, and protection of the essential features will contribute to sustaining this activity.

Further, the economic value of right whales can be estimated in part by such metrics as increased visitation and user enjoyment measured by the value of whale watching activities.

Education and awareness benefits stem from the critical habitat designation when non-federal government entities or members of the general public responsible for, or interested in, North Atlantic right whale conservation change their behavior or activities when they become aware of the designation and the importance of the critical habitat areas and features. Designation of critical habitat raises the public's awareness that there are special considerations that may need to be taken within the area. Similarly, state and local governments may be prompted to carry out programs to complement the critical habitat designation and benefit the North Atlantic right whale. Those programs would likely result in additional impacts of the designation. However, it is impossible to quantify the beneficial effects of the awareness gained or the secondary impacts from state and local programs resulting from the critical habitat designation.

Proposed Exclusions Under Section 4(b)(2)

On the basis of our impacts analysis, we are not proposing to exercise our discretion to propose excluding any particular areas from the proposed critical habitat designation.

We could not reasonably quantify the total economic costs and benefits of the proposed critical habitat designation due to limited information. Nevertheless, we believe that our characterization of the types of costs and benefits that may result from the designation, in particular circumstances, may provide some useful information to Federal action agencies and permit applicants that may implement the types of activities discussed in our analyses within the designated critical habitat. We have based the proposed designation on very specifically defined features essential to the species' conservation, which allowed us to identify the few, specific effects of federal activities that may adversely affect such features and thus require section 7 consultation under the ESA. We have discussed to the extent possible the circumstances under which section 7 impacts will be incremental impacts of this proposed rule. We believe that the limitations of current information about potential future projects do not allow us to be more specific in our estimates of the section 7 impacts (administrative consultation and project modification costs) of the proposed designation.

We have analyzed the economic, national security, and other relevant impacts of designating critical habitat. While we have utilized the best available information and an approach designed to avoid underestimating impacts, many of the potential impacts are speculative and may not occur in the future. Our conservative identification of potential incremental economic impacts indicates that any such impacts would be very small, resulting from very few (less than 17) federal section 7 consultations annually. Further, the analysis indicates that there is no particular area within the areas proposed for designation as critical habitat where economic impacts would be particularly high or concentrated. No impacts to national security are expected. Other relevant impacts include conservation benefits of the designation, both to the species and to society. Because the features that form the basis of the critical habitat designation are essential to the conservation of North Atlantic right whales, the protection of critical habitat from destruction or adverse modification may at minimum prevent loss of the benefits currently provided by the species and may contribute to an increase in the benefits of these species to society in the future. While we cannot quantify nor monetize the benefits, we believe they are not negligible and would be an incremental benefit of this designation. Moreover, our analysis indicates that all potential future section 7 consultations on impacts to critical habitat features would also be conducted for the projects' potential impacts on the species, resulting in at least partial co-extensive impacts of the designation and the baseline listing of the species. Therefore, we have concluded that there is no basis to exclude any particular area from the proposed critical habitat.

Critical Habitat Designation

We are proposing to designate approximately 29,945 nm^2 of marine habitat within the geographical area occupied by North Atlantic right whales at the time of its listing. The two units proposed for designations are in the Gulf of Maine and Georges Bank region (Unit 1) and in waters off the Southeast U.S coast (Unit 2).

The specific area where the essential foraging features are located (''Unit 1'') is in the Gulf of Maine and Georges Bank region and covers a total area of approximately 21,334 nm^2. In Unit 1, the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection are:

1. The physical oceanographic conditions and structures of the Gulf of Maine and Georges Bank region that combine to distribute and aggregate *C. finmarchicus* for right whale foraging, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes;

2. Low flow velocities in Jordan, Wilkinson, and Georges Basins that allow diapausing *C. finmarchicus* to aggregate passively below the convective layer so that the copepods are retained in the basins;

3. Late stage *C. finmarchicus* in dense aggregations in the Gulf of Maine and Georges Bank region; and

4. Diapausing *C. finmarchicus* in aggregations in the Gulf of Maine and Georges Bank region.

The specific area where the essential calving features are located (''Unit 2'') is in the South Atlantic Bight and covers a total area of approximately 8,611 nm^2. Within Unit 2, the essential features are:

1. Sea surface conditions associated with Force 4 or less on the Beaufort Scale,
2. Sea surface temperatures of 7 °C to 17 °C, and
3. Water depths of 6 to 28 meters.

These features simultaneously co-occur over contiguous areas of at least 231 nmi^2 of ocean waters during the months of November and April. When these features are available, they are selected by right whale cows and calves in dynamic combinations that are suitable for calving, nursing, and rearing, and which vary, within the ranges specified, depending on factors such as weather and age of the calves.

No unoccupied areas are proposed for designation of critical habitat.

Effects of Critical Habitat Designations

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to insure that any action authorized, funded, or carried out by the agency (agency action) does not jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. Federal agencies are also required to confer with NMFS regarding any actions likely to jeopardize a species proposed for listing under the ESA, or likely to destroy or adversely modify proposed critical habitat, pursuant to section 7(a)(4). A conference involves informal discussions in which NMFS may recommend conservation measures to minimize or avoid adverse effects. The discussions and conservation recommendations are to be documented in a conference report provided to the Federal agency. If requested by the Federal agency, a formal conference report may be issued, including a biological opinion prepared according to 50 CFR 402.14. A formal conference report may be adopted as the biological opinion when the species is listed or critical habitat designated, if no significant new information or changes to the action alter the content of the opinion. When a species is listed or critical habitat is designated, Federal agencies must consult with NMFS on any agency actions to be conducted in an area where the species is present and that may affect the species or its critical habitat. During the consultation, NMFS would evaluate the agency action to determine whether the action may adversely affect listed species or critical habitat and issue its findings in a biological opinion. If NMFS concludes in the biological opinion that the agency action would likely result in the destruction or adverse modification of critical habitat, NMFS would also recommend any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat. Regulations at 50 CFR 402.16 require federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where: (1) Critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered in the biological opinion. Consequently, some Federal agencies may request reinitiation of consultation or conference with NMFS on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities subject to the ESA section 7 consultation process include activities on Federal lands and activities on private or state lands requiring a permit from a Federal agency or some other Federal action, including funding. In the marine environment, activities subject to the ESA section 7 consultation process include activities in Federal waters and in state waters that (1) have the potential to affect listed species or critical habitat, and (2) are carried out by a Federal agency, need a permit or license from a Federal agency, or receive funding from a Federal agency. ESA section 7 consultation would not be required for Federal actions that do not affect listed species or critical habitat and for actions in the marine environment or on non-Federal and private lands that are not Federally funded, authorized, or carried out.

Activities That May Be Affected

ESA section 4(b)(8) requires in any proposed or final regulation to designate or revise critical habitat an evaluation and brief description of those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. A variety of activities may affect the proposed critical habitat and may be subject to the ESA section 7 consultation process when carried out, funded, or authorized by a Federal agency. As indicated above and in the 4(b)(2) report, activities (3) through (6) and (9) are only predicted to result in incremental administrative costs of consultation. As discussed previously, the activities most likely to be affected by this critical habitat designation, once finalized, are: (1) Water Quality/NPDES permitting and regulatory activities (Unit 1); (2) Oil Spill Response (Unit 1); (3) Maintenance Dredging and Disposal or Dredging (Unit 2); (4) Construction Permitting (Unit 2); (5) Offshore Liquid Natural Gas Facilities (Unit 1); (6) Oil and Gas Exploration and Development (Unit 1); (7) Offshore alternative energy development activities (Unit 2); (8) Directed copepod fisheries (Unit 1); and (9) Marine aquaculture (Unit 2). Private entities may also be affected by this proposed critical habitat designation if a Federal permit is required, Federal funding is received, or the entity is involved in or receives benefits from a Federal project. These activities will need to be evaluated with respect to their potential to destroy or adversely modify critical habitat. Changes to the actions to avoid destruction or adverse modification of proposed critical habitat may result in changes to some activities. Please see the ESA Section 4(b)(2) Report (NMFS 2014b) for more details and examples of changes that may need to occur in order for activities to minimize or avoid destruction or adverse modification of designated critical habitat. Questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat should be directed to NMFS (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Public Comments Solicited

We request that interested persons submit comments, information, maps, and suggestions concerning this proposed rule during the comment period (see **DATES**). We are soliciting comments or suggestions from the public, other concerned governments and agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are also soliciting economic data and information pertaining to our economic analysis and our Initial Regulatory Flexibility Analysis to improve our assessment of the impacts of this proposed rule on small entities. You

may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). The proposed rule, maps, fact sheets, references, and other materials relating to this proposal can be found on the NMFS Greater Atlantic Region Web site at *www.greateratlantic.fisheries.noaa.gov/*. We will consider all comments pertaining to this designation received during the comment period in preparing the final rule. Accordingly, the final designation may differ from this proposal.

