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DEPARTMENT OF ENERGY

10 CFR Part 810

RIN 1994–AA02

Assistance to Foreign Atomic Energy Activities

AGENCY: National Nuclear Security Administration (NNSA), Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: DOE is issuing the first comprehensive updating of regulations concerning Assistance to Foreign Atomic Energy Activities since 1986, reflecting a need to make the regulations consistent with current global civil nuclear trade practices and nonproliferation norms, and to update the activities and technologies subject to the Secretary of Energy's specific authorization and DOE reporting requirements. This rule also identifies destinations with respect to which most assistance would be generally authorized and destinations that would require a specific authorization by the Secretary of Energy.

DATES: This rule is effective March 25, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Goorevich, Senior Policy Advisor, or Ms. Katie Strangis, Senior Policy Advisor, Office of Nonproliferation and Arms Control (NPAC), National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–0589 (Mr. Goorevich) or 202–586–8623 (Ms. Strangis); Mr. Elliot Oxman, Office of the General Counsel, GC–53, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–1755; or Mr. Zachary Stern, Office of the General Counsel, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–8627.

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PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

I. Background

The Department of Energy's part 810 regulation (10 CFR part 810) implements section 57b.(2) of the Atomic Energy Act of 1954 (AEA), as amended by section 302 of the Nuclear Nonproliferation Act of 1978 (NNPA). Part 810 controls the export of unclassified nuclear technology and assistance. It enables peaceful nuclear trade by helping to assure that nuclear technologies exported from the United States will not be used for non-peaceful purposes. Part 810 controls the export of nuclear technology and assistance by identifying activities that can be ''generally authorized'' by the Secretary, thereby requiring no further authorization under part 810. It also controls those activities that require ''specific authorization'' by the Secretary. Part 810 also delineates the process for applying for specific authorization from the Secretary and identifies the reporting requirements for activities subject to part 810.

While some revisions to part 810 were made in 1993 and 2000, part 810 has not been comprehensively updated since 1986. Since then, the global civil nuclear market has expanded, particularly in China, the Middle East, and Eastern Europe, with vendors from France, Japan, the Republic of Korea, Russia, and Canada emerging to serve customers in these markets. DOE believes the regulation should be updated to ensure that the part 810 nuclear export controls remain effective and efficient as the commercial nuclear market continues to expand. This means carefully determining which destinations and activities can be generally authorized and which will require a specific authorization, and assuring that the determinations are consistent with U.S. national security, diplomatic, and trade policy.

On September 7, 2011, DOE issued the NOPR to propose the updating of part 810 (76 FR 55278). The NOPR listed destinations for which most assistance to foreign atomic energy activities would be generally authorized, and activities that would require a specific authorization by the Secretary of Energy. Additionally, the NOPR identified types of technology transfers subject to the regulation. DOE received numerous comments on the NOPR. After careful consideration of all comments received on the NOPR, on August 2, 2013 DOE issued a supplemental notice of proposed rulemaking (SNOPR) and public meetings to respond to those comments, propose new or revised rule changes,

and afford interested parties a second opportunity to comment (78 FR 46829). DOE held its first public meeting on August 5, 2013. On October 29, 2013 DOE issued a notice of a second public meeting and extension of the comment period and on March 25, 2014 re-opened the comment period until April 2, 2014. Today, DOE is issuing this final rule.

As described below and in response to comments received from the public on the SNOPR, in the final rule announced today, DOE makes only a few changes to the existing rule, what will be referred to hereinafter as ''the 1986 version of the rule,'' that are different than those proposed in the SNOPR. Details of today's changes to the 1986 version of part 810 are summarized in Section II. Responses to public comments received on the SNOPR are discussed in Section IV.

II. Description of Changes in the Final Rule

In response to the SNOPR, DOE received written comments from 26 entities as well as oral comments made at public meetings. All of the comments and meeting transcripts are available for review on line at: *http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035,* Docket ID: DOE–HQ–2011–0035. This final rule responds to the comments received in response to the SNOPR and makes changes to the 1986 version of the rule. Final changes to the current rule, organized by section, are summarized below:

1. The change to § 810.1 ''Purpose'' states the statutory basis and purpose of the part 810 regulation, eliminating the need for the 1986 version of § 810.6. ''U.S. persons'' has been replaced with ''persons.''

2. The change to paragraph (a) in § 810.2 ''Scope'' states DOE's jurisdiction under § 57b.(2) of the Atomic Energy Act. Paragraph (b) in § 810.2 identifies activities governed by the regulation when those activities, whether conducted in the United States or abroad, constitute engaging or participating, directly or indirectly, in the development or production of special nuclear material outside the United States. Paragraph (c) of § 810.2 identifies exempt activities, some retained from the 1986 version of the rule. A person directly or indirectly engaging or participating in the development or production of special nuclear material outside the United States may be, for example, a U.S. citizen, a foreign national or a subsidiary of a U.S. company located abroad. The activity may take place in the United States, in a country listed in the Appendix or in a country not listed in the Appendix. Part 810 does not apply to transfers of nuclear technology or assistance within the United States between or among U.S. citizens, citizens or nationals of foreign countries who are U.S. lawful permanent residents, or protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)), because such transfers would not constitute engaging or participating, directly or indirectly, in the development or production of special nuclear material outside the United States.

3. The following exempt activities are added:

- Exports authorized by the Department of State (DOS) or Department of Commerce (DOC), or the Nuclear Regulatory Commission (NRC);
- Transfer of ''publicly available information,'' ''publicly available technology,'' and the results of ''fundamental research'';
- Assistance for certain mining and milling activities, and certain fusion reactors because these activities do not involve the production or use of special nuclear material;
- Production or extraction of radiopharmaceutical isotopes when the process does not involve special nuclear material; and
- Transfers to lawful permanent residents of the United States or protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

4. In § 810.3 ''Definitions'' of this final rule, a number of definitions are added and revisions are made to existing definitions to reflect terminological changes and technological developments since the part 810 regulation was last updated, and to provide additional clarity to certain terms defined and used in the 1986 version of the rule.

The 1986 version of the rule has 23 defined terms. This final rule substantially revises 5 terms, adds 23 terms, deletes 5 terms, and leaves 13 terms essentially unchanged, for a total of 36 defined terms in the regulation.

The following terms have been added to the final rule to update the terms used in part 810 to make them consistent with terms used in other U.S. export control programs and Nuclear Suppliers Group (NSG) guidelines (IAEA Information Circular [INFCIRC] 254/Part 1): Assistance, cooperative enrichment enterprise, development, enrichment, fissile material, fundamental research, production, technical data, technology, and use. The following terms are added or revised in line with changes in the approach of the final rule to authorized destinations and authorized activities: Foreign national, general authorization, operational safety, production accelerator, production accelerator-driven subcritical assembly system, production subcritical assembly, publicly available information, publicly available technology, and specific authorization. The term ''country'' has been added to clarify that Taiwan is covered under this final rule, consistent with section 4 of the Taiwan Relations Act (22 U.S.C. 3303). The terms ''Secretary'' and ''DOE'' were added to define administrative terms. The following terms are retained with no change except technical edits or format changes: ''Agreement for cooperation'', ''Atomic Energy Act'', ''classified information'', ''IAEA'', ''NNPA'', ''NPT'', ''nuclear reactor'', ''person'', ''production reactor'', ''Restricted Data'', ''sensitive nuclear technology'', ''source material'', ''special nuclear material'', and ''United States''. The following terms have been deleted as unused: ''accelerator-driven subassembly'', ''non-nuclear-weapon state'', ''open meeting'', ''public information'', and ''subcritical assembly''.

Several changes from the definitions proposed in the SNOPR are made in the final rule including: ''technical assistance'' is changed to ''assistance,'' the term ''technical assistance'' is replaced with ''assistance'' in the definition of ''technology'', and the term ''technical services'' is replaced with ''assistance'' in the definition of ''sensitive nuclear technology''. These changes are explained in section IV.D. in response to public comments on the SNOPR.

5. Sections 810.4 ''Communications'' and § 810.5 ''Interpretations'' update points of contact information to reflect the current DOE organizational structure and office designations for applications, questions, or requests. Section 810.4(c) has been added to allow communication, fast-track requests, and Ukraine notifications to be emailed. The final rule adds paragraph (c) to § 810.5 that states DOE may periodically publish abstracts of general or specific authorizations, excluding applicants' proprietary data and other information protected by law from public disclosure, that may be of general interest.

6. The 1986 version of § 810.6 ''Authorization requirement,'' which quotes § 57 b. of the Atomic Energy Act, is deleted and replaced by § 810.1 ''Purpose.''

7. The 1986 version of § 810.7 ''Generally authorized activities'' is re-numbered as § 810.6. It identifies

activities the Secretary has found to be not inimical to the interest of the United States if conducted in a destination listed in the Appendix to the final rule. The introductory text eliminates the specific reference to § 57 b.(2) of the Atomic Energy Act.

(i) Paragraph (a) generally authorizes assistance or transfers of technology to destinations listed in the Appendix to the final rule. The 1986 version of § 810.8(a) uses the opposite classification approach. It lists destinations for which a specific authorization is required.

(ii) The 1986 version of § 810.7(a) ''furnishing public information'' is deleted from the list of generally authorized activities because under the final rule ''public information'' is no longer a defined term. Specifically, in § 810.2(c)(2) of the final rule, ''publicly available information,'' ''publicly available technology,'' and the results of ''fundamental research'' (all as defined in § 810.3 of this final rule) are exempt from the scope of part 810.

(iii) In a new approach to deemed exports, § 810.6(b) of this final rule generally authorizes nuclear technology transfers to citizens or nationals of specific authorization destinations who are lawfully employed by or contracted to work for nuclear industry employers in the United States, subject to such individuals meeting NRC unescorted access requirements and executing a confidentiality agreement to prevent unauthorized disclosure of nuclear technology to which those individuals are afforded access. Deemed export reporting requirements with respect to these individuals are set forth in § 810.12(g).

(iv) The existing ''fast track'' general authorization in the 1986 version of § 810.7(b) for emergency activities at any safeguarded facility and operational safety assistance to existing foreign safeguarded reactors has been retained in §§ 810.6 (c)(1) and (c)(2) of the final rule, respectively, but with a revised definition of ''operational safety.'' Paragraph (c)(1) includes the phrase ''in DOE's assessment,'' modifying the emergency clause to make DOE responsible for deciding potential ''other means.'' Furnishing operational safety information or assistance to existing safeguarded civilian nuclear reactors outside the United States in countries with safeguards agreements with the IAEA or an equivalent voluntary offer, for example, performance of probabilistic risk assessments, is authorized in § 810.6(c)(2). In § 810.6(c)(2) the SNOPR proposed to include an option to provide information cited in § 810.11(b). This proposal has not been adopted in the final rule.

(v) Furnishing operational safety information or assistance to existing, proposed, or new-build nuclear power plants in the United States is authorized in § 810.6(c)(3), for example, participation in safety assessments by organizations such as the Institute of Nuclear Power Operations (INPO).

(vi) Section 810.6(d) generally authorizes exchange programs approved by the DOS with DOE consultation. Sections 810.6(e) and (f) authorize certain cooperative activities with the IAEA, namely, activities carried out in the course of implementation of the ''Agreement between the United States of America and the [IAEA] for the Application of Safeguards in the United States''; and those carried out by full-time employees of the IAEA, or by individuals whose employment or work is sponsored or approved by the DOS or DOE. The final rule replaces the word ''and'' with the disjunctive ''or'' at the end of subparagraph (f) to clarify that any of the listed activities are generally authorized.

(vii) Section 810.6(g) is a new provision that authorizes transfers of technology and assistance for the extraction of Molybdenum-99 from irradiated nuclear material in certain circumstances.

8. Section 810.7—renumbered from the 1986 version of § 810.8—''Activities requiring specific authorization'' continues to list activities that require a specific authorization for all foreign destinations. The initial phrase ''Unless generally authorized by § 810.6'' proposed in the SNOPR has been removed as unnecessary.

9. Section 810.8 ''Restrictions on general and specific authorization'' remains unchanged from § 810.9 in the 1986 version of the rule, except for the following editorial revisions: Replacing ''these regulations'' with ''this part'' in the introductory phrase; replacing ''Restricted Data and other classified information'' with ''classified information'' in paragraph (a), and replacing ''Government agencies'' with ''U.S. Government agencies'' in paragraph (b).

10. Section 810.9 ''Grant of specific authorization'' of the final rule, § 810.10 of the 1986 version, identifies the factors consistent with U.S. international nonproliferation commitments that will be considered by the Secretary in granting a specific authorization. Paragraph (b) adds as factors to be considered: Whether the government of the country concerned is in good standing with respect to its nonproliferation commitments (subparagraph (b)(3)); and whether, under subparagraph (b)(8), the transfer is part of an existing ''cooperative enrichment enterprise'' (as defined in § 810.3 of this final rule) or the supply chain of such an enterprise. Section 810.9(c) addresses the export of ''sensitive nuclear technology'' as the quoted term is defined in § 810.3 of this final rule. This section is expanded to describe additional factors, which include compliance with the United States' NSG commitments, the Secretary will take into account when considering a specific authorization request for transfers of sensitive nuclear technology. The United States adheres to the NSG Guidelines for Nuclear Transfers, and NSG Guidelines for Transfers of Nuclear-related Dual-Use Equipment, Materials, Software and Related Technology (IAEA INFCIRC/254/Part 2). The current versions of both sets of Guidelines can be found at *www.nuclearsuppliersgroup.org.* In the final rule a new paragraph (d) is added to § 810.9 concerning requests to engage in authorized foreign atomic energy assistance activities related to the enrichment of source material and special nuclear material. Approval of such requests will be conditioned upon the receipt of written nonproliferation assurances from the government of the destination country concerned. This process is designed to facilitate U.S. conformity to the NSG Guidelines.

11. Section 810.10 ''Revocation, suspension, or modification of authorization,'' as renumbered from the 1986 version of § 810.11, makes an editorial revision, changing ''authorized assistance'' in paragraph (c) to ''authorization governed by this part.''

12. The 1986 version of § 810.12, renumbered in the final rule as § 810.11 ''Information required in an application for specific authorization,'' is expanded to add more detail about the information required for DOE to process a specific authorization request, including applications for ''deemed export'' and ''deemed re-export'' authorizations. Section 810.11(a) of the final rule requires the submission of the same information required by the 1986 version of the rule (§ 810.12(a)).

The 1986 version of § 810.12(a) required that an application for specific authorization include information regarding ''the degree of any control or ownership by any foreign person or entity''. Since the term ''foreign person'' is used only once in the 1986 version of the regulation (in § 810.12(a)), DOE proposed in the SNOPR to revise proposed § 810.11(a) without reference to ''foreign person''. To avoid any possible confusion between usages of

''person'' and ''foreign national'', the final rule adopts this change and § 810.11(a)(1) requests information concerning an applicant's foreign ownership or control by asking about ''the degree of any control or ownership by any foreign individual, corporation, partnership, firm, association, trust, estate, public or private institution or government agency''.

The SNOPR proposed in paragraph (b) to solicit any information the applicant wishes to provide concerning the factors listed in proposed §§ 810.9(b) and (c). However, this proposal has not been adopted. Instead, specific required applicant information has been added to § 810.11(a)(3) of the final rule. Therefore, proposed § 810.11(c) of the SNOPR is renumbered § 810.11(b) in this final rule. Likewise, proposed § 810.11(d) of the SNOPR is numbered § 810.11(c) in this final rule.

Section 810.11(b) addresses the required content for applications filed by U.S. companies seeking to employ in the United States citizens or nationals of specific authorization countries that could result in the transfer of technology subject to §§ 810.2 or 810.7 (deemed exports). Submission of the same information is also required with respect to any such citizen or national whom the part 810 applicant seeks to directly employ abroad in either a general or specific authorization country (a deemed re-export) that could result in the export of assistance or transfer of technology requiring a specific authorization. As proposed in the SNOPR, and adopted in the final rule, no part 810 authorization is required for an individual who is lawfully admitted for permanent residence in the United States or is a protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

As proposed in the SNOPR and adopted in the final rule, § 810.11(b) makes explicit DOE's current practice of requiring an applicant for a specific authorization to provide detailed information concerning the citizenship, visa status, educational background, and employment history of each foreign national to whom the applicant seeks to grant access to technology subject to the part 810 regulation. The applicant is also required to provide a description of the subject technology, a copy of any confidentiality agreement between the U.S. employer and the employee concerning the protection of the employer's proprietary business data from unauthorized disclosure, and written nonproliferation assurances by the individual. Section 810.11(b)(3) has been revised to eliminate the reference to § 810.6(b)(2), and reduce cross-referencing in the document.

Finally, § 810.11(c) identifies the information required to be submitted by an applicant seeking a specific authorization to engage in foreign atomic energy assistance activities related to the enrichment of fissile material.

13. The 1986 version of § 810.13 is renumbered as § 810.12 in the final rule and changes reporting obligations. An addition in § 810.12(d) of the final rule requires companies to submit reports to DOE concerning activities requiring specific authorization, to include information required by U.S. law concerning specific civil nuclear activities in or exports to destinations for which a specific authorization is required. Under § 810.12(e)(4) of the final rule the reference to reporting on materials and equipment transferred under a general authorization is retained to ensure, among other things, that any technical data that is transferred as part of dual-use equipment is reported. In this final rule, paragraph (g) describes the reporting requirements of U.S. employers with respect to their deemed export and deemed re-export employees.

14. The 1986 version of § 810.14 is renumbered in the final rule as § 810.13, ''Additional information.'' The section is otherwise unchanged.

15. In the final rule, a new § 810.14 has been added to describe specific reporting requirements with respect to Ukraine. While the SNOPR contained a proposal to move Ukraine to the general authorization list, that proposal was made prior to the current geopolitical situation in that country. In light of those circumstances, DOE is finalizing its SNOPR proposal with the inclusion of advance notification requirements prior to beginning any generally authorized activity in Ukraine. A written report within 10 days following the original transfer of material, equipment or technology is also required for all activities in Ukraine subject to part 810. A more detailed explanation of the reason for this addition is in Section IV.B.2.

16. Section 810.15 ''Violations'' retains the same section number in the final rule as it has in the 1986 version of the rule, although it was proposed to be renumbered in both the NOPR and the SNOPR. Section 810.15 in the final rule contains a number of revisions that bring the wording into alignment with the applicable statutory language.

17. Section 810.16, ''Effective date and savings clause'', which was proposed to be renumbered in the NOPR and the SNOPR, retains the same section number in the final rule as it has in the 1986 version of the rule. The only change to the language, as proposed in the SNOPR, is an extension of the date persons must come into compliance with the rule from 90 to 180 days.

18. In this final rule, Croatia is added to the Appendix list of generally authorized destinations because on July 1, 2013, it joined the European Atomic Energy Community (Euratom) and therefore the provisions of the peaceful nuclear cooperation agreement entered into pursuant to AEA § 123 (''123 Agreement'') between the United States and Euratom apply to supply to Croatia of U.S. nuclear material and equipment. Vietnam is also added to the Appendix list of generally authorized destinations because on October 3, 2014, a 123 Agreement between Vietnam and the United States entered into force. Thailand has been deleted from the list of generally authorized destinations because its 123 Agreement with the United States has expired and there has not been a decision to renew the Agreement. In this final rule, a reference has been added to the Appendix list regarding Ukraine, in order to ensure applicants are aware of the added requirements in § 810.14 of the final rule, as discussed in Section IV.B.2.

19. DOE/NNSA recently changed the name of the Office of Nonproliferation and International Security (NA–24) to the Office of Nonproliferation and Arms Control (NPAC). The final rule in §§ 810.4, 810.5, 810.9, and 810.12 reflect this change.

III. Transition Process to Final Rule

DOE recognizes that, as a result of the rule announced today, some persons will have foreign atomic energy assistance activities in process concerning destinations whose general authorization or specific authorization status has changed. This section describes actions to provide a seamless transition to the final rule.

A. Current Specific Authorization Requests

Any pending specific authorization request for a destination that is now generally authorized in the final rule, namely, Croatia, Kazakhstan, Ukraine, United Arab Emirates, and Vietnam, should be withdrawn starting on the effective date of the rule. Contact DOE to formally withdraw the request. Pending requests for specific authorization to Ukraine are subject to the 10-day notification requirement set forth in § 810.14(a) of the final rule.

B. Current Generally Authorized Activities

As stated in § 810.16, generally authorized activities for which the contracts, purchase orders, or licensing arrangements were already in effect before March 25, 2015, but that require specific authorization under the final rule, must be the subject of a specific authorization request by August 24, 2015 but may continue until DOE acts on the request.

C. Previously Unreported Deemed Exports and Deemed Re-Exports

DOE recognizes that many companies with employees who are citizens or nationals of countries now subject to specific authorization requirements under the final rule announced today may not have previously reported the transfer of part 810 covered technology to such individuals to DOE under the 1986 version of the rule, as required, and further, that in many cases technology transfers already have occurred. A record of part 810-controlled generally authorized technology transfers to these employees is necessary for DOE to adequately monitor these transfers. Companies that have made unreported generally authorized transfers should provide the information required by § 810.11 of the final rule for each transfer to any foreign national who continues to have access to part 810-controlled technology by August 24, 2015.

IV. Discussion of Public Comments and the Final Rule

On August 2, 2013 DOE published the SNOPR, inviting public comments on regulatory proposals DOE formulated in consideration of comments received on the NOPR. Thereafter, DOE held two formal public meetings to give the public an opportunity to make oral comments and ask questions about the proposed regulatory changes in the SNOPR. In addition, DOE extended the time period for the public to submit written comments on the SNOPR. DOE received comments from 26 industry members and organizations. The majority of commenters expressly supported some of the SNOPR changes to the NOPR, such as proposals:

1. Limiting the scope of technology covered by part 810
2. Generally authorizing deemed exports to certain U.S. nuclear industry employees
3. Facilitating nuclear safety and other exchange activities
4. Generally authorizing nuclear technology exports to Mexico, Chile, Kazakhstan, Ukraine, and the United Arab Emirates
5. Continuing the general authorization for emergency activities and operational safety assistance
6. Proposing that

a. Routine storage, processing, and transportation of spent nuclear fuel would be outside the scope of part 810,

b. Activities licensed by the DOS and DOC would be outside the scope of part 810, and

c. The transfer of publicly available information would be outside the scope of part 810.

Commenters also supported DOE's initiation of a process improvement program (PIP) to reduce specific authorization processing time, and DOE's plan to create a guide to part 810 and an electronic application and tracking (e-810) system. Several organizations and companies offered to participate in developing the PIP and drafting a guide.

The Nuclear Energy Institute (NEI), the primary industry trade association, provided a comprehensive set of comments in response to the SNOPR. The Ad-hoc Utility Group (AHUG), Exelon, and the Chamber of Commerce of the United States (USCC) fully endorsed NEI's comments. AREVA and the US India Business Council (USIBC) supported NEI's comments. Black and Veatch endorsed NEI's comments. Westinghouse stated that it ''largely concurred'' with NEI comments. In this discussion of the public comments, unless these commenters provided different perspectives on the same matter, NEI will be referenced when discussing the comments.

Many commenters, including the American Nuclear Society (ANS), AREVA, Babcock and Wilcox (B&W), the Center for Strategic and International Studies (CSIS), Energy*Solutions,* Exelon, Fluor, G.C. Rudy/Integrated Systems Technology (IST), NEI, the Nuclear Infrastructure Council (NIC), and Westinghouse, also made requests for guidance or clarification on part 810 that would not require a change from the regulatory text proposed in the SNOPR. Depending on the specific nature of these requests, DOE may address each request as part of a formal guide, more informally as part of a Frequently Asked Questions (FAQ) page on the proposed Web site, or in response to individual requests made pursuant to § 810.5—Interpretations.

This final rule implements the important goals of part 810:

- Effective nuclear proliferation threat reduction,
- Effective civil nuclear trade support, and
- Efficient regulation.

DOE has reviewed the public comments received in response to the SNOPR. The final rule adopts most of the regulatory revisions proposed in the SNOPR, and incorporates some further changes based on careful consideration of public comments. The public comments were analyzed and placed into three categories:

- Process Issues
- Classification of Foreign Destinations
- Activities Requiring Part 810 Authorization

A. Process Issues

1. Compliance With Administrative Procedure Act Rulemaking Requirements

NEI in part claimed the SNOPR violated the Administrative Procedure Act (APA) by providing inadequate explanation of the proposed changes, particularly the proposed general vs. specific authorization destination classifications. NEI included China, Russia, and India in this discussion, although these three countries have been, and remain, destinations requiring specific authorization. NEI, in 80 pages of comments on the destination classification issue, called for DOE to ''withdraw and re-publish the rule with enough information regarding its factual, legal and policy rationales to allow stakeholders to comment meaningfully.'' AREVA stated ''DOE has not put forth a sufficient rationale for the change in designation of these countries.'' AUECO ''join[ed] the U.S. Chamber of Commerce in calling upon DOE to withdraw the rule.'' In response to these concerns and comments, and the desire to hear from as many commenters as possible, DOE re-opened the comment period to allow for more public comments.

The SNOPR preamble adequately and reasonably explained the reasons for DOE's proposed reclassification of foreign destinations, as well as other proposed changes to the part 810 regulation. It also explained the reasons why DOE proposed the Secretary could not generally authorize nuclear technology transfers to China, Russia, and India. Adequate notice was provided for meaningful comments from the public on the SNOPR as evidenced by 26 separate letters of comments submitted to DOE, including lengthy and detailed comments from NEI and AREVA. DOE's new approach in the final rule to classifying general and specific authorization destinations is a reasonable policy decision, made in compliance with the requirements of the APA and as authorized by the AEA.

2. Part 810 Process Improvements

As noted in the SNOPR, many NOPR commenters were concerned that the part 810 specific authorization process is unduly protracted, and that processing delays put U.S. suppliers at a competitive disadvantage with companies in other countries. It appeared that many concerns with the NOPR and SNOPR proposals indicated less dissatisfaction with the merits of the proposed regulatory changes than the commenters' belief that the proposed rule revisions would continue or worsen delays in receiving specific authorizations.

AHUG, ANS, AREVA, B&W, CSIS, Energy*Solutions,* Exelon, Fluor, GC Rudy/IST, NEI, NIC, and Westinghouse all made suggestions and comments related to improving the processing of specific authorization requests. In many cases these comments reiterated those received during the NOPR comment period. As these comments are not directed to the content of the proposed rule, they will not be addressed here but rather in the PIP that is ongoing currently.

Similarly, commenters' concerns about process ''burdens'' appeared to drive their comments about the substance of the proposed regulatory changes. As noted, DOE proposed and has underway a PIP separate from the rulemaking to make the part 810 authorization process more transparent, orderly, and efficient in order to address specific authorization time in process.

The part 810 PIP is part of a larger NNSA plan to be ISO 9001 compliant. The PIP team will focus on improving performance as measured by these critical to quality characteristics:

- Effective nuclear proliferation threat reduction in a changing world,
- Openness, predictability, and clarity of regulation, and
- Efficiency: Performing the mission of preventing proliferation without wasting time, money, or placing unnecessary burdens on U.S. companies competing in global markets.

The PIP team also will:

- *Measure* process performance by listening to applicant ''customers'' and process implementers. Receiving these inputs will be key to realistic problem definition and development of effective process improvements.
- *Analyze* causes of delays in DOE processing time for an application.
- Recommend actions to sustain *improved* performance in processing part 810 applications for specific authorization.

Anticipated improvements in the processing time of part 810 applications that may come from the PIP include these recommended actions from commenters:

- Digitize the 810 authorization process (e810)—Digitization of the authorization process will make the applications easier to complete; streamline the review process, increase transparency by enabling applicant tracking; provide a searchable archive of past decisions; and facilitate audits required for ISO compliance. In this rule, DOE has added explicit email communication options, including applications, fast-track requests, and Ukraine notifications in § 810.4(c).
- Reduce application processing time—This effort will begin by DOE analyzing the authorization case database to determine causes of processing time variation and undue delay. The PIP team will conduct benchmark studies to identify best practices and methods to improve efficiency. The team will work with the DOS to find ways to request and secure foreign governments' nonproliferation assurances more promptly, and make internal DOE and inter-agency reviews of part 810 specific authorization applications more efficient by reducing unnecessary reviews and approvals.
- Develop a guidance document—Many SNOPR commenters sought guidance or clarification on specific issues and recommended DOE prepare a guidance document or Web site to improve transparency. As noted above, DOE intends to develop a document or Web site that may include responses to requests made under § 810.5 (with proprietary information redacted), FAQs, and process maps of various part 810 activities. DOE will continue to adhere to current inter-agency procedures for processing, reviewing and approving specific authorizations as set forth in the ''Amendment to Procedures Established Pursuant to the Nuclear Nonproliferation Act of 1978.'' 49 FR 20780 (May 16, 1984).

B. Classification of Foreign Destinations

The general authorization versus specific authorization proposed country classifications provoked considerable comments in response to the NOPR. The SNOPR explained the rationale for the proposed changes and proposed to change some classifications. Many of the NOPR comments were repeated in SNOPR comments. AHUG, AREVA, AUECO, B&W, CSIS, Energy*Solutions,* Electric Power Research Institute (EPRI), Exelon, Fluor, National Association of Manufacturers (NAM), NEI, NIC, USIBC, U.S. Russia Business Council, and Westinghouse all expressed concerns with the reclassification of countries that was proposed in the SNOPR.

AHUG cited Chile, Jamaica, Jordan, Namibia, New Zealand, Nigeria, and the Philippines as countries that deserved generally authorized status ''due to their participation in key international nuclear nonproliferation regimes, including the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the comprehensive safeguards agreement (CSA) with the IAEA and an Additional Protocol (AP) thereto, and the NSG''. Further, they noted that New Zealand and the Philippines have been granted a general license pursuant to 10 CFR 110.26 under NRC's regulations as destinations authorized to receive ''minor'' reactor components.

B&W named Saudi Arabia, Jordan, the Philippines, and Malaysia, and Fluor named the Philippines and Singapore as countries that deserved generally authorized status, but provided no specific arguments regarding their suitability for the non-inimicality determination mandated by AEA § 57b.(2).

Energy*Solutions* commented ''The Department has failed to account for the burden imposed by the proposed rule and the message it sends to foreign nations.'' The company repeated the claim it made in response to the NOPR that reversing the approach to country designations was unwarranted. In its comments on the SNOPR, Energy*Solutions* further commented ''the SNOPR sends a message to countries that have not been considered a proliferation risk for over 70 years and have maintained safe nuclear operations, that the United States now views them as a potential liability. While the Department may view this new Rulemaking as a way to provide additional oversight to trade countries, Energy*Solutions* fears that it has the potential to adversely affect foreign relations with our trading partners.''

DOE has considered commenters' recommendations for countries to be reconsidered for classification as generally authorized destinations. Under section 57b.(2) of the AEA, the Secretary may authorize the transfer of nuclear technology for the development or production of special nuclear material by persons subject to U.S. jurisdiction upon a determination that the activity will not be ''inimical'' to the interest of the United States. Classification of activities and foreign destinations as ''generally authorized'' or, conversely, the determination that other activities and destinations necessitate a specific authorization is a matter committed to agency discretion. The Secretary's decision that a specific

authorization is or is not required for a proposed transaction is based on U.S. nuclear and national security policies. Consonant with those policies, the Secretary may determine that transactions with a country or entity are either generally authorized or require a specific authorization. Under the AEA, DOE is to promote widespread participation in the development and utilization of atomic energy for peaceful purposes. The AEA, however, makes national security the paramount concern. Consequently, assistance to, participation in, or technology transfer for the development or production of special nuclear material outside the United States may be authorized only upon a determination by the Secretary that such activities will not be ''inimical to the interest of the United States''. A destination is included on the proposed generally authorized list based on the Secretary's ''not inimical'' determination required by section 57b.(2) of the AEA. Examples of types of considerations taken into account include the existence of a 123 Agreement with the United States, a full scope safeguards agreement with the IAEA, satisfactory experience as a civil nuclear trading partner, and being a party to nonproliferation treaties and membership in international nonproliferation regimes. That determination can be made only with the concurrence of the DOS and after consultation with the NRC, the Department of Defense (DOD), and the DOC.

DOE appreciates commenters' recommendations for countries to be reconsidered for classification to generally authorized status. However, classification of activities by destination as ''generally authorized'' is an administrative tool to avoid unnecessary reviews of foreign atomic energy assistance activities in countries that present little or no proliferation risk, and are known nuclear trading partners. General authorizations reflect the assessment that the Secretary has made a non-inimicality finding regarding the provision of assistance and technology to particular countries on an advance programmatic basis, without performing a transaction-specific analysis or obtaining specific nonproliferation assurances from the government of the intended foreign recipient.

The world has changed since the original part 810 rule was issued. The creation of new countries and the threat of proliferative activities in countries with limited ability to manage or deter such threats must be considered in the Secretary's determination of non-inimicality. The Secretary has considered that being a party to nonproliferation treaties (including but not limited to other regional treaties such as the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), African Nuclear Weapon Free Zone Treaty (Treaty of Pelindaba), South Pacific Nuclear Free Zone Treaty (Treaty of Roratonga)), while an important part of such a determination is not alone sufficient to make a finding of non-inimicality. The NRC's regulation at 10 CFR 110.26 is limited to reactor components only for reactors generating less than 5MW, which is not an adequate indication of a country's ability to manage nuclear technology and prevent its use in ways ''inimical to the interest of the United States.''

No comments were received regarding the SNOPR proposal to remove Bangladesh and Peru from the generally authorized destination list; therefore the proposed deletion is retained in the final rule.

The final rule retains the destination classifications proposed in the SNOPR unchanged, except for clarification concerning the availability of general authorizations for Ukraine (§ 810.14) and the addition of Croatia and Vietnam as generally authorized destinations and the removal of Thailand. DOE will provide notice of future changes to the Appendix in the **Federal Register**.

1. Mexico

EPRI noted that additional IAEA agreements beyond INFCIRC/203 and INFCIRC/825 with Mexico may be developed, and suggested clarifying language to allow countries concluding such agreements to be included in the general authorization destinations Appendix list to the final rule. DOE has decided not to incorporate such changes in the final rule. While DOE is prepared at present to include Mexico on the Appendix list, on the basis of its agreement with the IAEA, DOE has determined to approach other such agreements on a case-by-case basis.

2. Ukraine

The Secretary's decision that a specific authorization is or is not required for a particular proposed export is based on U.S. nuclear and national security policies. When the existing regulations were promulgated in 1986, Ukraine was not a party to any international nuclear cooperation agreements. Ukraine has since entered into a 123 Agreement with the United States, has engaged in civil nuclear trade with the United States under the 123 Agreement, and has developed a track record as a responsible nuclear nonproliferation partner.

Moreover, Ukraine is heavily dependent on nuclear reactors for generation of electricity. Currently, there are 15 operating reactors in Ukraine that generate about 50% of the electricity used there. While Ukraine is now a civil nuclear trading partner of the United States, these reactors rely almost entirely on services and nuclear fuel from the Russian Federation to operate. Recent geopolitical developments in Ukraine involving the Russian Federation underlie the U.S. Government's determination to help ensure that Ukraine is able to maintain a stable civil nuclear energy program independent of and without support from the Russian Federation.

However, transfers of nuclear technology and assistance to areas that are not under control of the Government of Ukraine could present a proliferation risk, and a case-by-case non-inimicality determination is needed for transfers to those areas. For this reason, § 810.14 in the final rule identifies an additional requirement, for persons about to begin any generally authorized activity involving Ukraine, to notify DOE at least ten days prior to beginning such activity. Following notification of a proposed transfer to Ukraine pursuant to § 810.14, the Secretary may invoke the authority in § 810.10 (c) if he determines that transfer is inimical to the interest of the United States at that time. Thus, that transfer would not be considered generally authorized and the applicant would need to file a request for specific authorization in accordance with §§ 810.7 and 11.

3. Croatia and Vietnam

NEI noted that ''Croatia, now a member-state of the European Union, should be added to the Appendix.'' In addition, as noted in section II, Vietnam, as of May 26, 2014 signed a 123 Agreement with the United States, and that agreement entered into force on October 3, 2014. DOE has added both Croatia and Vietnam to the list of generally authorized destinations in the Appendix to this final rule.

4. Continued Specific Authorization Destinations (Russia, India and China)

B&W, Energy*Solutions,* Fluor, Lightbridge, and NEI all repeated comments on the NOPR regarding DOE's proposal to retain Russia, India, and China as destinations requiring specific authorization. Some disagreed with the SNOPR's explanatory rationale in section IV.B.2, but failed to provide sufficient justification to warrant any change in the current specific

authorization status of these three countries.

After duly considering the comments and consulting with the DOS, DOC, DOD, and NRC, the Secretary remains of the view that it is not appropriate to change the part 810 specific authorization status of these three countries at this time for the same reasons as articulated in the SNOPR in section IV.B.2.

5. Thailand and Norway

The Appendix to the final rule has been changed from the SNOPR to omit Thailand, whose 123 Agreement with the United States has expired. As there has not been a decision regarding renewal of the Agreement at this time, under this final rule Thailand will therefore be a specifically authorized destination.

The Appendix to the final rule includes Norway, whose 123 Agreement with the United States has expired. However, the United States and Norway are negotiating a renewal of the 123 Agreement. Thus, the Department has determined that Norway will remain a generally authorized destination under this final rule.

C. Activities Requiring Part 810 Authorization

1. Special Nuclear Material Nexus Requirement

As explained in SNOPR section IV.C.1, the Secretary has broad discretion to determine which activities indirectly constitute sufficient engagement or participation in the production of special nuclear material to bring them within the scope of part 810. The decision is based on the nature of the technology or assistance to be provided. As such, whether an activity is generally authorized is a matter of policy. A number of commenters (including; NEI, B&W, Westinghouse, Fluor, ANS, NIC, AREVA, EPRI and ERIN Engineering and Research Inc. (ERIN)) stated that the SNOPR resolved some of their concerns with the sufficiency of the nexus between some covered activities or technologies and the production of special nuclear material to be subject to part 810 but maintained that the scope remained too broad or unclear in some cases. NEI also supported the proposed exclusion from part 810 of technologies and assistance under the jurisdiction of the DOS and DOC and requested the same treatment for NRC-approved activities, which was already explicit in § 810.2(c)(1) as proposed in the SNOPR and adopted in the final rule.

NEI commented that DOE should limit the scope of part 810 to technologies that are ''especially designed for the production or processing of special nuclear material,'' such as enrichment, reprocessing, and production reactors. Adoption of this proposal would move light water reactor (LWR) technology outside the scope of part 810, even though it has been within the scope since the inception of part 810. Although LWRs are designed primarily for power production, they do directly produce plutonium, which is within the scope of part 810. Therefore, the final rule retains LWRs in the scope of part 810.

NEI and NIC further commented that there should be explicit exemptions or authorization for the transfer of sales, marketing or sourcing information, to provide U.S. business with more flexibility to operate in the very competitive international civil nuclear market because U.S. businesses are at a disadvantage to foreign competitors that are not subject to technology controls similar to part 810 requirements. DOE is not prepared to exempt the transfer of part 810-controlled technology based on the intent of the transfer but will consider the content of the transfer when making a determination of part 810's applicability. That means that if part 810-controlled technical data is transferred in a bid, proposal, solicitation, trade show, or plant tour, the activity is subject to part 810 controls and requirements but if no such technical data is transferred, the activity is not within the scope of part 810 and therefore not subject to those controls.

NEI and B&W commented that the SNOPR lacked clear and justified thresholds for how much recipient control, modification or U.S. content in jointly developed technology would be enough to trigger part 810 coverage of an activity. NEI recommended that DOE adopt specific percentage values as *de minimis* thresholds based on the total value of technology to be transferred. NEI also proposed that only ''enhancements'' to foreign technology should be subject to part 810, but other changes, such as conforming foreign technology to U.S. codes and standards (commonly known as Americanization), should not generally make the transfer of technology subject to part 810. In a related comment, TerraPower asserted that DOE should set a *de minimis* threshold of 5% ownership before that ownership must be disclosed in an application for specific authorization. The comments above are largely restatements of views expressed in response to the NOPR and were addressed in the SNOPR preamble (Section IV.C.13.). The SNOPR explained that a mechanistic approach is not appropriate for part 810 coverage determinations for authorization of activities such as cooperative enrichment enterprises and other technology transfers by collaborative enterprises. DOE will continue to make coverage determinations based on the specific facts of the proposed activity including but not limited to technology to be transferred, the significance of the technology to the production of special nuclear material, end user destination, and end use duration of the activity such as single transfer or an ongoing activity, rather than by mechanistic rule because the facts of each case are unique and not readily addressed by a *de minimis* threshold or characterization.