Public Hearings

50 CFR 424.16(c)(3) requires the Secretary of Commerce (Secretary) to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed rule to designate critical habitat. Such hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule.

Information Quality Act and Peer Review

The data and analyses supporting this proposed action have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (IQA) (Section 515 of Public Law 106–554). On July 1, 1994, a joint USFWS/NMFS policy for peer review was issued stating that the Services would solicit independent peer review to ensure the best biological and commercial data is used in the development of rulemaking actions and draft recovery plans under the ESA (59 FR 34270). In addition, on December 16, 2004, the Office of Management and Budget (OMB) issued its Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664), and went into effect on June 16, 2005. The primary purpose of the Bulletin is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of ''influential scientific information'' and ''highly influential scientific information'' prior to public dissemination. ''Influential scientific information is defined as information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. Stricter standards were established for the peer review of ''highly influential scientific assessments,'' defined as information whose ''dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.''

The Draft Biological Source Document (NMFS 2014a) and Draft Section 4(b)(2) Report (NMFS 2014b) supporting this proposed critical habitat rule are considered influential scientific information and subject to peer review. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of those draft documents, which support this critical habitat proposal, and incorporated the peer review comments prior to dissemination of this proposed rulemaking. For this action, compliance with the OMB Peer Review Bulletin satisfies any peer review requirements under the 1994 joint peer review policy.

The Draft Biological Source Document (2014a) and Draft ESA Section 4(b)(2) Report (NMFS 2014b) prepared in support of this proposal for critical habitat for the North Atlantic right whale are available on our Web site at *www.greateratlantic.fisheries.noaa.gov,* on the Federal eRulemaking Web site at *http://www.regulations.gov,* or upon request (see **ADDRESSES**).

Required Determinations

Regulatory Planning and Review (E.O. 12866)

This proposed rule has been determined to be significant under Executive Order (E.O.) 12866.

National Environmental Policy Act

An environmental analysis as provided for under the National Environmental Policy Act (NEPA) for critical habitat designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Regulatory Flexibility Act

We prepared an initial regulatory flexibility analysis (IRFA) pursuant to section 603 of the Regulatory Flexibility Act (5 U.S.C. 601*, et seq.*), which describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is found in Appendix B of the Draft ESA Section 4(b)(2) Report and is available upon request (see **ADDRESSES**). A summary of that document follows.

This proposed action would replace the 1994 critical habitat for right whales in the North Atlantic with two new areas of critical habitat for the North Atlantic right whale pursuant to ESA sections 4(a)(3)(A)(i) and 4(b)(3)(D). The areas under consideration contain approximately 29,953 nm^2 of marine habitat in the Gulf of Maine-Georges Bank region (Unit 1) and off the coasts of northern Florida, Georgia, South Carolina and the southern part of North Carolina (Unit 2). The purpose of this action is to designate, within the geographical area occupied by the species at the time it was listed, the specific areas that contain the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. No areas outside the species' geographical range have been identified as essential to its conservation; therefore, none are proposed for designation in this action. The objective is to help conserve endangered North Atlantic right whales.

The proposed critical habitat rule does not directly apply to any particular entity, small or large. The rule would be implemented under ESA Section 7(a)(2), which requires that Federal agencies insure, in consultation with NMFS, that any action they authorize, fund, or carry out is not likely to destroy or adversely modify critical habitat. That consultation process may result in the recommendation or requirement of project modifications in order to protect critical habitat.

The proposed rule, in conjunction with the section 7(a)(2) consultation process, may indirectly affect small businesses, small nonprofit organizations, and small governmental jurisdictions if they engage in activities that may affect the essential features identified in this proposed designation and if they receive funding or authorization for such activity from a federal agency. Such activities would trigger ESA section 7 consultation requirements and potential requirements to modify proposed activities to avoid destroying or adversely modifying the critical habitat. The proposed rule may also indirectly benefit small entities that benefit from or strive for the protection of the essential features, such as commercial fishing and whale watching industries. The past consultation record from which we have projected likely federal actions over the next 10 years indicates that applicants for federal permits or funds have included small entities in the past.

A review of historical ESA section 7 consultations involving projects in the areas proposed for designation is described in Section 3.2 of the Draft ESA Section 4(b)(2) Report prepared for this rulemaking. We have concluded, based on our review of past section 7 consultations, and analyses in our draft 4(b)(2) report (NMFS 2014b), that no category of activity would trigger consultation on the basis of the critical habitat designation alone. Based on our review of past consultations, we have identified five categories of activities that may affect the proposed critical habitat: in Unit 1 National Pollution Discharge Elimination System (NPDES) permitting and oil spill response and; in Unit 2 dredging and spoil disposal, marine construction permitting, and construction, and operation of energy facilities. Of those, we identified the following categories of actions that may have incremental impacts: for Unit 1, water quality/NPDES and, oil spill response. We did not identify any for Unit 2. We also identified four new (*i.e.,* not previously consulted on) categories of federal activities that may occur in the future and, if they do occur, may affect the essential features. In Unit 1 these potential activities are: (1) Oil and gas exploration and development activities; and (2) directed copepod fisheries. In Unit 2 we have identified three categories of federal activities that could occur in the future: (1) Oil and gas exploration; (2) offshore alternative energy developments; and (3) marine aquaculture. Of those, we identified the following categories of actions that may have incremental impacts: Oil and gas exploration; (2) offshore alternative energy developments. Potential project modifications we have identified that may be required to prevent these types of projects from destroying or adversely modifying critical habitat include: Project relocation, project redesign, conditions monitoring, water quality standard modification, pollution control measures, timing restrictions, and area restrictions as outlined in Table 11 of the Draft ESA Section 4(b)(2) Report (NMFS 2014b).

While we cannot determine relative numbers of small and large entities that may be affected by this proposed rule, there is no indication that affected project applicants would be limited to, nor disproportionately comprise, small entities. It is unclear whether small entities would be placed at a competitive disadvantage compared to large entities. However, as described in the Draft ESA Section 4(b)(2) Report (NMFS 2014b), consultations and project modifications will be required based on the type of permitted action and its associated impacts on the essential critical habitat feature. Because the costs of many potential project modifications that may be required to avoid adverse modification of critical habitat are unit costs such that total project modification costs would be proportional to the size of the project, it is not unreasonable to assume that larger entities would be involved in implementing the larger projects with proportionally larger project modification costs.

It is also unclear whether the proposed rule will significantly reduce profits or revenue for small businesses. As discussed throughout the Draft ESA Section 4(b)(2) Report (NMFS 2014b), we assumed all of the future consultations that may result in incremental costs attributable to the proposed critical habitat will be formal consultations. This conclusion likely results in an overestimate of the impacts of the proposed action. In addition, as stated previously, though it is not possible to determine the exact cost of any given project modification resulting from consultation, the smaller projects most likely to be undertaken by small entities would likely result in relatively small modification costs.

Economic impacts of the proposed action consist of two main components: administrative costs, and costs of modifying projects in order to avoid destroying or adversely modifying the critical habitat. These costs may be incurred by NMFS, the Federal action agency, or a third party proposing the activity in areas proposed as critical habitat. The only quantitative cost estimates we can provide for this proposed action are the estimated administrative costs associated with ESA section 7 consultations required due to potential impacts to both the proposed critical habitat and the listed species. Based on our analysis in the 4(b)(2) report (NMFS 2014b), we have identified categories of federal actions that ''may affect'' the essential features in the future, but all of these projects will also affect the listed species. We considered whether any of these future activities may pose a greater threat to the essential features than to the listed species in order to identify any incremental costs of the designation. Based on our review (NMFS 2014b), we have determined that impacts resulting from EPA's management of municipal wastewater discharges to offshore waters and EPA's activities implementing the NPDES programs, as well as the USCG authorization or use of dispersants during an oil spill response in Unit 1, are more attributable to the critical habitat designation and are therefore incremental. In addition, we have identified two potential future activities that may have greater effects on the essential features than the species, and thus the impacts are incremental. These are oil and gas exploration and development in Unit 1 and the development of offshore renewable energy in Unit 2. Therefore, we conclude that there are incremental impacts attributable to this critical habitat designation. The associated estimated administrative annual costs for the projected number of formal consultations projected to be focused more on critical habitat are expected to cost approximately $82,296 per year. Economic effects from the action are not expected to be significant and are not anticipated to affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities.

Third party applicants or permittees would be expected to incur costs associated with participating in the administrative process of consultation along with the permitting federal agency. The average per consultation administrative costs for third parties is approximately $880. Because we have assumed all potential future consultations will be formal this may represent an overestimation of the costs. It is not possible to identify which third parties would qualify as small business entities. This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. Any reporting requirements associated with reporting on the progress and success of implementing project modifications are not likely to require special skills to satisfy.