NEI reiterated its recommendation to add the term ''control-in-fact'' to the definition in § 810.3 and to apply the concept to the application of the scope of § 810.2(a)(1) as well as revisions and clarifications to that provision to include the term ''control-in-fact.'' NEI recommended that DOE explicitly include in § 810.2(a)(2) the clarification that foreign ''licensees, contractors, or subsidiaries under [the] direction, supervision, responsibility or control'' of persons described by the proposed rule in § 810.2(a)(1) are within the scope of part 810 only if the technology transferred is of U.S. origin. Further, NEI recommended that control be determined by reference to corporate governance arrangements, instead of the specific terms and circumstances of the proposed activity. DOE has considered this comment again and has determined to adopt § 810.2(a) and (b) as proposed without further revision. DOE will review the specific fact pattern of the activity that includes the transfer of part 810-controlled technologies, which in some cases may not match the stated governance or ''control'' of the company but which is specific to the technology transfer in question.

B&W, TerraPower, NEI, and AHUG also commented that the definition of ''technology'' should be revised to use the conjunctive ''and'' in place of ''or'' before ''use'' in proposed § 810.3, thereby limiting the scope of part 810 to activities and technologies directly associated with the production of special nuclear material, creating a minimum threshold for technology and assistance provided, and mirroring the wording currently guiding the NSG. The proposed use of the disjunctive ''or'' in the definition of ''technology'' in proposed § 810.3 was intentional. Any of the listed forms of assistance is sufficient to trigger part 810 coverage. It is not necessary to specify all of the

technology forms; therefore the change has not been made to the definition.

AUECO commented that under the SNOPR, DOE would subject academic and scientific communications and research to new and burdensome deemed export requirements without sufficient statutory basis, and that burden would be further exacerbated by the general/specific authorization proposed reclassification of 77 countries. The SNOPR proposal, they argued, would jeopardize the free flow of academic collaboration that is explicitly protected by the AEA, without DOE identifying a clear or direct connection to the production of special nuclear material.

Part 810's statutory basis is the AEA, which states its purpose is to ''support the conducting, assisting and fostering of research in order to encourage maximum scientific progress'' through the establishment of policies that benefit not only the development of technology but also, and paramount, the common defense and security of the United States. While part 810 requirements concerning deemed exports may apply in an academic setting, DOE understands that most work performed by academic institutions qualifies as fundamental research, which is exempt from part 810 coverage under § 810.2(c)(2) of the final rule. Issuance of the final rule does not constitute a new burden for academic institutions and comports with AEA purposes. It is those activities that go beyond fundamental research and are applied research and development that have always been within the scope of part 810 controls. No change has been made in this final rule in response to this comment.

AUECO and NEI welcomed the definition of ''fundamental research'' proposed in the SNOPR but commented that it fell short of protecting applied research and development at universities, which they argued is the intent of the AEA. The definition announced today achieves the intent of the AEA both to encourage fundamental research and to protect information whose dissemination is restricted for national security reasons. NEI also recommended revising the definition of ''fundamental research'' to exclude proprietary ''industrial development'' and ''product utilization'' from the definition. DOE wishes to clarify that proprietary development or utilization information is not exempted from controls in the final rule because development and use technology is beyond basic scientific exploration that is intended to remain outside the scope of part 810. Applied research crosses the boundary from theoretical scientific inquiry to potential reactor specific applications of new technologies. This type of research will not be generally authorized because it can be applied to a facility that could be involved in the production of special nuclear material. The definition of ''fundamental research'' in the final rule remains unchanged from that proposed in the SNOPR.

AUECO also commented that the SNOPR's proposed definition of ''publicly available information'' did not address information that has been cleared for release by the appropriate entity but has not yet been officially released, and that lack of clarity on this point adversely affects academic institutions with respect to transferring nuclear technology to foreign national researchers. AUECO recommended that information that will be or is eligible for unlimited release should be considered ''publicly available information'' and therefore not subject to part 810 controls in academic settings. DOE considers information published in academic journals or otherwise available to the general public to be ''publicly available technology'' for the purposes of deemed exports prior to actual publication as long as the information has been appropriately authorized for release and there is a clear intent to publish all results, and directs commenters to examine the definition of ''publicly available technology'' for clarification. This subject will be dealt with in more detail in the PIP.

NEI also commented that the definition of ''publicly available information'' should conform to the text of and guidance concerning the ITAR (International Traffic in Arms Regulations) administered by DOS and DOC's EAR (Export Administration Regulations). DOE has considered NEI's request but has determined to retain the definition as proposed in the SNOPR because the definition as formulated in the final rule adequately and completely incorporates the characteristics of information that DOE considers to be publicly available.

2. Activities Supporting Commercial Power Reactors

NEI and B&W commented that controlling LWR technology is unnecessary, because it is ubiquitous and available more freely from many foreign vendors. Further, requiring a specific authorization for such technology to any country does little, in the commenters' view, to stem proliferation and would hurt the competitive position of U.S. vendors. AHUG, Fluor, and NEI stated that requiring a specific authorization for U.S. vendors offering nuclear technologies that are identical or similar to those that have been previously approved for export burdens U.S. vendors, giving their competitors an advantage without a nonproliferation benefit. Both DOE and the commenters recognize that the harm to U.S. vendors is exacerbated by lengthy part 810 application processing time required to secure a specific authorization. DOE believes the way to resolve the time-in-process problem is through the PIP, not by relaxing the standards for the Secretary's non-inimicality determination. It should be noted that the 1986 version of § 810.10(b)(7) expressly states that in making the non-inimicality determination, the Secretary will take into account ''[t]he availability of comparable assistance from other sources''. The final rule retains this provision.

NEI and AUECO commented that the description and definition of the portions of the ''nuclear reactor'' that would be covered by part 810, as proposed in §§ 810.2 and 810.3 of the SNOPR, were an improvement from the NOPR and provided clarity, but did not align with the NRC's part 110 Appendix A definition of a nuclear reactor. The proposed definition of ''nuclear reactor'' in § 810.3 in the SNOPR is almost identical to the NRC definition in 10 CFR 110.2. Also, the proposed scope of part 810 controls concerning nuclear reactors has been aligned with the language used in NRC's part 110 Appendix A. Specifically, the wording ''components within or attached directly to the reactor vessel, the equipment that controls the level of power in the core, and the equipment or components that normally contain or come in direct contact with or control the primary coolant of the reactor core'' in § 810.2(b)(5) of the SNOPR has been adopted in today's rule to align directly with language used in Appendix A of NRC's part 110 regulation.

NEI further commented that the description of the scope of covered technologies concerning nuclear reactors proposed in § 810.2 of the SNOPR did not address the limits of application of the regulation to analogous components or systems in boiling water reactors and pressurized water reactors. As a general principle, DOE considers the technology related to the primary coolant in the reactor core as within the scope of part 810 controls. However, NRC's part 110 regulation specifically excludes the steam turbine generator portion of a nuclear power plant from its definition of a utilization facility. Since the definition and scope statement in the SNOPR's proposed rule

were meant to align with part 110, DOE has determined that the steam turbine generator portion of a nuclear plant is licensed by the DOC and is not subject to part 810 requirements.

B&W commented that DOE should develop a list of Widely Available Technologies. B&W further recommended that DOE solicit national laboratory and industry input to publish and update the list through a **Federal Register** Notice. Per B&W's comment, the technology list would include an exhaustive list of technologies or assistance associated with those technologies and be generally authorized to non-embargoed countries. DOE has not added a widely available technology list to part 810 at this time because the Secretary has not made a non-inimicality finding about the transfer of technologies directly or indirectly related to the production of special nuclear material but rather the destination of those technologies. Instead, DOE will address technologies and approving the transfers of them in the PIP. As a part of the PIP process, DOE will seek stakeholder input during planned outreach programs.

NEI, B&W, Fluor, AHUG, and NIC provided similar comments to the effect that if technology related to nuclear reactors continues to be defined as proposed in § 810.2 of the SNOPR, some formulation of a ''fast track'' or hybrid authorization process should be included in the regulation text or a general authorization provided for transfers of identified technologies. This process would not apply to technology transfers to embargoed or non-NSG member countries but all other specifically authorized destinations. Expediting the approval of nuclear reactor technology transfers to destinations requiring specific authorizations will be addressed in the PIP that is being conducted independently from this rulemaking. Therefore DOE will not incorporate a change or add a general authorization for nuclear reactor technologies at this time.

3. Deemed Exports and Deemed Re-Exports Employee Issues

AUECO, NEI, B&W, and Westinghouse repeated in response to the SNOPR their recommendation in comments on the NOPR concerning the transfer of part 810-covered technology to individuals who are citizens (including those with dual citizenship) of specific authorization countries but have lawful permanent residence in a generally authorized country. The commenters advanced the view that, in determining whether a specific authorization is required, DOE should follow the DOC policy of using the individual's most recent country of citizenship or permanent residency to determine citizenship. Current DOE practice is to consider all countries of an individual's allegiance (citizenship or permanent residency) in making the requisite non-inimicality determination. Authorization decisions in these situations are fact-specific, and DOE will continue to deal with them on a case-by-case basis. Therefore DOE is not incorporating this suggestion in the final rule.

ANS, AREVA, AUECO, NEI, and AHUG welcomed the general authorization proposed in the SNOPR at § 810.6(b) for foreign nationals working at NRC-licensed facilities who are granted unescorted access in accordance with NRC regulations. The commenters also suggested expanding the general authorization to include foreign nationals working in the United States at non-NRC licensed facilities, based on NRC regulations governing access to safeguards information (SGI) or a U.S. security clearance for access to classified information. DOE determined that NRC's regulations and reviews governing unescorted access to NRC licensed facilities are much more detailed than SGI protection requirements, which mandate only a search by the Federal Bureau of Investigation to identify any criminal records of the individual for whom the applicant is requesting access. Alternatively, for unescorted access to controlled technology in an NRC-licensed facility, an individual must undergo a stringent review in addition to complying with the SGI's requirement, including, but not limited to, a psychological interview, drug testing, and employment history check. After consulting with the NRC, DOE and NRC concurred that, for the reasons described above, SGI review criteria are not sufficient to justify providing a general authorization under part 810 for foreign nationals to have access to part 810-controlled technologies. In addition, DOE was unable to identify a cohort of foreign nationals who would have security clearances and are nationals of countries not on the part 810 Appendix list that would justify adoption of the suggestion in the final rule. No other regulatory regimes or persuasive factors were identified by the other commenters as a basis for DOE to make the requested change. Therefore, DOE has decided to adopt § 810.6(b) as proposed in the SNOPR.

NEI further requested that DOE should clarify in guidance that the general authorization for deemed exports would continue to apply to NRC-cleared individuals working in the United States for a U.S. company who are no longer working at the NRC-licensed facility, but who require access to part 810-controlled information. Under this suggestion, the authorization would extend to foreign nationals working in the United States at any U.S. company, even if unescorted access status has expired. DOE is not adopting this proposal in today's final rule because the termination of NRC unescorted access could occur for a variety of reasons which must be considered. DOE invites applicants with respect to the requirements of § 810.11(b)(2) to document any NRC clearances granted to subject foreign nationals that may be used to inform DOE's determination of non-inimicality for the deemed export.

AREVA commented that positions requiring critical skill sets may go unfilled due to the increased number of foreign nationals working for AREVA in the United States and overseas that will no longer be eligible for a general authorization because under the SNOPR proposal, more countries would be specific authorization destinations, therefore restricting a larger number of possible hires from accessing part 810-controlled technology. In addition, AREVA stated that the provision would only address current employees but not address future hires and thus complicate hiring decisions. DOE has weighed this comment and understands that companies are concerned about burdens to comply with deemed export controls under the final rule, given the increase in the number of specifically authorized destinations. DOE will continue to require companies to seek authorization to provide access to part 810-controlled technologies to individuals who are citizens of specifically authorized countries because the transfer of technology to a citizen of a specific authorization destination is considered an export to that country and therefore deemed an export, which requires a Secretarial non-inimicality finding before the export can be authorized. But under the PIP, DOE will endeavor to institute efficiencies to decrease the review and approval times for deemed export authorizations.

Exelon stated that the cost of review of I–9 forms (required by U.S. Citizenship and Immigration Services) to determine the number of foreign nationals working at U.S. nuclear facilities who are citizens of specifically authorized countries will be overly burdensome and impede hiring and internal reassignments. In this regard,

the final rule makes all employees granted unescorted access to an NRC-licensed facility generally authorized, obviating any need to research the citizenship status of employees who have been granted unescorted access to an NRC-licensed facility. In addition, the required I–9 forms provide readily available data on new foreign national employees that should help companies determine whether a foreign national needing access to part 810-controlled information will require a specific authorization.

NEI and B&W both commented that the time frames in the supplemental proposed rule at § 810.15 were inadequate, DOE acknowledges that 90 days is too short a time for many entities to review internal compliance programs, review employment records, file reports with DOE on current foreign employees receiving part 810-controlled technology, and submit necessary requests for specific authorization, and in today's final rule DOE has therefore extended the transition period to 180 days.

Fluor commented that it is not reasonable for a U.S. company to treat its non-U.S. citizen employees working in offices/subsidiaries located in foreign countries differently (*e.g.,* an employee who is a citizen of specific authorization country working in a country on the general authorization Appendix list would require a specific authorization to access part 810-controlled technology); and requested that foreign nationals employed at U.S. subsidiaries in countries not listed in the Appendix be eligible for a general authorization as long as the company can assure DOE that the part 810-covered technology transferred to the foreign national is protected from unauthorized disclosure. The final rule retains the approach, as implemented under the 1986 version of the rule and as proposed in the NOPR and SNOPR, to deemed re-exports. That is, whether a specific authorization is required for a foreign national (as defined in § 810.3) employed in a foreign country depends on the general or specific authorization designation of the foreign national's country of citizenship. Under the final rule, companies working with entities outside the U.S., whether or not they are wholly owned subsidiaries, are authorized either generally or through a specific authorization to transfer specific technology. DOE will continue to require compliance with the transfer of part 810-controlled technology no matter where the export takes place.

B&W and Fluor made a similar proposal: That DOE view part 810-controlled technology transfers to companies in some subset of countries (B&W proposed NSG member states) as eligible for general authorization with respect to deemed re-exports, meaning the recipient entity would be generally authorized, as well as all its employees, regardless of citizenship, so long as the foreign nationals are employed legally (and in the case of Fluor's comment, so long as a confidentiality agreement is in place). As noted above, DOE has determined to retain in the final rule adopted today the regulatory approach to deemed re-exports under the 1986 version of part 810 and in the NOPR and SNOPR.

B&W and NEI suggested that the language contained in § 810.11(c) as proposed in the SNOPR (§ 810.11(b) in the final rule) indicates that mere ''employment'' of a foreign national who is a citizen of a country not listed in the Appendix, by a U.S. company or its foreign subsidiary, would require a specific authorization. This is incorrect. Under the SNOPR and under today's final rule, a specific authorization is required for the transfer of part 810-controlled technology or information to a foreign national, not merely employment of that individual by a U.S. company or its foreign subsidiary.

B&W and NEI also recommended that DOE streamline the proposed part 810 rule to clarify that U.S. companies are only required to comply with the proposed deemed export requirements to the extent that compliance does not violate applicable employment laws in those countries where a company's foreign national employees are employed. The intent of § 810.11(b) as proposed and made final is to control technology transfers, not employment. It enables DOE to implement its authority to authorize re-exports of transferred technology. Companies may hire whomever they choose. However, the AEA is the foundation upon which the regulation at part 810 and makes clear that U.S. companies are not free to transfer part 810-controlled technology to employees who are citizens of countries that are not listed in the Appendix without a specific authorization or who meet the requirements of § 810.6(b) of the final rule.

NEI commented that as proposed in the SNOPR, a foreign national is required to interact with DOE to secure a specific authorization. That assertion is incorrect. DOE consent is requested by and granted to the U.S. company-applicant under the rule, and not directly to the foreign national. It is the responsibility of the person subject to part 810 to ensure that transfers and retransfers of U.S. technology and assistance are under its control and take place in compliance with part 810.

AUECO commented that the rule ''should also explicitly authorize deemed exports to foreign nationals of Appendix A [sic] countries who meet the requirements of § 810.6(b)(1, 2 and 4) . . .)'' This recommendation indicates a misreading of § 810.6. Proposed § 810.6(a) of the SNOPR explicitly authorizes specified activities with entities in countries listed in the Appendix. Section 810.6 proposed in the SNOPR and adopted in today's final rule includes all nationals or citizens of countries listed in the Appendix for all activities except those described in § 810.7.

In conclusion, DOE carefully weighed the comments received concerning deemed exports and deemed re-exports. In the discussion above, DOE has provided clarity for issues raised by commenters, but has determined that it is unnecessary to make changes to the requirements for deemed export and deemed re-export authorizations as proposed in the SNOPR. DOE will address potential improvements for efficiencies for such applications in the PIP and continue to work directly with part 810 applicants that have fact-specific compliance questions.

4. Operational Safety Activities

AREVA, AHUG, and EPRI strongly supported the inclusion of the proposed definition of ''operational safety'' and the proposed general authorization provisions contained in the SNOPR for proposed § 810.6(c) (adopted as § 810.6(b) in the final rule). AHUG and EPRI provided comments and a red line text of the general authorization provisions at proposed § 810.6(c)(2) and (3) as well as the definition of ''operational safety'' contained in proposed § 810.3 to further expand the provisions. AHUG, NEI, and EPRI recommended that DOE consolidate proposed §§ 810.6(c)(2) and (3) into a single general authorization that focuses on the nationality of the recipients of the operational safety information or assistance rather than on the nuclear power plants. The commenters alleged that proposed § 810.6(c)(2) would be applicable only to existing plants overseas, while proposed § 810.6(c)(3) would include new plants as well as existing plants in the United States and that DOE did not provide a clear rationale for its proposal. AHUG further commented that extending a general authorization as proposed in the SNOPR to include assistance to new nuclear power plants located in countries that are not eligible for a general authorization to ensure state of the art

safety technologies and methodologies, including input from U.S. nuclear operators, are incorporated at the design phase of a reactor construction is crucial for the safety of nuclear plants.

Proposed § 810.6(c)(2) is intended to authorize U.S. companies to provide operational safety technologies and assistance to existing plants in foreign countries so they can meet specific national or international safety standards or requirements for operational safety. Proposed § 810.6(c)(3), on the other hand, is intended to authorize important benchmarking activities at plants in the United States by international entities or individuals, such as those conducted by the INPO, and NRC-sponsored and -approved activities. The difference in treatment between plants located in the United States and those overseas is intentional. Assistance to U.S. facilities is not assistance to foreign entities, and the incidental transfer of technical information to foreign nationals providing the assistance is not deemed by DOE to be a significant proliferation risk. However, providing information during the design and construction of a new facility in a destination requiring specific authorization constitutes a much higher proliferation risk, and requires DOE approval. The basis for the DOE decision to adopt the distinction between assistance to a foreign reactor and benchmarking in the United States remains the basis for § 810.6(c)(3) in the final rule. NRC-sponsored or -licensed activities in the United States or overseas are outside the scope of part 810, as explicitly provided in § 810.2(c)(1).

DOE also reviewed the proposed revision to the definition of ''operational safety'' provided by AHUG and EPRI. DOE proposed a definition of ''operational safety'' in the SNOPR that would broaden the scope of assistance and technology that could be generally authorized. The suggested revisions as provided by AHUG and EPRI further broadened DOE's proposed scope and include services that are not considered merely safety but rather services to improve design and/or efficiencies of nuclear reactors. Because the general authorization relates only to operational safety, the broader definition that includes design improvements or efficiencies has not been adopted. DOE has not made revisions to the proposed definition of ''operational safety'', but rather is adopting unchanged in today's final rule the definition proposed in the SNOPR.

ERIN requested clarification on whether probabilistic risk assessments (PRAs) for existing nuclear power plants in foreign countries should be generally authorized. ERIN commented that PRAs do not fall within the scope of part 810 because the methodology is publicly available. Further, ERIN stated that while the information included in the PRA is specific to the power plant, no knowledge to design or operate the reactor more efficiently is transferred in the process of developing a PRA or the final report. DOE has considered this comment and agrees with ERIN's comment. DOE concludes in today's final rule that PRAs are generally authorized activities within the definition of ''operational safety'' for destinations typically requiring specific authorization. No change to the rule is required to address this comment.

NEI commented that in proposed § 810.6(c)(1) of the SNOPR the words ''which emergency cannot be met by other means'' should be deleted. NEI stated that it is not in the interest of the United States that persons subject to part 810 should, in the face of a current or imminent radiological emergency, spend time trying to demonstrate that no other means, foreign or domestic, could defuse that emergency, or that the proposed assistance is uniquely capable of successfully doing so. DOE declines to incorporate that suggestion because the phrase in question provides DOE with the latitude to make the determination that an activity can take place without the paperwork in place. This is the qualitative analysis that DOE, not the U.S. company, must conduct when considering such requests. However, to clarify the intent, the phrase ''in DOE's assessment'' has been added. The phrase now reads ''which emergency in DOE's assessment cannot be met by other means.''

5. Other

NEI reiterated its view that exercise of the Secretary of Energy's statutory authority under § 57 b.(2) of the AEA to authorize persons to engage or participate in the development or production of special nuclear material outside the United States can and should be delegated; however, as the AEA in section 161 n. does not allow for delegation below the Secretary, the requested change has not been made in the rule. NEI also commented that some language proposed in the SNOPR does not conform to the NSG Guidelines in some areas. The U.S. Government is a member of and fully supports the NSG; however, the legal underpinning of the part 810 regulation is U.S. law, namely, the AEA. The NSG Guidelines are adopted by the NSG by unanimous approval; thus, in some important instances the part 810 regulation will not conform to the NSG Guidelines but instead reflects U.S. law.

DOE will address with Enrichment Technology U.S. and Integrated Systems Technology the questions posed in their comments concerning the application of the final rule to their specific cases or authorization conditions. NIC recommended a users group be created for part 810 authorization recipients. After consideration of this request, DOE has decided that the need for a users group will be considered upon completion of the PIP.

TerraPower commented that clarification is needed concerning technologies and assistance associated with fuel research and development programs that could be viewed as analogous to reprocessing technologies and because, without a definition of ''reprocessing'' in the rule, there is room for misinterpretation. DOE has considered this comment and will address these specific concerns on a case-by-case basis because the technology has a number of aspects that may or may not constitute reprocessing depending on the specifics of the case. A definition could be too restrictive in some applications, and insufficient in others.

DOE will not address B&W comments concerning the extraterritorial application of the rule as this is outside the scope of this rulemaking. Other matters that were presented but are outside the scope of this rulemaking include: EPRI's comment that any revision of part 810 is unnecessary as the United States already has the most stringent and unilateral export controls in the world; and NIC's recommendations to modernize the AEA 123 Agreement process and conduct a 360-degree peer review of other nuclear technology export control regimes.

NEI submitted a number of editorial and clarifying revisions in a red lined document, including a proposal that proposed § 810.5(b) should include a timeframe for a response (NEI proposed 30 days). The proposed rule and this final rule already provide 30 days for responses to requests for advice. Specific authorizations frequently require interactions with foreign governments over whose response time DOE has no control, thus attempting to incorporate a timeline in the final rule would not achieve NEI's intended purpose of driving speedier DOE approvals. Putting a hard deadline in the rule would require DOE to reject the application if foreign government nonproliferation assurances could not be obtained within the mandated time, and would require the company to

resubmit and restart the process. DOE will address timelines in the PIP and not in the final rule published today.

D. Technical Corrections

1. § 810.1

NEI recommended adding a clause to proposed § 810.1 ''(d) Establish orderly and expeditious procedures for the consideration of requests for specific authorization under this part.''

This phrase is, in part, a direct quote of § 57 b. of the Atomic Energy Act directing the adoption of procedures for processing part 810 specific authorization requests. Such procedures were issued in 1978 and amended in 1984. It does not add to the rule, nor does it create enforceable language that will either help applicants obtain their specific authorizations more rapidly or provide further direction to DOE. Therefore, DOE does not incorporate this recommendation into the final rule.

2. § 810.3 Technical Services

AUECO commented that there was no definition of ''technical services'' proposed in the SNOPR and requested clarification concerning whether the quoted phrase is different from the defined term ''technical assistance.'' The term ''technical services'' occurs only once in the 1986 version of the rule and in the SNOPR, in the definition of ''sensitive nuclear technology.'' To avoid the potential for confusion, DOE in today's final rule has replaced ''technical services'' with ''assistance'' because they have the same intended meaning. A new definition of ''assistance'' has been added to § 810.3.

3. § 810.3 Technical Assistance vs. Assistance

NEI commented that ''assistance'' should be globally replaced with ''technical assistance'' or ''assistance'' should be defined.

The phrase ''technical assistance'' occurred only twice in the SNOPR beyond the definitions in proposed § 810.3. All usages of ''technical assistance'' in today's final rule have been replaced with ''assistance'' and the definition modified accordingly. As noted, a new definition of ''assistance'' has been added to § 810.3.

In addition NEI commented that the phrase ''as determined by the Secretary'' in the definition of ''assistance'' should be deleted because ''it is vague and open-ended and reduces certainty about what types of assistance are covered by Part 810. Any expansion of the reach of the regulation should be accomplished only by an amendment, subject to Section 553 of the APA. At a minimum, the rule should be clear that any controls asserted on the basis of Secretarial determination over specific types of technical assistance that are not listed in the rule should apply only prospectively.''

The definition of ''assistance'' includes a list of activities that can be construed as assistance, and cannot, by its nature, be a comprehensive description of all the ways persons may endeavor to assist persons in other countries with nuclear technology. The inclusion of the phrase ''as determined by the Secretary'' is intended to prevent circumvention of this rule by the mere renaming of activities to avoid the descriptions included in this list. Therefore, based on consideration of the comment, DOE determined to retain the phrase in the final rule.

4. § 810.6(f)

NEI commented that DOE should delete the ''and'' at the end of § 810.6(f) proposed in the SNOPR to clarify that any one of the activities in subsections (a) through (g) of this section is independently generally authorized, rather than requiring that all of them be involved in order for the activity to be generally authorized.

DOE agrees with NEI and in this final rule replaces ''and'' with ''or'' to make the disjunctive nature of the list clear.

5. §§ 810.6(c)(2) and 810.11(b)

NEI requested that DOE clarify ''that 810.6(c)(2) has correctly numbered references. It calls for information in 810.11(b), which refers the applicant to optional information from 810.9(b) and (c).''

The SNOPR proposed § 810.11(b), which provided applicants the option of providing information concerning the factors listed in §§ 810.9(b) and (c) of the SNOPR. DOE has determined that the factors are more properly considered by DOE in making non-inimicality determinations. Therefore, in the final rule § 810.11(b) as proposed in the SNOPR has been eliminated and § 810.11(c) as proposed in the SNOPR has been renumbered as § 810.11(b).

In the final rule, the phrase ''and may provide information cited in § 810.11(b)'' is eliminated from § 810.6(c)(2). The elimination of § 810.11(b) and subsequent renumbering also requires changes to § 810.11(a) that referenced § 810.11(b). This clause now references §§ 810.9(b)(7), (8), and (9).

6. § 810.16 Savings Clause

NEI and B&W both commented that the time frames in proposed § 810.15 were inadequate. B&W recommended a complete grandfathering of all current activities in countries moving from general authorization to specific authorization classification. NEI pointed out that such activities were unlikely to be found problematic by DOE. NEI recommended a limited time frame and suggested that a lack of objection from DOE would constitute acceptance.

DOE acknowledges that 90 days is too short a time for many entities to request specific authorization for activities that were generally authorized prior to issuance of the final rule, and in today's final rule DOE has therefore extended the transition period to 180 days. However, a finding of non-inimicality cannot be met by DOE not meeting a deadline of any kind. Acknowledging that technology transfers have already occurred, the savings clause in the final rule provides that until DOE acts on an applicant's request, the applicant can continue its part 810-controlled current activities.

V. Regulatory Review

A. Executive Order 12866

Today's final rule has been determined to be an economically significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget. The required economic impact analysis was prepared by DOE. AREVA, AUECO, George Mason University, and NEI commented that the economic analysis performed as a part of the rulemaking was based on flawed data sets or data from soft growth periods, which the commenters contended are not realistic in normal circumstances.

NEI's analysis is the most comprehensive of those provided and is used in this discussion of the economic impacts of this final rule. Rather than debate the assumptions between DOE's analysis and NEI's analysis, DOE accepts NEI's basic claim that different assumptions will result in different outcomes. NEI's critique claims that revisions to part 810 as proposed in the SNOPR would have an annual impact of $10 million to the detriment of the U.S. nuclear industry.

In its analysis, NEI listed 14 key countries that will be moving from generally authorized to specifically authorized classification and based its conclusion concerning the economic impact of DOE's proposed regulatory revisions on these 14 countries. NEI did not provide any information about the specific opportunities provided in each

country, so DOE has assumed it is roughly equal to $700,000 per country per year. As Croatia was included in NEI's list, and since that country has been included on the Appendix list of generally authorized destinations, any impact should be reduced by $700,000 per year, bringing the impact down to $9.3 million per year.

NEI's critique also included a projected $5 million per year impact for losses associated with deemed exports. The argument is related to an economic loss attributed to those companies that would be required to hire workers from countries that do not require specific authorizations. While the DOE does acknowledge that there is additional effort involved in hiring workers from these destinations into positions where part 810-controlled technology would be shared, the final rule does not preclude such hiring and, in fact, NNSA is working on a PIP to reduce this burden. Under the 1986 version of the rule a large number of the specific authorizations were, in fact, to allow such workers to work in those positions. However, for the sake of discussion, DOE accepts that there is an impact of $2.5 million per year.

To be further conservative, DOE has omitted any potential additional positive impact of countries moving from specific authorizations to general authorization classification. Such changes serve to reduce the impact of this rule further. For example, Vietnam (although not one of NEI's identified 14 critical countries) has just entered into a 123 Agreement with the United States, and is included in the Appendix to the final rule as a generally authorized destination.

These corrections bring the net effect of the NEI based analysis to $6.8 million per year, or roughly $100 million over the analysis period (present to 2030). The Table below summarizes NEI's original assumption and DOE's corrections:

	Changes	Annual impact (million/yr)	Impacts through 2030 (millions)
NEI	Base	$10	160
DOE Changes for Croatia's status as GA	$0.7	9.3	148.8
DOE Changes for Deemed export impact	$2.5	6.8	108.7

DOE's economic analysis compared the potential impacts on the U.S. nuclear exports of shifting countries from one type of authorization to another for three different nuclear capacity forecasts. Using the World Nuclear Association (WNA low projection), Nuclear Assurance Corporation, and UxC nuclear capacity forecasts; DOE estimated the potential for lost business in nuclear exports to range from $20 to $86 million per year over the 18-year window as potential export volume destined for countries moving from generally authorized to specifically authorized status. Using the same three nuclear capacity forecasts, DOE also estimated the potential impacts on U.S. nuclear exports associated with transferring technology to specifically authorized countries reclassified as generally authorized countries to be between $86 to $154 million per year.

DOE monetized the potential impact of the rule from moving countries from the GA to SA category and from the SA to the GA category. For countries moving from the GA to SA category, the monetary impact is expected to be negative, since specific authorization involves additional cost to applicants and time for DOE to process, and some small fraction of SA applications may ultimately not be approved. The impact of moving a country from the SA to GA category will, for the same reasons, is expected to be positive. DOE calculated the net effect on U.S. nuclear exports using the average annual yearly trade derived from the WNA low projection from 2013 through 2030 and from four scenarios that assume 10% to 40% of annual yearly trade will be impacted either positively or negatively by the rule change. Using the 20% impact as the assumption for the primary impact estimate, DOE estimated the costs to be $23 million/year and the benefits to be $43 million/year with a net benefit of $20 million/year at a 7% discount rate. The net benefit of the rule ranged from a low of $9 million/year to $53 million/year at a 7% discount rate as shown in the table below. The estimates using a 3% discount rate are also presented in the table below.

	Primary	Low estimate	High estimate	Year dollars	Discount rate (%)	Period covered
Annualized Monetized Costs ($Millions/Year)	$22,690,617	$10,084,718	$60,508,311	2010	7	2013–2030
	23,674,479	10,521,991	63,131,945	2010	3	2013–2030
Annualized Monetized Benefits ($Millions/Year)	42,586,759	18,927,448	113,564,690	2010	7	2013–2030
	42,927,555	19,078,913	114,473,479	2010	3	2013–2030
Annualized Monetized Net Benefits ($Millions/Year)	19,896,142	8,842,730	53,056,379	2010	7	2013–2030
	19,253,076	8,556,922	51,341,534	2010	3	2013–2030

Both NEI and DOE's analyses concur that MW's of nuclear generation serve as a rough approximation of potential market opportunity. In looking at comprehensive forecasts from today to 2030, DOE notes that at the maximum, the countries moving from generally authorized to specific authorization status represent significantly less than 1% of the total market.

B. Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(3)(B), the DOE finds that providing an opportunity for public comment on office name changes in DOE's internal organization structure prior to publication of this rule is not necessary and contrary to the public interest because they are minor technical changes. Prior notice and

opportunity to comment on these changes are unnecessary because they are not subject to the exercise of discretion by the DOE.

C. National Environmental Policy Act

DOE determined that today's final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of Appendix A to Subpart D, 10 CFR part 1021, categorical exclusion A5, which applies to a rule or regulation that interprets or amends an ''existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.'' Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.energy.gov/gc/downloads/executive-order-13272-consideration-small-entities-agency-rulemaking.*

In the SNOPR, DOE certified that this rule would not have a significant economic impact on a substantial number of small entities and did not prepare a regulatory flexibility analysis for this rulemaking. The DOE received no comments on the certification, and has responded to comments related to the economic impacts of the rule elsewhere in this preamble; no changes to the certification were made based on comments received. As a result, the DOE certifies that today's final rule will not have a significant impact on a substantial number of small entities. The DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

E. Paperwork Reduction Act

U.S. companies that wish to export nuclear technology or assistance within the scope of this final rule must provide DOE with information concerning the technology to be transferred as well as the destination and use or application of the assistance or technology. Depending on the destination and the technology in question, a U.S. company will be required to submit a report of the activity 30 days after the fact or a request for a specific authorization from the Secretary. DOE submitted a request for the reinstatement of the collection of information associated with recordkeeping and reporting requirements of part 810 to OMB for approval pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.* The collection of information requirements for compliance with part 810 and recordkeeping is subject to review and approval by OMB under OMB Control Number 1901–0263. OMB approved the reinstatement of the information collection on October 31, 2014. DOE published notices in the **Federal Register** on March 7, 2014, FRN# 2014–04984, p. 13048, and FRN# 2014–12800, p. 31928 soliciting comments on the DOE estimate of the information collection burden. No public comments were received on the 60-day or 30-day notices. In association with this rulemaking revision for part 810, DOE is submitting for OMB approval the revisions to this information collection.

Under the 1986 version of the rule, a list of countries at § 810.8(a) contained 73 counties that required case-by-case review for the Secretary to make a non-inimicality finding specifically authorizing the transfer of any technology or assistance except where generally authorized in § 810.7. By default, all countries not listed were generally authorized destinations for the transfer of nuclear power plant technology and assistance to those countries without prior approval from DOE. In this final rule, DOE restructured the list to a positive list of destinations, including 51 destinations to which the transfer of nuclear power plant technology will be generally authorized. This revision has effected a net change of an additional 74 countries that were by default generally authorized for the transfer of nuclear power plant technology but will now require a specific authorization. While this is an increase in the number of destinations not eligible for a general authorization by default, in DOE's estimation, the positive generally authorized destination list is not expected to result in a substantial increase in the volume of reporting or requests for specific authorization, as the subject countries have no civilian nuclear programs or plans for civilian nuclear programs in the near future.

The reporting and application burden is estimated at three hours per response, and an average of three responses per distinct entity, regardless of it being a report of generally authorized activities or a request for specific authorization. This number includes the time for reviewing the regulation, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. DOE estimated for the 1986 version of the rule that the total number of unduplicated respondents to be 145 with the average of 2.22 responses per respondent, resulting in 322 responses and 966 total annual burden hours with the average burden per response at 3 hours and the average annual burden per respondent at 6.66 hours. Under the final rule, DOE is estimating that the number of respondents will remain the same but that the number of reports filed per respondent to increase from 2.22 to 3.19, resulting in 463 total annual responses and 1389 total annual burden hours. The average burden per response is estimated to remain at 3 hours per respondent and the average annual burden per respondent at 9.57 hours.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent

such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments (2 U.S.C. 1534).

This rule does not impose a Federal mandate on State, local, or tribal governments or on the private sector. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

G. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it does not pre-empt State law and will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

I. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the rule meets the relevant standards of Executive Order 12988.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action will not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Executive Order 13609

Executive Order 13609 of May 1, 2012, ''Promoting International Regulatory Cooperation,'' requires that, to the extent permitted by law and consistent with the principles and requirements of Executive Order 13563 and Executive Order 12866, each Federal agency shall:

(a) If required to submit a Regulatory Plan pursuant to Executive Order 12866, include in that plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563 and this order;

(b) Ensure that significant regulations that the agency identifies as having significant international impacts are designated as such in the Unified Agenda of Federal Regulatory and Deregulatory Actions, on RegInfo.gov, and on Regulations.gov;

(c) In selecting which regulations to include in its retrospective review plan, as required by Executive Order 13563, consider:

(i) Reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners, consistent with section 1 of this order, when stakeholders provide adequate information to the agency establishing that the differences are unnecessary; and

(ii) Such reforms in other circumstances as the agency deems appropriate; and

(d) For significant regulations that the agency identifies as having significant international impacts, consider, to the

extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.

DOE has reviewed this rule under the provisions of Executive Order 13609 and determined that the rule complies with all requirements set forth in the order.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

VI. Approval by the Office of the Secretary

The Office of the Secretary of Energy has approved the publication of this final rule.

List of Subjects in 10 CFR Part 810

Foreign relations, Nuclear energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, on February 7, 2015.

Ernest J. Moniz,

Secretary of Energy.

For the reasons stated in the preamble, DOE amends title 10 of the Code of Federal Regulations by revising part 810 to read as follows:

PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

Sec.
810.1 Purpose.
810.2 Scope.
810.3 Definitions.
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810.6 Generally authorized activities.
810.7 Activities requiring specific authorization.
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Appendix A to Part 810—Generally Authorized Destinations

Authority: Secs. 57, 127, 128, 129, 161, 222, and 232 Atomic Energy Act of 1954, as amended by the Nuclear Nonproliferation Act of 1978, Pub. L. 95–242, 68 Stat. 932, 948, 950, 958, 92 Stat. 126, 136, 137, 138 (42 U.S.C. 2077, 2156, 2157, 2158, 2201, 2272, 2280), and the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3768; Sec. 104 of the Energy Reorganization Act of 1974, Pub. L. 93–438; Sec. 301, Department of Energy Organization Act, Pub. L. 95–91; National Nuclear Security Administration Act, Pub. L. 106–65, 50 U.S.C. 2401 *et seq.,* as amended.

§ 810.1 Purpose.

The regulations in this part implement section 57 b.(2) of the Atomic Energy Act, which empowers the Secretary, with the concurrence of the Department of State, and after consultation with the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense, to authorize persons to directly or indirectly engage or participate in the development or production of special nuclear material outside the United States. The purpose of the regulations in this part is to:

(a) Identify activities that are generally authorized by the Secretary and thus require no other authorization under this part;

(b) Identify activities that require specific authorization by the Secretary and explain how to request authorization; and

(c) Specify reporting requirements for authorized activities.

§ 810.2 Scope.

(a) Part 810 (this part) applies to:

(1) All persons subject to the jurisdiction of the United States who directly or indirectly engage or participate in the development or production of any special nuclear material outside the United States; and

(2) The transfer of technology that involves any of the activities listed in paragraph (b) of this section either in the United States or abroad by such persons or by licensees, contractors or subsidiaries under their direction, supervision, responsibility, or control.

(b) The activities referred to in paragraph (a) of this section are:

(1) Chemical conversion and purification of uranium and thorium from milling plant concentrates and in all subsequent steps in the nuclear fuel cycle;

(2) Chemical conversion and purification of plutonium and neptunium;

(3) Nuclear fuel fabrication, including preparation of fuel elements, fuel assemblies and cladding thereof;

(4) Uranium isotope separation (uranium enrichment), plutonium isotope separation, and isotope separation of any other elements (including stable isotope separation) when the technology or process can be applied directly or indirectly to uranium or plutonium;

(5) Nuclear reactor development, production or use of the components within or attached directly to the reactor vessel, the equipment that controls the level of power in the core, and the equipment or components that normally contain or come in direct contact with or control the primary coolant of the reactor core;

(6) Development, production or use of production accelerator-driven subcritical assembly systems;

(7) Heavy water production and hydrogen isotope separation when the technology or process has reasonable potential for large-scale separation of deuterium (^2H) from protium (^1H);

(8) Reprocessing of irradiated nuclear fuel or targets containing special nuclear material, and post-irradiation examination of fuel elements, fuel assemblies and cladding thereof, if it is part of a reprocessing program; and

(9) The transfer of technology for the development, production, or use of equipment or material especially designed or prepared for any of the above listed activities. (*See* Nuclear Regulatory Commission regulations at 10 CFR part 110, Appendices A through K, and O, for an illustrative list of items considered to be especially designed or prepared for certain listed nuclear activities.)