In Unit 1, commercial fishing is the largest revenue generating activity occurring within the proposed critical habitat Unit 1; commercial fishing is not identified as an activity for which project modifications might be necessary. We have concluded, that with the exception of a possible future proposal to conduct a directed copepod fishery, the proposed action to designate critical habitat for the North Atlantic right whale will not have a direct impact on the profitability of small commercial fishing entities. That is because we have concluded that current fishing practices and techniques will not affect the essential foraging features in Unit 1. In 2014, based on a review of the number of active fishing vessels and dealers and trips landed in ME, NH, MA or RI in the Gulf of Maine Region, we have determined that there were 483 dealers and 8,094 fishing vessels that

meet the definition of small business entities. These numbers likely provide an overestimate of the total number of vessels and fish dealers engaged in the harvest of seafood within Unit 1 as it includes some non-federally-permitted vessels fishing only in state waters. As noted in the 4(b)(2) report, with the exception of a potential future proposal for a directed copepod fishery there are no fishery related activities that would trigger consultation on the basis of the critical habitat designation.

In Unit 1, another potentially impacted small entity identified is small municipalities. A review of the consultation history indicates that we have consulted with the U.S. EPA on small governmental jurisdictions' (population less than or equal to 50,000) municipal wastewater discharges adjacent to the area under consideration for designation as critical habitat. Based on our review of past consultation history we are projecting a total of 2l consultations over the next 10 years involving primarily small municipalities and NPDES/Water Quality activities. Any small municipality that proposes to discharge pollutants to waters of the United States must obtain a discharge permit from EPA or their appropriate state environmental protection agency, depending on which agency administers the permit program, to ensure compliance with the Clean Water Act. The Section 7 consultation requirement applies to the EPA's, but not state agencies', authorization of discharges that may affect listed species and critical habitat. Of the states bordering proposed Unit 1, EPA administers the discharge permit program only in Massachusetts and New Hampshire; therefore, consultations with EPA would be required for municipal discharges only from those two states. Thus, the number of small municipalities that might be impacted would be less than the 20 predicted to be involved in consultations from all states bordering Unit 1, over the next 10 years. Generally, discharge permits need to be renewed every 5 years unless they are administratively extended, so there is the potential for consultation approximately every 5 years or so. In the past, we have consulted with EPA on discharges from publicly owned treatment works operated by small municipalities. Based on the past consultation history, we believe that any future economic impact to small municipalities due to consultation to analyze impacts to right whale critical habitat from wastewater discharge would be small.

Other small business entities include the approximately 55–70 whale-watching companies that operate within the area on which are found the essential foraging features under consideration for designation as critical habitat. While these small businesses may benefit indirectly from the preservation of the current ecosystem, approach regulations prohibit the targeting of right whales by these whale watching operations. Whale watching companies would not be negatively affected by this action as their activities were not identified as having the potential to affect the features. There is the potential for some unquantifiable positive benefit to accrue to these small businesses as a result of the preservation and maintenance of the ecosystem benefits associated with the essential foraging features.

In Unit 2, the only category of potentially impacted small entities is wind energy firms. Structures associated with these activities could fragment large, continuous areas of the essential features such that Unit 2 is rendered unsuitable for calving right whales. Potential project modifications to minimize impacts to essential features would likely focus on project design and density of structures. The SBA revised the size standards for 13 industries in the North American Industry Classification system (NAICS) Sector 22, Utilities. Relevant to this proposed action, the revised SBA small business now categorizes the small business entity for wind electric power generation as any firm with 250 employees or less. We are unable to quantify the incremental impacts at this time due to the lack of past consultation history and any specific or planned federal proposals for these projects. Thus, we would only be speculating in estimating the number of potential projects in this category that may require consultation due to critical habitat impacts over the next 10 years, and further speculating in predicting the number of small entities that might be involved.

No federal laws or regulations duplicate or conflict with the proposed rule. Existing Federal laws and regulations overlap with the proposed rule only to the extent that they provide protection to marine natural resources or whales generally. However, no existing laws or regulations specifically prohibit destruction or adverse modification of critical habitat for, and focus on the recovery of, North Atlantic right whales.

We encourage all small businesses, small governmental jurisdictions, and other small entities that may be affected by this proposed rule to comment on the potential economic impacts of the proposed designation, such as anticipated costs of consultation and potential project modifications, to improve the draft analysis.

The alternatives to the proposed designation considered consisted of a no-action alternative, our preferred alternative, and an alternative with larger areas designated in both Unit 1 and Unit 2 areas. The no-action, or no designation, alternative would result in no additional ESA section 7 consultations relative to the status quo of the species' listing and existing critical habitat. However, the physical and biological features forming the basis for our proposed critical habitat designation are essential to North Atlantic right whale conservation, and conservation for this species will not succeed without the availability of these features. Thus, the lack of protection of the critical habitat features from adverse modification could result in continued declines in abundance of the right whale, and loss of associated economic values right whales provide to society.

Under the preferred alternative two specific areas that provide foraging (Unit 1) and calving (Unit 2) functions for the North Atlantic right whale are proposed as critical habitat. These areas contain the physical and biological features essential to the conservation of the North Atlantic right whale. The preferred alternative was selected because it reflects the best available scientific information on right whale habitat, best implements the critical habitat provisions of the ESA by defining the specific features that are essential to the conservation of the species, and offers greater conservation benefits relative to the no action alternative.

Under the Unit 1 alternative, we considered an area that would encompass additional right whale sightings within the Gulf of Maine-Georges Bank region (particularly inshore waters along the coasts of Maine, New Hampshire and Massachusetts), as well as additional right whale sightings to the south and east of the southern boundary of proposed Unit 1 resulting in a much larger geographic area. However, these sightings did not constitute a pattern of repeated annual observations. In addition, North Atlantic right whales are seldom reported in small coastal bays and inshore waters and feeding aggregations are not in these areas, indicating that the physical and biological features present in these areas do not provide the foraging functions essential to the conservation of the

species in these areas. Therefore, we rejected this alternative because the inshore waters along the coasts of Maine, New Hampshire and Massachusetts are not considered to meet the definition of critical habitat.

In addition we considered including areas to the south and east of the southern boundary of the proposed Unit 1 to encompass additional right whale sightings. These right whale sightings were not included within the proposed areas because a pattern of repeated annual observations is not evident in these areas. Typically, whales are sighted in these areas in one year, but are not seen again for a number of years. Most likely, these are sightings of migrating whales (Pace and Merrick 2008).

In Unit 2, we considered extending the boundaries to just south of Cape Canaveral, Florida, similar to existing SE calving critical habitat. Moving the proposed boundary southward would have captured southern habitat predicted by Good's (2008) calving habitat model for one month. However, Garrison's (2007) habitat model didn't predict suitable calving habitat that far south when based on the 75th percentile of predicted sightings per unit effort (SPUE) (91% of historical sightings). Since Garrison's 75th percentile captures 91% of historical sightings, we were comfortable with not examining additional model results by Garrison (*e.g.,* habitat based on 65th–70th percentile of predicted SPUE which would represent >91% of historical sightings). Good's model also predicted suitable habitat for one month north of our proposed Unit 2 boundary along much of North Carolina. However, Good stated that the combined model using all four months (Jan-March) best represented calving habitat in space and time. Garrison (2007) and Keller *et al.* (2012) cautioned against extending their models too far north of where the underlying data were collected because other ecological variables may come into play. Given that the 75th percentile from Garrison (2007) and Keller *et al.* (2012) and Good's (2008) habitat selected in three and four months account for 91 and 85 percent of all observed right whale mother-calf pair sightings, respectively, and Good's (2008) combined (four month) model is the best representation of potential calving habitat both in time and space, we believe these predicted habitat areas are the best basis for determining right whale calving habitat in the southeastern U.S. Consequently, we considered, but eliminated, the alternatives of farther south (to ~Canaveral) or farther north (along the entire North Carolina coast), based on the reasons stated above.

Coastal Zone Management Act

We have determined that this action will have no reasonably foreseeable effects on the enforceable policies of approved Coastal Zone Management Program of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida. Upon publication of this proposed rule, these determinations will be submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain a new or revised collection of information. This rule would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

Federalism (E.O. 13132)

Pursuant to the Executive Order on Federalism, E.O. 13132, we determined that this proposed rule does not have significant Federalism effects and that a Federalism assessment is not required. However, in keeping with Department of Commerce policies and consistent with ESA regulations at 50 CFR 424.16(c)(1)(ii), we request information from, and will coordinate development of this proposed critical habitat designation with, appropriate state resource agencies in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida. The proposed designations may have some benefit to state and local resource agencies in that the proposed rule more clearly defines the physical and biological features essential to the conservation of the species and the areas on which those features are found. It may also assist local governments in long-range planning (rather than waiting for case by-case ESA section 7 consultations to occur).