(c) This part does not apply to:

(1) Exports authorized by the Nuclear Regulatory Commission, Department of State, or Department of Commerce;

(2) Transfer of publicly available information, publicly available technology, or the results of fundamental research;

(3) Uranium and thorium mining and milling (*e.g.,* production of impure source material concentrates such as uranium yellowcake and all activities prior to that production step);

(4) Nuclear fusion reactors per se, except for supporting systems involving hydrogen isotope separation technologies within the scope defined in paragraph (b)(7) of this section and § 810.7(c)(3);

(5) Production or extraction of radiopharmaceutical isotopes when the process does not involve special nuclear material; and

(6) Transfer of technology to any individual who is lawfully admitted for permanent residence in the United States or is a protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

(d) Persons under U.S. jurisdiction are responsible for their foreign licensees,

contractors, or subsidiaries to the extent that the former have control over the activities of the latter.

§ 810.3 Definitions.

As used in this part 810:

Agreement for cooperation means an agreement with another nation or group of nations concluded under sections 123 or 124 of the Atomic Energy Act.

Assistance means assistance in such forms as instruction, skills, training, working knowledge, consulting services, or any other assistance as determined by the Secretary. Assistance may involve the transfer of technical data.

Atomic Energy Act means the Atomic Energy Act of 1954, as amended.

Classified information means national security information classified under Executive Order 13526 or any predecessor or superseding order, and Restricted Data classified under the Atomic Energy Act.

Cooperative enrichment enterprise means a multi-country or multi-company (where at least two of the companies are incorporated in different countries) joint development or production effort. The term includes a consortium of countries or companies or a multinational corporation.

Country, as well as government, nation, state, and similar entity, shall be read to include Taiwan, consistent with section 4 of the Taiwan Relations Act (22 U.S.C. 3303).

Development means any activity related to all phases before production such as: Design, design research, design analysis, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts.

DOE means the U.S. Department of Energy.

Enrichment means isotope separation of uranium or isotope separation of plutonium, regardless of the type of process or separation mechanism used.

Fissile material means isotopes that readily fission after absorbing a neutron of any energy, either fast or slow. Fissile materials are uranium-235, uranium-233, plutonium-239, and plutonium-241.

Foreign national means an individual who is not a citizen or national of the United States, but excludes U.S. lawful permanent residents and protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

Fundamental research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

General authorization means an authorization granted by the Secretary under section 57 b.(2) of the Atomic Energy Act to provide assistance or technology to foreign atomic energy activities subject to this part and which does not require a request for, or the Secretary's issuance of, a specific authorization.

IAEA means the International Atomic Energy Agency.

NNPA means the Nuclear Non-Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*

NPT means the Treaty on the Non-Proliferation of Nuclear Weapons, done on July 1, 1968.

Nuclear reactor means an apparatus, other than a nuclear explosive device, designed or used to sustain nuclear fission in a self-sustaining chain reaction.

Operational safety means the capability of a reactor to be operated in a manner that complies with national standards or requirements or widely-accepted international standards and recommendations to prevent uncontrolled or inadvertent criticality, prevent or mitigate uncontrolled release of radioactivity to the environment, monitor and limit staff exposure to radiation and radioactivity, and protect off-site population from exposure to radiation or radioactivity. Operational safety may be enhanced by providing expert advice, equipment, instrumentation, technology, software, services, analyses, procedures, training, or other assistance that improves the capability of the reactor to be operated in compliance with such standards, requirements or recommendations.

Person means:

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution;

(2) Any group, government agency other than DOE, or any State or political entity within a State; and

(3) Any legal successor, representative, agent, or agency of the foregoing.

Production means all production phases such as: Construction, production engineering, manufacture, integration, assembly or mounting, inspection, testing, and quality assurance.

Production accelerator means a particle accelerator especially designed, used, or intended for use with a production subcritical assembly.

Production accelerator-driven subcritical assembly system means a system comprised of a production subcritical assembly and a production accelerator and which is especially designed, used, or intended for the production of plutonium or uranium-233. In such a system, the production accelerator target provides a source of neutrons used to effect special nuclear material production in the production subcritical assembly.

Production reactor means a nuclear reactor especially designed or used primarily for the production of plutonium or uranium-233.

Production subcritical assembly means an apparatus that contains source material or special nuclear material to produce a nuclear fission chain reaction that is not self-sustaining and that is especially designed, used, or intended for the production of plutonium or uranium-233.

Publicly available information means information in any form that is generally accessible, without restriction, to the public.

Publicly available technology means technology that is already published or has been prepared for publication; arises during, or results from, fundamental research; or is included in an application filed with the U.S. Patent Office and eligible for foreign filing under 35 U.S.C. 184.

Restricted Data means all data concerning:

(1) Design, manufacture, or utilization of atomic weapons;

(2) The production of special nuclear material; or

(3) The use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act.

Secretary means the Secretary of Energy.

Sensitive nuclear technology means any information (including information incorporated in a production or utilization facility or important component part thereof) which is not available to the public (see definition of ''publicly available information'') and which is important to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to chapter 12 of the Atomic Energy Act. The information may take a tangible form such as a model, prototype, blueprint, or

operation manual or an intangible form such as assistance.

Source material means:

(1) Uranium or thorium, other than special nuclear material; or

(2) Ores that contain by weight 0.05 percent or more of uranium or thorium, or any combination of these materials.

Special nuclear material means:

(1) Plutonium,

(2) Uranium-233, or

(3) Uranium enriched above 0.711 percent by weight in the isotope uranium-235.

Specific authorization means an authorization granted by the Secretary under section 57b.(2) of the Atomic Energy Act, in response to an application filed under this part, to engage in specifically authorized nuclear activities subject to this part.

Technical data means data in such forms as blueprints, plans, diagrams, models, formulae, engineering designs, specifications, manuals, and instructions written or recorded on other media or devices such as disks, tapes, read-only memories, and computational methodologies, algorithms, and computer codes that can directly or indirectly affect the production of special nuclear material.

Technology means assistance or technical data required for the development, production or use of any plant, facility, or especially designed or prepared equipment for the activities described in § 810.2(b).

Use means operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing.

United States, when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States.

§ 810.4 Communications.

(a) All communications concerning the regulations in this part should be addressed to: U.S. Department of Energy, Washington, DC 20585. Attention: Senior Policy Advisor, National Nuclear Security Administration/Office of Nonproliferation and Arms Control (NPAC), Telephone (202) 586–1007.

(b) Communications also may be delivered to DOE's headquarters at 1000 Independence Avenue SW., Washington, DC 20585. All clearly marked proprietary information will be given the maximum protection allowed by law.

(c) Communications may also be delivered by email to: *Part810@nnsa.doe.gov*. For ''fast track'' activities described in §§ 810.6(c)(1) and (c)(2) emails should be sent to: *Part810-OperationalSafety@nnsa.doe.gov*. Notifications regarding activity in the Ukraine should be delivered by email to: *Part810-Ukraine@nnsa.doe.gov*.

§ 810.5 Interpretations.

(a) The advice of the DOE Office of Nonproliferation and Arms Control may be requested on whether a proposed activity falls outside the scope of this part, is generally authorized under § 810.6, or requires a specific authorization under § 810.7. However, unless authorized by the Secretary in writing, no interpretation of the regulations in this part other than a written interpretation by the DOE General Counsel is binding upon DOE.

(b) When advice is requested from the DOE Office of Nonproliferation and Arms Control, or a binding, written determination is requested from the DOE General Counsel, a response normally will be made within 30 calendar days and, if this is not feasible, an interim response will explain the reason for the delay.

(c) The DOE Office of Nonproliferation and Arms Control may periodically publish abstracts of general or specific authorizations that may be of general interest, exclusive of proprietary business-confidential data submitted to DOE or other information protected by law from unauthorized disclosure.

§ 810.6 Generally authorized activities.

The Secretary has determined that the following activities are generally authorized, provided that no sensitive nuclear technology or assistance described in § 810.7 is involved:

(a) Engaging directly or indirectly in the production of special nuclear material at facilities in countries or with entities listed in the Appendix to this part;

(b) Transfer of technology to a citizen or national of a country other than the United States not listed in the Appendix to this part and working at an NRC-licensed facility, provided:

(1) The foreign national is lawfully employed by or contracted to work for a U.S. employer in the United States;

(2) The foreign national executes a confidentiality agreement with the U.S. employer to safeguard the technology from unauthorized use or disclosure;

(3) The foreign national has been granted unescorted access in accordance with NRC regulations at an NRC-licensed facility; and

(4) The foreign national's U.S. employer authorizing access to the technology complies with the reporting requirements in § 810.12(g).

(c) Activities at any safeguarded or NRC-licensed facility to:

(1) Prevent or correct a current or imminent radiological emergency posing a significant danger to the health and safety of the off-site population, which emergency in DOE's assessment cannot be met by other means, provided DOE is notified in writing in advance and does not object within 48 hours of receipt of the advance notification;

(2) Furnish operational safety information or assistance to existing safeguarded civilian nuclear reactors outside the United States in countries with safeguards agreements with the IAEA or an equivalent voluntary offer, provided DOE is notified in writing and approves the activity in writing within 45 calendar days of the notice. The applicant should provide all the information required under § 810.11 and specific references to the national or international safety standards or requirements for operational safety for nuclear reactors that will be addressed by the assistance; or

(3) Furnish operational safety information or assistance to existing, proposed, or new-build civilian nuclear facilities in the United States, provided DOE is notified by certified mail return receipt requested and approves the activity in writing within 45 calendar days of the notice. The applicant should provide all the information required under § 810.11.

(d) Participation in exchange programs approved by the Department of State in consultation with DOE;

(e) Activities carried out in the course of implementation of the ''Agreement between the United States of America and the IAEA for the Application of Safeguards in the United States,'' done on December 9, 1980;

(f) Activities carried out by persons who are full-time employees of the IAEA or whose employment by or work for the IAEA is sponsored or approved by the Department of State or DOE; or

(g) Extraction of Molybdenum-99 for medical use from irradiated targets of enriched uranium, provided that the activity does not also involve purification and recovery of enriched uranium materials, and provided further, that the technology used does not involve significant components relevant for reprocessing spent nuclear reactor fuel (*e.g.,* high-speed centrifugal contactors, pulsed columns).

§ 810.7 Activities requiring specific authorization.

Any person requires a specific authorization by the Secretary before:

(a) Engaging in any of the activities listed in § 810.2(b) with any foreign country or entity not specified in the Appendix to this part;

(b) Providing or transferring sensitive nuclear technology to any foreign country or entity; or

(c) Engaging in or providing technology (including assistance) for any of the following activities with respect to any foreign country or entity (or a citizen or national of that country other than U.S. lawful permanent residents or protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)):

(1) Uranium isotope separation (uranium enrichment), plutonium isotope separation, or isotope separation of any other elements (including stable isotope separation) when the technology or process can be applied directly or indirectly to uranium or plutonium;

(2) Fabrication of nuclear fuel containing plutonium, including preparation of fuel elements, fuel assemblies, and cladding thereof;

(3) Heavy water production, and hydrogen isotope separation, when the technology or process has reasonable potential for large-scale separation of deuterium (^{2}H) from protium (^{1}H);

(4) Development, production or use of a production accelerator-driven subcritical assembly system;

(5) Development, production or use of a production reactor; or

(6) Reprocessing of irradiated nuclear fuel or targets containing special nuclear material.

§ 810.8 Restrictions on general and specific authorization.

A general or specific authorization granted by the Secretary under this part:

(a) Is limited to activities involving only unclassified information and does not permit furnishing classified information;

(b) Does not relieve a person from complying with the relevant laws or the regulations of other U.S. Government agencies applicable to exports; and

(c) Does not authorize a person to engage in any activity when the person knows or has reason to know that the activity is intended to provide assistance in designing, developing, fabricating, or testing a nuclear explosive device.

§ 810.9 Grant of specific authorization.

(a) An application for authorization to engage in activities for which specific authorization is required under § 810.7 should be made to the U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, Attention: Senior Policy Advisor, Office of Nonproliferation and Arms Control (NPAC).

(b) The Secretary will approve an application for specific authorization if it is determined, with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, Department of Commerce, and Department of Defense, that the activity will not be inimical to the interest of the United States. In making such a determination, the Secretary will take into account the following factors:

(1) Whether the United States has an agreement for cooperation in force covering exports to the country or entity involved;

(2) Whether the country is a party to, or has otherwise adhered to, the NPT;

(3) Whether the country is in good standing with its acknowledged nonproliferation commitments;

(4) Whether the country is in full compliance with its obligations under the NPT;

(5) Whether the country has accepted IAEA safeguards obligations on all nuclear materials used for peaceful purposes and has them in force;

(6) Whether other nonproliferation controls or conditions exist on the proposed activity, including that the recipient is duly authorized by the country to receive and use the technology sought to be transferred;

(7) Significance of the assistance or transferred technology relative to the existing nuclear capabilities of the country;

(8) Whether the transferred technology is part of an existing cooperative enrichment enterprise or the supply chain of such an enterprise;

(9) The availability of comparable assistance or technology from other sources; and

(10) Any other factors that may bear upon the political, economic, competitiveness, or security interests of the United States, including the obligations of the United States under treaties or other international agreements, and the obligations of the country under treaties or other international agreements.

(c) If the proposed activity involves the export of sensitive nuclear technology, the requirements of sections 127 and 128 of the Atomic Energy Act and of any applicable United States international commitments must also be met. For the export of sensitive nuclear technology, in addition to the factors in paragraph (b) of this section, the Secretary will take into account:

(1) Whether the country has signed, ratified, and is implementing a comprehensive safeguards agreement with the IAEA and has in force an Additional Protocol based on the Model Additional Protocol, or, pending this, in the case of a regional accounting and control arrangement for nuclear materials, is implementing, in cooperation with the IAEA, a safeguards agreement approved by the IAEA Board of Governors prior to the publication of INFCIRC/540 (September 1997); or alternatively whether comprehensive safeguards, including the measures of the Model Additional Protocol, are being applied in the country;

(2) Whether the country has not been identified in a report by the IAEA Secretariat that is under consideration by the IAEA Board of Governors, as being in breach of obligations to comply with the applicable safeguards agreement, nor continues to be the subject of Board of Governors decisions calling upon it to take additional steps to comply with its safeguards obligations or to build confidence in the peaceful nature of its nuclear program, nor as to which the IAEA Secretariat has reported that it is unable to implement the applicable safeguards agreement. This criterion would not apply in cases where the IAEA Board of Governors or the United Nations Security Council subsequently decides that adequate assurances exist as to the peaceful purposes of the country's nuclear program and its compliance with the applicable safeguards agreements. For the purposes of this paragraph, ''breach'' refers only to serious breaches of proliferation concern;

(3) Whether the country is adhering to the Nuclear Suppliers Group Guidelines and, where applicable, has reported to the Security Council of the United Nations that it is implementing effective export controls as identified by Security Council Resolution 1540; and

(4) Whether the country adheres to international safety conventions relating to nuclear or other radioactive materials or facilities.

(d) Unless otherwise prohibited by U.S. law, the Secretary may grant an application for specific authorization for activities related to the enrichment of source material and special nuclear material, provided that:

(1) The U.S. Government has received written nonproliferation assurances from the government of the country;

(2) That it/they accept(s) the sensitive enrichment equipment and enabling technologies or an operable enrichment facility under conditions that do not permit or enable unauthorized replication of the facilities;

(3) That the subject enrichment activity will not result in the production of uranium enriched to greater than 20% in the isotope uranium-235; and

(4) That there are in place appropriate security arrangements to protect the

activity from use or transfer inconsistent with the country's national laws.

(e) Approximately 30 calendar days after the Secretary's grant of a specific authorization, a copy of the Secretary's determination may be provided to any person requesting it at DOE's Public Reading Room, unless the applicant submits information demonstrating that public disclosure will cause substantial harm to its competitive position. This provision does not affect any other authority provided by law for the non-disclosure of information.

§ 810.10 Revocation, suspension, or modification of authorization.

The Secretary may revoke, suspend, or modify a general or specific authorization:

(a) For any material false statement in an application for specific authorization or in any additional information submitted in its support;

(b) For failing to provide a report or for any material false statement in a report submitted pursuant to § 810.12;

(c) If any authorization governed by this part is subsequently determined by the Secretary to be inimical to the interest of the United States or otherwise no longer meets the legal criteria for approval; or

(d) Pursuant to section 129 of the Atomic Energy Act.

§ 810.11 Information required in an application for specific authorization.

(a) An application letter must include the following information:

(1) The name, address, and citizenship of the applicant, and complete disclosure of all real parties in interest; if the applicant is a corporation or other legal entity, where it is incorporated or organized; the location of its principal office; and the degree of any control or ownership by any foreign individual, corporation, partnership, firm, association, trust, estate, public or private institution or government agency;

(2) The country or entity to receive the assistance or technology; the name and location of any facility or project involved; and the name and address of the person for which or whom the activity is to be performed;

(3) A description of the assistance or technology to be provided, including a complete description of the proposed activity, its approximate monetary value, and a detailed description of any specific project to which the activity relates as specified in §§ 810.9(b)(7), (8), and (9); and

(4) The designation of any information that if publicly disclosed would cause substantial harm to the competitive position of the applicant.

(b) Except as provided in § 810.6(b), an applicant seeking to employ a citizen or national of a country not listed in the Appendix in a position that could result in the transfer of technology subject to § 810.2, or seeking to employ any foreign national in the United States or in a foreign country that could result in the export of assistance or transfer of technology subject to § 810.7 must request a specific authorization. The applicant must provide, with respect to each foreign national to whom access to technology will be granted, the following:

(1) A description of the technology that would be made available to the foreign national;

(2) The purpose of the proposed transfer, a description of the applicant's technology control program, and any Nuclear Regulatory Commission standards applicable to the employer's grant of access to the technology;

(3) A copy of any confidentiality agreement to safeguard the technology from unauthorized use or disclosure between the applicant and the foreign national;

(4) Background information about the foreign national, including the individual's citizenship, all countries where the individual has resided for more than six months, the training or educational background of the individual, all work experience, any other known affiliations with persons engaged in activities subject to this part, and any current immigration or visa status in the United States; and

(5) A statement signed by the foreign national that he/she will comply with the regulations under this part; will not disclose the applicant's technology without DOE's prior written authorization; and will not, at any time during or after his/her employment with the applicant, use the applicant's technology for any nuclear explosive device, for research on or development of any nuclear explosive device, or in furtherance of any military purpose.

(c) An applicant for a specific authorization related to the enrichment of fissile material must submit information that demonstrates that the proposed transfer will avoid, so far as practicable, the transfer of enabling design or manufacturing technology associated with such items; and that the applicant will share with the recipient only information required for the regulatory purposes of the recipient country or to ensure the safe installation and operation of a resulting enrichment facility, without divulging enabling technology.

§ 810.12 Reports.

(a) Each person who has received a specific authorization shall, within 30 calendar days after beginning the authorized activity, provide to DOE a written report containing the following information:

(1) The name, address, and citizenship of the person submitting the report;

(2) The name, address, and citizenship of the person for whom or which the activity is being performed;

(3) A description of the activity, the date it began, its location, status, and anticipated date of completion; and

(4) A copy of the DOE letter authorizing the activity.

(b) Each person carrying out a specifically authorized activity shall inform DOE, in writing within 30 calendar days, of completion of the activity or of its termination before completion.

(c) Each person granted a specific authorization shall inform DOE, in writing within 30 calendar days, when it is known that the proposed activity will not be undertaken and the granted authorization will not be used.

(d) DOE may require reports to include such additional information that may be required by applicable U.S. law, regulation, or policy with respect to the specific nuclear activity or country for which specific authorization is required.

(e) Each person, within 30 calendar days after beginning any generally authorized activity under § 810.6, shall provide to DOE:

(1) The name, address, and citizenship of the person submitting the report;

(2) The name, address, and citizenship of the person for whom or which the activity is being performed;

(3) A description of the activity, the date it began, its location, status, and anticipated date of completion; and

(4) A written assurance that the applicant has an agreement with the recipient ensuring that any subsequent transfer of materials, equipment, or technology transferred under general authorization under circumstances in which the conditions in § 810.6 would not be met will take place only if the applicant obtains DOE's prior written approval.

(f) Individuals engaging in generally authorized activities as employees of persons required to report are not themselves required to submit the reports described in paragraph (e) of this section.

(g) Persons engaging in generally authorized activities under § 810.6(b) are required to notify DOE that a citizen

or national of a country not listed in the Appendix to this part has been granted access to information subject to § 810.2 in accordance with Nuclear Regulatory Commission access requirements. The report should contain the information required in § 810.11(b).

(h) All reports should be sent to: U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, Attention: Senior Policy Advisor, Office of Nonproliferation and Arms Control (NPAC).

§ 810.13 Additional information.

DOE may at any time require a person engaging in any generally or specifically authorized activity to submit additional information.

§ 810.14 Special provisions regarding Ukraine.

(a) *Pre-activity notification requirements.* Any person beginning any generally authorized activity involving Ukraine shall provide to DOE at least ten days prior to beginning that activity a report containing the following information:

(1) The name, address, and citizenship of the person submitting the notification;

(2) The name, address, and citizenship of the person for which the activity is to be performed;

(3) A description of the activity, the date it is proposed to begin, its location, status, and anticipated date of completion; and

(4) A written assurance that the person that is to perform the activity has an agreement with the recipient that any subsequent transfer of technology or information transferred under general authorization will not be transferred to a country that is not listed in the Appendix to this part without the prior written approval of DOE.

(b) *Post-activity reporting requirements.* Every person completing a generally authorized activity in Ukraine shall provide to DOE within ten days following the original transfer of technology or information written confirmation that such transfer was completed in accordance with the description of the activity provided as required by paragraph (a) of this section.

§ 810.15 Violations.

(a) The Atomic Energy Act provides that:

(1) In accordance with section 232 of the AEA, permanent or temporary injunctions, restraining or other orders may be granted to prevent a violation of any provision of the Atomic Energy Act or any regulation or order issued thereunder.

(2) In accordance with section 222 of the AEA, whoever willfully violates, attempts to violate, or conspires to violate any provision of section 57 of the Atomic Energy Act may be fined up to $10,000 or imprisoned up to 10 years, or both. If the offense is committed with intent to injure the United States or to aid any foreign nation, the penalty could be up to life imprisonment or a $20,000 fine, or both.

(b) In accordance with Title 18 of the United States Code, section 1001, whoever knowingly and willfully falsifies, conceals, or covers up a material fact or makes or uses false, fictitious or fraudulent statements or representations shall be fined under that title or imprisoned up to five or eight years depending on the crime, or both.

§ 810.16 Effective date and savings clause.

(a) The regulations in this part are effective March 25, 2015.

(b) Except for actions that may be taken by DOE pursuant to § 810.10, the regulations in this part do not affect the validity or terms of any specific authorizations granted under regulations in effect before March 25, 2015 or generally authorized activities under those regulations for which the contracts, purchase orders, or licensing arrangements were already in effect. Persons engaging in activities that were generally authorized under regulations in effect before March 25, 2015, but that require specific authorization under the regulations in this part, must request specific authorization by August 24, 2015 and may continue their activities until DOE acts on the request.

Appendix A to Part 810—Generally Authorized Destinations

Argentina
Australia
Austria
Belgium
Brazil
Bulgaria
Canada
Chile (For all activities related to INFCIRC/834 only)
Colombia
Croatia
Cyprus
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Hungary
Indonesia
International Atomic Energy Agency
Ireland
Italy
Japan
Kazakhstan
Korea, Republic of
Latvia
Lithuania
Luxembourg
Malta
Mexico (For all activities related to INFCIRC/203 Parts 1 and 2 and INFCIRC/825 only)
Morocco
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
South Africa
Spain
Sweden
Switzerland
Taiwan
Turkey
Ukraine (Refer to § 810.14 for specific information and requirements)
United Arab Emirates
United Kingdom
Vietnam

[FR Doc. 2015–03479 Filed 2–20–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0561; Directorate Identifier 2014–NE–12–AD; Amendment 39–18105; AD 2015–04–03]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Rolls-Royce plc (RR) RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines. This AD requires inspection of the oil feed tube sealing sleeve and removal of those oil feed tube sealing sleeves that are affected by this AD. This AD was prompted by fractures of the high-pressure/intermediate-pressure (HP/IP) turbine support internal oil feed tube. We are issuing this AD to prevent failure of the HP/IP turbine support internal oil feed tube, which could result in uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective March 30, 2015.

ADDRESSES: See the **FOR FURTHER INFORMATION CONTACT** section.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0561; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on September 18, 2014 (79 FR 56025). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There have been nine occurrences of high oil consumption, caused by fracture of the High/Intermediate Pressure (HP/IP) turbine support internal oil feed tube Part Number (P/N) FW45909.

The oil feed tube threaded end adaptor and sealing sleeve P/N FW15003 are designed to form a sliding joint which, if restrained, can compress the oil feed tube during thermal contraction of the turbine casing at the end of the flight cycle. On each subsequent flight, the thermal growth and contraction of the turbine casing relative to the oil tube, during the heating and cooling phases of the flight cycle, apply a load cycle to the tube, which may lead to low cycle fatigue fracture.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 56025, September 18, 2014).

Conclusion

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

Costs of Compliance

We estimate that this AD affects 69 engines installed on airplanes of U.S. registry. We also estimate that it will take about 8.5 hours per engine to comply with this AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $49,853.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–04–03 Rolls-Royce plc: Amendment 39–18105; Docket No. FAA–2014–0561; Directorate Identifier 2014–NE–12–AD.

(a) Effective Date

This AD becomes effective March 30, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce plc (RR) RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines, serial numbers 41693 through 42309 inclusive, 42313, 42318, 42319, 42320, 42328, and 42330 with high-pressure/intermediate-pressure (HP/IP) turbine support internal oil feed tube sealing sleeve, part number (P/N) FW15003, installed, that is marked with the prefix ''B/N'' followed by a six digit batch number and does not contain the marking 102013, 112013 or 102013L.

(d) Reason

This AD was prompted by fractures of the HP/IP turbine support internal oil feed tube. We are issuing this AD to prevent failure of the HP/IP turbine support internal oil feed tube, which could result in uncontained engine failure and damage to the airplane.

(e) Actions and Compliance

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

(1) Within 6 months after the effective date of this AD, perform on-wing or in-shop inspection for, and remove from service, any affected HP/IP turbine support internal oil feed tube sealing sleeve.

(2) Remove from service any HP/IP turbine support internal oil feed tube sealing sleeve on which markings cannot be sufficiently identified to determine whether said sealing sleeve is part of the affected population.

(3) From the effective date of this AD, you may install on engines HP/IP turbine support internal oil feed tube sealing sleeves, P/N FW15003, that are marked with the prefix ''B/N'' followed by a six digit batch number, provided that the part is marked with 102013, 112013, or 102013L.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2014–0168, dated July 16, 2014, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0561.*

(h) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on February 11, 2015.

Colleen M. D'Alessandro,

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

[FR Doc. 2015–03533 Filed 2–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–1001; Directorate Identifier 2014–CE–034–AD; Amendment 39–18003; AD 2015–04–01]

RIN 2120–AA64

Airworthiness Directives; Short Brothers & Harland Ltd. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Short Brothers & Harland Ltd. Model SC–7 Series 3 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fatigue cracking, which could lead to structural failure of the nose landing gear (NLG). We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective March 30, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 30, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1001; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Short Brothers & Harland Ltd. service information identified in this proposed AD, contact Airworthiness, Short Brothers PLC, P.O. Box 241, Airport Road, Belfast, BT3 9DZ Northern Ireland, United Kingdom; phone: +44–2890–462469, fax: 44–2890–733647, email: *michael.mulholland@aero.bombardier.com,* internet: None; and for SAFRAN Messier-Buggatti-Dowty service information contact Messier-Dowty Limited, Cheltenham Road, Gloucester GL2 9QH, ENGLAND; phone: +44(0)1452 712424; fax: +44(0)1452 713821; email: *americacsc@safranmbd.com,* Internet: *http://www.safranmbd.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. You can also find this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1001. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1001.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to adding an AD that would apply to Short Brothers & Harland Ltd Model SC–7 Series 3 airplane. The NPRM was published in the **Federal Register** on December 8, 2014 (79 FR 72562). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> A fracture of the nose landing gear (NLG) sliding tube was reported. The subsequent investigation determined fatigue cracking as possible cause of the failure.
>
> This condition, if not detected and corrected, could lead to structural failure of the NLG, possibly resulting in loss of control of the aeroplane during take-off or landing.
>
> To address this unsafe condition, the Messier-Dowty Ltd, the NLG manufacturer, issued Service Bulletin (SB) 32–17M to provide inspection instructions. Consequently Short Brothers PLC issued SB 32–74 which references Messier-Dowty Ltd SB 32–17M.
>
> For the reasons described above, this AD requires one-time visual and fluorescent penetrant inspections and, depending on findings, accomplishment of applicable corrective action(s).

The MCAI requires you report the findings to Short Brothers PLC to obtain FAA-approved repair instructions and accomplish the repair accordingly. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1001-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 72562, December 8, 2014) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 72562, December 8, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 72562, December 8, 2014).

Relative Service Information Under 1 CFR Part 51

We reviewed Short Brothers & Harland Ltd. Shorts Service Bulletin Number 32–74, dated November 1, 2014; and SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014. The Shorts Service Bulletin Number 32–74, dated November 1, 2014, and SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014, describe procedures for a visual inspection and a fluorescent penetrant inspection (FPI) for cracking of the NLG

Sliding Tube. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

Costs of Compliance

We estimate that this AD will affect 24 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $10,200, or $425 per product.

In addition, we estimate that any necessary follow-on actions would take about 16 work-hours and require parts costing $25,000, for a cost of $26,360 per product. We have no way of determining the number of products that may need these actions.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1001; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–04–01 Short Brothers & Harland Ltd: Amendment 39–18103; Docket No. FAA–2014–1001; Directorate Identifier 2014–CE–034–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 30, 2015.

(b) Affected Ads

None.

(c) Applicability

This AD applies to Short Brothers & Harland Ltd. Model SC–7 Series 3 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fatigue cracking which could lead to structural failure of the nose landing gear (NLG). We are issuing this proposed AD to detect and correct fatigue cracking which, if not detected and corrected, could lead to structural failure of the NLG, possibly resulting in loss of control of the airplane during take-off or landing.

(f) Actions and Compliance

Unless already done, comply with this AD within the compliance times specified in paragraphs (f)(1) through (f)(5) of this AD.

(1) Within 30 days after March 30, 2015 (the effective date of this AD), accomplish a visual inspection of the NLG sliding tube following the instructions of paragraph 3.A of SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014.

Note 1 to paragraphs (f)(1), (f)(2), (f)(4), and (f)(5) of this AD: Instructions provided by SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014, are referenced in Shorts Service Bulletin Number 32–74, dated November 1, 2014.

(2) Within 90 days after March 30, 2015 (the effective date of this AD), do a fluorescent penetrant inspection of the sliding tube following the instructions of paragraph 3.B of SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014.

(3) If any crack is detected during the inspection required by paragraph (f)(1) or (f)(2) of this AD, before further flight, obtain FAA-approved repair instructions approved specifically for compliance with this AD by reporting the findings to Short Brothers & Harland Ltd and incorporating those instructions. You can find contact information for Short Brothers & Harland Ltd. in paragraph (h) of this AD.

(4) Within 30 days after any inspection required by paragraphs (f)(1) and (f)(2) of this AD or within 30 days after March 30, 2015 (the effective date of this AD), whichever

occurs later, report the inspection results to Short Brothers & Harland Ltd. by completing the Inspection Results Proforma following the instructions of paragraph 3.C.(2) of SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014. You can find contact information for Short Brothers & Harland Ltd. in paragraph (h) of this AD.

(5) From March 30, 2015 (the effective date of this AD), you may install a sliding tube on an NLG provided that, before next flight after installation, the NLG sliding tube passes the inspections in paragraphs (f)(1) and (f)(2) of this AD following the instructions of paragraph 3 of SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2014–0246, dated November 12, 2014; and Shorts Service Bulletin Number 32–74, dated November 1, 2014, for related information. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1001-0002.* For Short Brothers & Harland Ltd. service information identified in this AD, contact Airworthiness, Short Brothers PLC, P.O. Box 241, Airport Road, Belfast, BT3 9DZ Northern Ireland, United Kingdom; phone: +44–2890–462469, fax: 44–2890–733647, email: *michael.mulholland@aero.bombardier.com,* internet: None.

(i) Material Incorporated by Reference

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

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

(i) SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014.

(ii) Reserved.

(3) For SAFRAN Messier-Buggatti-Dowty service information identified in this AD, contact Messier-Dowty Limited, Cheltenham Road, Gloucester GL2 9QH, ENGLAND; phone: +44(0)1452 712424; fax: +44(0)1452 713821; email: *americacsc@safranmbd.com,* Internet: *http://www.safranmbd.com.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1001.

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

Issued in Kansas City, Missouri, on February 6, 2015.

Robert Busto,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–03165 Filed 2–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Oregon Army National Guard Danger Zone, Camp Rilea, Clatsop County, Oregon

AGENCY: U.S. Army Corps of Engineers, DoD

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is establishing a new danger zone in the waters adjacent to Camp Rilea located in Clatsop County, Oregon. The regulation prohibits any activity by the public within the danger zone during use of weapons training ranges. The new danger zone is necessary to ensure public safety and satisfy the Oregon National Guard operations requirements for small arms training.

DATES: Effective March 25, 2015.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Steve Gagnon, U.S. Army Corps of Engineers, Portland District, Regulatory Branch, at 503–808–4379.

SUPPLEMENTARY INFORMATION: In response to a request from the Oregon Army National Guard, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations at 33 CFR part 334 to establish a new danger zone. The danger zone will prohibit access to waters adjacent to Camp Rilea during use of weapons training ranges, thereby ensuring that no threat is posed to passing water traffic due to ricochet rounds.

The proposed rule was published in the May 2, 2012, issue of the **Federal Register** (77 FR 25952), and its regulations.gov docket number is COE–2011–0036. Three state agencies responded to the notice with comments. Most of the comments were regarding public access and notification methods. Oregon law created a recreation easement in 1967 guaranteeing access to the beaches for everyone. The commenting agencies expressed concerns that these closures would impinge on this recreational access, especially during periods of heavy recreational use such as clam harvesting activities. Oregon Parks and Recreation Department developed an interagency agreement with the Oregon Military Department detailing when closures can and cannot occur and procedures for those closures to ensure public safety. For example, the closures will not be scheduled during low tides most favorable for clam digging; there will be 15 minutes of cease fire during each hour of closure to allow passage by boats and beach goers through the restricted area; and Oregon Military

Department will maintain a Web site to disseminate information about closures.

Oregon Department of Fish and Wildlife also had concerns about potential disturbance to sensitive wildlife species, including Steller sea lions, snowy plovers, and sea turtles. The use of the danger zone is not expected to increase impacts to any wildlife. A danger zone is a buffer established around a firing range for unexpected errant rounds or explosive fragments. In addition, establishing a buffer is intended to increase public safety during training on the firing ranges, but is not granting permission for the National Guard to perform training. Increased activity due to the danger zone determination would be limited to hanging warning flags and posting guards on the beach. This type of activity is entirely consistent with existing activity on the beach and would not increase impacts to sensitive wildlife species in the area.

Procedural Requirements

a. *Review Under Executive Order 12866.* This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The danger zone is necessary to protect public safety and satisfy the Oregon National Guard's operations requirements for small arms training. Small entities can utilize navigable waters in the danger zone when the danger zone is not activated by the Oregon National Guard. When the danger zone is activated, small entities can utilize navigable waters outside of the danger zone. After considering the economic impacts of this danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* The Corps has determined that this regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared and may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private section mandate and it is not subject to the requirements of either section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger Zones, Marine Safety, Navigation (water), Restricted Areas, Waterways.

For the reasons stated in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.1175 to read as follows:

§ 334.1175 Pacific Ocean, at Camp Rilea, Clatsop County, Oregon; Danger Zone.

(a) *The danger zone.* The danger zone shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, within an area bounded as follows: Beginning at latitude 46°09′00.32″ N, longitude 123°57′52.57″ W; thence to latitude 46°09′00.32″ N, longitude 124°01′03.92″ W; thence to latitude 46°05′25.38″ N, longitude 124°01′03.92″ W; thence to latitude 46°05′25.38″ N, longitude 123°56′23.19″ W. The datum for these coordinates is WGS84.

(b) *The regulations.* (1) No person or vessel shall enter or remain in the danger zone when restrictions are in force during weapons range training activities. At all other times, nothing in this regulation prohibits any lawful uses of this area.

(2) A schedule for proposed closures of the danger zone will be furnished to the Coast Guard, Astoria Command Center one week in advance of range training activities to provide local notice to mariners. Changes to the schedule made less than one week in advance of the event will be transmitted to the Command Center on the day the change is made.

(3) At least 30 minutes prior to restricting navigation in the danger zone, red flags will be raised on wooden poles immediately next to the beach at the north and south boundaries of Camp Rilea. The red flags will remain flying while the ranges are in use. During night weapons training activities, red lights will be substituted for the flags. Closure announcements will be broadcast over marine VHF Channel 16/19. When range training activities are completed, the red flags will be removed and an announcement made over marine VHF Channel 16/19 that restrictions are lifted.

(4) When restrictions are in force, Camp Rilea will visually monitor the danger zone using radar and guards, equipped with binoculars and two-way radios, posted on the beach near the north and south boundaries of the Camp. If a vessel is detected in the danger zone, a cease fire will be called on all active weapons ranges and Camp Rilea will attempt to contact the vessel using marine VHF radio. Cease fire will be maintained until the vessel leaves the danger zone.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Camp Rilea, Oregon and such agencies as he/she may designate.

Dated: February 18, 2015.

Edward E. Belk, Jr.,

Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2015–03626 Filed 2–20–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

St. Johns River, U.S. Coast Guard Station Mayport, Sector Jacksonville, Florida; Restricted Area

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its restricted area/danger zone regulations to establish a new restricted area in the waters surrounding U.S. Coast Guard Sector Jacksonville facilities at Station Mayport, Jacksonville, Florida (Station Mayport). Station Mayport is situated on the south side of the St. Johns River which, as the primary federal navigable channel entering the Port of Jacksonville, is heavily transited by commercial and recreational vessels. This United States Coast Guard (USCG)

facility maintains a high operational tempo for both routine and emergency operations. This amendment to the existing regulations is necessary to enhance the USCG's ability to counter postulated threats against their personnel, equipment, cutters and facilities by providing a stand-off buffer encompassing the waters immediately contiguous to the Station Mayport. The amendment will also serve to protect the general public from injury or property damage during routine and emergency USCG operations and provide an explosive safety arc buffer during periodic transfer of ammunitions between units, including cutters.

DATES: Effective March 25, 2015.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Mark R. Evans, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904–232–2028.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is amending the regulations in 33 CFR part 334 by adding § 334.505 to establish a new restricted area in the waters of the St. Johns River adjacent to Station Mayport. The amendment to this regulation will allow the Commanding Officer, U.S. Coast Guard Station Mayport to restrict passage of persons, watercraft, and vessels in waters contiguous to this Command, thereby providing greater security to the personnel, equipment, cutters and facilities housed at the site.

The proposed rule was published in the July 17, 2014, issue of the **Federal Register** (79 FR 41664), and its regulations.gov docket number is COE–2014–0009. In response to the proposed rule, one comment was provided by the Marine Chart Division, National Oceanic and Atmospheric Administration. The concern voiced pertained to the lack of information regarding what horizontal datum was associated with the latitude/longitude coordinates used to define the restricted area. In response to the comment received, we have modified the rule text to include datum information within the body of the final rule.

Procedural Requirements

a. *Review Under Executive Order 12866.* This regulation is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The restricted area regulations is necessary to protect USCG personnel, equipment, cutters, and facilities at Station Mayport. The restricted area is also necessary to protect the general public from injury or property damage during routine and emergency USCG operations. Small entities can continue to use the navigable waters of St. Johns River that are outside of the restricted area. After considering the economic impacts of this danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* This regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared. It may be reviewed at the district office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

d. *Unfunded Mandates Act.* This regulation does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this regulation.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.505 to read as follows:

§ 334.505 St. Johns River, U.S. Coast Guard Station Mayport, Sector Jacksonville, Florida; restricted area.

(a) *The area.* The restricted area encompasses all navigable waters of the United States as defined at 33 CFR part 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°23.315366′ N, longitude 081°26.056735′ W; thence directly to latitude 30°23.325775′ N, longitude 081°26.071548′ W; thence directly to latitude 30°23.266063′ N, longitude 081°26.132775′ W; thence to latitude 30°23.215082′ N, longitude 081°26.1287404′ W; thence proceed directly to a point on the shoreline at latitude 30°23.204522′ N, longitude 081°26.111753′ W thence following the mean high water line to the point of beginning. The datum for these coordinates is WGS84.