Energy Supply, Distribution, and Use (E.O. 13211)

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking an action expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. OMB Guidance on Implementing E.O. 13211 (July 13, 2001) states that significant adverse effects could include any of the following outcomes compared to a world without the regulatory action under consideration: (1) Reductions in crude oil supply in excess of 10,000 barrels per day; (2) reductions in fuel production in excess of 4,000 barrels per day; (3) reductions in coal production in excess of 5 million tons per year; (4) reductions in natural gas production in excess of 25 million mcf per year; (5) reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity; (6) increases in energy use required by the regulatory action that exceed any of the thresholds above; (7) increases in the cost of energy production in excess of one percent; (8) increases in the cost of energy distribution in excess of one percent; or (9) other similarly adverse outcomes. A regulatory action could also have significant adverse effects if it: (1) Adversely affects in a material way the productivity, competition, or prices in the energy sector; (2) adversely affects in a material way productivity, competition or prices within a region; (3) creates a serious inconsistency or otherwise interfere with an action taken or planned by another agency regarding energy; or (4) raises novel legal or policy issues adversely affecting the supply, distribution or use of energy arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866 and 13211. This rule, if finalized, will not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, we have not prepared a Statement of Energy Effects. The rationale for this determination follows.

We have considered the potential impacts of this action on the supply, distribution, or use of energy. The proposed critical habitat designation will not affect the distribution or use of energy and would not affect supply. We have concluded that oil and gas exploration and development that might occur in the future, offshore liquid natural gas (LNG) facilities, and alternative energy projects may affect both the species and the essential features of critical habitat. As discussed in the Draft Section 4(b)(2) Report, we anticipate that there may be small additional incremental administrative

and project modification costs associated with the section 7 consultations on oil/gas exploration/development in Unit 1 and alternative energy projects in Unit 2 due to this proposed rule.

With regard to LNG facilities in Unit 1, we do not anticipate incremental impacts from this rule on LNG activities based on our analysis of the potential impacts of this activity. Absent this proposed critical habitat rule, federal agencies authorizing, funding, or carrying out these energy-related activities would be required to consult with NMFS regarding impacts to right whales themselves, and other listed species such as sea turtles, under the jeopardy standard. However, if this critical habitat rule were finalized, we would expect the additional, critical habitat-related administrative costs to be miniscule, and we would expect any critical habitat-related project modification costs to insignificant.

The proposed action might result in project modifications that result in changes to how energy extraction is conducted, but these modifications would not result in a reduction of energy supply or production or increases in energy use. The proposed action would not result in an increase in the cost of energy production in excess of one percent.

In Unit 2, depending on the size, scale, and configuration of a potential wind farm, the installation and operation of an array of wind turbines may fragment large, continuous areas of the essential features such that Unit 2 is rendered unsuitable for calving right whales. Therefore, potential project modifications may be recommended during a section 7 consultation including project relocation or project redesign. Recommending relocation of a proposed wind farm may result in increased costs per kilowatt (kW). These increased costs may stem from increased distance from shore, increased water depths, or different environmental conditions at the alternative site, each of which may drive up construction, installation, or operation and maintenance costs. Because potential project modifications recommended during a section 7 consultation are dependent on the specific project and the circumstances of the new project's routes of effect on the species and the essential features, an estimate of the average cost or range of costs resulting from these recommendations cannot be reasonably made at this time.

As discussed, above and in the Draft ESA Section 4(b)(2) Report, any potential project modification that would be recommended to avoid impacts to the species would also address potential impacts to the essential features. In addition, in some cases, potential project modifications are common environmental mitigation measures that are already being performed under existing laws and regulations that seek to prevent or minimize adverse impacts to marine resources in general. Therefore, it appears unlikely that the energy industry will experience ''a significant adverse effect'' as a result of the critical habitat designation for North Atlantic right whale.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, NMFS makes the following findings:

(A) This final 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, 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. ''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 an enforceable duty on non-Federal government entities or private parties. The only regulatory effect of a critical habitat designation is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under ESA section 7. Non-Federal entities who receive funding, assistance, or permits from Federal agencies, or otherwise require approval or authorization from a Federal agency for an action may be indirectly affected by the designation of critical habitat. 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 previously to State governments.

(B) We do not anticipate that this final rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Takings (E.O. 12630)

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat in the marine environment does not affect private property, and it affects only Federal agency actions.

References

A complete list of all references cited in this rulemaking can be found on our Web site at *www.greateratlantic.fisheries.noaa.gov/* and is available upon request from the NMFS Greater Atlantic Regional Office in Gloucester, Massachusetts (see **ADDRESSES**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: February 12, 2015.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend 50 CFR part 226 as follows:

PART 226—DESIGNATED CRITICAL HABITAT

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. Revise § 226.203 to read as follows:

§ 226.203 Critical habitat for North Atlantic right whales (Eubalaena glacialis).

Critical habitat is designated for North Atlantic right whales as described in this section. The textual descriptions in paragraph (b) of this section are the definitive source for determining the critical habitat boundaries. The maps of the critical habitat units provided in paragraph (c) of this section are for illustrative purposes only.

(a) Physical and biological features essential to the conservation of endangered North Atlantic right whales.

(1) *Unit 1.* The physical and biological features essential to the conservation of the North Atlantic right whale, which provide foraging area functions in Unit 1 are: The physical oceanographic conditions and structures of the Gulf of Maine and Georges Bank region that combine to distribute and aggregate *C. finmarchicus* for right whale foraging, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes; low flow velocities in Jordan, Wilkinson, and Georges Basins that allow diapausing *C. finmarchicus* to aggregate passively below the convective layer so that the copepods are retained in the basins; late stage *C. finmarchicus* in dense aggregations in the Gulf of Maine and Georges Bank region; and diapausing *C. finmarchicus* in aggregations in the Gulf of Maine and Georges Bank region.

(2) *Unit 2.* The physical features essential to the conservation of the North Atlantic right whale, which provide calving area functions in Unit 2, are:

(i) Sea surface conditions associated with Force 4 or less on the Beaufort Scale,

(ii) Sea surface temperatures of 7 °C to 17 °C, and

(iii) Water depths of 6 to 28 meters, where these features simultaneously co-occur over contiguous areas of at least 231 nmi² of ocean waters during the months of November through April. When these features are available, they are selected by right whale cows and calves in dynamic combinations that are suitable for calving, nursing, and rearing, and which vary, within the ranges specified, depending on factors such as weather and age of the calves.

(b) Critical habitat boundaries. Critical habitat includes two areas (Units) located in the Gulf of Maine and Georges Bank Region (Unit 1) and off the coast of North Carolina, South Carolina, Georgia and Florida (Unit 2).

(1) Unit 1. The specific area on which are found the physical and biological features essential to the conservation of the North Atlantic right whale include all waters, seaward of the boundary delineated by the line connecting the geographic coordinates and landmarks identified herein:

(i) The southern tip of Nauset Beach (Cape Cod) (41°38.39′ N/69°57.32′ W)

(ii) From this point, southwesterly to 41°37.19′ N/69°59.11′ W

(iii) From this point, southward along the eastern shore of South Monomoy Island to 41°32.76′ N/69°59.73′ W

(iv) From this point, southeasterly to 40°50′ N/69°12′ W

(v) From this point, east to 40°50′ N 68°50′ W

(vi) From this point, northeasterly to 42°00′ N 67°55′ W

(vii) From this point, east to 42°00′ N 67°30′ W

(viii) From this point, northeast to the intersection of the U.S.-Canada maritime boundary and 42°10′ N

(ix) From this point, following the U.S.-Canada maritime boundary north to the intersection of 44°49.727′ N/66°57.952′ W; From this point, moving southwest along the coast of Maine, the specific area is located seaward of the line connecting the following points:

Lat	Long
44°49.727′ N	66°57.952′ W.
44°49.67′ N	66°57.77′ W.
44°48.64′ N	66°56.43′ W.
44°47.36′ N	66°59.25′ W.
44°45.51′ N	67°2.87′ W.
44°37.7′ N	67°9.75′ W.
44°27.77′ N	67°32.86′ W.
44°25.74′ N	67°38.39′ W.
44°21.66′ N	67°51.78′ W.
44°19.08′ N	68°2.05′ W.
44°13.55′ N	68°10.71′ W.
44°8.36′ N	68°14.75′ W.
43°59.36′ N	68°37.95′ W.
43°59.83′ N	68°50.06′ W.
43°56.72′ N	69°4.89′ W.
43°50.28′ N	69°18.86′ W.
43°48.96′ N	69° 31.15′ W.
43°43.64′ N	69°37.58′ W.
43°41.44′ N	69°45.27′ W.
43°36.04′ N	70°3.98′ W.
43°31.94′ N	70°8.68′ W.
43°27.63′ N	70°17.48′ W.
43°20.23′ N	70°23.64′ W.
43°4.06′ N	70°36.70′ W.
43°2.93′ N	70°41.47′ W.