(b) *The regulation.* (1) The restricted area described in paragraph (a) of this section is only open to U.S. Government vessels. U.S. Government vessels include, but are not limited to, U.S. Coast Guard, U.S. Coast Guard Auxiliary, Department of Defense, National Oceanic and Atmospheric Administration, state and local law enforcement, emergency services and vessels under contract with the U.S. Government. Warning signs notifying individuals of the restricted area boundary and prohibiting all unauthorized entry into the area will be posted along the property boundary.

(2) All persons, vessels and other craft are prohibited from entering, transiting, drifting, dredging or anchoring within the restricted area described in paragraph (a) of this section without prior approval from the Commanding Officer, U.S. Coast Guard Station Mayport or his/her designated representative.

(3) Fishing, trawling, net-fishing and other aquatic activities are prohibited in the restricted area without prior approval from the Commanding Officer, U.S. Coast Guard Station Mayport or his/her designated representative.

(4) The restrictions described in paragraph (b) of this section are in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, U.S. Coast Guard Station Mayport and/or such persons or agencies as he/she may designate.

Dated: February 18, 2015.

Edward E. Belk, Jr.,

Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2015–03625 Filed 2–20–15; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2014–0457; FRL–9922–53]

Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the VNT1 protein in potato when used as a plant-incorporated protectant in accordance with the terms of Experimental Use Permit (EUP) No. 8917–EUP–2. J.R. Simplot Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of VNT1 protein in potato. The temporary tolerance exemption expires on December 31, 2015.

DATES: This regulation is effective February 23, 2015. Objections and requests for hearings must be received on or before April 24, 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–2014–0457, 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 174 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0457 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 24, 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–2014–0457, by one of the following methods:

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

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

II. Background and Statutory Findings

In the **Federal Register** of October 24, 2014 (79 FR 63594) (FRL–9916–03), 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 4F8251) by J.R. Simplot Company, 5369 W. Irving St., Boise, ID 83706. In the **Federal Register** of December 17, 2014 (79 FR 75107) (FRL–9918–90), EPA inadvertently reannounced the filing of this same petition. The petition requested that 40 CFR part 174 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of Potato Late Blight Resistance protein VTN1 in or on potato. Those documents referenced a summary of the petition prepared by the petitioner J.R. Simplot Company, which is available in the docket, *http://www.regulations.gov.* Comments were received, and EPA's response to these comments is discussed in Unit VII.B.

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 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.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information 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. Product Characterization Overview

The gene that confers Potato Late Blight Resistance (*Rpi-vnt1*) is found naturally in wild potato varieties. When *Rpi-vnt1* is expressed in potato, the VNT1 protein it encodes confers broad-spectrum resistance to *Phytophthora infestans,* late blight of potato. VNT1 activates a signal transduction pathway that leads to localized plant cell death or the hypersensitive response. Death is restricted to a few plant cells and limits the growth and spread of *Phytophthora infestans* throughout the rest of the plant.

Although people have not been exposed to the VNT1 protein in potatoes (because it is currently only found in wild potato varieties), humans have been exposed to the VNT1 protein in tomatoes. In addition to conferring resistance to late blight in potato, the VNT1 protein also confers resistance to late blight in tomatoes. Both potato and tomato, which both belong to the *Solanum* genus, are affected by late blight and have developed resistance through the same VNT1 protein.

In addition, the VNT1 protein found in wild potatoes and tomatoes is similar to several other protein sequences in tomatoes. The protein in tomato species most closely related to the VNT1 protein (over 90% similarity) introduced into potato is called Tm-2 or Tm2^2, which is a protein bred into tomato for resistance to the tomato mosaic virus.

B. Mammalian Toxicity and Allergenicity Assessment

Since the VNT1 protein is not detectable by current methodologies and attempts to isolate or produce the VNT1 protein were not successful, no toxicity testing was performed with either plant purified protein or protein produced in a surrogate organism. Rather, the Agency has reviewed a bioinformatics analysis of the allergenic and toxic potential of the VNT1 protein and on similar proteins to which humans are currently and regularly exposed through ingestion of edible plants. The Agency has identified known allergens found in potatoes and tomatoes, and the analysis shows that VNT1 protein does not have any similarity to any known allergens.

The Agency has not identified any other potential toxicity with the VNT1 protein. Although some proteins may have toxic properties, those proteins are not found in tomato or potato, and the VNT1 protein does not have any similarity to those proteins. Furthermore, consumers have been exposed previously to the VNT1 protein in tomatoes. Also, consumers have been exposed to the very similar Tm-2 protein in tomato. Many tomato mosaic virus resistant tomato varieties are readily available and grown in the U.S. for fresh market tomato production and are widely consumed. Since no health or toxicity issues have been raised in tomato containing the Tm-2 protein, the Agency does not expect any toxicity to be associated with the VNT1 protein in potato.

Therefore, EPA concludes that VNT1 protein is not likely to pose any toxicity or cause any allergenicity based on the following:

1. The VNT1 protein has been a component of the human diet from ingestion of tomatoes for a long time.
2. The VNT1 protein is similar to other proteins to which people are regularly exposed in their diet without adverse effect.
3. The VNT1 protein is not similar to any known allergens.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the residues of plant-incorporated protectant, and exposure from non-occupational sources.

The Agency expects consumers to be exposed to the VNT1 protein through potatoes containing the plant-incorporated protectant derived from the *Rpi-vnt1* gene and to other potatoes and tomatoes containing the gene naturally. Since this protein will be directly incorporated into the potato in a plant-incorporated protectant, the Agency does not expect any exposure through drinking water or through inhalation or dermal routes of exposure. The Agency also does not expect any non-occupational (*i.e.,* other residential) exposure to the VNT1 protein since there are no residential uses for this plant-incorporated protectant.

V. 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 concluded that the VNT1 protein in potato does not have a toxic mode of action and thus does not share a common mechanism of toxicity with other substances; therefore, section 408(b)(2)(D)(v)) does not apply.

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of exposure (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 that a different margin of exposure (safety) will be safe for infants and children. This additional margin of exposure (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.

Based on the information discussed in Unit III., EPA concludes that there are no threshold effects of concern to infants, children, or adults from exposure to the VNT1 protein. As a result, EPA concludes that no additional margin of exposure (safety) is necessary to protect infants and children and that not adding any additional margin of exposure (safety) will be safe for infants and children.

Therefore, based on the discussion in Unit III and the supporting documentation, 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 the residues of VNT1 protein in potato when it is used as a plant-incorporated protectant. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information.

VII. Other Considerations

A. Analytical Enforcement Methodology

The Agency has determined that an analytical method is not required for enforcement purposes since the Agency is establishing a temporary exemption from the requirement of a tolerance without any numerical limitation in association with use under EUP No.: 8917–EUP–2.

B. Response to Comments

EPA received two comments relevant to this petition.

It is unclear whether one commenter, which urged ''no deregulation'', had a general comment related to the Agency's tolerance action for the VNT1 protein. EPA's action is establishing a regulation that would exempt residues of the VNT1 protein in potato from the requirement of a tolerance; the Agency does not consider such action to be a ''deregulation''. EPA continues to regulate this pesticidal active ingredient through the FFDCA and the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). To the extent the commenter is arguing generally that that pesticides, including plant-incorporated protectants, should be banned on agricultural crop, the comment appears to be directed at the underlying statute and not EPA's implementation of it. However, the existing legal framework provided by section 408 of the FFDCA states that tolerances or exemptions may be set when the Agency determines that the pesticide meets the safety standard imposed by that statute.

Another commenter raised issues in regards to pollen drift, soil health, and mammalian health for plant-incorporated protectants. In this FFDCA action, the Agency has reviewed the food safety issues for this product and has concluded the product is safe for human/animal consumption. The potatoes with the VNT1 protein are safe for human consumption at levels likely to be found in these sources. The other issues raised by the commenter, pollen drift and soil health, are not relevant to this food safety determination made under FFDCA. However, EPA has considered these issues as part of its review of the EUP regulated under FIFRA.

VIII. Conclusion

The Agency 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 VNT1 protein in potato. Therefore, a temporary exemption is established for residues the VNT1 protein in potato. The experimental use permit (EUP No. 8917–EUP–2) expires on December 31, 2015, so EPA is establishing an expiration for this temporary tolerance of the same date.

IX. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance 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 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).

X. 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 174

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

Dated: February 4, 2015.

Kimberly Nesci,

Chief, Microbial Pesticides Branch, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

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

■ 2. Add § 174.534 to subpart W to read as follows:

§ 174.534 VNT1 protein in potato; temporary exemption from the requirement of a tolerance.

Residues of VNT1 protein in potato are exempt from the requirement of a tolerance when the *Rpi-vnt1* gene that expresses the VNT1 protein is used as a plant-incorporated protectant in potato in accordance with the terms of Experimental Use Permit No. 8917–EUP–2. This temporary exemption from the requirement of a tolerance expires on December 31, 2015.

[FR Doc. 2015–03570 Filed 2–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0589; FRL–9922–82]

Fomesafen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fomesafen in or on watermelon. Interregional Research Project Number 4 (IR–4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA). A final rule establishing a tolerance for residues of fomesafen on watermelon, among other commodities, was previously published in the **Federal Register** on November 1, 2013, however, watermelon was not ultimately included in the table in the Code of Federal Regulations (CFR) under section 180.433 paragraph (a). This document corrects that error.

DATES: This regulation is effective February 23, 2015. Objections and requests for hearings must be received on or before April 24, 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–2012–0589, 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 Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0589 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 24, 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–2012–0589, 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 September 28, 2012 (77 FR 59578) (FRL–9364–6), 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 2E8061) by IR–4, IR–4 Project Headquarters, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.433 be amended by establishing tolerances for residues of the herbicide fomesafen, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-*N*-(methylsulfonyl)-2-nitrobenzamide, in or on cantaloupe; cucumber; pea, succulent; pumpkin; squash, summer; squash, winter; and watermelon at 0.025 parts per million (ppm); and soybean, vegetable, succulent at 0.05 ppm. The document referenced a summary of the petition prepared by Syngenta Crop Protections, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.*

A final rule establishing tolerances on these commodities, including watermelon at 0.025 ppm, was published in the **Federal Register** on November 1, 2013 (78 FR 65565) (FRL–9401–8); however, watermelon was not ultimately included in the CFR under section 180.433 paragraph (a). This document corrects that error and establishes the tolerance for residues of fomesafen in or on watermelon at 0.025 ppm.

III. Aggregate Risk Assessment and Determination of Safety

EPA is relying upon the findings summarized in the November 1, 2013, final rule (78 FR 65565) (FRL–9401–8) that established tolerances for residues of fomesafen in or on multiple commodities, including watermelon, to establish this tolerance. Details regarding the final rule as well as its associated supporting risk assessments are available at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2012–0589.

Based on the risk assessments used to support the November 1, 2013, **Federal Register** notice, 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 fomesafen residues.

IV. Conclusion

Therefore, a tolerance is established for residues of the herbicide fomesafen, including its metabolites and degradates, in or on watermelon at 0.025 ppm.

V. Statutory and Executive Order Reviews

This action 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 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 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).

VI. 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 12, 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 § 180.433, by adding alphabetically the following entry ''Watermelon'' to the table in paragraph (a) to read as follows:

§ 180.433 Fomesafen; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Watermelon	0.025

* * * * *

[FR Doc. 2015–03575 Filed 2–20–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 15–2, RM–11744; DA 15–210]

Television Broadcasting Services; Lansing, Michigan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: A petition for rulemaking was filed by WLAJ–TV LLC (''Petitioner''), the licensee of WLAJ–TV, channel 51, Lansing, Michigan, requesting the substitution of channel 25 for channel 51 at Lansing. Petitioner filed comments reaffirming its interest in the proposed channel substitution stating that if the proposal is granted, it will promptly file an application for the facilities specified in its rulemaking petition and construct the station. Petitioner also reiterates that the grant of the petition would serve the public interest because its operation on channel 25 would eliminate potential interference to and from wireless operations in the adjacent Lower 700 MHz A Block. The proposed substitution will permit the wireless licensee to expand operations in service to subscribers.

DATES: Effective February 23, 2015.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, *Jeremy.Miller@fcc.gov,* Media Bureau, (202) 418–1507.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 15–2, adopted February 13, 2015, and released February 13, 2015. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Michigan is amended by removing channel 51 and adding channel 25 at Lansing.

[FR Doc. 2015–03742 Filed 2–20–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2014–0036; FF09M21200–145–FXMB1231099BPP0]

RIN 1018–BA48

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2015 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is establishing migratory bird subsistence harvest regulations in Alaska for the 2015 season. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes region-specific regulations that would go into effect on April 2, 2015, and expire on August 31, 2015.

DATES: Effective April 2, 2015, through August 31, 2015.

FOR FURTHER INFORMATION CONTACT: Donna Dewhurst, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786–3499.

SUPPLEMENTARY INFORMATION:

Why is this rulemaking necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule establishes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2015. This rule also sets forth a list of migratory bird season openings and closures in Alaska by region.

How do I find the history of these regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history, were originally addressed in the **Federal Register** on August 16, 2002 (67 FR 53511) and most recently on April 8, 2014 (79 FR 19454).

Recent **Federal Register** documents and all final rules setting forth the annual harvest regulations are available at *http://www.fws.gov/alaska/ambcc/regulations.htm* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

What is the process for issuing regulations for the subsistence harvest of migratory birds in Alaska?

The U.S. Fish and Wildlife Service (Service or we) is establishing migratory bird subsistence harvest regulations in Alaska for the 2015 season. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may

occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

We opened the process to establish regulations for the 2015 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on April 30, 2014 (79 FR 24512), to amend 50 CFR part 20. While that proposed rule primarily addressed the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2015 season. The rulemaking processes for both types of migratory bird harvest are related, and the April 30, 2014, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held meetings on April 10–11, 2014, to develop recommendations for changes that would take effect during the 2015 harvest season. No changes were recommended, and this was presented first to the Pacific Flyway Council and then to the Service Regulations Committee (SRC) for approval at the committee's meeting on July 30, 2014.

Who is eligible to hunt under these regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial migratory bird subsistence harvest to about 13 percent of Alaska residents. High-populated, roaded areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459, based on the latest census information at that time.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village, and Ferry, with a combined population of 2,812.

In 2012, we received a request from the Native Village of Eyak to include Cordova, Alaska, for a limited season that would legalize the traditional gathering of gull eggs and the hunting of waterfowl during spring. This request resulted in a new, limited harvest of spring waterfowl and gull eggs starting in 2014.

What is different in the region-specific regulations for 2015?

There are no changes from the 2014 regulations.

How will the service ensure that the subsistence harvest will not raise overall migratory bird harvest or threaten the conservation of endangered and threatened species?

We have monitored subsistence harvest for the past 25 years through the use of household surveys in the most heavily used subsistence harvest areas, such as the Yukon-Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of listed or candidate species.

Spectacled and Steller's Eiders

Spectacled eiders *(Somateria fischeri)* and the Alaska-breeding population of Steller's eiders *(Polysticta stelleri)* are listed as threatened species. Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species have been taken in several regions of Alaska.

The Service has dual objectives and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these objectives continue to be challenging, they are not irreconcilable, provided that regulations continue to protect threatened species, measures to address documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual objectives in mind, the Service, working with North Slope partners, developed measures in 2009, to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness through partnering with the North Slope Migratory Bird Task Force; and (2) continued enforcement of the migratory bird regulations that are protective of listed eiders.

This final rule continues to focus on the North Slope from Barrow to Point Hope because Steller's eiders from the listed Alaska breeding population are known to breed and migrate there. These regulations are designed to address several ongoing eider management needs by clarifying for subsistence users that (1) Service law enforcement personnel have authority to verify species of birds possessed by hunters, and (2) it is illegal to possess any species of bird closed to harvest. This rule also describes how the Service's existing authority of emergency closure will be implemented, if necessary, to protect Steller's eiders. We are always willing to discuss regulations with our partners on the North Slope to ensure protection of closed species as well as provide subsistence hunters an opportunity to harvest migratory birds in a way that maintains the culture and traditional harvest of the community. The regulations pertaining to bag checks and possession of illegal birds are deemed necessary to monitor the number of closed eider species taken during the subsistence hunt.

The Service is aware of and appreciates the considerable efforts by North Slope partners to raise awareness and educate hunters on Steller's eider conservation via the bird fair, meetings, radio shows, signs, school visits, and one-on-one contacts. We also recognize that no listed eiders have been documented shot from 2009 through 2012, however, one Steller's eider and one spectacled eider were found shot during the summer of 2013; and one was found shot in 2014. The Service acknowledges progress made with the other eider conservation measures including partnering with the North Slope Migratory Bird Task Force for increased waterfowl hunter awareness, continued enforcement of the regulations, and in-season verification

of the harvest. To reduce the threat of shooting mortality of threatened eiders, we continue to work with North Slope partners to conduct education and outreach. In addition, the emergency closure authority provides another level of assurance if an unexpected number of Steller's eiders are killed by shooting (50 CFR 92.21 and 50 CFR 92.32).

In-season harvest monitoring information will be used to evaluate the efficacy of regulations, conservation measures, and outreach efforts. Conservation measures are being continued by the Service, with the amount of effort and emphasis being based on regulatory adherence.

The longstanding general emergency closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the regulation at 50 CFR 92.32, carried over from the past 5 years, clarifies that we will take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. When and if mortality of threatened eiders is documented, we will evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We will consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we will design it to minimize its impact on the subsistence harvest.

Yellow-billed loon

In the proposed rule, we discussed Yellow-billed loons (*Gavia adamsii*) as a candidate species for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Since then, the Service published a ''not-warranted'' 12-Month Finding in the **Federal Register** on October 3, 2014 (79 FR 59195), determining that listing yellow-billed loons as a threatened or endangered species is not warranted at this time. There are several reasons the Service determined that listing the yellow-billed loon was not warranted in contrast to our earlier determination. The Service and its partners expanded efforts to better understand yellow-billed loon harvest, abundance, and distribution in the Bering Strait-Norton Sound region with the goal of evaluating the reliability of reported subsistence harvest. The Service now has reliable information suggesting the yellow-billed loon is not a significant subsistence resource; and, that the limited harvest does not have a negative impact on the population. Also, additional years of survey data on the Arctic Coastal Plain in Alaska of survey data on the Arctic Coastal Plain in Alaska further support that the breeding population, which we believe to be representative of the other breeding populations, is stable or slightly increasing in abundance. Though the Service is not listing the yellow-billed loon, it remains a conservation priority for the Service. The Service, working with Tribal, State, and Federal partners, will continue to monitor and implement conservation measures for the yellow-billed loon in northern and western Alaska.

The Yellow-billed Loon Species Status Assessment Report is available on the Internet at on *http://www.fws.gov/alaska/fisheries/endangered/species/yellow-billed_loon.htm.*

Yellow-billed loons are currently closed to hunting, but surveys have indicated that on the North Slope and St. Lawrence Island some take does occur. Of the yellow-billed loons taken on the North Slope, many were found to be entangled loons salvaged from subsistence fishing nets as described below. The Service is planning to continue outreach efforts on St. Lawrence Island, encouraging partners in an effort to reduce the take of yellow-billed loons.

Consistent with the request of the North Slope Borough Fish and Game Management Committee and the recommendation of the Co-management Council, this rule continues the provisions originally established in 2005, to allow subsistence use of yellow-billed loons inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important to the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons will be allowed to be kept if found entangled in fishing nets in 2015, under this provision. This provision does not authorize intentional harvest of yellow-billed loons, but allows use of those loons inadvertently entangled during normal subsistence fishing activities.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to ''review other programs administered by him and utilize such programs in furtherance of the purposes of the Act'' and to ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *'' We conducted an intra-agency consultation with the Service's Fairbanks Fish and Wildlife Field Office on this harvest as it will be managed in accordance with this final rule and the conservation measures. The consultation was completed with a biological opinion dated December 5, 2014, that concluded the final rule and conservation measures are not likely to jeopardize the continued existence of Steller's and spectacled eiders or result in the destruction or adverse modification of designated critical habitat.

Summary of Public Involvement

On September 5, 2014, we published in the **Federal Register** a proposed rule (79 FR 53120) to establish spring and summer migratory bird subsistence harvest regulations in Alaska for the 2015 subsistence season. The proposed rule provided for a public comment period of 60 days, ending November 4, 2014. We posted an announcement of the comment period dates for the proposed rule, as well as the rule itself and related historical documents, on the Co-management Council's Internet homepage. We issued a press release announcing our request for public comments and the pertinent deadlines for such comments, which was faxed to the media statewide in Alaska. Additionally, all documents were available on *http://www.regulations.gov.* The Service received three responses, two from the public and one from a government agency.

Response to Public Comments

Comment: We received one comment on the overall regulations that expressed strong opposition to the concept of allowing any harvest of migratory birds in Alaska.

Service Response: For centuries, indigenous inhabitants of Alaska have harvested migratory birds for subsistence purposes during the spring and summer months. The Canada and Mexico migratory bird treaties were amended for the express purpose of allowing subsistence hunting for migratory birds during the spring and summer. The amendments indicate that the Service should issue regulations allowing such hunting as provided in the Migratory Bird Treaty Act; see 16 U.S.C. 712(1). Please refer to Statutory Authority section, below, for more details.

Comment: We received two comments expressing support of the continued

implementation of the proposed regulations at the 2014 levels, citing the importance of subsistence to provide fresh, local foods in the rural areas.

Service Response: The Service appreciates the support for this co-management process which allows for the continuation of customary and traditional subsistence uses of migratory birds in Alaska.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that, if adopted, this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This final rule would legalize a pre-existing subsistence activity, and the resources harvested will be consumed.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Would not have an annual effect on the economy of $100 million or more. It would legalize and regulate a traditional subsistence activity. It would not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities that would be regulated under this final rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this final rule would derive from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska qualify as small businesses. We have no reason to believe that this final rule would lead to a disproportionate distribution of benefits.

(b) Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This final rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This final rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate substantial effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this final rule would not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. The final rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council requires travel expenses for some Alaska Native organizations and local governments. In addition, they assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In a notice of decision (65 FR 16405; March 28, 2000), we identified 7 to 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game also incurs expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this final rule would not have significant takings implications. This final rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We discuss effects of this final rule on the State of Alaska in the Unfunded Mandates Reform Act section above. We worked with the State of Alaska to develop these final regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this final rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations with Native American Tribal Governments

Consistent with Executive Order 13175 (65 FR 67249; November 6, 2000), ''Consultation and Coordination with Indian Tribal Governments,'' and Department of Interior policy on Consultation with Indian Tribes (December 1, 2011), we will send letters to all 229 Alaska Federally recognized Indian tribes. Consistent with Congressional direction (Pub. L. 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452; as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267), we will be sending letters to approximately 200 Alaska Native corporations and other tribal entities in Alaska soliciting their input as to whether or not they would like the Service to consult with them on the 2015 migratory bird subsistence harvest regulations.

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They develop recommendations for, among other things: Seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

Paperwork Reduction Act

This final rule has been examined under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and does not contain any new collections of information that require Office of Management and Budget (OMB) approval. OMB has renewed our collection of information associated with the voluntary annual household surveys used to determine levels of subsistence take. The OMB control number is 1018–0124, which expires June 30, 2016. We may not conduct or sponsor a survey unless it displays a currently valid OMB control number.

National Environmental Policy Act Consideration (42 U.S.C. 4321 et seq.)

The annual regulations and options are considered in a September 2014 environmental assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2015 Spring/Summer Harvest.'' Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at *http://www.regulations.gov.*

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it would allow only for traditional subsistence harvest and improve conservation of migratory birds by allowing effective regulation of this harvest. Further, this final rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and a Statement of Energy Effects is not required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Final Regulation Promulgation

For the reasons set out in the preamble, we amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart D—Annual Regulations Governing Subsistence Harvest

■ 2. Amend subpart D by adding § 92.31 to read as follows:

§ 92.31 Region-specific regulations.

The 2015 season dates for the eligible subsistence harvest areas are as follows:

(a) *Aleutian/Pribilof Islands Region.* (1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleutian Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in Game Management Units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta Region.* (1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(c) *Bristol Bay Region.* (1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound Region.* (1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago Region,* except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point

in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larsen Bay. Marine waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic Region.* (1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope Region.* (1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30′ W and south of the latitude line 70°45′ N to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area consists of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30′ W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30′ W and north of the latitude line 70°45′ N to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: Yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region inadvertently entangled in subsistence fishing nets in the North Slope Region may be kept for subsistence use.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland).

(i) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subpart C and D of this part.

(ii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region.* (1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: Game Management Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Game Management Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region.* (1) Prince William Sound Area West (Harvest area: Game Management Unit 6[D]), (Eligible Chugach communities: Chenega Bay, Tatitlek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Prince William Sound Area East (Harvest area: Game Management Units 6[B] and [C]–Barrier Islands between Strawberry Channel and Softtuk Bar), (Eligible Chugach communities: Cordova):

(i) Season: April 2–April 30 (hunting); May 1–May 31 (gull egg gathering).

(ii) Closure: May 1–August 31 (hunting); April 2–30 and June 1–August 31 (gull egg gathering).

(iii) Species Open for Hunting: Greater white-fronted goose; snow goose; gadwall; Eurasian and American wigeon; blue-winged and green-winged teal; mallard; northern shoveler; northern pintail; canvasback; redhead; ring-necked duck; greater and lesser scaup; king and common eider; harlequin duck; surf, white-winged, and black scoter; long-tailed duck; bufflehead; common and Barrow's goldeneye; hooded, common, and red-breasted merganser; and sandhill crane. Species open for egg gathering: Glaucous-winged, herring, and mew gulls.

(iv) Use of Boats/All-Terrain Vehicles: No hunting from motorized vehicles or any form of watercraft.

(v) Special Registration: All hunters or egg gatherers must possess an annual permit, which is available from the Cordova offices of the Native Village of Eyak and the U. S. Forest Service.

(3) Kachemak Bay Area (Harvest area: Game Management Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: Portions of Game Management Unit 16[B] as specified below) (Eligible communities: Tyonek only):

(1) Season: April 2–May 31—That portion of Game Management Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Game Management Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.* (1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR part 100.3(a)):

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: Small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands):

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou), and coastal lands and islands bordering

the Gulf of Alaska from Point Manby southeast to and including Dry Bay):

(i) Season: Glaucous-winged gull egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

■ 4. Amend subpart D by adding § 92.32 to read as follows:

§ 92.32 Emergency regulations to protect Steller's eiders.

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders *(Polysticta stelleri),* the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or Statewide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: February 9, 2015.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–03602 Filed 2–20–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD780

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Western Aleutian Islands District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod, including for the Community Development Quota program (CDQ), in the Western Aleutian Islands district (Area 543) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Area 543 Pacific cod harvest limit of the 2015 total allowable catch (TAC) in the Aleutian Islands subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 18, 2015, through 2400 hrs, A.l.t., December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Area 543 Pacific cod harvest limit of the 2015 TAC in the Aleutian Islands subarea of the BSAI is 2,478 metric tons (mt) as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014) and inseason adjustment (80 FR 188, January 5, 2015). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the Area 543 Pacific cod harvest limit of the 2015 Pacific cod TAC in the Aleutian Islands subarea of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,178 mt, and is setting aside the remaining 300 mt as incidental catch in directed fishing for other species. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod in the Western Aleutian Islands district of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod in the Western Aleutian Islands district of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 16, 2015.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 18, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–03554 Filed 2–18–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 35
Monday, February 23, 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 ENERGY

10 CFR Part 430

[Docket Number EERE–2014–BT–STD–0036]

RIN 1904–AD35

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Hearth Products; Correction

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

ACTION: Notice of proposed rulemaking and announcement of public meeting; Correction.

SUMMARY: This document corrects the **DATES** section to a notice of proposed rulemaking and announcement of public meeting which published in the **Federal Register** on February 9, 2015, regarding Energy Conservation Program for Consumer Products: Energy Conservation Standards for Hearth Products. The day of the week for the March 23, 2015 meeting is being corrected.

DATES: February 23, 2015.

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

Correction

In the **Federal Register** published on February 9, 2015, in FR Doc. 2015–02179, the following correction should be made:

On page 7082, the first sentence of the **DATES** section is corrected to read:

Meeting: DOE will hold a public meeting on Monday, March 23, 2015, from 9:00 a.m. to 4:00 p.m., in Washington, DC.

Issued in Washington, DC, on February 12, 2015.

Kathleen B. Hogan,

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

[FR Doc. 2015–03594 Filed 2–20–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2014–BT–STD–0021]

RIN 1904–AD24

Energy Efficiency Program for Residential Products: Energy Conservation Standards for Residential Dishwashers

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

ACTION: Reopening of public comment period.

SUMMARY: The U.S. Department of Energy (DOE) has published a notice of proposed rulemaking (NOPR) which is proposing energy conservation standards for residential dishwashers. The comment period for the NOPR pertaining to the energy conservation standards for residential dishwasher products ended February 17, 2015. DOE is reopening the comment period for comments related to the analysis that estimates the potential economic impacts and energy savings that could result from an energy conservation standard for residential dishwashers. Comments will be accepted until March 25, 2015.

DATES: The reopened comment period ends March 25, 2015.

ADDRESSES: Interested persons may submit comments, identified by docket number EERE–2014–BT–STD–0021 and/or Regulation Identification Number (RIN) 1904–AD24, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: ResDishwashers2014STD0021@ee.doe.gov* . Include EERE–2014–BT–STD–0021 and/or RIN 1904–AD24 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S.Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The rulemaking Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/67.* This Web page contains a link to the docket for this notice on the regulation.gov site. The *www.regulations.gov* Web page contains instructions on how to access all documents in the docket, including public comments.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *dishwashers@ee.doe.gov*

Ms. Johanna Hariharan, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Hariharan@hq.doe.gov.*

For further information on how to submit a comment and review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: On December 19, 2014, DOE published in the **Federal Register** a notice of proposed rulemaking (NOPR) to update the energy conservation standards for residential dishwashers. 79 FR 76142 . In the NOPR, DOE invited written submission of public comments, to be received by February 17, 2015. On an email dated January 16, 2015, the Association for Home Appliance Manufacturers (AHAM) requested an extension of the public comment period by 60 days. AHAM stated in its request that AHAM required additional time to review the published analysis in order to prepare and submit comments accordingly. DOE has determined that extending the comment period to allow additional time for interested parties to submit comments is appropriate based on the foregoing reason. DOE believes an additional 30-days, providing a total comment period of 90 days, allows sufficient time for submitting inputs regarding DOE's analysis. Accordingly, DOE will consider any comments received by midnight of March 25, 2015, and deems any comments received by that time to be timely submitted.

Issued in Washington, DC, on February 12, 2015.

Kathleen B. Hogan,

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

[FR Doc. 2015–03599 Filed 2–20–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0187; Directorate Identifier 2011–NM–094–AD]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain The Boeing Company Model 757 airplanes. The NPRM proposed to require modifying the fuel quantity indication system (FQIS) wiring or fuel tank systems to prevent development of an ignition source inside the center fuel tank. The NPRM was prompted by fuel system reviews conducted by the manufacturer. This action revises the NPRM by revising the applicability, including optional actions for cargo airplanes, and extending the compliance time. We are proposing this supplemental NPRM (SNPRM) to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. Since these actions significantly change the corrective action options for cargo airplanes relative to the proposal in the NPRM, and because the cost estimate is significantly revised, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by April 24, 2015.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–0187.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–0187; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *jon.regimbal@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0187; Directorate Identifier 2011–NM–094–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 757 airplanes. The NPRM published in the **Federal Register** on March 1, 2012 (77 FR 12506). The NPRM proposed to require modifying the fuel quantity indication system (FQIS) wiring or fuel tank systems to prevent development of an ignition source inside the center fuel tank. We subsequently issued an NPRM (77 FR 33129, June 5, 2012) to reopen and extend the comment period for an additional 2 months.

Related Service Information Under 1 CFR Part 51

We have reviewed Boeing Service Bulletin 757–28–0136, dated June 5, 2014. This service information describes procedures for the built-in test equipment test/procedure (BITE check) specified in paragraph (h)(1) of this

supplemental NPRM. For information on the procedures and compliance times, refer to this service information. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

Comments

We gave the public the opportunity to comment on the NPRM (77 FR 12506, March 1, 2012). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Withdraw NPRM (77 FR 12506, March 1, 2012): Unjustified by Risk

Boeing and Airbus requested that we withdraw the NPRM (77 FR 12506, March 1, 2012). Airbus requested that we consider risk levels before pursuing anticipated ADs for similar models. Boeing's request was based on a determination that the risk posed by the FQIS is not high enough to warrant AD action. Boeing described the detailed design features that it considers make the failures contributing to the unsafe condition unlikely. Boeing added that its own numerical probability analysis of the average risk level due to the combination of failures required to cause a fuel tank explosion is on the order of one catastrophic event per billion flight hours. Boeing pointed out that this probability level would meet the certification standard for systems contained in section 25.1309(b) of the Federal Aviation Regulations (14 CFR 25.1309(b)). Boeing also pointed out that, because the Model 757 is out of production and has a limited remaining fleet life, the total risk of a catastrophic event occurring in the remaining fleet life is approximately 0.5 percent. Boeing also noted that if a conductive condition were to exist between the probes or wiring and structure, it would be identified by FQIS faults and therefore would not be latent for multiple flights.

We disagree with the request to withdraw the NPRM (77 FR 12506, March 1, 2012). Average risk per flight hour and total fleet risk were not the safety criteria that drove the FAA to propose the AD. In addition to examining average risk and total fleet risk, the FAA examines the individual flight risk on the worst reasonably anticipated flights. FAA Transport Airplane Risk Assessment Methodology (TARAM) Policy Statement PS–ANM–25–05 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/4E5AE8707164674A862579510061F96B?OpenDocument&Highlight=ps-anm-25–05*) calls for the FAA to assess individual flight safety risk in consideration of pre-existing hidden failure conditions and accounts for dispatch with inoperative equipment. The TARAM policy classifies a flight dispatch condition as ''reasonably anticipated'' if, in absence of corrective action, ten or more flights are expected to occur.

Average risk is an arithmetic average of the risk of a given event during all operation of an aircraft fleet, regardless of whether the risk actually varies during the operation of the fleet. We use average risk analysis to assess whether a risk is acceptable when there is little or no variation in risk from flight to flight. Total fleet risk is the aggregate sum of all risk throughout a fleet during the remaining fleet life. Total fleet risk analysis is meaningful in assessing total societal risk, but it does not assess the variation in risk between flights or the risk on the worst anticipated flights. Individual flight risk as used by the FAA is an assessment of the specific safety risk that exists or will exist on the worst reasonably anticipated individual flights due to a given issue.

Individual risk analysis is used by the FAA to determine whether the public's expectation for a reasonable level of safety on each transport airplane flight is met. An acceptable average risk level and acceptable total fleet risk do not ensure that all reasonably anticipated flights (flights with known inoperative equipment, flights with undetected failures, flights in less-than-ideal but approved and expected weather or operational conditions, etc.) will provide the minimum level of safety expected by the public. When the safety risk is concentrated on flights with a given pre-existing dispatch condition or expected operational condition, it is possible to have an unacceptable individual flight safety risk on the worst reasonably anticipated flights even when the average risk and total fleet risk are acceptable.

In the case of this SNPRM, the risk due to the current Model 757 FQIS design architecture is not spread equally among all of the flights conducted on the affected airplanes. Instead, the risk is concentrated almost entirely on the small subset of flights that occur with a latent failure condition pre-existing in the fuel tank. Flights with such a latent failure condition and flammable conditions in the center fuel tank have been judged by the FAA to be reasonably anticipated to occur based on the numerical probability analysis submitted by the manufacturer in response to Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83) (*http://rgl.faa.gov/Regulatory_and_Guidance_Library%5CrgFAR.nsf/0/EEFB3F94451DC06286256C93004F5E07?OpenDocument*) and the flammability analysis submitted to support certification of Boeing's flammability reduction means (FRM), which Boeing refers to as a nitrogen generation system (NGS). For those reasonably anticipated flights, the probability of a catastrophic event (or individual flight safety risk) is the probability of an additional single failure in the related aircraft wiring or equipment sending a high energy signal onto the already compromised in-tank circuit(s). The individual flight safety risk of a catastrophic event on these flights is in excess of the FAA's threshold for an unsafe condition determination contained in the published TARAM Policy Statement PS–ANM–25–05 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/4E5AE8707164674A862579510061F96B?OpenDocument&Highlight=ps-anm-25-05*).

As discussed above, this risk of a catastrophic event on those flights is due to a single additional failure condition. The risk on those flights due to a single failure violates the FAA's general fail-safe design requirements philosophy for transport airplanes. In general, we issue ADs in cases where reasonably anticipated flights with pre-existing failures (either due to latent failure conditions or allowable dispatch configurations) are vulnerable to a catastrophic event due to an additional foreseeable single failure condition. This is because the FAA considers operation of flights vulnerable to a potentially catastrophic single failure condition to be an excessive safety risk to the passengers on those flights. This SNPRM is consistent with that continued operational safety philosophy.

In its comment, Boeing stated that the existing design meets the numerical probability requirements of section 25.1309(b) of the Federal Aviation Regulations (14 CFR 25.1309(b)), which requires safety analysis of systems. Boeing concluded that the existing system would need no further risk reduction to meet the requirements of that rule. We disagree with this conclusion. First, the existence of a general safety standard, even if met by a design, does not in and of itself preclude a determination that there is a specific unsafe condition. The recognition that compliance with an existing regulation may not be sufficient to ensure safety is specifically addressed in type certification by section 21.21(b)(2) of the Federal Aviation Regulations (14 CFR 21.21.(b)(2)) and

has often led to changes in regulations to address newly recognized unsafe conditions. Second, because Boeing mentioned only that rule, we infer that Boeing may be suggesting that section 25.1309(b) of the Federal Aviation Regulations (14 CFR 25.1309(b)) is the most relevant safety analysis standard applicable to the FQIS. As discussed above, even if later changes to section 25.981 of the Federal Aviation Regulations (14 CFR 25.981) are not considered and only the original certification basis for the Model 757 is applied, there are safety standards more specific to powerplant installations including fuel tanks and FQIS than section 25.1309(b) of the Federal Aviation Regulations (14 CFR 25.1309(b)).

The original certification basis for Model 757 airplanes included section 25.901(c) of the Federal Aviation Regulations (14 CFR 25.901(c)) (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgFar.nsf/FARSBySectLookup/25.901*) at Amendment 25–40. According to that subsection, ''For each powerplant and auxiliary power unit installation, it must be shown that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane. . . .'' (The FQIS is considered to be part of the powerplant installation in accordance with the definition in section 25.901(a) of the Federal Aviation Regulations (14 CFR 25.901(a)).) Section 25.901(c) of the Federal Aviation Regulations (14 CFR 25.901(c)) sets a more stringent applicable standard than that of section 25.1309(b) of the Federal Aviation Regulations (14 CFR 25.1309(b)) for catastrophic failure conditions that are due to latent failure conditions combined with a subsequent single failure condition (referred to as ''latent-plus-one'' conditions).

The more stringent intent of section 25.901(c) of the Federal Aviation Regulations (14 CFR 25.901(c)) (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgFar.nsf/FARSBySectLookup/25.901*) is discussed in further detail in the notice of proposed rulemaking and the preamble that were published for Amendment 25–102. The FAA's long-standing practice in applying the ''no single failure or malfunction'' clause of section 25.901(c) of the Federal Aviation Regulations (14 CFR 25.901(c)) has been to apply that standard to all reasonably anticipated flights—not simply to an average flight or an ideal flight. As such, we examine all conditions: Flights with reasonably anticipated pre-existing failure conditions, flights with inoperative equipment allowed for dispatch, and flights in adverse environmental conditions or other operational conditions for which the airplane is approved. If single failure conditions that jeopardize safe operation of the airplane (catastrophic or hazardous conditions) are identified as part of this examination, the design is considered to be non-compliant with section 25.901(c) of the Federal Aviation Regulations (14 CFR 25.901(c)).

Finally, the SFAR 88 AD-decision policy (Policy Memo ANM–100–2003–112–15) (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/DC94C3A46396950386256D5E006AED11?OpenDocument&Highlight=anm-100-2003-112-15*) classifies a ''latent-plus-one'' condition in a high flammability fuel tank as an unsafe condition requiring corrective action. That policy actually provides some relief from the latent-plus-one criteria contained in the airworthiness regulations.

We have not changed this SNPRM regarding this issue.

Request To Withdraw NPRM (77 FR 12506, March 1, 2012): Not Supported by Risk Analysis

Airlines for America (A4A) proposed that we re-evaluate the NPRM (77 FR 12506, March 1, 2012) because it is ''not founded on a data-based risk analysis.'' A4A stated that the FAA determined that an unsafe condition exists based only on non-compliance with one SFAR 88 criterion. A4A noted that the design approval holder, Boeing, has performed a numerical probability analysis and has calculated that the probability of a fuel tank explosion due to the FQIS issue is approximately one event per billion flight hours, with cargo airplanes being slightly better due to a lower average tank flammability. A4A also stated that existing ignition-prevention ADs have reduced the overall risk of an ignition event to a level that questions the need for FQIS modification. We infer that the commenter is requesting that we withdraw the NPRM.