(x) From this point (43°2.93′ N/70°41.47′ W) on the coast of New Hampshire south of Portsmouth, the boundary of the specific area follows the coastline southward along the coasts of New Hampshire and Massachusetts along Cape Cod to Provincetown southward along the eastern edge of Cape Cod to the southern tip of Nauset Beach (Cape Cod) (41°38.39′ N/69°57.32′ W) with the exception of the area landward of the lines drawn by connecting the following points:

42°59.986′ N	70°44.654′ W	TO	Rye Harbor.
42°59.956′ N	70°44.737′ W		Rye Harbor.
42°53.691′ N	70°48.516′ W	TO	Hampton Harbor.
42°53.516′ N	70°48.748′ W		Hampton Harbor.
42°49.136′ N	70°48.242′ W	TO	Newburyport Harbor.
42°48.964′ N	70°48.282′ W		Newburyport Harbor.
42°42.145′ N	70°46.995′ W	TO	Plum Island Sound.
42°41.523′ N	70°47.356′ W		Plum Island Sound.
42°40.266′ N	70°43.838′ W	TO	Essex Bay.
42°39.778′ N	70°43.142′ W		Essex Bay.
42°39.645′ N	70°36.715′ W	TO	Rockport Harbor.
42°39.613′ N	70°36.60′ W		Rockport Harbor.
42° 20.665′ N	70° 57.205′ W	TO	Boston Harbor.
42° 20.009′ N	70° 55.803′ W		Boston Harbor.
42° 19.548′ N	70° 55.436′ W	TO	Boston Harbor.
42° 18.599′ N	70° 52.961′ W		Boston Harbor.
42°15.203′ N	70°46.324′ W	TO	Cohasset Harbor.
42°15.214′ N	70°47.352′ W		Cohasset Harbor.
42°12.09′ N	70°42.98′ W	TO	Scituate Harbor.
42°12.211′ N	70°43.002′ W		Scituate Harbor.
42°09.724′ N	70°42.378′ W	TO	New Inlet.
42°10.085′ N	70°42.875′ W		New Inlet.
42°04.64′ N	70°38.587′ W	TO	Green Harbor.

42°04.583′ N	70°38.631′ W		Green Harbor.
41°59.686′ N	70°37.948′ W	TO	Duxbury Bay/Plymouth Harbor.
41°58.75′ N	70°39.052′ W		Duxbury Bay/Plymouth Harbor.
41°50.395′ N	70°31.943′ W	TO	Ellisville Harbor.
41°50.369′ N	70°32.145′ W		Ellisville Harbor.
41°45.53′ N	70°09.387′ W	TO	Sesuit Harbor.
41°45.523′ N	70°09.307′ W		Sesuit Harbor.
41°45.546′ N	70°07.39′ W	TO	Quivett Creek.
41°45.551′ N	70°07.32′ W		Quivett Creek.
41°47.269′ N	70°01.411′ W	TO	Namskaket Creek.
41°47.418′ N	70°01.306′ W		Namskaket Creek.
41°47.961′ N	70°0.561′ W	TO	Rock Harbor Creek.
41°48.07′ N	70°0.514′ W		Rock Harbor Creek.
41°48.932′ N	70°0.286′ W	TO	Boat Meadow River.
41°48.483′ N	70°0.216′ W		Boat Meadow River.
41°48.777′ N	70°0.317′ W	TO	Herring River.
41°48.983′ N	70°0.196′ W		Herring River.
41°55.501′ N	70°03.51′ W	TO	Herring River, inside Wellfleet Harbor.
41°55.322′ N	70°03.191′ W		Herring River, inside Wellfleet Harbor.
41°53.922′ N	70°01.333′ W	TO	Blackfish Creek/Loagy Bay.
41°54.497′ N	70°01.182′ W		Blackfish Creek/Loagy Bay.
41°55.503′ N	70°02.07′ W	TO	Duck Creek.
41°55.753′ N	70°02.281′ W		Duck Creek.
41°59.481′ N	70°04.779′ W	TO	Pamet River.
41°59.563′ N	70°04.718′ W		Pamet River.
42°03.601′ N	70°14.269′ W	TO	Hatches Harbor.
42°03.601′ N	70°14.416′ W		Hatches Harbor.
41°48.708′ N	69°56.319′ W	TO	Nauset Harbor.
41°48.554′ N	69°56.238′ W		Nauset Harbor.
41°40.685′ N	69°56.781′ W	TO	Chatham Harbor.
41°40.884′ N	69°56.28′ W		Chatham Harbor.

(xi) In addition, the specific area does not include waters landward of the 72 COLREGS lines (33 CFR part 80) as described in paragraphs (b)(1)(xi)(A), (B), and (C) of this section.

(A) Portland Head, ME to Cape Ann, MA—A line drawn from the northernmost extremity of Farm Point to Annisquam Harbor Light.

(B) Cape Ann MA to Marblehead Neck, MA—(*1*) A line drawn from Gloucester Harbor Breakwater Light to the twin towers charted at latitude 42°35.1′ N. longitude 70°41.6′ W.

(*2*) A line drawn from the westernmost extremity of Gales Point to the easternmost extremity of House Island; thence to Bakers Island Light; thence to Marblehead Light.

(C) Hull, MA to Race Point, MA—(*1*) A line drawn from Canal Breakwater Light 4 south to the shoreline.

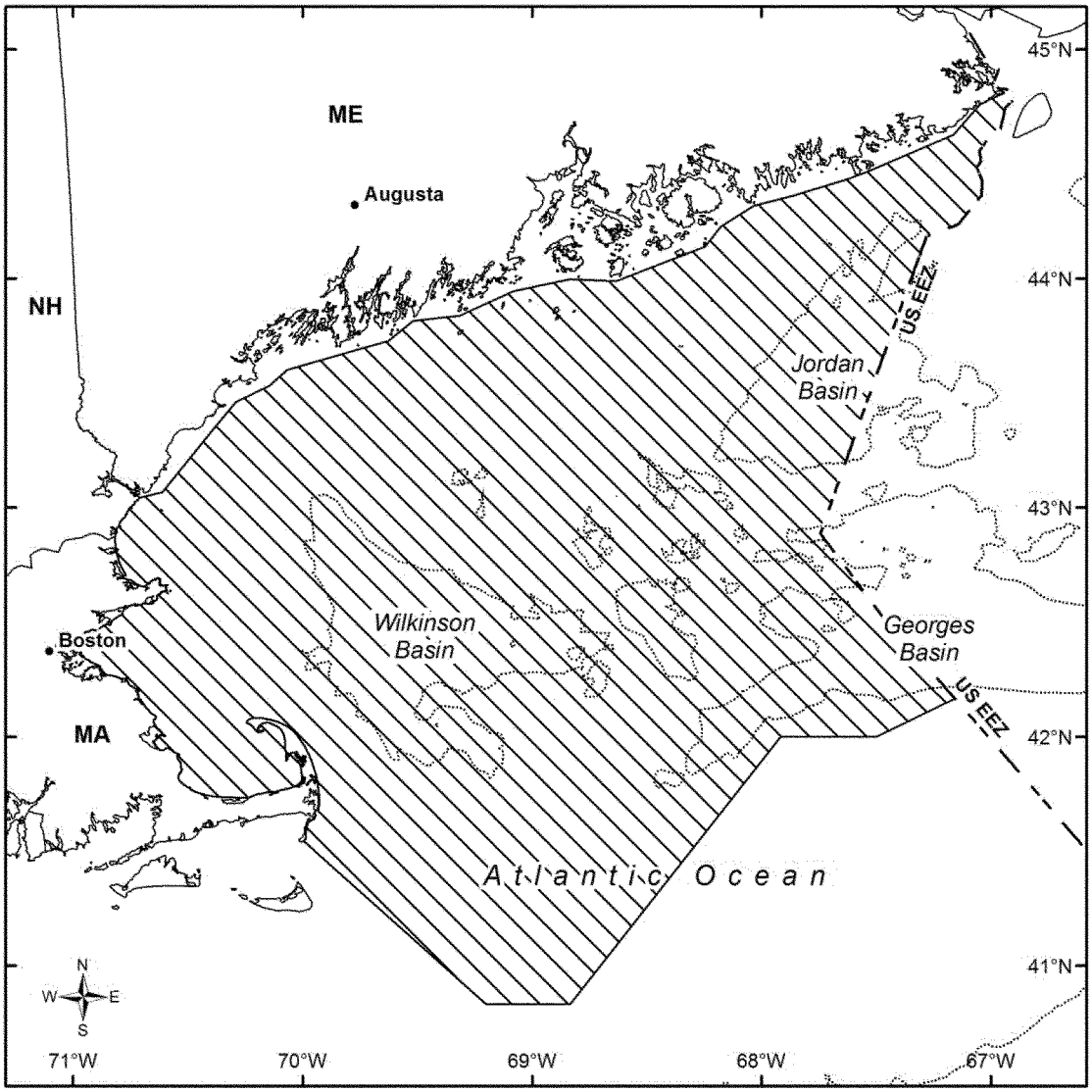
(xii) The specific area does not include inshore areas, bays, harbors and inlets, as delineated in paragraphs (b)(1)(x) and (xi) of this section.

(2) *Unit 2.* Unit 2 includes marine waters from Cape Fear, North Carolina, southward to 29°N latitude (approximately 43 miles north of Cape Canaveral, Florida) within the area bounded on the west by the shoreline and the 72 COLREGS lines, and on the east by rhumb lines connecting the following points in the order stated from north to south.

N Latitude	W Longitude
33°51′	at shoreline
33°42′	77°43′
33°37′	77°47
33°28′	78°33
32°59′	78°50′
32°17′	79°53′
31°31′	80°33′
30°43′	80°49′
30°30′	81°01′
29°45′	81°01′
29°00′	at shoreline

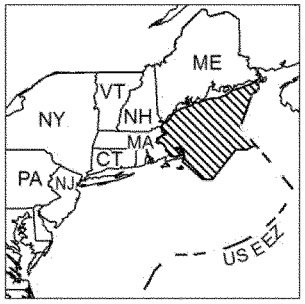
(c) Overview maps of the designated critical habitat for the North Atlantic right whale follow.

North Atlantic Right Whale Critical Habitat
Proposed Northeastern U.S. Foraging Area **Unit 1**

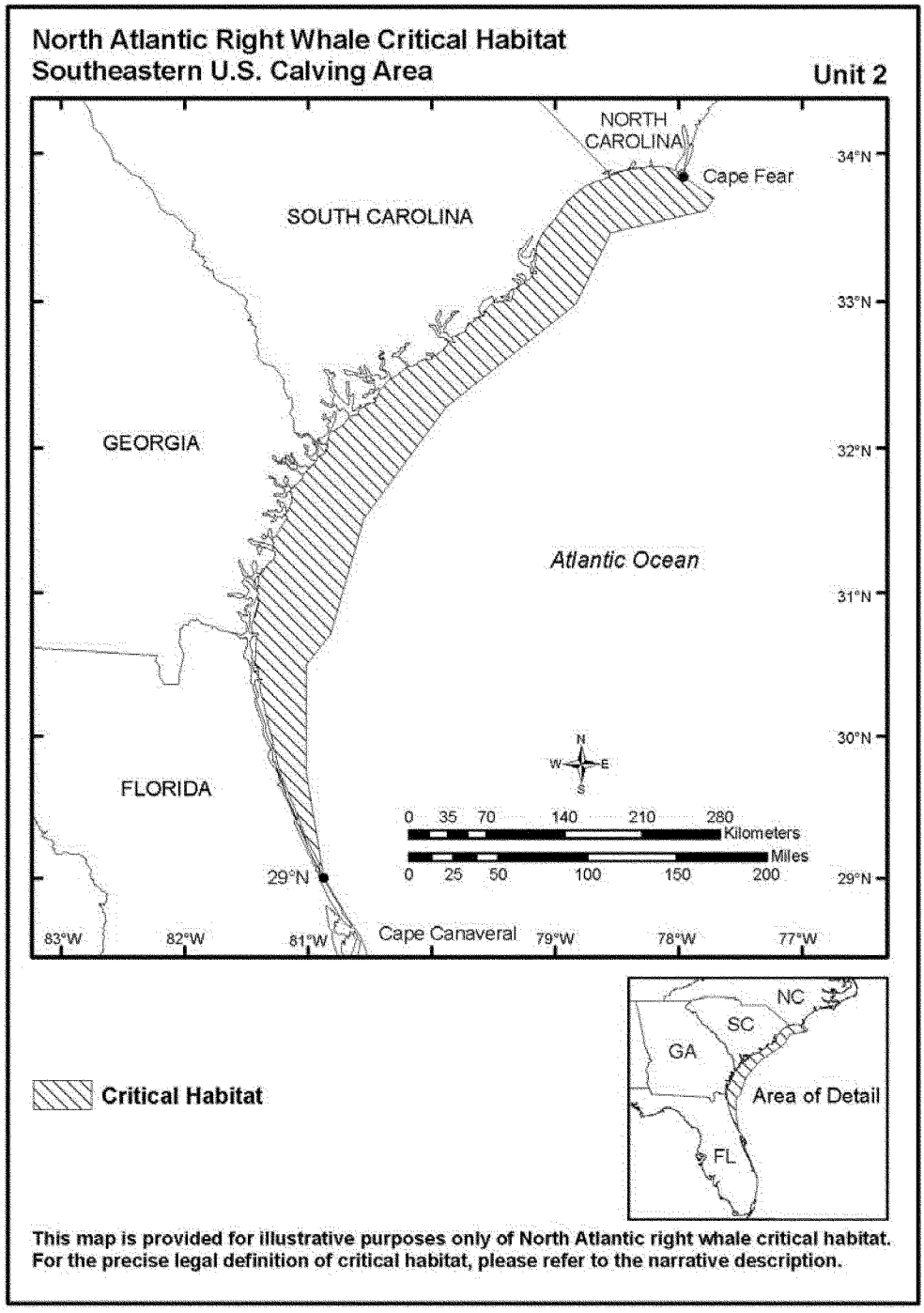


Proposed Critical Habitat

200m Depth Contour



This map is provided for illustrative purposes only of proposed North Atlantic right whale critical habitat. For the precise legal definition of critical habitat, please refer to the narrative description.



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Part III

The President

Executive Order 13691—Promoting Private Sector Cybersecurity Information Sharing

Memorandum of February 15, 2015—Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems

Federal Register
Vol. 80, No. 34
Friday, February 20, 2015

Presidential Documents

Title 3—

The President

Executive Order 13691 of February 13, 2015

Promoting Private Sector Cybersecurity Information Sharing

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* In order to address cyber threats to public health and safety, national security, and economic security of the United States, private companies, nonprofit organizations, executive departments and agencies (agencies), and other entities must be able to share information related to cybersecurity risks and incidents and collaborate to respond in as close to real time as possible.

Organizations engaged in the sharing of information related to cybersecurity risks and incidents play an invaluable role in the collective cybersecurity of the United States. The purpose of this order is to encourage the voluntary formation of such organizations, to establish mechanisms to continually improve the capabilities and functions of these organizations, and to better allow these organizations to partner with the Federal Government on a voluntary basis.

Such information sharing must be conducted in a manner that protects the privacy and civil liberties of individuals, that preserves business confidentiality, that safeguards the information being shared, and that protects the ability of the Government to detect, investigate, prevent, and respond to cyber threats to the public health and safety, national security, and economic security of the United States.

This order builds upon the foundation established by Executive Order 13636 of February 12, 2013 (Improving Critical Infrastructure Cybersecurity), and Presidential Policy Directive–21 (PPD–21) of February 12, 2013 (Critical Infrastructure Security and Resilience).

Policy coordination, guidance, dispute resolution, and periodic in-progress reviews for the functions and programs described and assigned herein shall be provided through the interagency process established in Presidential Policy Directive–l (PPD–l) of February 13, 2009 (Organization of the National Security Council System), or any successor.

Sec. 2. *Information Sharing and Analysis Organizations.* (a) The Secretary of Homeland Security (Secretary) shall strongly encourage the development and formation of Information Sharing and Analysis Organizations (ISAOs).

(b) ISAOs may be organized on the basis of sector, sub-sector, region, or any other affinity, including in response to particular emerging threats or vulnerabilities. ISAO membership may be drawn from the public or private sectors, or consist of a combination of public and private sector organizations. ISAOs may be formed as for-profit or nonprofit entities.

(c) The National Cybersecurity and Communications Integration Center (NCCIC), established under section 226(b) of the Homeland Security Act of 2002 (the ''Act''), shall engage in continuous, collaborative, and inclusive coordination with ISAOs on the sharing of information related to cybersecurity risks and incidents, addressing such risks and incidents, and strengthening information security systems consistent with sections 212 and 226 of the Act.

(d) In promoting the formation of ISAOs, the Secretary shall consult with other Federal entities responsible for conducting cybersecurity activities,

including Sector-Specific Agencies, independent regulatory agencies at their discretion, and national security and law enforcement agencies.

Sec. 3. *ISAO Standards Organization.* (a) The Secretary, in consultation with other Federal entities responsible for conducting cybersecurity and related activities, shall, through an open and competitive process, enter into an agreement with a nongovernmental organization to serve as the ISAO Standards Organization (SO), which shall identify a common set of voluntary standards or guidelines for the creation and functioning of ISAOs under this order. The standards shall further the goal of creating robust information sharing related to cybersecurity risks and incidents with ISAOs and among ISAOs to create deeper and broader networks of information sharing nationally, and to foster the development and adoption of automated mechanisms for the sharing of information. The standards will address the baseline capabilities that ISAOs under this order should possess and be able to demonstrate. These standards shall address, but not be limited to, contractual agreements, business processes, operating procedures, technical means, and privacy protections, such as minimization, for ISAO operation and ISAO member participation.