We disagree to withdraw the NPRM (77 FR 12506, March 1, 2012). We performed a qualitative risk assessment in accordance with our published SFAR 88 unsafe condition determination policy based on Boeing's submitted SFAR 88 design review, and determined that the FQIS design on the Model 757 series airplanes presents an unsafe condition and that AD action was warranted under that policy. We also performed a data-based numerical risk analysis using data provided by the manufacturer, and assessed the risk under the transport airplane unsafe condition criteria in the TARAM policy currently used by the FAA. Our risk analysis determined that the risk of an explosion event due to an FQIS latent-plus-one failure condition is not evenly shared by all flights of airplanes of the affected design. Instead, the risk of an FQIS-related fuel tank ignition event is largely concentrated on the subset of flights that occur with a pre-existing latent failure condition and that operate with flammable conditions in the center fuel tank. Based on Boeing's data, such flights are reasonably anticipated to occur.

For those flights, the risk exceeds the allowable threshold for individual flight safety risk in the TARAM policy. In addition, that risk on those flights is due to a single additional failure, which is inconsistent with the fail-safe design philosophy; that philosophy is fundamental to the excellent safety record of transport airplanes. (See FAA Advisory Circular (AC) 25.1309–1A, ''System Design and Analysis,'' dated June 21, 1998 (*http://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%2025.1309-1.pdf*), for a discussion of the fail-safe design philosophy.) We would normally classify either of those conditions as an unsafe condition. Based on this risk analysis, we have determined that the individual flight safety risk due to this issue on the worst anticipated flights does not meet the minimum level of safety required by the FAA and expected by the public. We have not changed this SNPRM regarding this issue.

Request To Withdraw or Delay NPRM (77 FR 12506, March 1, 2012): Need Detailed Risk Assessment

FedEx requested that we revise the NPRM (77 FR 12506, March 1, 2012) to provide a numerical risk assessment justifying the proposed action. UPS made a similar comment. UPS stated that, if the FAA has gathered new data since the issuance of the ''Reduction of Fuel Tank Flammability in Transport Category Airplanes'' rule (73 FR 42444, July 21, 2008) (*http://www.gpo.gov/fdsys/pkg/FR-2008-07-21/pdf/E8-16084.pdf*), referred to as the Fuel Tank Flammability Reduction (FTFR) rule, the FTFR working group should be reconvened in order to collaborate and discuss the proposed safety risk, assess the risk statistically, evaluate solutions and options, and establish accurate cost and economic impact for the options. FedEx provided an analysis showing that the total risk of a tank explosion due to this issue on the fleet of Model 757 cargo airplanes is relatively low. We infer that the commenters are requesting that we withdraw or delay the NPRM.

We disagree with the request to withdraw the NPRM (77 FR 12506, March 1, 2012), pending review of the FAA's numerical risk assessment by the ''FTFR working group.'' The Aviation Rulemaking Advisory Committee (ARAC) Fuel Tank Harmonization Working Group (FTHWG) was tasked to recommend new rulemaking to eliminate or significantly reduce the risk of exposure to flammable fuel-air mixtures in fuel tanks. The ARAC FTHWG issued its final report in 1998. The subsequent ARAC Fuel Tank Inerting Harmonization Working Group (FTIHWG) was tasked to provide data needed for the FAA to evaluate the feasibility of implementing regulations that would require eliminating or significantly reducing the development of flammable vapors in fuel tanks on transport-category airplanes. This effort was an extension of the previous work performed by the FTHWG. The ARAC FTIHWG issued its final report in 2002. The FAA's work in developing the SFAR 88 corrective action decision policy and in determining specific unsafe conditions was outside the scope and charter of these working groups that contributed to the FTFR rule (73 FR 42444, July 21, 2008). We determined that an unsafe condition exists in accordance with the SFAR 88 corrective action decision policy and TARAM policy. We have provided a summary of our risk assessment as discussed in the responses to ''Request to Withdraw NPRM (77 FR 12506, March 1, 2012): Unjustified by Risk'' and ''Request to Withdraw NPRM (77 FR 12506, March 1, 2012): Not Supported by Risk Analysis'' in this SNPRM. As explained previously (see ''Request to Withdraw NPRM (77 FR 12506, March 1, 2012): Unjustified by Risk'' in this SNPRM), the FAA determined the unsafe condition based on the unacceptable risk on anticipated flights with a latent FQIS failure and flammable fuel tank conditions, not the total fleet risk. We have not changed this SNPRM regarding this issue.

Request To Withdraw NPRM (77 FR 12506, March 1, 2012): No Unsafe Condition

UPS stated that an SFAR 88 working group analyzed potential fuel tank ignition sources and that maintenance programs were revised using MSG3 methodology to meet the revised criteria in ''14 CFR 25.981(3).'' (We assume UPS intended to refer to section 25.981(a)(3) of the Federal Aviation Regulations (14 CFR 25.981(a)(3))) (*http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/73716*).) UPS stated that the unsafe condition identified in the NPRM is inconsistent with the working group analysis and lacks new data or evidence indicating that ''excessive flammability or other known unsafe condition exists, or is likely to develop.'' Finally, UPS made the following observation about the NPRM:

> The NPRM fails to consider the beneficial effects of the timing and effects of the maintenance action in response to a single in-tank or out-of-tank failure mode, or the beneficial effects of previous airworthiness directives and other SFAR 88 related actions taken to mitigate the proposed risk and reduce the probability.

We infer that the commenter is requesting that we withdraw the NPRM (77 FR 12506, March 1, 2012). We disagree with the request to withdraw the NPRM. The FAA has performed a risk assessment and has determined that an unsafe condition does exist, both from a design architectural standpoint and a numerical risk standpoint. The basis for that determination is discussed in detail in the responses to ''Request to Withdraw NPRM (77 FR 12506, March 1, 2012): Unjustified by Risk'' and ''Request to Withdraw NPRM (77 FR 12506, March 1, 2012): Not Supported by Risk Analysis'' in this SNPRM.

The requirements of section 25.981(a)(3) of the Federal Aviation Regulations (14 CFR 25.981(a)(3)) cannot be met with an approved maintenance program only. While an appropriate maintenance program is required, section 25.981(a)(3) of the Federal Aviation Regulations (14 CFR 25.981(a)(3)) has the effect of setting minimum requirements for the design architecture and the reliability of system elements. The Model 757 FQIS as originally designed does not meet all of those requirements. Previous AD actions, other than the required maintenance program revisions included in AD 2012–12–15, Amendment 39–17095 (77 FR 42964, July 23, 2012) (which superseded AD 2008–10–11, Amendment 39–15517 (73 FR 25974, May 8, 2008)), have no effect on the level of individual flight risk that has been determined to be an unsafe condition. Some of the airworthiness limitations (AWLs) introduced by AD 2012–12–15 will reduce the rate of introduction of additional risks due to future maintenance errors or modifications compromising required design features, but are not expected to prevent all errors. Those AWLs do not address problems that may already exist or develop on in-service airplanes separate from maintenance activity, and they do not address the basic non-compliant aspects of the original FQIS design architecture. Those AWLs therefore would not have a significant effect on either the number of flights that occur with a latent failure condition or the FQIS-related fuel tank explosion risk level on those flights estimated in the FAA's risk assessment. We have not changed this SNPRM regarding this issue.

Request To Withdraw NPRM (77 FR 12506, March 1, 2012): No Unsafe Condition

Airbus acknowledged that the latent-plus-one scenarios that prompted the unsafe condition determination are a technical possibility, but stated that the failure combinations that can create an ignition source are extremely improbable. Airbus also stated that AD-required airworthiness limitations related to FQIS have significantly reduced the likelihood of an FQIS-related fuel tank ignition event. We infer that Airbus is requesting that we withdraw the NPRM (77 FR 12506, March 1, 2012) based on Airbus's contention that no unsafe condition exists.

We agree to clarify the likelihood that the unsafe condition could occur. The FAA's unsafe condition determination was not based on an assessment of average risk. We agree that the average risk of a fuel tank explosion on the Model 757 is likely to be lower than the numerical guidance for ''extremely improbable'' of 1.0x10E–9 per flight hour. We also agree that the average risk was likely reduced by AD-required airworthiness limitations that specify extra checks after in-tank work, and adequate separation of newly installed out-of-tank wiring from FQIS wiring.

As discussed in ''Request to Withdraw NPRM (77 FR 12506, March 1, 2012): Unjustified by Risk'' in this SNPRM, however, the FAA's unsafe condition determination was driven by the identification of an unacceptable level of individual risk that exists on flights that are anticipated to occur with a pre-existing latent in-tank failure condition and with a flammable center fuel tank. In the remaining life of the affected airplanes, a significant number of such flights are reasonably anticipated to occur—even with the improvements expected under the AWLs required by AD 2012–12–15, Amendment 39–17095 (77 FR 42964, July 23, 2012). For those flights, a fuel tank explosion can be caused by an additional single wiring failure. In addition, the manufacturer's estimated probability of such a failure (the additional single wiring failure) significantly exceeds the FAA's unsafe condition numerical threshold for individual flight risk. The probability of

a fuel tank explosion on those flights is not reduced by the existence of the above-mentioned AWLs. The AWL that requires extra checks after in-tank work has been done has the potential to reduce the number of flights with a pre-existing in-tank failure condition. The AWL that requires newly installed wiring to meet separation standards should prevent a significant increase in the risk on those flights that would have resulted from the installation of additional, inadequately separated wiring.

We have not changed this SNPRM regarding this issue.

Request To Withdraw NPRM (77 FR 12506, March 1, 2012) Based on Similar Rulemaking for Cargo Airplanes

ASTAR Air Cargo (ASTAR) requested that we withdraw the NPRM (77 FR 12506, March 1, 2012). In support of its request, ASTAR cited the TWA Flight 800 accident investigation and its finding that the most probable cause of the accident was a fuel tank explosion due to a latent-plus-one failure of the FQIS. ASTAR stated that the FAA had proposed the FTFR rule (73 FR 42444, July 21, 2008) to mitigate the risk of fuel tank explosions, and that cargo airplanes had been exempted from that requirement based on a cost-benefit analysis. ASTAR argued that, because the basis for exclusion of all cargo aircraft from the FTFR rule has not changed, all cargo aircraft should be exempt from any corrective action for the FQIS latent-plus-one issues, and the NPRM (77 FR 12506, March 1, 2012) should be withdrawn.

We disagree with the request. We have determined that an unsafe condition requiring corrective action exists in the Model 757 FQIS. The FTFR rule (73 FR 42444, July 21, 2008) was proposed not because of FQIS issues specifically, but because of the history of fuel tank explosions in the transport airplane fleet due to various causes, and an acknowledgement that industry and the FAA may not be able to anticipate and prevent all of the fuel tank ignition sources that may arise due to design and maintenance issues in the life of a fleet of airplanes.

The intent of the FTFR rule (73 FR 42444, July 21, 2008) was to reduce the overall exposure to flammable fuel tank conditions in the fleet by approximately one order of magnitude with the expectation that this would have a significant impact on the rate of fuel tank explosions in the future due to unanticipated causes. In promulgating this improvement in the safety standards, the FAA acknowledged that installation of FRM or ignition mitigation means on a given airplane in accordance with the FTFR rule would be sufficient to address the FQIS latent-plus-one unsafe condition. The FTFR rule was not intended to prevent the FAA from addressing that unsafe condition on airplanes that would not be affected by the FTFR rule. This was clearly stated in the preamble to the FTFR rule. We have not changed this SNPRM regarding this issue.

Request To Withdraw NPRM (77 FR 12506, March 1, 2012): Underestimated Economic Impact

Several commenters requested that we withdraw the NPRM (77 FR 12506, March 1, 2012) because the FAA's cost estimate was too low. A4A estimated that the costs associated with the NPRM would be up to 3 times the $100,000 to $200,000 estimated by the FAA, and would be comparable with the cost of Boeing's NGS installation. Goodrich pointed out that any redesigned FQIS would likely be subject to the current requirements of section 25.981 of the Federal Aviation Regulations (14 CFR 25.981), resulting in higher costs than estimated by the FAA. A4A speculated that these higher costs were the reason the NGS was acknowledged as a method of compliance in the NPRM. A4A and UPS stated that the FAA appears to be using the NPRM as a method to require the installation of Boeing's NGS (or equivalent actions) on airplanes that were not included in the applicability of the FTFR rule (73 FR 42444, July 21, 2008) based on a cost-benefit analysis.

Although we disagree to withdraw the NPRM, we agree with some of the commenters' assertions. We agree that our original cost estimate was low. We agree to adjust the cost estimate, based on the information provided by the commenters, as discussed below under ''Request to Revise Cost Estimate Based on New Data.'' Our original estimate was based on information provided previously by manufacturers of original equipment FQIS, retrofit FQIS, and both original equipment and aftermarket transient suppression and isolation devices. Our current estimate has been increased to reflect the written comments from and further discussions with Boeing and Goodrich. There is no change to our determination that an unsafe condition exists. We are therefore proceeding with this AD action based on the identified corrective actions that will address the unsafe condition.

We disagree with the characterization that we are using the AD process to require an FRM to be installed on airplanes that were excluded from the FTFR rule (73 FR 42444, July 21, 2008) because inclusion could not be justified in a cost-benefit analysis. The FTFR rule was intended to enhance the airworthiness standards in a manner that would increase the level of safety for affected airplanes over that ensured by the existing regulations. That enhancement was expected to result from an increased level of protection from ignition sources that had not been identified by manufacturers in their safety analyses. That enhancement of the airworthiness standards was required to be justified by a cost-benefit analysis. Cargo airplanes were excluded because the FTFR rule safety enhancement could not be justified for those airplanes from a cost-benefit standpoint.

This SNPRM would not require a safety enhancement over the level of safety required by previous standards. Instead, this SNPRM addresses an unsafe condition that was identified from the manufacturer's SFAR 88 safety analysis using the FAA's published corrective action decision criteria for SFAR 88 identified design issues (see section 25.981(a)(3) of the Federal Aviation Regulations (14 CFR 25.981(a)(3) (*http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/73716*). We deferred taking action on this unsafe condition until after the FTFR rulemaking activity because the installation of an FRM would sufficiently address the FQIS latent-plus-one unsafe condition. Now that the FTFR rulemaking process is complete, we are resuming our activity to address these unsafe conditions via AD actions. The Boeing NGS has been acknowledged as a method of compliance in this SNPRM because the Boeing NGS is an available design that the FAA knows would address the unsafe condition. No additional change was made to this SNPRM as a result of this comment.

Request To Withdraw NPRM (77 FR 12506, March 1, 2012) Due to Its Hidden Effects

A4A requested that we withdraw the NPRM (77 FR 12506, March 1, 2012) because of certain hidden effects that may not have been anticipated by the FAA. A4A pointed out that some operators are already anticipating difficulty in meeting the deadlines for compliance with the FTFR rule (73 FR 42444, July 21, 2008). Based on A4A's assumption that airlines would comply with the NPRM by incorporating Boeing's current NGS design, A4A expressed concern that using Boeing's NGS for these additional airplanes would potentially exceed the rate at

which industry can modify the fleet affected by the planned ADs and the FTFR rule. A4A also noted that the compliance time for the NPRM would overlap the compliance period for the FTFR rule.

While we disagree with the request to withdraw the NPRM, we agree with some of the assertions made by the commenter. We agree with the concern that this AD action has the potential to further burden the operators and modifiers that are working to meet the FRM operating rule deadlines, because some additional airplanes are likely to be modified by installing FRM such as Boeing's NGS. But since we issued the NPRM (77 FR 12506, March 1, 2012), two factors have changed that reduce A4A's concern. First, we have identified a less costly option for cargo airplanes, which most cargo operators are expected to prefer over installation of FRM. This is expected to result in significantly fewer airplanes competing for FRM modification resources. Second, this AD action has been delayed due to numerous factors, including the number of comments, the development of a different corrective action option, and the resultant need to extend the comment period to allow the public the chance to comment on these proposed changes.

Also, as discussed below under ''Request to Extend Compliance Time Pending Issuance of Service Information,'' we have extended the proposed compliance time by 12 months. These delays and changes will result in the AD compliance deadline being at least 3 years beyond the final compliance deadline of the FTFR rule (73 FR 42444, July 21, 2008). Similar planned ADs for other models have been similarly delayed. We have determined that the industry modification capacity will be sufficient to support the modification of the expected additional airplanes receiving FRM within the new proposed compliance time. We have not changed this SNPRM further regarding this issue.

Request To Withdraw NPRM (77 FR 12506, March 1, 2012): Potential Significant Rule

A4A stated that the combined costs of the NPRM (77 FR 12506, March 1, 2012) and other anticipated ADs for U.S. airplane models with an FQIS latent-plus-one issue would exceed $177 million and would require a cost-benefit analysis. We infer that the commenter is requesting we withdraw the NPRM (77 FR 12506, March 1, 2012) on the basis that the planned ADs for various models, if combined, would qualify as a significant rule that would require a cost-benefit analysis.

We disagree with the request. First, in assessing whether an AD is a significant rule in accordance with FAA policy, we do not combine the cost of multiple planned ADs for different airplanes, even when the design issues and unsafe conditions addressed are similar. Second, the changes discussed previously in this SNPRM will significantly reduce the cost impact. We have made no further changes to this SNPRM regarding this issue.

Request To Withdraw NPRM (77 FR 12506, March 1, 2012): Inadequate Notice to Public

A4A recommended that we provide information on any other designs that have been reviewed under SFAR 88, and provide industry with information regarding their planned disposition. A4A asserted that, during the FTFR rulemaking activity, we did not provide notice to the industry that we still intended to address the FQIS issues identified via SFAR 88. We infer that A4A is requesting that we withdraw the NPRM (77 FR 12506, March 1, 2012) based on inadequate notice to the public and the chance to comment on the proposal. The commenter stated that the preamble of the FTFR rule (73 FR 42444, July 21, 2008) was unclear regarding whether AD actions would be taken to address the FQIS issues on airplanes that were not required to incorporate FRM.

We disagree with the request to withdraw the NPRM (77 FR 12506, March 1, 2012). We determined that an unsafe condition exists. FTFR rulemaking was done because the FAA recognized the benefit for the specific design changes involving incorporation of FRM required by the FTFR rule (73 FR 42444, July 21, 2008) to enhance fuel tank safety. Because the FTFR final rule requires action on only a subset of the airplanes that have the FQIS unsafe condition, we are taking action to address the remaining airplanes that will continue to have the unsafe condition if no further corrective action is taken.

The commenter has taken the statement from the FTFR preamble out of context. In fact, the paragraph from which the commenter quoted specifically states that the FAA expected to take AD action to address FQIS issues identified through SFAR 88 analyses. The paragraph simply states that the proposed FRM has the potential to reduce the industry cost associated with those expected ADs because the installation of an FRM likely would eliminate the need for action to further address the FQIS issue with AD actions. The purpose of that statement was to note that there would be some cost savings to industry resulting from the elimination of other actions required to address an unsafe condition for the airplanes affected by the proposed rules, and to point out that the FAA did not take credit for those potential cost reductions in assessing the cost of the FTFR rule (73 FR 42444, July 21, 2008) because the costs were not well understood at the time. That statement was not a commitment by the FAA to reverse its intentions to address an identified unsafe condition on the airplanes that are not required to incorporate FRM. We have not changed this SNPRM regarding this issue.

Request for Cost-Benefit Analysis

Boeing, FedEx, Airbus, ASTAR Air Cargo, and A4A requested that we perform a cost-benefit analysis for the NPRM (77 FR 12506, March 1, 2012) and publish the results. Airbus stated that its own cost estimates exceed those used by the FAA for the FTFR rule (73 FR 42444, July 21, 2008) cost-benefit analysis that ended up excluding cargo airplanes. A4A and ASTAR Air Cargo requested that the NPRM be withdrawn until a cost-benefit analysis is performed. The commenters suggested that a cost-benefit analysis would show that the NPRM cannot be justified because the costs of the proposed actions would exceed the monetary value of the AD's safety benefits. The commenters cited the cost-benefit analysis that was performed to justify the FTFR rule, and pointed out that a requirement for FRM could not be justified for the airplanes that would be affected by the proposed AD.

We infer that, pending a full cost-benefit analysis, these commenters are requesting that we either withdraw the NPRM or delay this action further until a cost-benefit analysis demonstrates that an AD is justified in this case. We disagree. The FAA's process and legal obligations for introducing new airworthiness standards are different from those for initiating an AD to address an unsafe condition in an existing product. In addition, the commenters' assertions were based on the assumption that the only design solution that would be made available to address the solution would be an FRM, or another solution of similarly high cost.

When we propose a new airworthiness standard, as in the case of the FTFR rule (73 FR 42444, July 21, 2008), we are required to perform a cost-versus-benefit comparison to justify the application of the new standard. The

decision in that rulemaking action—to not require FRM installation on cargo airplanes—was based in significant part on cost estimates that industry provided to show that AD-required FQIS design changes would be far less costly than installing FRM on cargo airplanes. We specifically considered the option to not require retrofit of cargo airplanes with FRM because of the expectation that alternative design solutions to address the specific, known unsafe condition of FQIS latent-plus-one vulnerability would still be required through AD actions. For this AD action, however, industry submitted written comments and made verbal statements that the cost of an FQIS design solution would be comparable to, and possibly greater than, the cost of its FRM modification.

In general, a full cost-benefit analysis is rarely required for an AD. As a matter of regulation, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that the design complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that those requirements establish a level of safety that is cost beneficial. A finding of an unsafe condition that warrants AD action means that this cost-beneficial level of safety is no longer being achieved, and the required AD actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost beneficial and does not add an additional regulatory requirement, a full cost-benefit analysis for each AD would be redundant and unnecessary.

We have not changed this SNPRM regarding this issue.

Request To Revise Applicability Statement To Clarify the Intent of the Rule for Non-U.S.-Registered Airplanes

The European Aviation Safety Agency (EASA), the Technical Agent for the Member States of the European Community, requested that we revise the proposed applicability. Specifically, EASA requested that we add Model 757 airplanes that did not have FRM installed in production. EASA further requested that we exclude airplanes equipped with FRM that meet the FAA's FTFR rule (73 FR 42444, July 21, 2008). EASA stated that it has not issued an operating regulation corresponding to the FAA's requirements for retrofitting FRM in the FTFR rule. EASA noted that, at least for European operators, the unsafe condition would not be required to be addressed for airplanes that would have been subject to the FTFR rule in the U.S., and suggested that EASA might have to issue an AD (instead of adopting the FAA AD), with similar technical content, but extending the applicability to the entire Model 757 fleet in Europe.

We agree to revise the applicability. EASA is correct that the unsafe condition potentially affects all Model 757 airplanes, whereas the applicability statement in the NPRM (77 FR 12506, March 1, 2012) could be interpreted as not covering airplanes in passenger service that are not operated under parts 121, 125, or 129 of the Federal Aviation Regulations (14 CFR part 121, 125, or 129). The EASA comment makes it apparent that the proposed applicability statement may be unclear to some operators and regulatory authorities. While the applicability statement in the NPRM is technically correct (*e.g.,* an EASA operator is not operating under those FAA operating rules and therefore would have been subject to the AD), we now agree that there is a potential for confusion that can be eliminated by more directly stating the requirement and applicability in a manner similar to that proposed by EASA in their comment. We have changed the applicability in this SNPRM to all Model 757 airplanes except for airplanes equipped with an FRM approved by the FAA as compliant with the FTFR requirements of section 26.33(c)(1) of the Federal Aviation Regulations (14 CFR 26.33(c)(1)), as discussed below. As with any required equipment, the FRM must be operational with the exception of any relief granted under master minimum equipment list (MMEL) provisions.

With the clarification in paragraph (c), ''Applicability,'' of this SNPRM, we have determined that paragraph (h), ''Optional Installation of Flammability Reduction Means,'' of the NPRM would be superfluous and is no longer necessary. Paragraph (c) of this supplemental NPRM, as revised, would not apply to airplanes equipped with FRM.

Requests To Withdraw NPRM (77 FR 12506, March 1, 2012) Based on Applicability

Boeing and ASTAR Air Cargo requested that we withraw the NPRM (77 FR 12506, March 1, 2012) because cargo airplanes on average have a lower flammability exposure due to a larger portion of night operations (with resultant cooler outside air temperatures) and a lower rate of utilization of the cabin air conditioning system on the ground. Boeing stated that operation of the air conditioning system on the ground significantly contributes to the heating of the center fuel tank. Boeing's analysis estimated a fleet average flammability for the center fuel tanks of the cargo airplane fleet of 50 percent of the level for the passenger fleet. Boeing also noted that cargo airplanes generally accumulate flight hours at a lower rate than passenger airplanes.

We disagree with the request to withdraw the NPRM (77 FR 12506, March 1, 2012).

We acknowledge that the increased night operation and reduced use of the air conditioning system on the ground reduce the average flammability exposure for the fleet of cargo airplanes relative to the fleet of passenger airplanes. That reduction in fleet average flammability, however, is not sufficient to allow the center fuel tanks on those airplanes to be classified as low flammability fuel tanks. The FAA's determination that an unsafe condition exists for the cargo airplanes as well as passenger airplanes was driven by the FAA's individual risk safety decision criteria rather than an average risk or fleet risk criterion. There is no difference in the individual flight risk on the worst anticipated flights between passenger airplanes and cargo airplanes due to this issue. The worst anticipated flights in either case involve a pre-existing latent in-tank failure and operation with flammable conditions in the center fuel tank. Flights with that combination of conditions are anticipated to occur in both the passenger fleets and cargo fleets (although at a somewhat lower relative rate on cargo airplanes, for the reasons cited by the commenters).

For those flights, a fuel tank explosion could occur due to a single failure in the airplane wiring or the FQIS processor that conducts a high level of electrical energy onto circuits that enter the fuel tank. As discussed previously in the response to ''Request to Withdraw NPRM (77 FR 12506, March 1, 2012): Unjustified by Risk,'' this is not consistent with the FAA's fail-safe design philosophy for transport airplanes. In addition, the numerical probability of the single failure as estimated by the manufacturer and the FAA significantly exceeds the unsafe condition threshold for individual flight risk in the FAA's TARAM) Policy Statement PS–ANM–25–05 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/4E5AE8707164674A862579510061F96B?OpenDocument&Highlight=ps-anm-25–05*). We have therefore determined that an unsafe condition does exist on cargo

airplanes even in consideration of the lower fleet exposure factors cited by the commenters.

While we have determined that this unsafe condition requires corrective action, we have identified additional corrective action options that we expect will be significantly less costly to incorporate than the originally proposed requirement. We have determined that this additional corrective action option is not suitable for passenger airplanes because it does not provide a sufficient level of risk reduction for passenger operations. The FAA normally does not differentiate between the safety requirements or corrective action requirements for cargo airplanes and passenger airplanes. However, after reviewing all of the comments on the estimated high cost of the corrective action and the uncertainty in those estimates, we examined other options for less costly risk reduction on cargo airplanes. We identified an option that provides significant risk reduction at a per-airplane cost that is estimated to be less than one-quarter of the cost of the original proposal (77 FR 12506, March 1, 2012). The amount of risk reduction from this option is not at this time considered to be adequate to address the unsafe condition for passenger airplanes.

In this case, the FAA is proposing to accept a higher level of individual flight risk exposure for cargo flights that are not fail-safe due to the absence of passengers and the resulting significant reduction in occupant exposure on a cargo airplane versus a passenger airplane, and due to relatively low estimated individual flight risk that would exist on a cargo airplane after the corrective actions are taken. The FAA has allowed a higher risk level to exist on cargo airplanes due to other issues, and applies a slightly less stringent numerical fleet risk threshold standard for unsafe conditions in the published TARAM policy. Because this is an unusual determination, we have reopened the comment period to give affected operators, pilots, and the public the opportunity to comment on this proposal.

We expect that the optional wire separation design change to support compliance with the proposed AD for cargo airplanes will involve the manufacturer or any other modifier petitioning for a partial exemption from the ''latent-plus-one'' requirements of sections 25.901(c) and 25.981(a)(3) of the Federal Aviation Regulations (14 CFR 25.901(c) and 14 CFR 25.981(a)(3)). We have informed the manufacturer that we are open to granting such an exemption, and they indicated their willingness to make such a petition.

We have added new paragraph (h) in this SNPRM to allow repetitive FQIS built-in test equipment (BITE) checks and modification of the airplane by separating FQIS wiring from other aircraft wiring that is not intrinsically safe (in a manner acceptable to the FAA) as an additional option for airplanes used exclusively for cargo operations. We have redesignated subsequent paragraphs of this SNPRM accordingly.

Request To Change Applicability To Address Unsafe Condition on Airplanes With FRM

National Air Traffic Controllers Association (NATCA) requested that we revise the NPRM (77 FR 12506, March 1, 2012) to include airplanes on which FRMs were incorporated either voluntarily or to comply with the FTFR rule (73 FR 42444, July 21, 2008). NATCA noted that the introduction of FRM on such airplanes only reduces the fraction of time the airplane is operated with flammable conditions in its fuel tanks, but does not eliminate flammable operation. NATCA further noted that FAA operating rules allow limited operation of the airplane with the FRM inoperative. NATCA added that the likelihood of a fuel tank explosion during operation with flammable tanks is similar regardless of whether an FRM is installed.

We disagree with the request. We have developed and published policy for determination of unsafe conditions and the need for corrective actions during the evaluation of SFAR 88 fuel tank safety review findings. The decision to allow FRM as an acceptable mitigating action for the identified unsafe condition is consistent with that policy. We acknowledge NATCA's point that, if no actions are taken on an airplane to correct the FQIS latent-plus-one issue other than installation of an FRM, flights on that airplane where FRM is inoperative or ineffective would have the same risk of a fuel tank explosion due to the FQIS latent-plus-one issue as flights on an airplane with no FRM installed. However, the published unsafe condition criteria (section 25.981(a)(3) of the Federal Aviation Regulations (14 CFR 25.981(a)(3)) (*http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/73716*) differentiate between low- and high-flammability fuel tanks, with a higher level of conservatism applied to high-flammability tanks.

The criteria recognize that low-flammability tanks are still flammable for a portion of their operating time, and the criteria include ignition prevention thresholds commensurate with that level of flammability. The regulatory performance standard for FRMs is equivalent to the flammability of a conventional aluminum wing tank, which is the benchmark for the definition of a low-flammability tank. We have therefore determined that it is appropriate to treat ignition sources in center fuel tanks with compliant FRMs the same way they would be treated for a tank that has inherent low flammability. Because the FQIS latent-plus-one vulnerability for Model 757 airplanes was classified as a theoretical vulnerability and not as a condition known to have occurred, the SFAR 88 corrective action policy does not require corrective action for that condition in low-flammability fuel tanks. The installation of an FRM causes the center fuel tank to meet the criteria for classification as a low-flammablity fuel tank, and therefore FRM installation was considered to be acceptable mitigating action. We have not changed this SNPRM regarding this issue.

Request To Remove Requirement for Goodrich FQIS

Goodrich stated that its FQIS fuel height and dielectric sensor interface circuitry presently meets the energy, voltage, and current limits specified in FAA AC 25.981–1C, ''Fuel Tank Ignition Source Prevention Guidelines,'' dated September 19, 2008 (*http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/73716*). Goodrich stated that the system design would require multiple serial failures to enable a fault to propagate to the tank, resulting in the combination of those failures being extremely improbable on average. Goodrich added that the system built-in test detects open circuits and short circuits in the sensors and aircraft wiring, including shorts to structure. Goodrich stated that there have been no failures in service in which the Goodrich FQIS exposed the fuel tank to an unsafe condition. Goodrich asked whether the actual system operation and service life have been considered in the evaluation of the probability of an unsafe condition and the mitigation provided by the present Goodrich FQIS.

We infer that the commenter is requesting that we revise the NPRM (77 FR 12506, March 1, 2012) to eliminate any requirement for corrective action for airplanes equipped with a Goodrich FQIS. We partially agree. The Goodrich system is recognized as having significant improvements relative to the

original 757 system developed by another manufacturer. We recognize that the Goodrich FQIS has the ability to identify a significant portion of the potential latent in-tank failure conditions that can occur inside the fuel tanks. Those conditions, however, are detected and corrected only when the built-in test capability is activated during maintenance. Currently, activating the built-in test features is required only when troubleshooting an FQIS problem that has become apparent to flight or maintenance crew. This still potentially leaves significant latency periods for those failures.

We have agreed that the Goodrich processor has sufficient circuit isolation such that the processor itself is not expected to create hot short conditions in tank circuits, and is not expected to pass energy from non-tank-side low-voltage hot shorts onto tank-side circuits. There remains, however, a significant potential for a single failure causing a hot short onto tank-side circuits, or a single failure causing a high-voltage hot short onto non-tank-side circuits to cause non-intrinsically safe energy, voltage, or current levels to be conducted into the fuel tanks. The latent-plus-one concern therefore still exists even with the additional detection capabilities that exist in the Goodrich FQIS. We have determined this concern requires corrective action in accordance with the SFAR 88 corrective action decision policy discussed previously. We disagree with the request to revise this SNPRM to eliminate any requirement for corrective action for airplanes equipped with a Goodrich FQIS because we have determined that an unsafe condition requiring corrective action exists on the Goodrich FQIS-equipped airplanes even after considering the differences between the Goodrich FQIS and the original 757 system developed by another manufacturer. We have not changed this SNPRM regarding this issue.

Request To Clarify Affected Tanks

FedEx requested that we revise the NPRM (77 FR 12506, March 1, 2012) to clarify that only the center fuel tank is affected. FedEx stated that the proposed wording could be interpreted as applying to all tanks.

We agree to clarify the intent of this SNPRM. The FQIS wiring and related system components are to be modified to the extent necessary to prevent the development of an ignition source in the center fuel tank due to FQIS failure conditions. If modification of wing tank-related components is necessary to prevent an ignition source in the center fuel tank (for example, because of common wiring between the tanks), then that modification would be required. Paragraph (g) of this SNPRM already states this (''modify the FQIS wiring or fuel tank systems to prevent development of an ignition source inside the center fuel tank''). A change to this SNPRM itself therefore is not necessary.

Request To Revise Proposed AD Requirements To Apply to All Fuel Tanks

NATCA noted that action similar to the proposed requirements of the NPRM (77 FR 12506, March 1, 2012) was required for all fuel tanks on early Model 747 and 737 airplanes via AD 98–20–40, Amendment 39–10808 (63 FR 52147, September 30, 1998); and AD 99–03–04, Amendment 39–11018 (64 FR 4959, February 2, 1999). The commenter also noted that the FAA's published SFAR 88 unsafe condition criteria (section 25.981(a)(3) of the Federal Aviation Regulations (14 CFR 25.981(a)(3)) (*http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/73716*)) require corrective action for ''known latent-plus-one conditions'' in both low- and high-flammability tanks.

We infer the commenter is requesting that we revise the proposed actions of the NPRM (77 FR 12506, March 1, 2012) to apply to all fuel tanks. We disagree. NATCA's interpretation of the word ''known'' appears to be different from that intended by the FAA when the SFAR 88 decision criteria were developed and implemented. For low-flammability fuel tanks, the FAA has proposed that corrective action for ''latent-plus-one'' issues be required only in cases where the particular latent-plus-one scenario is known to have occurred on that particular design. Where relevant design details are significantly different, a condition that has occurred with one design is not considered to be a ''known'' latent-plus-one condition on another design simply because the same architectural vulnerability theoretically exists.

In the case of AD 98–20–40, Amendment 39–10808 (63 FR 52147, September 30, 1998); and AD 99–03–04, Amendment 39–11018 (64 FR 4959, February 2, 1999); we required corrective action for all fuel tanks because the details of those designs were identical or very similar to the details of the design that were considered to be the most likely cause of the 1996 Model 747–100 accident. The actions of AD 98–20–40 and AD 99–03–04 are consistent with the intent of the later-developed SFAR 88 unsafe condition criteria. We have not changed this SNPRM regarding this issue.

Request for Specific Corrective Action

EASA noted that the NPRM (77 FR 12506, March 1, 2012) did not cite service information for a specific design solution other than acknowledging FRM as an acceptable method of compliance. We infer that EASA is requesting that the NPRM propose to require a specific corrective action for the unsafe condition. EASA pointed out that, under its regulations and policies, EASA issues ADs based on specific solutions provided by the responsible manufacturer. EASA stated that, in the absence of a specific solution, EASA will not be in a position to simply adopt the FAA AD, and may need to develop its own AD or find another solution.

We disagree with the request to require a specific corrective action in this SNPRM. In this case, the manufacturer has not provided a corrective action specific to FQIS in time to support the NPRM, noting that they have provided service instructions to install FRM that the FAA has defined as one method of compliance within the NPRM (77 FR 12506, March 1, 2012). While the FAA has the authority to compel the manufacturer to provide a solution specifically providing FQIS protection, in this case the FAA decided to seek public comment on the NPRM (77 FR 12506, March 1, 2012) before deciding whether to take that action. The FAA already requires the vast majority of passenger airplanes registered in the U.S. to be equipped with FRM, and since we defined incorporation of FRM as one method of compliance within the NPRM (77 FR 12506, March 1, 2012), and because Boeing and Goodrich provided information to show that a specific FQIS protection solution would have a per-airplane cost similar to that of Boeing's FRM design solution, we have determined there is no practical reason to require the manufacturer to provide a corrective action specific to FQIS for passenger airplanes. Consideration of the many comments on the NPRM (77 FR 12506, March 1, 2012) has resulted in a revision of the FAA's approach for cargo airplanes, leading to a significantly different proposed AD. At this point we do expect the manufacturer to provide service information for the proposed optional solution for cargo airplanes. We have, however, decided not to further delay action on this issue by waiting for that service information. The service information is expected to be released shortly after the issuance of a final rule.

No change to this SNPRM is necessary for this issue. If service information becomes available before the final rule is issued, we might consider incorporating it into the AD.

Request for Information on Modifications

Icelandair requested more detailed information on the specific modifications that would need to be performed to comply with the proposed requirements specified in the NPRM (77 FR 12506, March 1, 2012), and asked if a related service bulletin was available.

Service information is available for incorporation of FRM approved by the FAA as compliant with the FTFR rule (73 FR 42444, July 21, 2008) requirements of section 26.33(c)(1) of the Federal Aviation Regulations (14 CFR 26.33(c)(1)).

As stated previously, we have revised the NPRM (77 FR 12506, March 1, 2012) to provide more specific information about a less costly optional modification for cargo airplanes. Service information related to this modification is not currently available. We have not changed this SNPRM further regarding this issue.

Request for Optional Modification

Goodrich requested that we revise the NPRM (77 FR 12506, March 1, 2012) to require or allow a modification to separate and shield the FQIS tank-side circuits from other wiring as corrective action for the identified unsafe condition. Goodrich referred to its discussion regarding the capability of the Goodrich FQIS processor to isolate the tank-side circuits from the non-tank-side circuits.

We partially agree with the request. We considered that method of compliance and determined that the benefit from that corrective action would be sufficient for cargo airplanes when combined with regular FQIS checks using the previously mentioned built-in test capability. We disagree with allowing the proposed alternative for passenger airplanes that are not equipped with FRM because the level of risk reduction achieved from that alternative corrective action would not provide a sufficient risk reduction for those airplanes. Even when the built-in test capability is periodically exercised, there will still be a significant latency period for some in-tank failures. The risk on the flights where those failures exist and where flammable conditions exist in the fuel tank is considered to be excessive for passenger airplanes, because it results from a single additional failure (those flights would not be fail-safe). Even if it did not result from an additional single failure, it would still exceed the TARAM-allowable risk level for individual flight risk. This determination is consistent with the SFAR 88 corrective action decision policy and TARAM policy. As discussed previously, we have added new paragraph (h) in this SNPRM to allow the option of a periodic BITE check and partial wire separation for cargo airplanes.

Request for Repetitive Inspections or Replacement

Oy Air Finland Ltd. stated that wires within the fuel tank must remain in an undamaged condition and therefore requested that we revise the NPRM (77 FR 12506, March 1, 2012) to specify their repetitive inspection or replacement. The commenter provided no justification.

We disagree with including specific requirements to periodically inspect or replace the wiring within the fuel tanks because airworthiness limitations and existing maintenance practices are already in place to monitor the condition of in-tank wiring. This SNPRM would require installation of flammability reduction means or a combination of periodic system checks (which would detect many types of wiring defects or damage) and wire separation improvements, either of which would significantly reduce the probability of a fuel tank explosion on a given airplane flight to an acceptable level. We have not changed this SNPRM regarding this issue.

Request To Compel Issuance of Service Information

NATCA requested that we enforce sections 21.99 and 183.63(d) of the Federal Aviation Regulations (14 CFR 21.99 and 183.63(d)) and SFAR 88, Amendment 21–78, and subsequent Amendments 21–82 and 21–83) (*http://rgl.faa.gov/Regulatory_and_Guidance_Library%5CrgFAR.nsf/0/EEFB3F94451DC06286256C93004F5E07?OpenDocument*) to obtain necessary service information from design approval holders. NATCA noted that EASA cannot ''issue ADs'' (that is, EASA may not be able to adopt the FAA AD per se) if specific service information is not identified. NATCA expressed concern that other civil aviation authorities may take a similar position.

We partially agree with the request. We agree that the cited regulations are relevant in setting requirements for action by design approval holders when we have identified an unsafe condition. We also recognize that issuance of an AD without service information creates significant issues for regulatory agencies and for operators that must comply with the AD. This SNPRM, however, is not the appropriate forum to discuss potential enforcement action. We have not changed this SNPRM regarding this issue.

Boeing's Planned Service Information

Boeing stated that it will offer only the Boeing FRM as a solution, if the AD is issued as proposed. Boeing added that it does not develop detailed cost estimates for design changes they do not intend to provide. Further, Boeing stated that it does not advocate FRM installation on airplanes for which FRM is not required under the FTFR rule (''Reduction of Fuel Tank Flammability in Transport Category Airplanes'' (73 FR 42444, July 21, 2008)). Boeing proposed no change to the NPRM (77 FR 12506, March 1, 2012). Boeing noted that a requirement to install an FRM on the affected airplanes could not be justified in the cost-versus-benefit analysis performed for the new FTFR rule, and therefore cannot be justified to address the unsafe condition identified by the FAA.

We have provided the basis for this SNPRM in response to ''Request for Cost-Benefit Analysis'' in this SNPRM. We emphasize, however, that this SNPRM does not require installation of a nitrogen generation system or other FRM. The actions specified in this SNPRM will correct a specific, known unsafe condition with the FQIS. We decided to propose this AD action without specific service information for the expected design solution specifically because Boeing has not to date provided a design solution specific to FQIS. As a result of considering the comments to the NPRM (77 FR 12506, March 1, 2012), the FAA has identified a less costly option for Model 757 cargo airplanes. We have asked Boeing to develop service information for that option, and Boeing has agreed. Since the FAA already requires the vast majority of passenger airplanes registered in the U.S. to be equipped with FRM and we defined incorporation of FRM as one method of compliance within the NPRM (77 FR 12506, March 1, 2012), and because Boeing and Goodrich provided information to show that a specific FQIS protection solution would have a per-airplane cost similar to that of Boeing's FRM design solution, we have determined there is no practical reason to require the manufacturer to provide a corrective action specific to FQIS for passenger airplanes. We have not further changed this SNPRM regarding this issue.

Request To Extend Compliance Time Pending Issuance of Service Information

A4A requested that we revise the NPRM (77 FR 12506, March 1, 2012) to extend the compliance time from 60 months to ''a 96-month compliance period that commences one year after the effective date of the AD''—for a total compliance time of 9 years. A4A noted that SFAR 88 (Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83) (*http://rgl.faa.gov/Regulatory_and_Guidance_Library%5CrgFAR.nsf/0/EEFB3F94451DC06286256C93004F5E07?OpenDocument*)) required design solutions for non-compliant designs to be provided by December 6, 2002, and considered that the absence of service information reflects a failure of communication and coordination, presumably between the FAA and Boeing. A4A was concerned that Boeing's declaration that it does not intend to develop a design solution other than its existing nitrogen generation system indicates that the development of any other design solution would be technically challenging and time consuming. A4A also cited the implementation of the requirements of part 26 of the Federal Aviation Regulations (14 CFR part 26) as an example of the FAA underestimating the costs and time required to develop design solutions.

We partially agree with the request to extend the compliance time. While we agree to provide additional time for manufacturers to develop service information, we acknowledge that service information is not likely to be available until several months after the final rule is issued. We disagree with the assertion that the delay in proposing an AD to address the FQIS latent-plus-one unsafe conditions on several transport airplane models reflects a failure to communicate and coordinate with design approval holders.

In 2003, the FAA held a series of AD board meetings to decide which of the design areas identified in SFAR 88 design reviews as non-compliant on Boeing airplanes would be classified as unsafe conditions requiring AD action. The FQIS latent-plus-one issue was identified as an unsafe condition for high flammability fuel tanks at that time for several models, including the Model 757. Several airplane models from other manufacturers were identified as having similar issues. However, during that same time period, the National Transportation Safety Board (NTSB) had recommended FAA action to require inerting systems for center fuel tanks, and the FAA was working with industry to develop a practical nitrogen generation system for new production and retrofit installations on transport airplanes. The FAA was also planning to propose a new rule requiring those systems to be installed on new and existing airplanes, as recommended by the NTSB. The FAA recognized that, if such a system was installed on a given set of airplanes, the unsafe condition determination for the center fuel tank latent-plus-one would be addressed due to the modified center fuel tank meeting the conditions for a low flammability fuel tank after installation of a nitrogen generation system.

The FAA therefore decided to defer addressing the FQIS latent-plus-one issue on the affected airplanes until after the outcome of the FTFR rulemaking process. Now that the rulemaking process is complete and the safety enhancement provided by the FTFR rule (73 FR 42444, July 21, 2008) has been limited to certain airplanes (14 CFR part 121, 125, and 129 passenger airplanes), the FAA is addressing the FQIS latent-plus-one unsafe conditions on the airplanes that are not required to receive the safety enhancement of the FTFR rule. This history was discussed in detail in the NPRM (77 FR 12506, March 1, 2012) and in the preamble for the FTFR rule.

We disagree with extending the compliance time to 9 years. Service information to support the modification portion of the option for cargo airplanes is expected to be available shortly after the final rule is issued. The service information for the inspection portion of that option and the FRM option is already released. We have determined that a compliance time extension to 72 months for the modification will give adequate time for manufacturers to complete the remaining service information and for operators to complete the modification.

We have revised the compliance time in this SNPRM to 72 months after the effective date of the AD.

Request To Reduce Compliance Time

NATCA requested that we reduce the compliance time from 60 months to 36 months because of the time that has already passed to address this unsafe condition since its identification in 2003.

While we acknowledge the time that has passed since the identification of the unsafe condition identified in this SNPRM, the FAA delayed taking action for this issue while we developed the FTFR rule (73 FR 42444, July 21, 2008), determined its applicability, which directly affected the applicability of this SNPRM, and implemented the FTFR rule. Now that we are proposing action for the affected airplanes, we must consider the ability of industry to develop an appropriate design change and incorporate it on all affected airplanes; we find that it is not practical for industry to respond to this AD in only 3 years. We have therefore not reduced the compliance time in this SNPRM.

Request To Revise Cost Estimate Based on New Data

Boeing requested that we revise the cost estimate specified in the NPRM (77 FR 12506, March 1, 2012) because the actual cost to develop and implement a design change to fully address the FQIS latent-plus-one failure conditions would be significantly higher. Boeing estimated in their comment that the cost to develop and implement a transient suppression unit design for Model 757 airplanes would be about the same as the cost of Boeing's FRM provided for the airplanes affected by the FTFR rule (73 FR 42444, July 21, 2008): in excess of $300,000 per airplane for airplanes equipped with the early FQIS design, and in excess of $200,000 per airplane for airplanes equipped with a Goodrich FQIS.

In a subsequent meeting initiated by the FAA to obtain more detail on this cost estimate, Boeing provided a higher cost estimate than they provided in their written comment. However, in subsequent discussions with Boeing as part of developing this SNPRM, Boeing indicated that they were working on an isolation-based design alternative to the FAA's proposed modification option for the cargo airplanes that would likely be significantly less costly than the FAA's proposed cargo airplane option of partial wire separation.

We partially agree with the commenter. We agree to revise the cost estimate because both Boeing and one of Boeing's affected FQIS vendors provided similar cost estimates that were higher than the estimates made in the NPRM (77 FR 12506, March 1, 2012) by the FAA. We disagree to revise the cost estimate as Boeing proposed. We have received several inconsistent cost estimates from industry during the development of the FTFR rule (73 FR 42444, July 21, 2008), in their written comments to the NPRM, and during discussions of the FAA's proposed alternative for cargo airplanes. We have therefore provided a revised cost estimate for the originally proposed action based on input from Boeing's written comment and from the FQIS vendor. We also have considered that it

is likely that aftermarket vendors may develop competing design solutions, as has occurred for other similar ADs, and those solutions will likely cost less than the original manufacturer's solutions.

In addition, we have identified an additional compliance option—with a different cost—for cargo airplanes. That cost estimate is based on Model 757 service information that described a very similar modification. We have used the work-hour estimate from that service bulletin, increased the work-hour estimate by 20 percent to account for any unforeseen increases in the work, and increased the parts prices to account for inflation and the potential that additional parts may be needed.

Request To Revise Cost Estimate Based on AD Scope

Goodrich requested that, if the intent of the NPRM (77 FR 12506, March 1, 2012) is to protect all fuel tanks rather than just the center fuel tank, we revise the cost estimate of the NPRM accordingly. Goodrich stated that the cost estimate is based on three assumptions: (1) That current technology circuit isolation devices similar to those previously approved for other models would be acceptable, (2) that no further changes to airplane wiring would be required, and (3) that the design change would be required to protect only the center fuel tank. Goodrich noted that protection for all fuel tanks is required for the two similar ADs: AD 99–03–04, Amendment 39–11018 (64 FR 4959, February 2, 1999), for Model 737 airplanes; and AD 98–20–40, Amendment 39–10808 (63 FR 52147, September 30, 1998), for Model 747 airplanes. Goodrich requested that we revise the cost estimate if the AD's intent is to require protection for fuel tanks other than the center fuel tank or if other wiring change requirements are anticipated. Goodrich stated that the cost specified in the NPRM should be estimated based on the actual design changes expected, rather than on previous AD actions.

We provide the following clarification of the intended scope of the NPRM (77 FR 12506, March 1, 2012) and the associated cost estimate regarding which fuel tanks are subject to the proposed requirements. AD 99–03–04, Amendment 39–11018 (64 FR 4959, February 2, 1999), and AD 98–20–40, Amendment 39–10808 (63 FR 52147, September 30, 1998), affect FQIS designs that are considered to have a higher level of risk of a fuel tank ignition source than the systems used on Model 757 airplanes. In addition, those systems were identical or nearly identical to the FQIS that was determined by the NTSB to be the most likely cause of the 1996 Model 747–100 accident described in the NPRM. Because the latent-plus-one failure scenario was suspected of actually having occurred on that system type, we determined that corrective action for all fuel tanks was appropriate. This decision was consistent with the subsequently published FAA policy on SFAR 88 AD decision criteria (section 25.981(a)(3) of the Federal Aviation Regulations (14 CFR 25.981(a)(3))) (*http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/73716*)). Also, it was our understanding that the design of that FQIS was such that, due to wiring interconnections between fuel tanks, it was necessary to protect the circuits for all fuel tanks in order to achieve effective protection for any one fuel tank.

We have determined that the FQIS used on earlier production Model 757 airplanes has the same fuel tank interconnection issue, but that the Goodrich system used on later production Model 757 airplanes does not have that issue. Since the cost estimates provided by both Boeing and Goodrich were based on design solutions that included upgrading to a Goodrich FQIS, we assume that the level of circuit protection for the center fuel tank can be significantly increased relative to the existing Goodrich design without having to further alter circuits or wiring for the main fuel tanks (beyond the alterations necessary to replace the FQIS with the Goodrich FQIS).

Because the latent-plus-one scenarios for Model 757 airplanes equipped with the Goodrich FQIS are classified as ''theoretical'' rather than ''known to have occurred'' under the FAA policy on SFAR 88 AD decision criteria (section 25.981(a)(3) of the Federal Aviation Regulations (14 CFR 25.981(a)(3))) (*http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/73716*)), we have determined in accordance with that policy that the corrective action for passenger airplanes must eliminate the potential for all theoretical latent-plus-one scenarios to create an ignition source in the center fuel tank, which is classified under that policy as a high flammability fuel tank. The need to modify the circuits or wiring for the main fuel tanks to achieve that intent will depend on the proposed design solution and the existing configuration of the airplane.

As stated previously, we have revised the cost estimate in this SNPRM. For the purpose of the cost estimate for passenger airplanes, we have assumed that the airplane will be upgraded to the Goodrich FQIS if necessary, and any further modifications will be to only the center fuel tank circuits or wiring. For the purpose of the additional proposed cargo airplane option, we have provided separate estimates for each design. For cargo airplanes equipped with the early 757 FQIS design, we have assumed that additional isolation of some main fuel tank wiring will be required. It is not necessary to change the proposed requirement itself in paragraph (g) of this SNPRM, which is very specific that protection is required for the center fuel tank.

Request To Revise Cost Estimate To Consider Long-Term Effect of AD

Goodrich asked whether the cost estimate specified in the NPRM (77 FR 12506, March 1, 2012) considers the expectation that the affected fleet will be in operation for at least 20 more years, and that a complete redesign of the FQIS would need to be considered to ensure the availability of key FQIS electrical components. Goodrich stated this concern could drive potential development costs higher.

We agree with the commenter's assertion. We did consider that the affected fleet will be in service for a considerable period of time. In the cost estimate in the NPRM (77 FR 12506, March 1, 2012), we assumed that the existing FQIS could be modified to meet the intent of the AD. However, comments from Boeing and Goodrich led us to recognize that it was likely that operators of airplanes with the early 757 FQIS design will likely need to be upgraded to the later Goodrich FQIS. The cost estimates used in this SNPRM for the fully compliant FQIS option (as opposed to the newly added cargo airplane option) are based on the estimates provided by Boeing and Goodrich. We previously described changes to the cost estimate in this SNPRM, but no further change is necessary regarding this issue.

Request To Explain Delay in Rulemaking and Identify Planned SFAR 88 ADs

A4A requested that we explain the delay in rulemaking for this issue, and identify any further planned SFAR 88 ADs. A4A asked why the NPRM (77 FR 12506, March 1, 2012) was issued approximately 10 years after the identification of the unsafe conditions and development of design solutions was required to be completed under SFAR 88. A4A further asked that the FAA provide information on any other

designs that were already reviewed under SFAR 88, and provide industry with information regarding their planned disposition.

We have specifically discussed these issues in the preamble to the FTFR rule (73 FR 42444, July 21, 2008) and the NPRM (77 FR 12506, March 1, 2012), and explained the reasons for the delay in the response to ''Request to Extend Compliance Time Pending Issuance of Service Information'' in this SNPRM. We cannot provide additional information on the results of design reviews and the planned disposition of issues identified in those design reviews because that information is proprietary. The FAA has not made available to the public an overall list of the specific product issues identified and the plans to address those issues, but operators can request the design review results from the manufacturers. We will likely propose additional AD rulemaking, and the public will be notified of those proposals via NPRMs. We have not changed this SNPRM regarding this issue.

Request To Explain Timing of NPRM (77 FR 12506, March 1, 2012) and Deficiencies of Affected Design

FedEx requested that we explain what is non-compliant about the affected design and why we are proposing this design change at this late date. FedEx stated that Boeing and Goodrich determined in their safety reviews that only the FQIS densitometer was non-compliant.

We agree to provide further explanation. This SNPRM addresses the question about the timing of this proposal under ''Request to Extend Compliance Time Pending Issuance of Service Information'' in this SNPRM. Boeing and Goodrich did identify that the densitometer of the Goodrich system had the potential for a single failure to cause an ignition source in a fuel tank. That issue was addressed by AD 2009–06–20, Amendment 39–15857 (74 FR 12236, March 24, 2009). However, the Boeing safety review and the FAA SFAR 88 AD Board also identified the potential for a failure in airplane wiring outside the fuel tank or in the FQIS processor unit that, combined with a pre-existing latent failure of wiring or certain types of probe contamination inside the fuel tank, could cause an ignition source. These identified failure combinations were considered to be non-compliant with section 25.901(c) of the Federal Aviation Regulations (14 CFR 25.901(c)) and section 25.981 of the Federal Aviation Regulations (14 CFR 25.981). We have not changed this SNPRM regarding this issue.

Request for Independent Review Regarding Timeliness of AD

NATCA requested an independent review to identify and document how this issue was allowed to go unaddressed for 16 years since the TWA accident and 9 years since SFAR 88 required the development of service information. The commenter requested that the findings from that review be published.

We acknowledge that there have been significant delays in addressing the issue that is the subject of this SNPRM. We are also fully aware of the events and factors that have led to those delays. We infer that NATCA made the request to ensure that the public is aware of those events and factors. We have described those events and factors in the NPRM (77 FR 12506, March 1, 2012) and in the other comment responses included in this SNPRM, and therefore the FAA does not plan to conduct the proposed review. We have not changed this SNPRM regarding this issue.

Request To Clarify Compliance Times

A4A requested that we revise the NPRM (77 FR 12506, March 1, 2012) to clarify that the compliance deadlines in the AD prevail over the compliance deadlines in section 121.1117 of the Federal Aviation Regulations (14 CFR 121.1117) for any airplane for which the operator has chosen to comply with the AD by installing FRM.

The proposed compliance times reflect the desired interpretation of the commenter as they pertain to cargo airplanes and airplanes that are not operated per part 121, part 125, or part 129 of the Federal Aviation Regulations (14 CFR part 121, 14 CFR part 125, or 14 CFR part 129). Passenger airplanes operating under part 121, part 125, or part 129 of the Federal Aviation Regulations (14 CFR part 121, 14 CFR part 125, or 14 CFR part 129) must meet the compliance deadlines established in those operating rules. No change to this SNPRM is necessary regarding this issue.

Request To Clarify Master Minimum Equipment List (MMEL) Relief

A4A requested that we revise the NPRM (77 FR 12506, March 1, 2012) to clarify that the MMEL relief provided for the Boeing NGS also applies to airplanes for which the operator has chosen to comply with the AD by installing an FRM such as the Boeing NGS.

We acknowledge the commenter's concern. The revised applicability statement in paragraph (c) of this SNPRM excludes airplanes that are ''equipped with a flammability reduction means (FRM) approved by the FAA. . . .'' That exclusion does not state that the installed equipment must be operative. However, installed equipment is required to be operative by sections 121.628, 125.201, and 129.14 of the Federal Aviation Regulations (14 CFR 121.628, 14 CFR 125.201, and 14 CFR 129.14) except as allowed by the MMEL and the operator's approved minimum equipment list (MEL). Dispatch with an inoperative FRM under the MMEL is not prohibited by the AD, and our intent is to allow such operation. We have not further changed this SNPRM regarding this issue.

Request To Clarify Airplanes Excluded From Applicability

A4A requested that we revise the NPRM (77 FR 12506, March 1, 2012) to clarify that airplanes equipped with FRM before conversion to all-cargo operations are excluded from the proposed requirement to modify the FQIS.

We agree to provide clarification. The revised applicability of this SNPRM excludes airplanes for which operators have installed FRM. No further change is necessary to this SNPRM regarding this issue. As noted above, the FRM must be operational with the exception of any relief granted under MMEL provisions.

Additional Change to NPRM (77 FR 12506, March 1, 2012)

We have removed NOTE 1 of the NPRM (77 FR 12506, March 1, 2012). The note was included only as reminder that maintenance and/or preventive maintenance under 14 CFR part 43 is permitted provided the maintenance does not result in changing the AD-mandated configuration (reference 14 CFR 39.7).

FAA's Determination

We are proposing this SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM (77 FR 12506, March 1, 2012). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed Requirements of the SNPRM

This SNPRM would require modifying the FQIS wiring or fuel tank systems to prevent development of an ignition source inside the center fuel tank.

Costs of Compliance

We estimate that this proposed AD affects 167 airplanes of U.S. registry. This estimate includes 148 cargo airplanes and 19 non-air-carrier passenger airplanes. We estimate the following costs to comply with this proposed AD:

Action	Labor cost	Parts cost	Cost per product
Estimated Costs—Basic Proposed Requirement for All Airplanes			
Fully correct FQIS vulnerability to latent-plus-one failure conditions.	1,200 work-hours × $85 per hour = $102,000	$200,000	$302,000.
Estimated Costs—Optional Actions for All Airplanes			
Install FRM	720 work-hours × $85 per hour = $61,200	$323,000	$384,200.
Estimated Costs—Optional Actions for Cargo Airplanes			
Wire separation	230 work-hours × $85 per hour = $19,550	$10,000	$29,550.
FQIS BITE check (required with wire separation option).	1 work-hour × $85 per hour = $85	0	$85 per check (4 checks per year).

Existing regulations already require that air-carrier passenger airplanes be equipped with FRM by December 26, 2017. We therefore assume that the FRM installation specified in paragraph (g) of this SNPRM would be done on only the 19 affected non-air-carrier passenger airplanes, for an estimated passenger fleet cost of $5,738,000. We also assume that the operators of the 148 affected cargo airplanes would choose the less costly actions specified in paragraph (h) of this AD, at an estimated cost of $4,373,400 for the wire separation modification, plus $50,320 annually for the BITE checks.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0187; Directorate Identifier 2011–NM–094–AD.

(a) Comments Due Date

We must receive comments by April 24, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes; certificated in any category; except airplanes equipped with a flammability reduction means (FRM) approved by the FAA as compliant with the Fuel Tank Flammability Reduction (FTFR) rule (73 FR 42444, July 21, 2008) requirements of section 25.981(b) or section 26.33(c)(1) of the Federal Aviation Regulations (14 CFR 25.981(b) or 14 CFR 26.33(c)(1)).

(d) Subject

Joint Aircraft System Component (JASC) Code 7397: Engine fuel system wiring.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent development of an ignition source inside the center fuel tank caused by a latent in-tank failure combined with electrical energy transmitted into the center fuel tank via the fuel quantity indicating system (FQIS) wiring due to a single out-tank failure.

(f) Compliance

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

(g) Modification

Within 72 months after the effective date of this AD, modify the FQIS wiring or fuel tank systems to prevent development of an ignition source inside the center fuel tank, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Optional Actions for Cargo Airplanes

For airplanes used exclusively for cargo operations: As an option to the requirements of paragraph (g) of this AD, do the actions

specified in paragraphs (h)(1) and (h)(2) of this AD, using methods approved in accordance with the procedures specified in paragraph (i) of this AD.

(1) Within 6 months after the effective date of this AD, record the existing fault codes stored in the FQIS processor and then do a BITE check (check of built-in test equipment) of the FQIS, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–28–0136, dated June 5, 2014. If any fault codes are recorded prior to the BITE check or as a result of the BITE check, before further flight, do all applicable repairs and repeat the BITE check until a successful test is performed with no faults found, in accordance with Boeing Service Bulletin 757–28–0136, dated June 5, 2014. Repeat these actions thereafter at intervals not to exceed 750 flight hours.

(2) Within 72 months after the effective date of this AD, modify the airplane by separating FQIS wiring that runs between the FQIS processor and the center fuel tank, including any circuits that might pass through a main fuel tank, from other airplane wiring that is not intrinsically safe.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *jon.regimbal@faa.gov.*

Issued in Renton, Washington, on December 18, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–03540 Filed 2–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Proposed Priorities, Requirements, Selection Criterion, and Definitions—First in the World Program

CFDA Numbers: 84.116F and 84.116X

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Proposed priorities, requirements, selection criterion, and definitions.

SUMMARY: The Assistant Secretary for Postsecondary Education proposes priorities, requirements, a selection criterion, and definitions under the First in the World (FITW) Program. The Assistant Secretary may use these priorities, requirements, selection criterion, and definitions for FITW competitions in fiscal year (FY) 2015 and later years. These priorities, requirements, selection criterion, and definitions would enable the Department to focus the FITW program on identified barriers to student success in postsecondary education and advance the program's purpose to build evidence for what works in postsecondary education through development, evaluation, and dissemination of innovative strategies to support students who are at risk of failure in persisting in and completing their postsecondary programs of study.

DATES: We must receive your comments on or before March 25, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Frank Frankfort, U.S. Department of Education, 1990 K Street NW., Room 6166, Washington, DC 20006.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Frank Frankfort. Telephone: (202) 502–7513 or email: *frank.frankfort@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, selection criterion, and definitions, we urge you to identify clearly the specific proposed priority, requirement, selection criterion or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, selection criterion, or definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person in room 6164, 1990 K. St. NW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: Earning a postsecondary degree or credential is a prerequisite for the growing jobs of the new economy and the clearest pathway to the middle class. Average earnings of college graduates are almost twice as high as that of workers with only a high school diploma and, over this decade, employment in jobs requiring education beyond a high school diploma will grow more rapidly than employment in jobs that do not.[1]

[1] Carnavale, A., Smith, N., Strohl, J., *Help Wanted: Projections of Jobs and Education*

But today, even though college enrollment has increased by 50 percent since 1990, from almost 14 million students to almost 21 million students, and despite the importance of a postsecondary education to financial security for American families and for the national economy to grow and remain competitive in the global economy, only 40 percent of Americans hold a postsecondary degree.[2] While the vast majority of high school graduates from the wealthiest American families continue on to higher education, only half of high school graduates from the poorest families attend college.[3] About 60 percent of students at four-year institutions earn a bachelor's degree within six years.[4] For low-income students, the prospects are even worse as only 40 percent reach completion.[5] Almost 37 million Americans report ''some college, no degree'' as their highest level of education.[6] Due to these outcomes, the U.S. has been outpaced internationally in higher education. In 1990, the U.S. ranked first in the world in four-year degree attainment among 25–34 year olds; in 2012, the U.S. ranked 12th.[7]

Recognizing these factors, President Obama set a goal for the country that America will once again have the highest proportion of college graduates in the world. To support this national effort, the Administration has outlined a comprehensive agenda that includes expanding opportunity and increasing quality at all levels of education, from early learning through higher education. The FITW program is a key part of this agenda.

Unlike in previous generations, adult learners, working students, part-time students, students from low-income backgrounds, students of color, and first-generation students now make up the majority of students in college.[8] Ensuring that these students persist in and complete their postsecondary education is essential to meeting our nation's educational challenges. However, the traditional methods and practices of the country's higher education system have typically not been focused on ensuring successful outcomes for these students, and too little is known about what strategies are most effective for addressing key barriers that prevent these students from persisting and completing.

The FITW program addresses these problems by supporting the development of innovative solutions to persistent and widespread challenges in postsecondary education, particularly those that affect adult learners, working students, part-time students, students from low-income backgrounds, students of color, and first-generation students, and building evidence for what works in postsecondary education by testing the effectiveness of these strategies in improving student persistence and completion outcomes. Similar to the Department's Investing in Innovation Fund, which supports innovation and evidence building in elementary and secondary education, a key element of the FITW program is its multi-tier structure that links the amount of funding that an applicant may receive to the quality of evidence supporting the efficacy of the proposed project. Applicants proposing practices supported by limited evidence can receive relatively small grants (Development grants) that support the development and initial evaluation of innovative but untested strategies. Applicants proposing practices supported by evidence from rigorous evaluations can receive larger grants (Validation and Scale-up grants), in amounts commensurate to the level of supporting evidence, for implementation at greater scale to test whether initially successful strategies remain effective when adopted in varied locations and with large and diverse groups of students. This structure provides incentives for applicants to build evidence of effectiveness of their proposed projects and to address the barriers to serving large numbers of students within institutions and across systems, States, regions, or the country. Additionally, the Department is exploring ways to accelerate the progress of building evidence for effective strategies that improve college completion through rapid scaling by allowing larger awards in lower tiers for college and university systems and consortia that collaborate with leading experts to test and rigorously evaluate the most promising strategies at multiple sites.

All FITW projects are required to use part of their budgets to conduct independent evaluations (as defined in this notice) of their projects. This ensures that projects funded under the FITW program contribute significantly to improving the information available to practitioners and policymakers about which practices work, for which types of students, and in what contexts.

Program Authority: 20 U.S.C. 1138–1138d.

Background: The proposed priorities, requirements, selection criterion, and definitions for the FITW program set forth in this notice would better enable the Department to achieve the purpose and goals of the FITW program by creating mechanisms to direct funding to priority areas of work that address the most important challenges in postsecondary education and, additionally, set evidence and evaluation requirements. There are currently no such program-specific priorities, requirements, selection criteria, or definitions for the FITW program.

Proposed Priorities: This notice contains nine proposed priorities. In any grant competition under this program, the Secretary may use, individually or in combination, one or more of these priorities or subparts of these priorities, priorities from the final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 10, 2014 (79 FR 73425), and priorities based on the statutory requirements for the Fund for the Improvement of Postsecondary Education (FIPSE).

Background: The proposed priorities correspond to what the Department believes are the greatest current challenges in postsecondary education and most important areas of work seeking to address barriers to postsecondary student success. As provided under 34 CFR 75.105, these priorities may be used by the Department as absolute or competitive preference priorities in grant competitions for the FITW program in FY 2015 and later years to direct FITW funds to projects that address these identified challenges and areas of work. In addition, we may also use priorities from the Department's final supplemental priorities and definitions

Requirements Through 2018. Georgetown Center on Education and the Workforce, 2010.

[2] National Center for Education Statistics. ''Total fall enrollment in degree-granting postsecondary institutions, by attendance status, sex of student, and control of institution: Selected years, 1947 through 2012.'' Retrieved from: *http://nces.ed.gov/programs/digest/d13/tables/dt13_303.10.asp.*

[3] National Center for Education Statistics. ''Percentage of recent high school completers enrolled in 2-year and 4-year colleges, by income level: 1975 through 2012.'' Retrieved from: *http://nces.ed.gov/programs/digest/d13/tables/dt13_302.30.asp.*

[4] National Center for Education Statistics. ''Percentage distribution of first-time postsecondary students starting at 2- and 4-year institutions during the 2003–04 academic year, by highest degree attained, enrollment status, and selected characteristics: Spring 2009.'' Retrieved from: *http://nces.ed.gov/programs/digest/d13/tables/dt13_326.40.asp.*

[5] Id.

[6] U.S. Census Bureau, 2012 American Community Survey.

[7] Organization of Economic Co-operation and Development, Education at a Glance 2014.

[8] U.S. Department of Education. 2010. *Profile of Undergraduate Students: 2007–08.* National Center for Education Statistics: 2010–205. Washington DC.

for discretionary grant programs, published in the **Federal Register** on December 10, 2014 (79 FR 73425) (Supplemental Priorities), as absolute or competitive preference priorities in the FITW program. Accordingly, we are not proposing priorities in this notice that are already included in the Supplemental Priorities.

Establishing program-specific priorities would provide the Department the option to focus a particular year's FITW grant competition on any or all (or none) of the policy areas set forth in those priorities. For each year that new funds are available under the FITW program, the Department would determine which, if any, of the priorities to include in the grant competition.

The proposed priorities are organized so that the Department has the flexibility to determine the area of focus for the priority. For example, with respect to *Proposed Priority 1—Improving Success in Developmental Education,* the Department could choose to include in a notice inviting applications a competitive preference priority for any type of project that seeks to improve outcomes in developmental education by using the broadest language in the priority:

• *(Example)* Competitive Preference Priority: *Improving Success in Developmental Education*—Projects designed to improve student success in developmental education or accelerate student progress into credit bearing postsecondary courses.

Or, we could choose more specific language from the priority to target a particular aspect of developmental education reform by choosing to also include one of the subparts of Proposed Priority 1:

• *(Example)* Competitive Preference Priority: *Improving Success in Developmental Education*—Projects designed to improve student success in developmental education or accelerate student progress into credit bearing postsecondary courses through redesigning developmental education courses or programs through strategies such as contextualization of developmental coursework together with occupational or college-content coursework.

We may also use priorities in combination with each other in a notice inviting applications. For example, a competitive preference priority for low cost, high impact strategies (*Proposed Priority 6—Implementing Low Cost-High Impact Strategies to Improve Student Outcomes*) that influence non-cognitive factors (*Supplemental Priority 2—Influencing the Development of Non-cognitive Factors*) could be included as follows:

• (Example) Competitive Preference Priority: To meet this competitive preference priority, an applicant must meet both sections (A) and (B) of this priority.

(A) *Implementing Low Cost-High Impact Strategies to Improve Student Outcomes*—Projects that use low cost tools or strategies, such as those that use technology, that result in a high impact on student outcomes.

(B) *Influencing the Development of Non-cognitive Factors*—Projects that are designed to improve students' mastery of non-cognitive skills and behaviors (such as academic behaviors, academic mindset, perseverance, self-regulation, social and emotional skills, and approaches toward learning strategies) and enhance student motivation and engagement in learning.

With respect to the proposed priorities, the Department is particularly interested in brief comments responding to the following questions:

• Do the proposed priorities sufficiently address the greatest challenges and barriers to postsecondary student success?

• Do the subparts for each proposed priority adequately capture the most promising aspects of the policy topic area of each priority?

Proposed Priorities:

The Assistant Secretary proposes the following priorities for this program. In any grant competition under this program, the Secretary may use, individually or in combination, one or more of these priorities or subparts of these priorities, priorities from the final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 10, 2014 (79 FR 73425), and priorities based on the statutory requirements for the Fund for the Improvement of Postsecondary Education (FIPSE).

Proposed Priority 1—Improving Success in Developmental Education.

Background: ''Developmental'' courses are instructional courses, typically non-credit bearing, designed for students deficient in the general competencies necessary for a regular postsecondary curriculum. The most common developmental courses to which beginning students are referred are math and reading/writing.[9] It is estimated that almost one-third of all students take some form of developmental course.[10] While participation rates vary widely across States and institution types, low-income, African-American, and Hispanic students are referred to developmental courses at much higher rates.[11] [12] [13]

Developmental education is one of the leading barriers to postsecondary persistence and completion.[14] Discouraged by the inability to enroll in courses that will allow them to earn credit and advance in their programs of study, many students never even enroll in the developmental courses to which they are referred.[15] For those students that do enroll in developmental courses, the majority do not complete them, eventually dropping out of postsecondary education altogether.[16] [17] Promising new practices in developmental math education that have shown greater learning gains and success in credit-bearing coursework by students indicate that the traditional sequence, teaching, and content of developmental coursework has been ineffective in supporting student mastery of the material.

A number of institutions are making great effort to reform traditional developmental education with promising results that would benefit from more rigorous evaluation, in part to determine their effectiveness on student performance, persistence, and completion, but also to identify effective implementation strategies. Further, for the interventions that have produced evidence of positive impacts on student outcomes, almost none have been replicated and evaluated at scale.

[9] *http://ccrc.tc.columbia.edu/media/k2/attachments/referral-enrollment-completion-developmental.pdf.*

[10] U.S. Department of Education, National Center for Education Statistics, 2011–12 National Postsecondary Student Aid Study (NPSAS:12), Profile of Undergraduate Students 2011–12, Table 6.2. Report available at: *http://nces.ed.gov/pubs2015/2015167.pdf.*

[11] MDRC, Unlocking the Gate, June 2011. Article available at: *http://www.mdrc.org/sites/default/files/full_595.pdf.*

[12] Attewell, P. A., Lavin, D. E., Domina, T., & Levey, T. 2006. *New Evidence on College Remediation. The Journal of Higher Education.* Article available at: *http://www.jstor.org/stable/3838791.*

[13] *http://ccrc.tc.columbia.edu/media/k2/attachments/referral-enrollment-completion-developmental.pdf.*

[14] *http://www.mdrc.org/sites/default/files/full_595.pdf.*

[15] Complete College America. 2012. *Remediation: Higher Education's Bridge to Nowhere.* Report available at: *http://www.completecollege.org/resources_and_reports/.*

[16] Complete College America. 2012. *Remediation: Higher Education's Bridge to Nowhere.*

[17] Bailey, T. 2009. *Challenge and Opportunity: Rethinking the Role and Function of Developmental Education in Community College.* In New Directions for Community Colleges. (Available Article available at: *http://onlinelibrary.wiley.com/doi/10.1002/cc.352/pdf.*

Proposed Priority 1—Improving Success in Developmental Education.

Proposed Priority: The Secretary gives priority to:

(a) Projects designed to improve student success in developmental education or accelerate student progress into credit bearing postsecondary courses; or,

(b) Projects designed to improve student success in developmental education or accelerate student progress into credit bearing postsecondary courses through one or more of the following:

(i) Identifying and treating academic needs prior to postsecondary enrollment, including while in middle or high school, through strategies such as partnerships between K–12 and postsecondary institutions;

(ii) Diagnosing students' developmental education needs at the time of or after postsecondary enrollment, such as by developing alternatives to single measure placement strategies, and identifying specific content gaps in order to customize instruction to an individual student's needs;

(iii) Offering alternative pathways in mathematics, such as non-Algebra based coursework for non-math and science fields.

(iv) Accelerating students' progress in completing developmental education, through strategies such as modularized, fast-tracked, or self-paced courses or placing students whose academic performance is one or more levels below that required for credit-bearing courses into credit-bearing courses with academic supports;

(v) Redesigning developmental education courses or programs through strategies such as contextualization of developmental coursework together with occupational or college-content coursework;

(vi) Integrating academic and other supports for students in developmental education.

Proposed Priority 2—Improving Teaching and Learning.

Background: A large percentage of students in postsecondary education struggle academically because they arrive to college unprepared for college-level coursework.[18] These struggles make the prospect of dropping out more likely.[19] Further, for students that do complete, the limited available information on learning proficiency suggests that too many students are lacking the critical thinking, analytical, and communication skills needed for the modern workforce.[20] Some research indicates that as much as a third of students show no high-order cognitive learning gains over the course of their undergraduate educations.[21]

These deficits are accompanied by a decline in productivity in higher education. Controlling for inflation, the cost of attending college has more than doubled over the past three decades.[22]

Despite these challenges, which are felt more acutely by the types of students that now make up the majority of students enrolled in postsecondary education, adult learners, working students, part-time students, students from low-income backgrounds, students of color, and first-generation students, there has been little change in the methods of teaching and instruction, as well as how students experience learning in college. With some exceptions, the same degrees and other credentials are offered in the same way, by counting up the amount of hours students are taught. Methods of teaching have stayed largely static. Given the poor outcomes many students are experiencing, new approaches to teaching and learning, using new tools and strategies that can help customize learning to accommodate diverse learning styles, are needed at all levels of postsecondary education to improve accessibility and quality and reduce cost.

Proposed Priority 2: Improving Teaching and Learning.

The Secretary gives priority to:

(a) Projects designed to improve teaching and learning; or,

(b) Projects designed to improve teaching and learning through one or more of the following:

(i) Instruction-level tools or strategies such as adaptive learning technology, educational games, personalized learning, active- or project-based learning, faculty-centered strategies that systematically improve the quality of teaching, or multi-disciplinary efforts focused on improving instructional experiences;

(ii) Program-level strategies such as competency-based programs that are designed with faculty, industry, employer, and expert engagement, use rigorous methods to define competencies, and utilize externally validated assessments, online or blended programs, or joint offering of programs across institutions;

(iii) Institution-level tools or strategies such as faculty-centered strategies to improve teaching across an institution, use of open educational resources across, or tailoring academic content and delivery to serve the needs of non-traditional students.

Proposed Priority 3—Improving Student Support Services.

Background: Almost all secondary schools and institutions of higher education offer a diverse array of student support services to assist with college preparation, application and enrollment, financial aid, academic barriers and other issues related to access, persistence, and completion. The range of services and support is extensive, and include interventions both inside and outside the classroom and campus. Many of these services are also provided by outside organizations, including non-profits. Further, several of the Department's programs, including TRIO, GEAR UP, and the Aid for Institutional Development programs, provide funding for student and academic support services.

However, few student support services strategies have been rigorously evaluated. Given the need to improve outcomes, particularly for adult learners, working students, part-time students, students from low-income backgrounds, students of color, and first-generation students, new and innovative approaches are needed, including those that are cost effective, so that a greater number of students can be served.

[18] Xianglei Chen and others, Academic Preparation for College in the High School Senior Class of 2003–04: Education Longitudinal Study of 2002 (ELS: 2002), Base-year, 2002, First Follow-up, 2004, and High School Transcript Study, 2004 (Washington: U.S. Department of Education, National Center for Education Statistics, January 2010); Jay Greene and Greg Foster, ''Public High School Graduation and College Readiness Rates in the United States,'' Working Paper 3 (New York: Manhattan Institute, Center for Civic Information, Education, September 2003). Greene and Foster define being minimally ''college ready'' as: graduating from high school, having taken four years of English, three years of mathematics, and two years of science, social science, and foreign language, and demonstrating basic literacy skills by scoring at least 265 points on the National Assessment of Educational Progress in reading.

[19] Eric Bettinger and Bridget Terry Long, ''Addressing the Needs of Under-Prepared College Students: Does College Remediation Work?'' Journal of Human Resources 44, no. 3 (2009); Brian Jacob and Lars Lefgren, ''Remedial Education and Student Achievement: A Regression-Discontinuity Analysis,'' Review of Economics and Statistics 86, no. 1 (2004): 226–44.

[20] Arum, Richard and Roksa, Josipa, *Academically Adrift: Limited Learning on College Campuses* (University of Chicago Press, January 2011).

[21] Richard Arum and Josipa Roksa, ''Are Undergraduates Actually Learning Anything?'' *Chronicle of Higher Education,* January 18, 2011. Retrieved from: *http://chronicle.com/article/Are-Undergraduates-Actually/125979/.*

[22] National Center for Education Statistics. ''Average undergraduate tuition and fees and room and board rates charged for full-time students in degree-granting institutions, by level and control of institution: 1969–70 through 2011–12.'' Retrieved from: *http://nces.ed.gov/programs/digest/d12/tables/dt12_381.asp.*

Proposed Priority 3: Improving Student Support Services.