(b) To be selected, the SO must demonstrate the ability to engage and work across the broad community of organizations engaged in sharing information related to cybersecurity risks and incidents, including ISAOs, and associations and private companies engaged in information sharing in support of their customers.

(c) The agreement referenced in section 3(a) shall require that the SO engage in an open public review and comment process for the development of the standards referenced above, soliciting the viewpoints of existing entities engaged in sharing information related to cybersecurity risks and incidents, owners and operators of critical infrastructure, relevant agencies, and other public and private sector stakeholders.

(d) The Secretary shall support the development of these standards and, in carrying out the requirements set forth in this section, shall consult with the Office of Management and Budget, the National Institute of Standards and Technology in the Department of Commerce, Department of Justice, the Information Security Oversight Office in the National Archives and Records Administration, the Office of the Director of National Intelligence, Sector-Specific Agencies, and other interested Federal entities. All standards shall be consistent with voluntary international standards when such international standards will advance the objectives of this order, and shall meet the requirements of the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113), and OMB Circular A–119, as revised.

Sec. 4. *Critical Infrastructure Protection Program.* (a) Pursuant to sections 213 and 214(h) of the Critical Infrastructure Information Act of 2002, I hereby designate the NCCIC as a critical infrastructure protection program and delegate to it authority to enter into voluntary agreements with ISAOs in order to promote critical infrastructure security with respect to cybersecurity.

(b) Other Federal entities responsible for conducting cybersecurity and related activities to address threats to the public health and safety, national security, and economic security, consistent with the objectives of this order, may participate in activities under these agreements.

(c) The Secretary will determine the eligibility of ISAOs and their members for any necessary facility or personnel security clearances associated with voluntary agreements in accordance with Executive Order 13549 of August 18, 2010 (Classified National Security Information Programs for State, Local, Tribal, and Private Sector Entities), and Executive Order 12829 of January 6, 1993 (National Industrial Security Program), as amended, including as amended by this order.

Sec. 5. *Privacy and Civil Liberties Protections.* (a) Agencies shall coordinate their activities under this order with their senior agency officials for privacy and civil liberties and ensure that appropriate protections for privacy and

civil liberties are incorporated into such activities. Such protections shall be based upon the Fair Information Practice Principles and other privacy and civil liberties policies, principles, and frameworks as they apply to each agency's activities.

(b) Senior privacy and civil liberties officials for agencies engaged in activities under this order shall conduct assessments of their agency's activities and provide those assessments to the Department of Homeland Security (DHS) Chief Privacy Officer and the DHS Office for Civil Rights and Civil Liberties for consideration and inclusion in the Privacy and Civil Liberties Assessment report required under Executive Order 13636.

Sec. 6. *National Industrial Security Program.* Executive Order 12829, as amended, is hereby further amended as follows:

(a) the second paragraph is amended by inserting ''the Intelligence Reform and Terrorism Prevention Act of 2004,'' after ''the National Security Act of 1947, as amended,'';

(b) Sec. 101(b) is amended to read as follows: ''The National Industrial Security Program shall provide for the protection of information classified pursuant to Executive Order 13526 of December 29, 2009, or any predecessor or successor order, and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).'';

(c) Sec. 102(b) is amended by replacing the first paragraph with: ''In consultation with the National Security Advisor, the Director of the Information Security Oversight Office, in accordance with Executive Order 13526 of December 29, 2009, shall be responsible for implementing and monitoring the National Industrial Security Program and shall:'';

(d) Sec. 102(c) is amended to read as follows: ''Nothing in this order shall be construed to supersede the authority of the Secretary of Energy or the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*), or the authority of the Director of National Intelligence (or any Intelligence Community element) under the Intelligence Reform and Terrorism Prevention Act of 2004, the National Security Act of 1947, as amended, or Executive Order 12333 of December 8, 1981, as amended, or the authority of the Secretary of Homeland Security, as the Executive Agent for the Classified National Security Information Program established under Executive Order 13549 of August 18, 2010 (Classified National Security Information Program for State, Local, Tribal, and Private Sector Entities).'';

(e) Sec. 201(a) is amended to read as follows: ''The Secretary of Defense, in consultation with all affected agencies and with the concurrence of the Secretary of Energy, the Nuclear Regulatory Commission, the Director of National Intelligence, and the Secretary of Homeland Security, shall issue and maintain a National Industrial Security Program Operating Manual (Manual). The Secretary of Energy and the Nuclear Regulatory Commission shall prescribe and issue that portion of the Manual that pertains to information classified under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*). The Director of National Intelligence shall prescribe and issue that portion of the Manual that pertains to intelligence sources and methods, including Sensitive Compartmented Information. The Secretary of Homeland Security shall prescribe and issue that portion of the Manual that pertains to classified information shared under a designated critical infrastructure protection program.'';

(f) Sec. 201(f) is deleted in its entirety;

(g) Sec. 201(e) is redesignated Sec. 201(f) and revised by substituting ''Executive Order 13526 of December 29, 2009, or any successor order,'' for ''Executive Order No. 12356 of April 2, 1982.'';

(h) Sec. 201(d) is redesignated Sec. 201(e) and revised by substituting ''the Director of National Intelligence, and the Secretary of Homeland Security'' for ''and the Director of Central Intelligence.'';

(i) a new Sec. 201(d) is inserted after Sec. 201(c) to read as follows: ''The Manual shall also prescribe arrangements necessary to permit and enable secure sharing of classified information under a designated critical infrastructure protection program to such authorized individuals and organizations as determined by the Secretary of Homeland Security.'';

(j) Sec. 202(b) is amended to read as follows: ''The Director of National Intelligence retains authority over access to intelligence sources and methods, including Sensitive Compartmented Information. The Director of National Intelligence may inspect and monitor contractor, licensee, and grantee programs and facilities that involve access to such information or may enter into written agreements with the Secretary of Defense, as Executive Agent, or with the Director of the Central Intelligence Agency to inspect and monitor these programs or facilities, in whole or in part, on the Director's behalf.'';

(k) Sec. 202(d) is redesignated as Sec. 202(e); and

(l) in Sec. 202 a new subsection (d) is inserted after subsection (c) to read as follows: ''The Secretary of Homeland Security may determine the eligibility for access to Classified National Security Information of contractors, licensees, and grantees and their respective employees under a designated critical infrastructure protection program, including parties to agreements with such program; the Secretary of Homeland Security may inspect and monitor contractor, licensee, and grantee programs and facilities or may enter into written agreements with the Secretary of Defense, as Executive Agent, or with the Director of the Central Intelligence Agency, to inspect and monitor these programs or facilities in whole or in part, on behalf of the Secretary of Homeland Security.''

Sec. 7. *Definitions.* (a) ''Critical infrastructure information'' has the meaning given the term in section 212(3) of the Critical Infrastructure Information Act of 2002.

(b) ''Critical infrastructure protection program'' has the meaning given the term in section 212(4) of the Critical Infrastructure Information Act of 2002.

(c) ''Cybersecurity risk'' has the meaning given the term in section 226(a)(1) of the Homeland Security Act of 2002 (as amended by the National Cybersecurity Protection Act of 2014).

(d) ''Fair Information Practice Principles'' means the eight principles set forth in Appendix A of the National Strategy for Trusted Identities in Cyberspace.

(e) ''Incident'' has the meaning given the term in section 226(a)(2) of the Homeland Security Act of 2002 (as amended by the National Cybersecurity Protection Act of 2014).

(f) ''Information Sharing and Analysis Organization'' has the meaning given the term in section 212(5) of the Critical Infrastrucure Information Act of 2002.

(g) ''Sector-Specific Agency'' has the meaning given the term in PPD–21, or any successor.

Sec. 8. *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. Nothing in this order shall be construed to alter or limit any authority or responsibility of an agency under existing law including those activities conducted with the private sector relating to criminal and national security threats. Nothing in this order shall be construed to provide an agency with authority for regulating

the security of critical infrastructure in addition to or to a greater extent than the authority the agency has under existing law.

(c) All actions taken pursuant to this order shall be consistent with requirements and authorities to protect intelligence and law enforcement sources and methods.

(d) 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,
February 13, 2015.

[FR Doc. 2015–03714
Filed 2–19–15; 2:00 pm]
Billing code 3295–F5

Presidential Documents

Memorandum of February 15, 2015

Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems

Memorandum for the Heads of Executive Departments and Agencies

Unmanned Aircraft Systems (UAS) technology continues to improve rapidly, and increasingly UAS are able to perform a variety of missions with greater operational flexibility and at a lower cost than comparable manned aircraft. A wide spectrum of domestic users—including industry, private citizens, and Federal, State, local, tribal, and territorial governments—are using or expect to use these systems, which may play a transformative role in fields as diverse as urban infrastructure management, farming, public safety, coastal security, military training, search and rescue, and disaster response.

The Congress recognized the potential wide-ranging benefits of UAS operations within the United States in the FAA Modernization and Reform Act of 2012 (Public Law 112–95), which requires a plan to safely integrate civil UAS into the National Airspace System (NAS) by September 30, 2015. As compared to manned aircraft, UAS may provide lower-cost operation and augment existing capabilities while reducing risks to human life. Estimates suggest the positive economic impact to U.S. industry of the integration of UAS into the NAS could be substantial and likely will grow for the foreseeable future.

As UAS are integrated into the NAS, the Federal Government will take steps to ensure that the integration takes into account not only our economic competitiveness and public safety, but also the privacy, civil rights, and civil liberties concerns these systems may raise.

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish transparent principles that govern the Federal Government's use of UAS in the NAS, and to promote the responsible use of this technology in the private and commercial sectors, it is hereby ordered as follows:

Section 1. *UAS Policies and Procedures for Federal Government Use.* The Federal Government currently operates UAS in the United States for several purposes, including to manage Federal lands, monitor wildfires, conduct scientific research, monitor our borders, support law enforcement, and effectively train our military. As with information collected by the Federal Government using any technology, where UAS is the platform for collection, information must be collected, used, retained, and disseminated consistent with the Constitution, Federal law, and other applicable regulations and policies. Agencies must, for example, comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the ''Privacy Act''), which, among other things, restricts the collection and dissemination of individuals' information that is maintained in systems of records, including personally identifiable information (PII), and permits individuals to seek access to and amendment of records.

(a) *Privacy Protections.* Particularly in light of the diverse potential uses of UAS in the NAS, expected advancements in UAS technologies, and the anticipated increase in UAS use in the future, the Federal Government shall take steps to ensure that privacy protections and policies relative to UAS continue to keep pace with these developments. Accordingly, agencies shall, prior to deployment of new UAS technology and at least every

3 years, examine their existing UAS policies and procedures relating to the collection, use, retention, and dissemination of information obtained by UAS, to ensure that privacy, civil rights, and civil liberties are protected. Agencies shall update their policies and procedures, or issue new policies and procedures, as necessary. In addition to requiring compliance with the Privacy Act in applicable circumstances, agencies that collect information through UAS in the NAS shall ensure that their policies and procedures with respect to such information incorporate the following requirements:

(i) *Collection and Use.* Agencies shall only collect information using UAS, or use UAS-collected information, to the extent that such collection or use is consistent with and relevant to an authorized purpose.

(ii) *Retention.* Information collected using UAS that may contain PII shall not be retained for more than 180 days unless retention of the information is determined to be necessary to an authorized mission of the retaining agency, is maintained in a system of records covered by the Privacy Act, or is required to be retained for a longer period by any other applicable law or regulation.

(iii) *Dissemination.* UAS-collected information that is not maintained in a system of records covered by the Privacy Act shall not be disseminated outside of the agency unless dissemination is required by law, or fulfills an authorized purpose and complies with agency requirements.

(b) *Civil Rights and Civil Liberties Protections.* To protect civil rights and civil liberties, agencies shall:

(i) ensure that policies are in place to prohibit the collection, use, retention, or dissemination of data in any manner that would violate the First Amendment or in any manner that would discriminate against persons based upon their ethnicity, race, gender, national origin, religion, sexual orientation, or gender identity, in violation of law;

(ii) ensure that UAS activities are performed in a manner consistent with the Constitution and applicable laws, Executive Orders, and other Presidential directives; and

(iii) ensure that adequate procedures are in place to receive, investigate, and address, as appropriate, privacy, civil rights, and civil liberties complaints.

(c) *Accountability.* To provide for effective oversight, agencies shall:

(i) ensure that oversight procedures for agencies' UAS use, including audits or assessments, comply with existing agency policies and regulations;

(ii) verify the existence of rules of conduct and training for Federal Government personnel and contractors who work on UAS programs, and procedures for reporting suspected cases of misuse or abuse of UAS technologies;

(iii) establish policies and procedures, or confirm that policies and procedures are in place, that provide meaningful oversight of individuals who have access to sensitive information (including any PII) collected using UAS;

(iv) ensure that any data-sharing agreements or policies, data use policies, and record management policies applicable to UAS conform to applicable laws, regulations, and policies;

(v) establish policies and procedures, or confirm that policies and procedures are in place, to authorize the use of UAS in response to a request for UAS assistance in support of Federal, State, local, tribal, or territorial government operations; and

(vi) require that State, local, tribal, and territorial government recipients of Federal grant funding for the purchase or use of UAS for their own operations have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

(d) *Transparency.* To promote transparency about their UAS activities within the NAS, agencies that use UAS shall, while not revealing information

that could reasonably be expected to compromise law enforcement or national security:

(i) provide notice to the public regarding where the agency's UAS are authorized to operate in the NAS;

(ii) keep the public informed about the agency's UAS program as well as changes that would significantly affect privacy, civil rights, or civil liberties; and

(iii) make available to the public, on an annual basis, a general summary of the agency's UAS operations during the previous fiscal year, to include a brief description of types or categories of missions flown, and the number of times the agency provided assistance to other agencies, or to State, local, tribal, or territorial governments.

(e) *Reports.* Within 180 days of the date of this memorandum, agencies shall provide the President with a status report on the implementation of this section. Within 1 year of the date of this memorandum, agencies shall publish information on how to access their publicly available policies and procedures implementing this section.

Sec. 2. *Multi-stakeholder Engagement Process.* In addition to the Federal uses of UAS described in section 1 of this memorandum, the combination of greater operational flexibility, lower capital requirements, and lower operating costs could allow UAS to be a transformative technology in the commercial and private sectors for fields as diverse as urban infrastructure management, farming, and disaster response. Although these opportunities will enhance American economic competitiveness, our Nation must be mindful of the potential implications for privacy, civil rights, and civil liberties. The Federal Government is committed to promoting the responsible use of this technology in a way that does not diminish rights and freedoms.

(a) There is hereby established a multi-stakeholder engagement process to develop and communicate best practices for privacy, accountability, and transparency issues regarding commercial and private UAS use in the NAS. The process will include stakeholders from the private sector.

(b) Within 90 days of the date of this memorandum, the Department of Commerce, through the National Telecommunications and Information Administration, and in consultation with other interested agencies, will initiate this multi-stakeholder engagement process to develop a framework regarding privacy, accountability, and transparency for commercial and private UAS use. For this process, commercial and private use includes the use of UAS for commercial purposes as civil aircraft, even if the use would qualify a UAS as a public aircraft under 49 U.S.C. 40102(a)(41) and 40125. The process shall not focus on law enforcement or other noncommercial governmental use.

Sec. 3. *Definitions.* As used in this memorandum:

(a) ''Agencies'' means executive departments and agencies of the Federal Government that conduct UAS operations in the NAS.

(b) ''Federal Government use'' means operations in which agencies operate UAS in the NAS. Federal Government use includes agency UAS operations on behalf of another agency or on behalf of a State, local, tribal, or territorial government, or when a nongovernmental entity operates UAS on behalf of an agency.

(c) ''National Airspace System'' means the common network of U.S. airspace; air navigation facilities, equipment, and services; airports or landing areas; aeronautical charts, information, and services; related rules, regulations, and procedures; technical information; and manpower and material. Included in this definition are system components shared jointly by the Departments of Defense, Transportation, and Homeland Security.

(d) ''Unmanned Aircraft System'' means an unmanned aircraft (an aircraft that is operated without direct human intervention from within or on the aircraft) and associated elements (including communication links and components that control the unmanned aircraft) that are required for the pilot

or system operator in command to operate safely and efficiently in the NAS.

(e) ''Personally identifiable information'' refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, as set forth in Office of Management and Budget Memorandum M–07–16 (May 22, 2007) and Office of Management and Budget Memorandum M–10–23 (June 25, 2010).

Sec. 4. *General Provisions.* (a) This memorandum complements and is not intended to supersede existing laws and policies for UAS operations in the NAS, including the National Strategy for Aviation Security and its supporting plans, the FAA Modernization and Reform Act of 2012, the Federal Aviation Administration's (FAA's) Integration of Civil UAS in the NAS Roadmap, and the FAA's UAS Comprehensive Plan.

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

(c) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, 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.

(d) Independent agencies are strongly encouraged to comply with this memorandum.

(e) 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.

(f) The Secretary of Commerce is hereby authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
Washington, February 15, 2015

[FR Doc. 2015–03727
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