The Secretary gives priority to:

(a) Projects designed to improve the supports or services provided to students prior to or during the students' enrollment in postsecondary education; or,

(b) Projects designed to improve the supports or services provided to students prior to or during the students' enrollment in postsecondary education through one or more of the following:

(i) Integrating student support services, including with academic advising and instruction;

(ii) Individualizing or personalizing support services such as advising, coaching, tutoring, or mentoring to students and their identified needs using tools or strategies such as predictive analytics to identify students who may need specific supports, or behavioral interventions used to provide timely, relevant, and actionable information for students at critical points such as when they may be at risk of dropping out;

(iii) Connecting students to resources or services other than those typically provided by postsecondary institutions, such as providing assistance in accessing government benefits, transportation assistance, medical, health, or nutritional resources and services, child care, housing, or legal services;

(iv) Utilizing technology such as digital messaging to provide supports or services systematically.

Proposed Priority 4—Developing and Using Assessments of Learning.

Background: Learning assessment has shown promise as an effective instructional strategy to increase student success. While learning assessment, in the past, focused more on traditional testing, current assessment has expanded to assess not just what students know but also what they can do. Further, a knowledge-based economy requires assessment of higher-order thinking skills such as recall, analysis, comparison, inference, application, and evaluation. New forms of assessments must be developed for these purposes. Assessments are also needed to measure what is learned outside the classroom, such as through previous work experience.

Proposed Priority 4: Developing and Using Assessments of Learning.

The Secretary gives priority to:

(a) Projects that support the development and use of externally validated assessments of student learning and stated learning goals; or,

(b) Projects that support the development and use of externally validated assessments of student learning and stated learning goals through one or more of the following:

(i) Alternative assessment tools or strategies such as micro- or competency-based assessments, assessments embedded in curriculum, or simulations, games, or other technology-based assessment approaches;

(ii) Professional development or training of faculty on the approaches to developing, using, and interpreting assessments;

(iii) Combining or sequencing assessments from multiple sources to strengthen diagnostic capabilities;

(iv) Aligning assessments across sectors and institutions, such as across kindergarten through grade 12 and postsecondary education systems or across 2-year and 4-year institutions, to improve college-readiness and content delivery;

(v) Open-source assessments.

Proposed Priority 5—Facilitating Pathways to Credentialing and Transfer.

Background: Students obtain knowledge and skills through a variety of experiences and from a range of institutions and providers. Many postsecondary students attend more than one institution on their way to earning a certificate or degree. Although increasing numbers of States and educational institutions are entering into articulation agreements to facilitate credit transfer, too many students continue to lose time and incur additional expense due to lost credits when transferring between institutions. Further, many student learning experiences, such as learning that occurs through work experience or from non-traditional education providers, are simply not recognized.

Alternate systems and methods of assessing, aggregating, and credentialing learning experiences are needed to help more students reach completion in accelerated timeframes. Additionally, new systems of portable, stackable postsecondary degrees and credentials along transparent career pathways must be designed and opportunities to obtain such degrees and credential must be expanded.

Proposed Priority 5: Facilitating Pathways to Credentialing and Transfer.

The Secretary gives priority to:

(a) Projects designed to develop and implement systems and practices to capture and aggregate credit or other evidence of knowledge and skills towards postsecondary degrees or credentials; or,

(b) Projects designed to develop and implement systems and practices to capture and aggregate credit or other evidence of knowledge and skills towards postsecondary degrees or credentials through one or more of the following:

(i) Seamless transfer of credits between postsecondary institutions;

(ii) Validation and transfer of credit for learning or learning experiences from non-institutional sources;

(iii) Alternate credentialing or badging frameworks;

(iv) Opportunities for students to earn college credits prior to postsecondary enrollment, such as through dual enrollment, dual degree, dual admission, or early college programs.

Proposed Priority 6—Increasing the Effectiveness of Financial Aid.

Background: The federal government, States, and institutions make a wide range of financial aid in the form of grants, loans, and tax credits available to students pursuing postsecondary education. Evidence shows that lowering the costs of college, the result of student aid, can improve access and completion.[23] Indeed, since the adoption of the Higher Education Act almost 50 years ago, average aid per student has more than tripled, from $3,347 in 1971–72 to $12,455 in 2010–11 (in constant 2010 dollars), while full-time equivalent enrollment has more than doubled, from about 6.2 million in 1971–72 to 14.2 million in 2010–11.[24]

But, this conclusion is not without exception. Due to the numerous types of aid that are available, the range of sources, and the detailed application process, the financial aid system is complex. This complexity may have the unintended effect of creating barriers to access, one of the very problems that financial aid is designed to address. Further, some types of aid may have a greater impact on outcomes than others, achievement incentives may help improve persistence and completion, and in the case of loans, levels of debt may influence student decisions. In general, the effectiveness of financial aid is impacted by a number of factors including the design and delivery of aid programs, the level of understanding by students and families of costs and availability of aid, and the ability of students and families to navigate the application process and make optimal decisions. New and innovative strategies and tools that address these realities to maximize the effectiveness of financial aid are needed.

[23] Dynarski, S.(2003). *Does Aid Matter? Measuring the Effects of Student Aid on College Attendance and Completion. American Economic Review.*

[24] Dynarski, S., & Scott-Clayton, J. (2013). Financial aid policy: Lessons from Research. The Future of Children. Postsecondary Education in the United States. Vol 23. No. 1.

Proposed Priority 6: Increasing the Effectiveness of Financial Aid. The Secretary gives priority to:

(a) Projects designed to improve the effectiveness of financial aid.

(b) Projects designed to improve the effectiveness of financial aid through one or more of the following:

(i) Counseling, advising, creation of information and resources, and other support activities on higher education financing and financial literacy delivered by financial aid offices or integrated with other support services provided by institutions, including on student loan repayment options such as income driven repayment plans and public service loan forgiveness and debt management;

(ii) Personalized approaches to financial aid delivery, counseling, advising, and other support activities which may include early warning systems, use of predictive analytics, need based aid, emergency aid, or bonuses or other incentives for successful outcomes such as on-time academic progress and completion.

Note: As with any project supported by the FITW program, grantees may not disburse project funds under this priority to students for the purpose of providing student aid. FITW funds may be used to pay project costs such as costs for the design, administration, and evaluation of aid programs or financial aid strategies.

Proposed Priority 7—Implementing Low Cost-High Impact Strategies To Improve Student Outcomes.

Background: Given the limited resources of secondary schools, institutions of higher education, and other relevant stakeholders, the cost effectiveness of any intervention designed to improve student outcomes is of primary importance. In recent years, numerous institutions, researchers, and others have begun testing interventions that are relatively low cost but have the ability to have a high impact on student outcomes. Many of these interventions minimize cost through the use of technology, such as digital messaging. Others incorporate low cost approaches, such as non-cognitive interventions. We are particularly interested in effective low cost interventions because even institutions with limited resources would be able to scale such strategies to impact large numbers of students, and, such interventions, particularly those that use technology, are often easily replicable. This proposed priority could be used in combination with other priorities.

Proposed Priority 7: Implementing Low Cost-High Impact Strategies To Improve Student Outcomes. The Secretary gives priority to projects that use low cost tools or strategies, such as those that use technology, that result in a high impact on student outcomes.

Proposed Priority 8—Improving Postsecondary Student Outcomes at Minority-Serving Institutions.

Background: Minority-serving institutions (MSIs) (as defined in this notice), including Historically Black Colleges and Universities (HBCUs), enroll a significant and disproportionate share of students from low-income backgrounds, students of color, and first-generation students. As the goal of the FITW program is to identify strategies that work in improving the postsecondary outcomes of these students, and because, in some cases, MSIs face unique challenges, it is important that the FITW program supports projects at MSIs. Accordingly, the Department proposes this priority to prioritize projects at MSIs. This proposed priority could be used as an absolute priority to set aside a specific amount of funds to support projects at MSIs, or to give competitive preference points to applicants that are MSIs. The lead applicant under this proposed priority must be an MSI.

Proposed Priority 8: Improving Postsecondary Student Outcomes at Minority-Serving Institutions. The Secretary gives priority to projects designed to improve student outcomes at Minority-Serving Institutions (as defined in this notice).

Proposed Priority 9—Systems and Consortia Focused on Large-Scale Impact.

Background: The Department is including this proposed priority to encourage the formation of college consortia and systems that can collaborate with leading experts to implement promising strategies that address key barriers to completion. This would allow applicants to increase the number of students participating in or impacted by a project and would allow for development, testing, and robust evaluation of projects at multiple sites whose results could be more rapidly generalized and applied to other institutions. While Validation and Scale-up projects would be designed to serve relatively larger numbers of students across multiple institutions, Development projects may be more limited in scope so long as they have the sample size necessary to meet the proposed requirements for evaluation design described below. Encouraging greater collaboration with other institutions and partners would enable postsecondary institutions and systems to expand the number of students served by a project, more rapidly improve the quality and applicability of the evidence produced from the required evaluations, and encourage efforts in the field to work across networks to share emergent effective practices across the higher education enterprise.

Proposed Priority 9: Systems and Consortia Focused on Large-Scale Impact. The Secretary gives priority to projects that involve consortia of institutions, including across a college or university system, and partnerships with leading experts that are implemented at multiple sites with large sample sizes to allow for more rapid development, evaluation, and scaling of practices determined to be effective.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements, Selection Criterion, and Definitions:

This notice contains eight proposed requirements, one proposed selection criterion, and three proposed definitions.

Background: The proposed requirements, selection criterion, and definitions would allow the Department to set the eligibility, evidence, and evaluation expectations for grant recipients under the FITW program. We may also use requirements, selection criteria, or definitions from 34 CFR parts 75 and 77 and other sections of the Education Department General Administrative Regulations (EDGAR). Accordingly, we are not proposing requirements, selection criteria, and definitions in this notice that are already included in EDGAR.

The Department may award three types of grants under this program: ''Development'' grants, ''Validation'' grants, and ''Scale-up'' grants. These grants differ in terms of the level of prior evidence of effectiveness required for consideration of funding, the level of scale the funded project should reach, and, consequently, the amount of funding available to support the project. We provide an overview to clarify our expectations for each grant type:

(1) Development grants provide funding to support the development or testing of processes, products, strategies, or practices that are supported by relatively less evidence, likely strong theory (as defined in 34 CFR 77.1(c)) or evidence of promise (as defined in 34 CFR 77.1(c)), and whose efficacy should be systematically studied. Development grants would support new or substantially more effective practices for addressing widely shared challenges. Development projects are novel and significant nationally, not projects that simply implement existing practices in additional locations or support needs that are primarily local in nature.

All Development grantees must evaluate the effectiveness of the project at the level of scale required in the notice inviting applications under which they applied.

(2) Validation grants provide funding to expand projects supported by greater evidence than would be required for a development grant, likely moderate evidence of effectiveness (as defined in 34 CFR 77.1(c)), to multiple sites such as multiple institutions. Validation grants must further assess the effectiveness of the FITW-supported practice through a rigorous evaluation, with particular focus on the populations for and the contexts in which the practice is most effective. We expect and consider it appropriate that each applicant would propose to use the Validation funding to build its capacity to deliver the FITW-supported practice, particularly early in the funding period, to successfully reach the level of scale proposed in its application. Additionally, we expect each applicant to address any specific barriers to the growth or scaling of the organization or practice (including barriers related to cost-effectiveness) in order to deliver the FITW-supported practice at the proposed level of scale and provide strategies to address these barriers as part of its proposed scaling plan.

All Validation grantees must evaluate the effectiveness of the practice that the supported project implements and expands. We expect that these evaluations would be conducted in a variety of contexts and for a variety of students, would identify the core elements of the practice, and would codify the practices to support adoption or replication by the applicant and other entities.

(3) Scale-up grants provide funding to expand projects supported by greater evidence than would be required for Development or Validation grants, likely strong evidence of effectiveness (as defined in 34 CFR 77.1(c)), and to a larger number of sites than would be required for a Development or Validation grant, such as across a system of institutions, across institutions in a State, a region, or nationally, or across institutions in a labor market sector. In addition to improving outcomes for an increasing number of high-need students, Scale-up grants will generate information about the students and contexts for which a practice is most effective. We expect that Scale-up grants would increase practitioners' and policymakers' understanding of strategies that allow organizations or practices to expand quickly and efficiently while maintaining their effectiveness.

Similar to Validation grants, all Scale-up grantees must evaluate the effectiveness of the FITW-supported practice that the project implements and expands; this is particularly important in instances in which the proposed project includes changing the FITW-supported practice in order to more efficiently reach the proposed level of scale (for example, by developing technology-enabled training tools). The evaluation of a Scale-up grant must identify the core elements of, and codify, the FITW-supported practice that the project implements to support adoption or replication by other entities. We also expect that evaluations of Scale-up grants would be conducted in a variety of contexts and for a variety of students in order to determine the context(s) and population(s) for which the FITW-supported practice is most effective.

With respect to the proposed requirements, selection criterion, and definitions, the Department is particularly interested in brief comments responding to the following questions:

- Are there a sufficient number of postsecondary strategies or interventions addressing important challenges in postsecondary education that are supported by moderate evidence of effectiveness (as defined in 34 CFR 77.1(c)), the likely evidence standard requirement that would be assigned by the Department to a competition for Validation grants, to warrant making Validation grants available in the FY 2015 FITW grant competition? The Department encourages commenters responding to this question to provide citations or links to any studies they believe would meet the moderate evidence of effectiveness standard.
- Are there a sufficient number of postsecondary strategies or interventions addressing important challenges in postsecondary education that are supported by strong evidence of effectiveness (as defined in 34 CFR 77.1(c)), the likely evidence standard requirement that would be assigned by the Department to a competition for Scale-up grants, to warrant making Scale-up grants available in the FY 2015 FITW grant competition? The Department encourages commenters responding to this question to provide citations or links to any studies they believe would meet the strong evidence of effectiveness standard.
- Which of the proposed priorities should be included as absolute or competitive preference priorities in the FY 2015 FITW program grant competition?

Proposed Requirements:

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

1. *Innovations that Improve Outcomes for High-Need Students:* The Secretary may require that—

(a) Grantees must implement projects designed to improve outcomes of high-need students (as defined in this notice) in postsecondary education; or,

(b) Grantees must implement projects designed to improve one or more of the following outcomes of high-need students (as defined in this notice) in postsecondary education:

(i) Persistence;

(ii) Academic progress;

(iii) Time to degree; or,

(iv) Completion.

2. *Eligibility:* The Secretary may make grants to, or enter into contracts with, one or more of the following:

(a) A public or private non-profit institution of higher education, a public or private non-profit institution, or combinations of such institutions; or,

(b) A public or private non-profit agency.

The Secretary will announce the eligible applicants in the NIA.

Note: Section 741 of the HEA provides that, under the FIPSE, the Secretary is authorized to make grants to, or enter into contracts with, institutions of higher education, combinations of such institutions, and other public and private nonprofit institutions and agencies. The requirement for eligibility simply restates these statutory

provisions. In any grant competition under this program, the Department could choose to allow applications from one or more of the eligible entities, including public or private non-profit educational institutions that are not institutions of higher education as defined under the HEA and public agencies or third party non-profit organizations or entities.

3. *Types of FITW grants:* Awards may be made for Development grants, Validation grants, and Scale-up grants. The Secretary will announce the type of grants that applicants may apply for in the NIA.

4. *Evidence and Sample Size Standards:* To be eligible for an award—

(a) An application for a Development grant must be supported by one of the following:

(i) Evidence of promise (as defined in 34 CFR 77.1(c));

(ii) Strong theory (as defined in 34 CFR 77.1(c)); or

(iii) Evidence of promise or strong theory.

The Secretary will announce in the notice inviting applications which evidence standard will apply to a Development grant in a given competition. Under (a)(iii), applicants must identify whether their application is supported by evidence of promise or strong theory.

(b) An application for a Validation grant must be supported by moderate evidence of effectiveness (as defined in 34 CFR 77.1(c)).

(c) An application for a Scale-up grant must be supported by strong evidence of effectiveness (as defined in 34 CFR 77.1(c)).

(d) The Secretary may require that an application for a Development grant, Validation grant, or Scale-up grant must be supported by one or more of the following levels of sample size:

(i) Large sample (as defined in 34 CFR 77.1(c));

(ii) Multi-site sample (as defined in 34 CFR 77.1(c)), such as at multiple institutions; or

(iii) Scaled multi-site sample, such as across a system of institutions, across institutions in a State, a region, or nationally, or across institutions in a labor market sector.

The Secretary will announce in the NIA which sample size standards will apply to each type of FITW grant (Development, Validation, or Scale-up) that is available.

(e) Where evidence of promise, moderate evidence of effectiveness, or strong evidence of effectiveness is required to receive a grant, an applicant's project must propose to implement the core aspects of the process, product, strategy, or practice from their supporting study as closely as possible. Where modifications to a cited process, product, strategy, or practice will be made to account for student or institutional characteristics, resource limitations, or other special factors or to address deficiencies identified by the cited study, the applicant must provide a justification or basis for the modifications. Modifications may not be proposed to the core aspects of any cited process, product, strategy, or practice.

5. *Evaluation:*

(a) The grantee must conduct an Independent Evaluation (as defined in this notice) of its project. The evaluation must estimate the impact of the FITW-supported practice (as implemented at the proposed level of scale) on a relevant outcome (as defined in 34 CFR 77.1(c)).

(b) The evaluation design for a Development grant, Validation grant, or Scale-up grant must meet one or either of the following standards:

(i) What Works Clearing Standards without reservations (as defined in 34 CFR 77.1(c)); or

(ii) What Works Clearinghouse Standards with reservations (as defined in 34 CFR 77.1(c)).

The Secretary will announce in the NIA the evaluation standard(s) that will apply to each type of FITW grant (Development, Validation, or Scale-up) that is available.

(c) The grantee must make broadly available digitally and free of charge, through formal (*e.g.,* peer-reviewed journals) or informal (*e.g.,* newsletters) mechanisms, the results of any evaluations it conducts of its funded activities. The grantee must also ensure that the data from its evaluation are made available to third-party researchers consistent with applicable privacy requirements.

(d) The grantee and its independent evaluator must agree to cooperate on an ongoing basis with any technical assistance provided by the Department or its contractor, including any technical assistance provided to ensure that the evaluation design meets the required evaluation standards, and comply with the requirements of any evaluation of the program conducted by the Department. This includes providing to the Department, within 100 days of a grant award, an updated comprehensive evaluation plan in a format and using such tools as the Department may require. Grantees must update this evaluation plan at least annually to reflect any changes to the evaluation and provide the updated evaluation plan to the Department. All of these updates must be consistent with the scope and objectives of the approved application.

6. *Funding Categories:* An applicant will be considered for an award only for the type of FITW grant (Development, Validation, and Scale-up) for which it applies. An applicant may not submit an application for the same proposed project under more than one type of grant.

7. *Limit on Grant Awards:* The Secretary may choose to deny the award of a grant to an applicant if the applicant already holds an active FITW grant from a previous FITW competition or, if awarded, would result in the applicant receiving more than one FITW grant in the same year.

8. *Management Plan:* Within 100 days of a grant award, the grantee must provide an updated comprehensive management plan for the approved project in a format and using such tools as the Department may require. This management plan must include detailed information about implementation of the first year of the grant, including key milestones, staffing details, and other information that the Department may require. It must also include a complete list of performance metrics, including baseline measures and annual targets. The grantee must update this management plan at least annually to reflect implementation of subsequent years of the project and provide the updated management plan to the Department.

Proposed Selection Criterion:

The Assistant Secretary proposes the following selection criterion for evaluating an application under this program. We may apply this criterion or any of the selection criteria from 34 CFR part 75 in any year in which this program is in effect. In the notice inviting applications, the application package, or both, we will announce the maximum points assigned to each selection criteria.

1. *Collaborations:* The extent to which the proposed project is designed to engage individuals or entities with expertise, experience, and knowledge regarding the project's activities, such as postsecondary institutions, non-profit organizations, experts, academics, and practitioners.

Note: This proposed selection criterion—Collaborations—would assess the extent to which applicants collaborate with knowledgeable or experienced parties in designing and implementing their projects. It is intended to encourage such collaboration in order to increase the quality of an application and project. The purpose of the Collaborations selection criterion is distinct from the purpose of Proposed Priority 8—*Implementing Partnerships Focused on*

Large-scale Impact, which focuses on increasing impact. The proposed selection criterion for Collaborations would not assess scope of impact. Rather, it would determine whether an applicant has engaged relevant third party experts in designing the project.

Proposed Definitions:

The Assistant Secretary proposes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

1. *High-need student* means a student at risk of education failure or otherwise in need of special assistance and support such as adult learners, working students, part-time students, students from low-income backgrounds, students of color, first-generation students, and students who are English learners.

2. *Independent evaluation* means an evaluation that is designed and carried out independent of and external to the grantee, but in coordination with, any employees of the grantee who develop a process, product, strategy, or practice and are implementing it.

3. *Minority-serving institution* means an institution that is eligible to receive assistance under sections 316 through 320 of part A of Title III, under part B of Title III, or under Title V of the HEA.

Final Priorities, Requirements, Selection Criterion, and Definitions:

We will announce the final priorities, requirements, selection criterion, and definitions in a notice in the **Federal Register**. We will determine the final priorities, requirements, selection criterion, and definitions after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, selection criterion, and definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, selection criterion, and definitions only upon a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search

feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 13, 2015.

Ted Mitchell,

Under Secretary.

[FR Doc. 2015–03502 Filed 2–20–15; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2013–0581; FRL–9923–37–Region 10]

Approval and Promulgation of Implementation Plans; Idaho: Interstate Transport of Fine Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. On June 28, 2010, the State of Idaho submitted a SIP revision to the Environmental Protection Agency (EPA) to address these interstate transport requirements with respect to the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The EPA is proposing to find that Idaho has adequately addressed certain CAA interstate transport requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before March 25, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2013–0581, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov.*
- *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–150), 1200 Sixth Avenue Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10 9th Floor Mailroom, 1200 Sixth Avenue Suite 900, Seattle, WA 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT—150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2013–0581. The 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 the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA. Information is organized as follows:

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I. Background

A. 2006 24-Hour $PM_{2.5}$ NAAQS and Interstate Transport

On September 21, 2006, the EPA promulgated a final rule revising the 1997 24-hour primary and secondary NAAQS for $PM_{2.5}$ from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$ (October 17, 2006, 71 FR 61144). Section 110(a)(1) of the CAA requires each state to submit to the EPA, within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP that provides for the ''implementation, maintenance, and enforcement'' of such NAAQS. The EPA refers to these specific submittals as ''infrastructure'' SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS. For the 2006 24-hour $PM_{2.5}$ NAAQS, these infrastructure SIPs were due on September 21, 2009. CAA section 110(a)(2) includes a list of specific elements that ''[e]ach such plan submission'' must meet.

The interstate transport provisions in CAA section 110(a)(2)(D)(i) (also called ''good neighbor'' provisions) require each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the impacts of air pollutants transported across state lines. In this action, the EPA is addressing the first two elements of this section, specified at CAA section 110(a)(2)(D)(i)(I),[1] for the 2006 24-hour $PM_{2.5}$ NAAQS.

[1] This proposed action does not address the two elements of the interstate transport SIP provision in CAA section 110(a)(2)(D)(i)(II) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state. We previously approved the Idaho SIP for purposes of CAA section 110(a)(2)(D)(I)(II) for the 2006 24-hour $PM_{2.5}$ NAAQS on July 14, 2014 (79 FR 40662).

The first element of CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will ''contribute significantly to nonattainment'' of the NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i)(I) requires that each SIP contain adequate provisions to prohibit any source or other type of emissions activity in the state from emitting air pollutants that will ''interfere with maintenance'' of the applicable NAAQS in any other state.

B. Rules Addressing Interstate Transport for the 2006 24-Hour $PM_{2.5}$ NAAQS

The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) in past regulatory actions.[2] The EPA promulgated the final Cross-State Air Pollution Rule (Transport Rule) to address CAA section 110(a)(2)(D)(i)(I) in the eastern portion of the United States with respect to the 2006 $PM_{2.5}$ NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS (August 8, 2011, 76 FR 48208). The Transport Rule was intended to replace the earlier Clean Air Interstate Rule (CAIR) which was judicially remanded.[3] *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued a decision vacating the Transport Rule. *See EME Homer City Generation, L.P.* v. *E.P.A.,* 696 F.3d 7 (D.C. Cir. 2012). The Court also ordered the EPA to continue implementing CAIR in the interim. However, on April 29, 2014, the U.S. Supreme Court reversed and remanded the D.C. Circuit's ruling and upheld the EPA's approach in the Transport Rule for the issues that were in front of the Supreme Court for review.[4] On October 23, 2014, the D.C. Circuit lifted the stay on the Transport Rule.[5] While our evaluation is consistent with the Transport Rule approach, the State of Idaho was not covered by either CAIR or the Transport Rule, and the EPA made no determinations in either rule regarding whether emissions from sources in Idaho significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in another state, nor did it attempt to quantify Idaho's obligation.[6]

C. Guidance

On September 25, 2009, the EPA issued a guidance memorandum that addressed the requirements of CAA section 110(a)(2)(D)(i) for the 2006 24-hour $PM_{2.5}$ NAAQS (''2006 24-hour $PM_{2.5}$ NAAQS Infrastructure Guidance'' or ''Guidance'').[7] With respect to the requirement in CAA section 110(a)(2)(D)(i)(I) that state SIPs contain adequate provisions prohibiting emissions that would contribute significantly to nonattainment of the NAAQS in any other state, the 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure Guidance essentially reiterated the recommendations for western states made by the EPA in previous guidance addressing the CAA section 110(a)(2)(D)(i) requirements for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.[8] The 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure Guidance advised states outside of the CAIR region to include in their CAA section 110(a)(2)(D)(i)(I) SIPs adequate technical analyses to support their conclusions regarding interstate pollution transport, *e.g.,* information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient pollutant concentrations in the state and in potentially impacted states, distances to the nearest areas not attaining the NAAQS in other states, and air quality modeling.[9] With respect to the requirement in CAA section 110(a)(2)(D)(i)(I) that state SIPs contain adequate provisions prohibiting emissions that would interfere with maintenance of the NAAQS by any other state, the Guidance stated that SIP submissions must address this independent requirement of the statute and provide technical information appropriate to support the state's conclusions, such as information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient concentrations in the state and in potentially impacted states, and air quality modeling. See footnotes 5 and 6.

In this action, the EPA is proposing to use the conceptual approach to evaluating interstate pollution transport under CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS with respect to Idaho that the EPA explained in the 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure Guidance. The EPA believes that the CAA section 110(a)(2)(D)(i)(I) SIP submission from Idaho for the 2006 24-hour $PM_{2.5}$ NAAQS may be evaluated using a ''weight of the evidence'' approach that takes into account available relevant information. Such information may include, but is not limited to, the amount of emissions in the state relevant to the 2006 24-hour $PM_{2.5}$ NAAQS, the meteorological conditions in the area, the distance from the state to the nearest monitors in other states that are appropriate receptors, or such other information as may be probative to consider whether sources in the state may contribute significantly to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in other states. These submissions may rely on modeling when acceptable modeling technical analyses are available, but if not available, other available information can be sufficient to evaluate the presence or degree of interstate transport in a specific situation for the 2006 24-hour $PM_{2.5}$ NAAQS. For further explanation of this approach, see the technical support document (TSD) in the docket for this action.

II. State Submittal

CAA sections 110(a)(1) and (2) and section 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. The EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F.

[2] *See* NO_X SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); and Transport Rule or Cross-State Air Pollution Rule, 76 FR 48208 (August 8, 2011).

[3] CAIR addressed the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS. It did not address the 2006 24-hour $PM_{2.5}$ NAAQS. For more information on CAIR, please see our July 30, 2012 proposal for Arizona regarding interstate transport for the 2006 $PM_{2.5}$ NAAQS (77 FR 44551, 44552).

[4] *EPA* v. *EME Homer City Generation, L.P.,* 134 S.Ct. 1584 (2014).

[5] USCA Case #11–1302, Document #1518738, Filed 10/23/2014.

[6] Transport Rule or Cross-State Air Pollution Rule, 76 FR 48208 (August 8, 2011).

[7] *See* Memorandum from William T. Harnett entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' September 25, 2009, available at *http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.*

[8] *See* Memorandum from William T. Harnett entitled ''Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' August 15, 2006, available at *http://www.epa.gov/ttn/caaa/t1/memoranda/section110a2di_sip_guidance.pdf.*

[9] The 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure Guidance stated that EPA was working on a new rule to replace CAIR that would address issues raised by the Court in the *North Carolina* case and that would provide guidance to states in addressing the requirements related to interstate transport in CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. It also noted that states could not rely on the CAIR rule for section 110(a)(2)(D)(i)(I) submissions for the 2006 24-hour $PM_{2.5}$ NAAQS because the CAIR rule did not address this NAAQS. *See* 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance at 4.

These requirements include publication of notices, by prominent advertisement in the relevant geographic area, a public comment period of at least 30 days, and an opportunity for a public hearing.

On June 28, 2010, Idaho submitted a SIP to address the interstate transport requirements of CAA section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ NAAQS (Idaho 2010 Interstate Transport submittal).[10] The Idaho 2010 Interstate Transport submittal included documentation of a public comment period from May 11, 2010 through June 10, 2010, and opportunity for public hearing. We find that the process followed by Idaho in adopting the SIP submittal complies with the procedural requirements for SIP revisions under CAA section 110 and the EPA's implementing regulations.

With respect to the requirement in CAA section 110(a)(2)(D)(i)(I), the Idaho 2010 Interstate Transport submittal referred to the applicable rules in the Idaho SIP, meteorological and other characteristics of areas with nonattainment problems for the 2006 24-hour $PM_{2.5}$ NAAQS in surrounding states, source apportionment data that provides information on how Idaho sources influence $PM_{2.5}$ levels at monitors in National Parks and wilderness areas surrounding Idaho. The Idaho submittal concluded that, based on the weight of the evidence, the Idaho SIP adequately addresses the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. The Idaho submittal made clear that such submittal did not address the 2006 24-hour $PM_{2.5}$ nonattainment problems in the Cache Valley, a mountain valley that straddles the Utah-Idaho border. A portion of the Cache Valley has been designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS (Logan UT–ID nonattainment area (NAA)).[11] Idaho stated that the State is working directly with Utah and EPA Regions 8 and 10 under a two-state, one airshed approach to address the nonattainment problems in the Logan UT–ID NAA. A detailed discussion of the Idaho 2010 Interstate Transport submittal can be found in the technical support document (TSD) in the docket for this action.

III. EPA Evaluation

To determine whether the CAA section 110(a)(2)(D)(i)(I) requirements are satisfied, the EPA must determine whether a state's emissions will contribute significantly to nonattainment or interfere with maintenance in other states. If this factual finding is in the negative, then CAA section 110(a)(2)(D)(i)(I) does not require any changes to a state's SIP. Consistent with the EPA's approach in the 1998 NO_X SIP call, the 2005 CAIR, and the 2011 Transport Rule, the EPA is evaluating these impacts with respect to specific monitors identified as having nonattainment and/or maintenance problems, which we refer to as ''receptors.'' See footnote 2.

With respect to this proposed action, the EPA notes that no single piece of information is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together is used to evaluate significant contributions to nonattainment or interference with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in another state. Our proposed action takes into account the Idaho 2010 Interstate Transport submittal, a supplemental evaluation of monitors in other states that are appropriate ''nonattainment receptors'' or ''maintenance receptors,'' a review of monitoring data considered representative of background, and revisions made to the Idaho SIP since the 2010 Interstate Transport submittal. In particular, we have reviewed technical information developed since the Idaho 2010 Interstate Transport submittal, specifically the Idaho SIP revision submitted in December of 2012 for purposes of addressing 24-hour $PM_{2.5}$ problems in the Logan UT–ID NAA. The EPA finalized a limited approval of portions of this December 2012 SIP submittal on March 25, 2014 (79 FR 16201).

Based on the analysis in our TSD in the docket for this action, we believe that it is reasonable to conclude that emissions from sources in Idaho do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state, with the following exception. We are unable to determine whether or not emissions from Idaho significantly contribute to nonattainment of the 2006 24-hour $PM_{2.5}$ NAAQS in Utah, within the Cache Valley. In the event that emissions from sources on the Idaho side of the Cache Valley do significantly contribute to nonattainment on the Utah side of the Cache Valley, we have evaluated the current Idaho SIP, and control measures in the SIP addressing emissions within the Cache Valley. We believe it is reasonable to conclude that, taking cost into account as the EPA has done in past interstate transport rulemakings, and which has been recently upheld as a valid approach by the Supreme Court (See footnote 4), Idaho has adequately addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. We are not, in this action, proposing to make any findings with respect to the attainment planning requirements of CAA title I, part D for the Logan UT–ID NAA. These requirements will be addressed in a separate action. Below is a summary of our evaluation. For the complete evaluation, please see the TSD in the docket for this action.

A. Identification of Nonattainment and Maintenance Receptors

The EPA evaluated data from existing monitors over three overlapping three-year periods (*i.e.,* 2009–2011, 2010–2012, and 2011–2013) to determine which areas were violating the 2006 24-hour $PM_{2.5}$ NAAQS and which areas might have difficulty maintaining the standard. If a monitoring site measured a violation of the 2006 24-hour $PM_{2.5}$ NAAQS during the most recent three-year period (2011–2013), then this monitor location was evaluated for purposes of the significant contribution to nonattainment element of CAA section 110(a)(2)(D)(i)(I). If, on the other hand, a monitoring site showed attainment of the 2006 24-hour $PM_{2.5}$ NAAQS during the most recent three-year period (2011–2013) but a violation in at least one of the previous two three-year periods (2009–2011 or 2010–2012), then this monitor location was evaluated for purposes of the interference with maintenance element of the statute.

The State of Idaho was not covered by the modeling analyses available for the CAIR and the Transport Rule. The approach described above is similar to the approach utilized by the EPA in promulgating the CAIR and the Transport Rule. By this method, the EPA has identified those areas with monitors to be considered ''nonattainment receptors'' or ''maintenance receptors'' for evaluating whether the emissions from sources in another state could significantly

[10] The Idaho 2010 Interstate Transport submittal addressed the interstate transport requirements of the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, and 2008 ozone NAAQS. In this action, we are only taking action with respect to CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. The EPA has addressed CAA section 110(a)(2)(D)(i)(II) for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS in a separate action (July 14, 2014, 79 FR 40662). In addition, we previously approved the Idaho SIP for 110(a)(2)(D)(i) with respect to the 1997 $PM_{2.5}$ and 1997 ozone NAAQS on November 26, 2010 (75 FR 72705). Finally, we will address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS in a future action.

[11] The EPA designated areas nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS on November 13, 2009, including the Logan UT–ID nonattainment area, commonly referred to as the Cache Valley nonattainment area (74 FR 58688).

contribute to nonattainment in, or interfere with maintenance in, that particular area.

B. Evaluation of Significant Contribution to Nonattainment

The EPA reviewed the Idaho 2010 Interstate Transport submittal and additional technical information to evaluate the potential for emissions from sources in Idaho to contribute significantly to nonattainment of the 2006 24-hour $PM_{2.5}$ NAAQS at specified monitoring sites in the western United States.[12] The EPA first identified as ''nonattainment receptors'' all monitoring sites in the western states that had recorded $PM_{2.5}$ design values above the level of the 2006 24-hour $PM_{2.5}$ NAAQS (35 μg/m^3) during the years 2011–2013.[13] Please see the TSD in the docket for a more detailed description of the EPA's methodology for selection of nonattainment receptors. All of the nonattainment receptors we identified in western states are in California, Idaho, Montana, Oregon, and Utah.[14]

Based on the analysis in our TSD, we believe it is reasonable to conclude that emissions from sources in Idaho do not significantly contribute to nonattainment of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state, with the possible exception of Utah, within the Cache Valley. We also evaluated nonattainment receptors in eastern states, as detailed in the TSD, and we believe it is reasonable to conclude that emissions from sources in Idaho do not significantly contribute to nonattainment of the 2006 24-hour $PM_{2.5}$ NAAQS in any eastern state.

On March 25, 2014, the EPA finalized a limited approval of specific residential wood burning ordinances and road sanding agreements addressing emissions of $PM_{2.5}$ on the Idaho side of the Cache Valley (79 FR 16201). We note that because of a recent court remand of related implementing regulations,[15] and the need to evaluate the controls for the Idaho side of the Cache Valley in conjunction with the controls submitted for the Utah side of the Cache Valley, we did not fully approve the submittal as meeting all statutory nonattainment planning requirements for the 2006 $PM_{2.5}$ NAAQS (March 25, 2014; 79 FR 16201).

However, based on the analysis in our TSD, we are proposing to determine that Idaho's SIP adequately addresses the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS, including with respect to Utah, within the Cache Valley.

C. Evaluation of Interference With Maintenance

The EPA reviewed the Idaho 2010 Interstate Transport SIP and additional technical information to evaluate the potential for Idaho emissions to interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS at specified monitoring sites in the western United States. The EPA first identified as ''maintenance receptors'' all monitoring sites in the western states that had recorded $PM_{2.5}$ design values above the level of the 2006 24-hour $PM_{2.5}$ NAAQS (35 μg/m^3) during the 2009–2011 and/or 2010–2012 periods but below this standard during the 2011–2013 period. Please see our TSD for more information regarding the EPA's methodology for selection of maintenance receptors. All of the maintenance receptors we identified in western states are located in California, Montana, and Utah.

As detailed in the TSD, we believe it is reasonable to conclude that emissions from sources in Idaho do not interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in these states. We also evaluated maintenance receptors in eastern states, as detailed in the TSD, and we believe it is reasonable to conclude that emissions from sources in Idaho do not interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any eastern state.

IV. Proposed Action

The EPA is proposing to find that Idaho has adequately addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. We are not, in this action, proposing to make any findings with respect to the attainment planning requirements of CAA title I, part D for the Logan UT–ID NAA. These requirements will be addressed in a separate action.

V. Statutory and Executive Order Reviews

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

[12] The EPA has also considered potential $PM_{2.5}$ transport from Idaho to the nearest nonattainment and maintenance receptors located in the eastern, midwestern, and southern states covered by the Transport Rule and believes it is reasonable to conclude that, given the significant distance from Idaho to the nearest such receptor (in Illinois) and the relatively insignificant amount of emissions from Idaho that could potentially be transported such a distance, emissions from Idaho sources do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS at this location. These same factors also support a finding that emissions from Idaho sources neither contribute significantly to nonattainment nor interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS at any location further east. *See* TSD at Section II.C.

[13] Because CAIR did not cover states in the western United States, these data are not significantly impacted by the remanded CAIR at the time and thus could be considered in this analysis.

[14] As this analysis is focused on *interstate* transport, the EPA did not evaluate the impact of Idaho emissions on nonattainment receptors within Idaho.

[15] On January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded two of the EPA's rules implementing the 1997 $PM_{2.5}$ NAAQS, including the ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321, May 16, 2008) (2008 $PM_{2.5}$ NSR Implementation Rule). The Court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of Part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas. On June 2, 2014, the EPA repromulgated these rules pursuant to Subpart 4 (79 FR 31566).

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 5, 2015.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2015–03573 Filed 2–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2011–0976; FRL–9922–45]

RIN 2070–AJ91

Toluene Diisocyanates (TDI) and Related Compounds; Significant New Use Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA issued a proposed rule in the **Federal Register** of January 15, 2015, concerning 2,4-toluene diisocyanate, 2,6-toluene diisocyanate, toluene diisocyanate unspecified isomers (these three chemical substances are hereafter referred to as toluene diisocyanates or TDI) and related compounds. This document extends the comment period for 45 days, from March 16, 2015, to April 30, 2015. The comment period is being extended because EPA received comments asserting that there may be significant implications for the supply chain and it is critical that interested stakeholders have sufficient time to respond to the proposed rulemaking.

DATES: The comment period for the proposed rule published on January 15, 2015 (80 FR 2068), is extended. Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0976, must be received on or before April 30, 2015.

ADDRESSES: Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of January 15, 2015 (80 FR 2068) (FRL–9915–62).

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Katherine Sleasman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–7716; email address: *sleasman.katherine@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: This document extends the public comment period established in the **Federal Register** document of January 15, 2015. In that document, EPA proposed the significant new use is any use in a consumer product, with a proposed exception for use of certain chemical substances in coatings, elastomers, adhesives, binders, and sealants that results in less than or equal to 0.1 percent by weight of TDI in a consumer product. In addition, EPA also proposed that the general SNUR exemption for persons who import or process these chemical substances as part of an article would not apply. EPA is hereby extending the comment period, which was set to end on March 16, 2015, to April 30, 2015.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of January 15, 2015. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 4, 2015.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2015–03301 Filed 2–20–15; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 80, No. 35

Monday, February 23, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2014–0039]

Document Reviews of Foreign Food Regulatory Systems: New Web-based Self-Reporting Tool

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Response to comments; notice of availability.

SUMMARY: FSIS is making available to the public its new Web-based Self-Reporting Tool (SRT) that it will be sending to foreign countries to report information on their food regulatory systems for the purpose of establishing that the systems are, or continue to be, equivalent to that of the United States' system. The Agency will send a letter to foreign countries with instructions on how to access and use the Web-based SRT. FSIS is also responding to the comments on its document review process for determining and verifying equivalence that the Agency received in response to the **Federal Register** notice that it published on January 25, 2013, on the use of the SRT. FSIS evaluates the information provided in the SRT and uses it, along with the results of on-site systems audits and port-of-entry (POE) reinspections, to make a determination on equivalence.

DATES: On February 17, 2015, FSIS will make available to the public the new Web-based SRT. To ensure that a complete and up-to-date SRT is being considered as part of FSIS's annual assessment of country performance, countries that are currently eligible to export meat, poultry, and egg products to the United States must submit their completed SRTs to FSIS before May 18 of 2015 and annually before May 18 thereafter. FSIS will send SRTs to all countries currently eligible to export meat, poultry, and egg products to the United States on December 1 of each year in the future.

Countries applying for initial equivalence determinations after February 23, 2015 must submit their completed SRTs within one year of receiving the SRT.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel L. Engeljohn, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** of January 25, 2013 (78 FR 5409) (hereafter ''the **Federal Register** notice''), FSIS described how it conducts ongoing equivalence verifications of the food regulatory systems of countries that export meat, poultry, or processed egg products to the United States. FSIS uses a three-part approach that includes (1) document reviews, (2) on-site system audits, and (3) POE reinspections. FSIS determines the scope and frequency of on-site systems audits based on its analysis of the results of its document reviews and ongoing assessment of a country's performance. This performance-based approach allows FSIS to direct its audit resources to foreign food regulatory systems that appear to pose a greater risk to public health than other foreign systems.

FSIS invited interested persons to submit comments on its new methodology by March 26, 2013. FSIS received approximately 31 comments from foreign countries, trade consulting groups, consumer groups, private citizens, a trade association representing the meat industry, and a member of the U.S. Congress. Twelve of those comments concerned the Agency's document review process. In this notice, FSIS is responding only to the comments that it received on its document review process. A summary of comments on the Agency's document review process and the Agency's responses are below. The Agency will address the other comments in a future **Federal Register** document.

On the basis of information provided by commenters, FSIS's experience in conducting document reviews, and the Agency's analysis of available SRT data, FSIS has decided to make two changes to its document review process. The changes are explained below and are discussed in more detail in the Agency's responses to comments.

Improvements to the Document Review Process

A foreign country interested in exporting to the United States is required to submit information concerning its food regulatory system to FSIS (see 9 CFR 327.2(a)(2)(iii), 381.196(a)(2)(iii), and 590.910). As explained in the January 2013 **Federal Register** notice, FSIS uses the equivalence questionnaire, called the SRT, to collect this information for the Agency's document review of the food regulatory system of foreign countries that are listed in the regulations as eligible to export meat, poultry, or egg products to the United States and for countries interested in becoming eligible (78 FR 5411). The SRT is a repository for key documents about a foreign food safety inspection system (*e.g.,* inspection system laws, regulations, and policy issuances) that FSIS uses, in addition to on-site audits, to verify whether the laws, regulations, and implementing policies of a foreign country establish an inspection system that is equivalent to the U.S. system. It also allows FSIS to evaluate whether a country maintains system effectiveness and to assess any impacts that an administrative or legislative change has had on a foreign food regulatory system. FSIS conducts a document review at least annually.

The information in the SRT allows FSIS to conduct a comprehensive assessment of a foreign country's food safety regulatory system. These comprehensive assessments inform the Agency's determination of whether a country's system should be found equivalent and the country eligible to export product into the United States. FSIS also assesses information in the SRT on an ongoing basis to verify whether a country maintains equivalence.

In the past, the SRT was available in a Microsoft Word format, and once completed by the country, it was submitted to FSIS along with corresponding supporting documentation either by mail or email communication. A PDF copy of the Microsoft Word version of the SRT is available on FSIS's Web site at: *http://www.fsis.usda.gov/wps/wcm/connect/*

7893547e-d0d2-4fa9-a984-fdc17228bfcd/SRT.pdf?MOD=AJPERES. On February 17, 2015, FSIS will launch a Web-based version of the SRT within its Public Health Information System (PHIS) to more efficiently capture up-to-date information about foreign food regulatory systems. PHIS is a comprehensive Web-based data-analytics and inspection system that automates and replaces many of FSIS's paper-based processes.

The Web-based SRT will be beneficial for countries exporting meat, poultry, and egg products to the United States; countries interested in exporting product to the United States and applying for equivalence; and FSIS personnel. With the Web-based SRT, countries can link supporting documentation to each question. With the Microsoft Word version, the supporting documentation is provided as a supplement to the SRT. As a result, during the review process, FSIS must sift through documents to match up information with the corresponding questions in the SRT. FSIS anticipates that use of the Web-based SRT will decrease the time it takes the Agency to review an SRT submission and thereby allow for a quicker response to an equivalence request.

Using PHIS as a platform for the SRT allows for a more secure exchange of information between FSIS and foreign countries because countries will be accessing the SRT through a secure USDA Web site that requires a unique ID and password acquired through an authentication process. To guarantee that the security of the Web-based SRT in PHIS is maintained and to gain access to the system, each potential user will have to register for a USDA eAuthentication (eAuth) Level 2 account and complete the authentication process. FSIS will send a letter to foreign countries with instructions on obtaining an eAuth account and using the Web-based version of the SRT. FSIS strongly encourages countries to use the Web-based SRT. However, the use of the Web-based SRT is voluntary, and FSIS will continue to accept the current Microsoft Word version of the SRT. To ensure that the transition to the Web-based SRT is as seamless as possible, FSIS pre-entered into PHIS the SRT responses and supporting documentation that countries actively exporting meat, poultry, or egg products to the United States have provided to FSIS. FSIS requests that countries review the pre-entered responses for completeness and accuracy.

In addition to a Web-based version of the SRT, foreign countries will note that the revised SRT asks fewer and more targeted questions necessary for FSIS to verify system equivalence. FSIS expects countries to answer all the targeted questions in the SRT to facilitate the review process. FSIS may not be able to make an equivalence determination without answers to all of these questions.

The SRT also includes questions for FSIS to use in assessing how frequently to conduct on-site audits of the country. FSIS refers to these questions as level of advancement (LOA) questions. As explained in the **Federal Register** notice, the sum of the LOA responses is one of the factors that FSIS considers as part of an annual analysis of country performance to determine the frequency and scope of on-site audits (78 FR 5412). FSIS uses the results from the analysis to place exporting countries into one of three categories, based on food safety performance, with corresponding audit frequencies: Well-performing countries are to be audited every three years.

Average-performing countries are to be audited every two years. Adequately-performing countries are to be audited every year. Thus, the completeness of a country's SRT contributes to FSIS's assessment of that country's performance and to FSIS's determination of the appropriate audit frequency for that country. Countries with incomplete SRTs will not be considered ''well-performing'' because they will not have provided the Agency enough information to give the Agency confidence in their food safety systems. FSIS will provide more information on LOAs in a subsequent **Federal Register** notice that addresses all comments received in the January 2013 **Federal Register** notice and provides additional updates on the FSIS equivalence determination process.

To ensure that a complete and up-to-date SRT is being considered as part of FSIS's annual assessment of country performance, countries must submit their completed SRTs to FSIS before May 18, 2015, and on an annual basis moving forward. If a country submits partial or inaccurate information, FSIS personnel will follow up with additional questions until all outstanding issues are resolved. FSIS must have complete and accurate information to verify that the foreign country's food regulatory system is robust, transparent, and science-based. If a country does not provide FSIS with documentation showing its system is equivalent, or if it continues to submit inadequate documentation, FSIS will not have sufficient information to determine the viability of the food safety system and may have to pursue a series of actions directed at product presented for reinspection (*e.g.,* intensified testing for microbial adulterants, indicator organisms, chemical residues, or species) to address the absence of a government-supplied explanation of inspection system controls. In addition, FSIS likely would begin refusing to list establishments newly certified by the foreign government, or to relist certified establishments, because of a lack of confidence in the government-supplied explanation of its inspection system. FSIS may conduct specially designed in-country audits to obtain information. FSIS may, within a reasonable period of time, refuse entry to products exported from that country. Finally, if it becomes necessary, FSIS will take steps to remove the country from the list of countries eligible to export meat, poultry, or processed egg products.

Any country can apply for eligibility to export meat, poultry, or egg products to the United States. The application process begins with a letter to FSIS from a foreign country asking for consideration to export its products for sale in the United States. FSIS responds to these letters with a standard package that contains information on the SRT and information on gaining eAuthentication. More information on how to apply for initial equivalence is available on FSIS's Web site at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/equivalence/equivalence-process-apply-for-initial-equivalence.*

FSIS asks that a foreign country applying for initial equivalence submit a complete SRT to FSIS in PHIS within one year of receiving the questionnaire. If FSIS needs additional information, or if FSIS's regulations change, the Agency will request that the country update its SRT to provide additional information to demonstrate that the country has an equivalent food regulatory system to the United States' system. If FSIS's document review supports that the foreign country's food regulatory system may be equivalent to the United States' system, the Agency will conduct an on-site audit.

However, if a foreign government applying for initial equivalence does not submit a complete SRT or fails to respond to additional requests for information within one year of receiving the SRT, FSIS will not be able to determine that the country maintains an inspection system equivalent to FSIS's system and will discontinue its analysis.

FSIS will accept information submitted in any one of the three official languages of the World Trade Organization (WTO)—English, French, or Spanish. Please note that it may take

the Agency a longer period of time to review documents submitted in French or Spanish because the information will have to be translated.

Summary of Comments

Comment: Several commenters were pleased to see improvements in the document review process; however, they asked FSIS to provide more guidance on how the SRT will be used. They also asked the Agency to share the content of the SRT with the public. A few commenters asked FSIS to clarify whether the document review process is limited to the information collected in the SRT, or if it also includes information from other sources. The commenters asked FSIS to explain how data outside the SRT would be used in the document review process, how the Agency would validate the quality of data, and how often FSIS would collect and use the data. One commenter stated that both the National Advisory Committee on Meat and Poultry Inspection's (NACMPI's) recommendations and the Codex document cited in the **Federal Register** notice (78 FR 5409) support third-party audits as a means of informing importing countries about the knowledge, experience, and confidence of an exporting country's food regulatory system.

Response: The SRT is used to inform a determination that a country has or has not met the United States' level of protection and is eligible to export product into the United States. It is reviewed on an ongoing basis to verify whether the country maintains equivalence. FSIS requires countries to update the SRT at least annually and as changes are made in the foreign country's food regulatory system.

FSIS personnel may review outside information, such as third-party audit reports, in preparation for an on-site audit (see FSIS Notice 35–14, *Ongoing Foreign Equivalence Verification Audits*). The outside information could affect the scope of an on-site audit.

Comment: Two commenters were concerned about the amount of time it takes to complete the SRT. One commenter asked FSIS to reduce the number of questions in the SRT. Another commenter requested that FSIS limit the level of detail required for responses. The commenter stated that the SRT focuses too much on individual components of the foreign inspection system, rather than taking a more holistic approach to assessing whether defined food safety outcomes are met. The commenter recommended that FSIS focus more on an evaluation of whether food safety and suitability outcomes have been achieved rather than whether various activities and processes have been replicated. The commenter suggested that FSIS change the design of the SRT so that it is more like the ''outcome-focused'' design of the United States Food and Drug Administration's (FDA's) International Comparability Tool.

Response: FSIS reduced the number of questions in the SRT to focus on those most necessary to determine or to verify whether a country's food regulatory system is equivalent and those necessary to help inform the necessary on-site audit frequency. In the past, the SRT included approximately 500 questions. The new, streamlined version has approximately 200 questions. Foreign countries may receive fewer questions depending on the number of classes of products produced.

In addition, the Web-based version of the SRT is more accessible. Foreign countries will be able to log onto PHIS at any time to view and update their responses and supporting documentation. Countries will also be able to view the status of their individual SRT, as well as a date and time stamp for each status update.

FDA's International Comparability Tool does not provide the information that FSIS needs to verify that a foreign country's food regulatory system is equivalent to FSIS's system. The SRT focuses on individual components of a foreign food regulatory system and compares them to components within FSIS's regulations because the Acts and regulations (9 CFR 372.2, 381.196, and 590.910) require that foreign countries maintain equivalent requirements to those that apply to United States domestic meat, poultry, and egg products.

Comment: A few commenters stated that FSIS's review of information in the SRT should not be a substitute for on-site audits by FSIS because countries may not always report information fully or accurately. The commenters argued that FSIS will be forced to rely more heavily on self-reported data from countries, as well as POE reinspections, and that these data sources are not an adequate substitute for in-person inspection.

Response: The SRT is not a substitute for on-site audits. The SRT is one of three components to FSIS's equivalence process. As mentioned above and in the January 2013 **Federal Register** notice, the SRT provides FSIS with initial information that is verified through periodic on-site audits and POE reinspections (78 FR 5411). FSIS will get more accurate information through the SRT that will better inform FSIS's audit scheduling. In addition, information from the SRT may be used to inform reinspection assignments. For example, based on information from the SRT, FSIS may perform targeted testing for residues or pathogens in product from certain countries.

It should also be noted that every country now eligible to export meat, poultry, or egg products to the United States has a food inspection system that FSIS has determined to be equivalent to the FSIS domestic inspection system. FSIS is committed to protecting the health of U.S. consumers, and it will continue to make every effort to ensure that meat, poultry, and egg products imported into the United States are as safe as products produced in this country.

USDA Nondiscrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: *program.intake@usda.gov*.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register*.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS

policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe*. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done in Washington, DC on: February 18, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–03576 Filed 2–20–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tahoe National Forest; California; Tahoe National Forest Over-Snow Vehicle (OSV) Use Designation Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, U.S. Department of Agriculture will prepare an Environmental Impact Statement (EIS) on a proposal to designate over-snow vehicle (OSV) use on National Forest System (NFS) roads, NFS trails, and areas on NFS lands within the Tahoe National Forest; and to identify snow trails for grooming within the Tahoe National Forest. In addition, the Forest Service is proposing to establish snow depths for OSV use and snow grooming.

DATES: Comments concerning the scope of the analysis must be received by March 25, 2015. The draft environmental impact statement is expected in January 2016, and the final environmental impact statement is expected in August 2016.

ADDRESSES: Send written comments to Michael Woodbridge, on behalf of Tom Quinn, Forest Supervisor, Tahoe National Forest, 631 Coyote Street, Nevada City, CA 95959. Comments may also be sent via facsimile to 530–478–6109 or submitted on the Tahoe National Forest OSV Designation Web page: *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=45914.*

FOR FURTHER INFORMATION CONTACT: Michael Woodbridge, Public Affairs Officer, USDA Forest Service, Tahoe National Forest, 631 Coyote Street, Nevada City, CA 95959; phone 530–478–6205; email *mjwoodbridge@fs.fed.us.* Hours for personal communication at the Supervisor's Office are between 8:00 a.m. and 4:30 p.m. Pacific Time, Monday through Friday.

Individuals with a hearing or speech disability may dial 711 for Telecommunication Relay Services.

SUPPLEMENTARY INFORMATION:

Snow Trail Grooming Program: For over 30 years, the Forest Service, Pacific Southwest Region, in cooperation with the California Department of Parks and Recreation Off-Highway Motor Vehicle Recreation (OHMVR) Division has enhanced winter recreation, and more specifically snowmobiling recreation, by maintaining NFS trails (snow trails) by grooming snow for snowmobile use. Most groomed snow trails are co-located on underlying NFS roads. Some grooming occurs on county roads and closed snow-covered highways. Most grooming activities are currently funded by the state off-highway vehicle trust fund.

The Forest Service manages OSV use on the Tahoe National Forest consistent with management direction contained in the *Tahoe National Forest Land and Resource Management Plan* (Forest Plan). The following summarizes current management of OSV use on approximately 829,510 acres of NFS lands in the Tahoe National Forest:

1. Approximately 236 miles of designated NFS OSV trails;
2. Of the approximately 236 miles of designated NFS OSV trails, approximately 188 miles are OSV trails available for grooming;
3. Approximately 105 miles of NFS trail (Pacific Crest Trail) is closed to OSV use;
4. Approximately 48,756 acres of NFS land is restricted to designated routes only;
5. Approximately 1,408 acres of NFS land is closed to OSV use from September 15 through December 31.
6. Approximately 669,537 acres of NFS land is open to off-trail cross-country OSV use; and
7. Approximately 109,808 acres of NFS land is closed to OSV use.

The final amended Subpart C of the Travel Management Rule was issued on January 28, 2015 (80 FR 4500, Jan. 28, 2015), and becomes effective on February 27, 2015. The final rule states: ''Over-snow vehicle use on NFS roads, on NFS trails, and in areas on NFS lands shall be designated by the Responsible Official on administrative units or Ranger Districts, or parts of administrative units or Ranger Districts, of the NFS where snowfall is adequate for that use to occur, and, if appropriate, shall be designated by class of vehicle and time of year . . .'' (36 CFR 212.81 (a)). Further, under 36 CFR 261.14, it is prohibited to possess or operate an OSV on NFS lands in that administrative unit or Ranger District other than in accordance with those designations. OSV designations made as a result of the analysis in this Environmental Impact Statement would conform to the final Subpart C of the Travel Management Rule.

Purpose and Need for Action

One purpose of this project is to effectively manage OSV use on the Tahoe National Forest to provide access, ensure that OSV use occurs when there is adequate snow, promote the safety of all users, enhance public enjoyment, minimize impacts to natural and cultural resources, and minimize conflicts among the various uses.

There is a need to provide a manageable, designated OSV system of trails and areas within the Tahoe National Forest that is consistent with and achieves the purposes of the Forest Service Travel Management Rule at 36 CFR part 212. This action responds to direction provided by the Forest Service's Travel Management Rule at 36 CFR part 212 and Subpart C of the Travel Management Rule.

The existing system of OSV trails and areas open for OSV use on the Tahoe National Forest results from implementation of Forest Plan management direction for OSV use. Public OSV use of the majority of this existing system continues to be manageable and consistent with current travel management regulations. Exceptions have been identified, based on internal and informal public input and the criteria listed at 36 CFR 212.55. These include needs to protect natural resources, provide improved access for OSV users, provide improved quiet winter recreation opportunities and ensure consistency with overall management area direction contained in the Forest Plan. These exceptions represent additional needs for change, and in these cases, changes are proposed to meet the overall objectives.

The snow trail grooming analysis would also address the need to provide a high quality snowmobile trail system on the Tahoe National Forest that is

smooth and stable for the rider. Groomed trails are designed so the novice rider can use them without difficulty.

Proposed Action

The Forest Service proposes the following:

1. To designate OSV use on NFS roads, NFS trails, and areas on NFS lands within the Tahoe National Forest where snow depth is adequate for that use to occur. The Tahoe National Forest is proposing off-trail cross-country OSV use covering 665,717 acres. Trails where OSV use would be allowed would total 236 miles.

2. To identify approximately 188 miles of the Tahoe National Forest's approximately 236 miles of designated OSV trails as available for snow grooming.

3. To implement a standard of 12 inches of snow depth or more for snow trail grooming when funds and equipment are used from sources other than the OHMVR Division. When using OHMVR Division funds, their snow depth standards will be used.

4. To implement a Forest-wide snow depth requirement for OSV use that would provide for public safety and natural and cultural resource protection by (1) allowing OSV use in designated areas when there is a minimum of 12 inches of snow covering the landscape, and (2) allowing OSV use on designated NFS roads and designated NFS trails when there is a minimum of 6 inches of snow covering the road or trail. When the snow-depth requirement is not met, OSV use would be prohibited. Most snow trails would be located on existing dirt, gravel, or paved trails or roads. These trails and roads are used in the summer for highway vehicle and off highway vehicle uses.

5. To establish OSV use prohibitions in three areas. OSV use is currently prohibited on 109,808 acres of the Tahoe National Forest in accordance with the existing Forest Plan management direction. These current OSV prohibitions would continue. The Tahoe National Forest has identified three additional areas in which OSV use would be prohibited. Adopting these prohibitions would require an amendment to the Forest Plan. These areas are:

a. High Loch Leven (approximately 3,117 acres)—To provide increased non-motorized winter recreation opportunities in the Loch Leven Management Area.

b. Robinson Flat Cultural (approximately 1 acre)—To protect fragile historic building structures from damage by snowmobile use. Snowmobile riders are known to use the snow covered roofs of the historic structures as ramps at Robinson Flat.

c. Independence Lake Donated Parcels (approximately 703 acres)—To protect watershed values on steep terrain within the Independence Lake watershed which provides habitat for the Lahontan cutthroat trout, a species listed as Threatened under the Endangered Species Act.

6. To designate OSV crossings for the Pacific Crest Trail. There would be two designated crossings, as well as two sections in which an OSV trail and the Pacific Crest Trail share the same route where the Pacific Crest Trail is located on roads.

OSV use inconsistent with these designations would be prohibited under 36 CFR part 261 once the decision is issued and OSV use maps are made available to the public.

The use designations resulting from this analysis would only apply to the use of OSVs. An OSV is defined in the Forest Service's Travel Management Regulations as ''a motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow'' (36 CFR 212.1).

Limited administrative use by the Forest Service; use of any fire, military, emergency, or law enforcement vehicle for emergency purposes; authorized use of any combat or combat support vehicle for national defense purposes; law enforcement response to violations of law, including pursuit; and OSV use that is specifically authorized under a written authorization issued under Federal law or regulations would be exempt from these designations (36 CFR 212.81(a)).

These actions would begin immediately upon the issuance of the record of decision, which is expected in December of 2016. The Forest Service would produce an OSV use map that would resemble the existing motor vehicle use map for the Tahoe National Forest. Such a map would allow the public to identify the routes and areas where OSV use would be allowed on the Tahoe National Forest.

Responsible Official

The Tahoe National Forest Supervisor will issue the decision.

Nature of Decision To Be Made

This decision will designate OSV use on NFS roads, on NFS trails, and in areas on NFS lands in the Tahoe National Forest where snowfall is adequate for that use to occur. It will also identify the NFS trails available for snow grooming. The decision would only apply to the use of OSVs as defined in the Forest Service's Travel Management Regulations (36 CFR 212.1). The Forest Supervisor will consider all reasonable alternatives and decide whether to continue current management of OSV uses on the Tahoe National Forest, implement the proposed action, or select an alternative for the management of OSV use.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

Scoping meetings will be held between 4 p.m. and 7 p.m. Pacific Time at the following locations:

March 2: Nevada City, Supervisor's Office, 631 Coyote Street, Nevada City, CA 95959.

March 3: Truckee, Truckee Ranger Station, 10811 Stockrest Springs Road, Truckee, CA 96161.

March 4: Sierraville, Sierraville Ranger District, 317 South Lincoln Street, Sierraville, CA 96126.

March 5: Sierra City, Sierra City Community Hall, 13 Castagna Alley, Sierra City, CA 96125.

Foresthill—Date and location to be determined.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will also be accepted and considered.

The Tahoe National Forest OSV Use Designation Project is an activity implementing a land management plan. It is not an activity authorized under the Healthy Forests Restoration Act of 2003 (Pub. L. 108–148). Therefore, this activity is subject to pre-decisional administrative review consistent with the Consolidated Appropriations Act of 2012 (Pub. L. 112–74) as implemented by Subparts A and B of 36 CFR part 218. Certain portions of the proposed action would amend the Forest Plan. These actions are subject to pre-decisional administrative review, pursuant to Subpart B of the Planning Rule (36 CFR part 219).

Dated: February 13, 2015.

Tom Quinn,

Forest Supervisor, Tahoe National Forest.

[FR Doc. 2015–03595 Filed 2–20–15; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program (CFRP) Technical Advisory Panel (Panel) will meet in Albuquerque, New Mexico. The Panel is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. II), and Title VI of the Community Forest Restoration Act (Pub. L. 106–393). Additional information concerning the Panel, including the meeting summary/minutes, can be found by visiting the Panel's Web site at: *http://www.fs.usda.gov/goto/r3/cfrp.*

DATES: The meeting will be held March 30, 2015–April 3, 2015, from 10:00 a.m. to 4:00 p.m. All meetings are subject to cancellation. For updated status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Hyatt Place Albuquerque/Uptown, 6901 Arvada Avenue NE, Albuquerque, New Mexico. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Cooperative and International Forestry Office. Please call ahead at to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, Designated Federal Official, USDA Forest Service, 333 Broadway SE., Albuquerque, New Mexico 87102, by phone at (505) 842–3425, by email at *wdunn@fs.fed.us,* or via fax at (505) 842–3165.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

(1) Review Panel Bylaws, Charter, and what it means to be a Federal Advisory Committee,

(2) Evaluate and score the 2015 CFRP grant applicsiotns to determine which ones best meet the program objectives,

(3) Develop prioritized 2015 CFRP project funding recommendations for the Secretary,

(4) Develop an agenda and identify members for the 2015 CFRP Sub-Committee for the review of multi-party monitoring reports from completed projects, and

(5) Discuss the proposal review process used by the Panel to identify what went well and what could be imporved.

The meeting is open to the public. Panel discussion is limited to Panel members and Forest Service staff. Project proponents may make brief presentations to the Panel summarizing their grant application and respond to questions of clarification from Panel members or Forest Service staff. However, the agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by March 23, 2015 to be scheduled on the agenda. Anyone who would like to bring CFRP grant application review related matters to the attention of the Panel may file written statements with the Panel staff before or after each day of the meeting. Written comments and time requests for oral comments must be sent to the person listed under **FOR FURTHER INFORMATION CONTACT**.

A summary of the meeting will be posted on the Web site listed above within 45 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 17, 2015.

Danny R. Montoya,

Acting Deputy Regional Forester.

[FR Doc. 2015–03566 Filed 2–20–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Survey of International Air Travelers (SIAT).

OMB Control Number: 0625–0227.

Form Number(s): None.

Type of Request: Regular submission (extension and revision of a currently approved information collection).

Number of Respondents: 300,000.

Average Hours per Response: 15 minutes.

Burden Hours: 75,000.

Needs and Uses: The Survey of International Air Travelers (SIAT) program, administered by the National Travel and Tourism Office (NTTO) of the International Trade Administration provides source data required to: (1) Estimate international travel and passenger fare exports, imports and the trade balance for the United States, (2) comply with the U.S. Travel Promotion Act of 2009 (Pub. L. 111–145), collect, analyze and report information to the Corporation for Travel Promotion (CTP), and support the National Export Initiative (NEI–NEXT) to double U.S. exports, (3) comply with the 1945, 1961, 1981, and 1996 travel and tourism related acts to collect and publish comprehensive international travel and tourism statistics and other marketing information, and (4) support the continuation of the Travel & Tourism Satellite Accounts for the United States, which provide the only spending and employment figures for the industry. The SIAT program contains the core data that is analyzed and communicated by NTTO with other government agencies, associations and businesses that share the same objective of increasing U.S. international travel exports.

The SIAT assists NTTO in assessing the economic impact of international travel on state and local economies, providing visitation estimates, key market intelligence, and identifying traveler and trip characteristics. The U.S. Department of Commerce assists travel industry enterprises to increase international travel and passenger fare exports for the country as well as outbound travel on U.S. carriers. The Survey program provides the only available estimates of nonresident visitation to the states and cities within the United States, as well as U.S. resident travel abroad.

The SIAT also assists NTTO in producing in-depth statistical reports, fact sheets and briefings on economic factors and policy issues affecting U.S. industries. With the SIAT statistical data not replicable by private sector trade associations or by private firms, Federal agencies, Congress and

international organizations rely on these statistic-based tools, as do American businesses, state and local governments, and news organizations.

Affected Public: Individuals or households: International travelers departing the United States 18 years or older which includes U.S. and non-U.S. residents for all countries except Canada.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: February 18, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–03550 Filed 2–20–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–8–2015]

Foreign-Trade Zone 72—Indianapolis, Indiana; Expansion of Subzone 72B; Eli Lilly and Company; Plainfield, Indiana

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Indianapolis Airport Authority, grantee of FTZ 72, requesting an expansion of Subzone 72B on behalf of Eli Lilly and Company (Eli Lilly) to include a site in Plainfield, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on February 13, 2015.

Subzone 72B was approved on July 26, 1985 (Board Order 309, 50 FR 3l404, 8–2–1985), and expanded on April 15, 2002 (Board Order 1222, 67 FR 20086, 4–24–2002). The subzone currently consists of two sites: Site 1 (359 acres)—five parcels in the Indianapolis area, Marion County; and, Site 3 (751 acres)—State Road 63, Clinton, Vermillion County.

The current request would add a site (34 acres) located at 2222 Stanley Road in Plainfield, Hendricks County, to the subzone. No additional authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is April 6, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 20, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: February 13, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–03614 Filed 2–20–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of:

Ernesto Salgado-Guzman; Inmate Number—68370–097; Willacy County; Correctional Institution; 1800 Industrial Drive; Raymondville, TX 78580

and with an address at:

16738 Harper Blvd.; Madera, CA 93638

On May 5, 2014, in the U.S. District Court, Eastern District of California, Ernesto Salgado-Guzman (''Salgado-Guzman''), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Specifically, Salgado-Guzman knowingly and willfully exported and caused to be exported and attempted to export and attempted to cause to be exported from the United States to Mexico caliber rifles, defense articles which were on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export. Salgado-Guzman was sentenced to 46 months imprisonment, 36 months of supervised release and a $100 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'')[1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 83(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Salgado-Guzman's conviction for violating the AECA, and have provided notice and an opportunity for Salgado-Guzman to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has received and reviewed a submission from Salgado-Guzman.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Salgado-Guzman's export privileges under the Regulations for a period of 10 years from the date of Salgado-Guzman's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2014). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (August 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

Salgado-Guzman had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until May 5, 2024, Ernesto Salgado-Guzman, with last known addresses of Inmate Number—68370–097, Willacy County, Correctional Institution, 1800 Industrial Drive, Raymondville, TX 78580 and 16738 Harper Blvd., Madera, CA 93638, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Salgado-Guzman by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Salgado-Guzman may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Salgado-Guzman. This Order shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until May 5, 2024.

Issued this 12th day of February, 2015.

Thomas Andrukonis,

Acting Director, Office of Exporter Services.

[FR Doc. 2015–03590 Filed 2–20–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on uncovered innerspring units (''innerspring units'') from the People's Republic of China (''PRC''). The period of review is February 1, 2013, through January 31, 2014. The review covers two exporters of subject merchandise: Comfort Coil Technology Sdn Bhd (''Comfort Coil'') and Creative Furniture & Bedding Manufacturing (''Creative Furniture''). The Department preliminarily determines that Comfort Coil had no shipments of subject merchandise during the POR. The Department also preliminarily determines that Creative Furniture did not cooperate to the best of its ability and is, therefore, applying adverse facts available (''AFA'') to Creative Furniture's PRC-origin merchandise. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 2009, the Department published in the **Federal Register** notice of an antidumping duty order on innerspring units from the PRC (''the *Order*'').[1] On February 28, 2014, Leggett & Platt, Inc. (''Petitioner'') submitted a request for the Department to conduct an administrative review of the *Order* that examines Comfort Coil's and Creative Furniture's exports of subject merchandise made during the POR.[2] On April 1, 2014, the Department published in the **Federal Register** a notice of initiation of this administrative review of the *Order* concerning Comfort Coil's and Creative Furniture's POR exports of subject merchandise.[3] [4]

Scope of the Order

The merchandise subject to the order is uncovered innerspring units

[1] *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009).

[2] *See* Request for Antidumping Administrative Review of the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China, dated February 28, 2014.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 18262, 18272 (April 1, 2014) (''*Initiation Notice*'').

[4] Comfort Coil and Creative Furniture are both located in market economy countries. As a result, the Department is examining each company's respective PRC exports of subject merchandise for this administrative review.

composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. The product is currently classified under subheading 9404.29.9010 and has also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.[5]

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). With respect to Creative Furniture, we relied on facts available and, because Creative Furniture did not act to the best of its ability to respond to the Department's requests for information, we drew an adverse inference in selecting from among the facts otherwise available.[6]

For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'').[7] ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination of No Shipments

Comfort Coil timely submitted a certification indicating that it had no exports, sales, or entries of subject merchandise to the United States during the POR.[8] To corroborate Comfort Coil's no shipments claim, the Department submitted a formal query to U.S. Customs & Border Protection (''CBP''), the results of which did not provide any evidence that contradicts Comfort Coil's claim of no shipments. Moreover, no party commented on Comfort Coil's no shipments claim or the results of the CBP query. Based on the certification of Comfort Coil and our analysis of the CBP information, the Department preliminarily determines that Comfort Coil did not have any reviewable transactions during the POR. In addition, consistent with the Department's practice in nonmarket economy (''NME'') cases, the Department finds that it is appropriate not to rescind the review, in part, in these circumstances, but rather to complete the review with respect to Comfort Coil and issue appropriate instructions to CBP based on the final results of the review.[9]

Preliminary Results of Review

The Department preliminarily determines that a dumping margin of 234.51 percent exists for Creative Furniture for the period February 1, 2013, through January 31, 2014.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice in the **Federal Register**. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11] Case and rebuttal briefs should be filed using ACCESS.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS. An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice in the **Federal Register**.[13] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[14] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We will instruct CBP to assess duties at the *ad valorem* margin rate published above. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis.* Additionally, pursuant to its assessment practice in NME cases, if the Department continues to determine that Comfort Coil had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[15] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. The Department will assess duties only on entries of Comfort Coil's

[5] For a complete description of the scope of the subject antidumping duty order, *see* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled ''Decision Memorandum for Preliminary Results of 2013–2014 Antidumping Duty Administrative Review: Uncovered Innerspring Units from the People's Republic of China'' (''Preliminary Decision Memorandum''), dated concurrently with these results and hereby adopted by this notice.

[6] *See* sections 776(a) and (b) of the Act.

[7] On November 24, 2014, Enforcement and Compliance changed the name of its centralized electronic service system to ACCESS. The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov*. The Department published in the **Federal Register** the final rule changing the references to ''IA ACCESS'' in the Department's regulations to ''ACCESS.'' *See Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014).

[8] *See* Uncovered Innerspring Units from the People's Republic of China: No Sales Certifications Clarifications, dated December 2, 2014.

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the ''Assessment Rates'' section below.

[10] *See* 19 CFR 351.309(d).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] *See* 19 CFR 351.303.

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.212(b)(1).

[15] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

and Creative Furniture's PRC-origin merchandise.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Comfort Coil, which claimed no shipments, the Department has not established a cash deposit rate in this administrative review, for Creative Furniture, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required) and the Department will collect cash deposits only on Comfort Coil's and Creative Furniture's PRC-origin merchandise; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 234.51 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: February 13, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Preliminary Determination of No Shipments
5. Facts Otherwise Available
6. Adverse Facts Available
7. Corroboration
8. Recommendation

[FR Doc. 2015–03613 Filed 2–20–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Shipboard Observation Form for Floating Marine Debris.

OMB Control Number: 0648–0644.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 20.

Average Hours Per Response: 30 minutes.

Burden Hours: 10.

Needs and Uses: This request is for extension of a currently approved information collection.

This data collection project will be coordinated by the NOAA Marine Debris Program, and involve recreational and commercial vessels (respondents), shipboard observers (respondents), NGOs (respondents) as well as numerous experts on marine debris observations at sea. The Shipboard Observation Form for Floating Marine Debris was created based on methods used in studies of floating marine debris by established researchers, previous shipboard observational studies conducted at sea by NOAA, and the experience and input of recreational sailors. The goal of this form is to be able to calculate the density of marine debris within an area of a known size. Additionally, this form will help collect data on potential marine debris resulting from the March 2011 Japan tsunami in order to better model movement of the debris as well as prepare (as needed) for continued debris arrival to areas around the Pacific. This form may additionally be used to collect data on floating marine debris in any water body.

Affected Public: Individuals or households; not-for-profit institutions; business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: February 17, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–03536 Filed 2–20–15; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coral Reef Conservation Program Administration.

OMB Control Number: 0648–0448.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 35.

Average Hours Per Response: 2.

Burden Hours: 70.

Needs and Uses: This request is for extension of a currently approved information collection.

The Coral Reef Conservation Act of 2000 (Act) was enacted to provide a framework for conserving coral reefs. The Coral Reef Conservation Grant Program, under the Act, provides funds

to broad-based applicants with experience in coral reef conservation to conduct activities to protect and conserve coral reef ecosystems. The information submitted by applicants is used to determine if a proposed project is consistent with the NOAA coral reef conservation priorities and the priorities of authorities with jurisdiction over the area where the project will be carried out. As part of the application, NOAA requires a Data and Information Sharing Plan in addition to the standard required application materials.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; state, local, or tribal government.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: February 17, 2015.

Sarah Brabson,

NOAA PRA Clearance Offcer.

[FR Doc. 2015–03535 Filed 2–20–15; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Aleutian Islands Pollock Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 24, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

Amendment 82 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMP) established a framework for the management of the Aleutian Islands subarea (AI) directed pollock fishery. The Aleutian Islands pollock fishery was allocated to the Aleut Corporation, Adak, Alaska, for the purpose of economic development in Adak, Alaska. The Aleut Corporation is identified in Public Law 108–199 as a business incorporated pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). Regulations implementing the FMP appear at 50 CFR part 679.

Participants are identified and approved through a letter from the Aleut Corporation which is approved by National Marine Fisheries Service (NMFS). This letter includes a list of approved participants. A copy of the letter must be on each participating vessel.

II. Method of Collection

Mail and retention of document on participating vessels.

III. Data

OMB Control Number: 0648–0513.

Form Number: None.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business or other for-profits organizations.

Estimated Number of Respondents: 1.

Estimated Time per Response: Annual AI Pollock Fishery Participant Letter, 16 hours; process, 4 hours.

Estimated Total Annual Burden Hours: 36.

Estimated Total Annual Cost to Public: $3 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 18, 2015.

Sarah Brabson,

NOAA PIA Clearance Officer.

[FR Doc. 2015–03543 Filed 2–20–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD775

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Fishing Year 2014 Sector Exemption

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

ACTION: Notice; request for comments.

SUMMARY: Several groundfish sectors have requested regulatory exemptions from two recently implemented Gulf of Maine cod interim management measures. The Regional Administrator, Greater Atlantic Region, NMFS, has determined that the request warrants further consideration. We are seeking public comment on these exemption requests.

DATES: Comments must be received on or before March 2, 2015.

ADDRESSES: You may submit comments by the following methods:

- *Email: william.whitmore@noaa.gov.* Include in the subject line ''Comments on Gulf of Maine Cod Sector Exemption Request.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Gulf of Maine Cod Sector Exemption Request.''

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fisheries Policy

Analyst, 978–281–9182, *william.whitmore@noaa.gov.*

SUPPLEMENTARY INFORMATION: On November 13, 2014, NMFS published a temporary rule to enhance protections for Gulf of Maine (GOM) cod (79 FR 67362) in response to an updated GOM cod stock assessment that indicated the health of the stock is worsening. The GOM cod interim rule implemented a GOM cod trip limit of 200 lb (90.7 kg) for sector and common pool groundfish vessels fishing within the GOM broad stock area (BSA) and restricted commercial limited access groundfish vessels that fish in the GOM BSA to fishing only in that BSA for the duration of the declared trip. Additional information on the GOM cod interim rule can be found online at *www.greateratlantic.fisheries.noaa.gov/stories/2014/GOM_cod_interim_management_measures.html.*

On February 9, 2015, we received an exemption request from several sectors. These sectors worked together to assemble 30 mt of GOM cod annual catch entitlement (ACE), which was traded to Northeast Fishery Sector IV, a lease-only sector with no active fishing effort. That sector has proposed to withhold and render unusable that GOM cod ACE, including preventing its use for potential carryover to the next fishing year, if sectors are granted regulatory exemptions from the GOM cod trip limit and GOM BSA restriction.

The 200-lb (90.7-kg) trip limit was intended to reduce the incentive to target GOM cod in areas that would remain open under the interim action to ensure that open-area catch would not result in excessive GOM cod fishing mortality. The 2014 GOM Cod Interim Rule environmental assessment (EA) estimated that implementing the 200-lb (90.7-kg) trip limit would likely reduce GOM cod mortality by 20 mt. The sectors' request would reduce the GOM cod catch limit by 30 mt. Economic modeling and simulations included in the EA suggest that there is a substantial amount of uncertainty regarding the 20-mt estimated mortality reduction. It should also be noted that most of the public comments submitted in response to the GOM cod interim rule opposed the implementation of a trip limit because trip limits can result in high discards of GOM cod and are counter to the sector system, which limits the fishery based on an annual quota. The requesting sectors propose that a definite 30-mt reduction in the catch limit resulting from the sector exemption would provide a greater biological benefit to GOM cod than the probable reduction in mortality from the 200-lb (90.7-kg) trip limit. Removing the trip limit, as requested by the sectors, would provide a clear limit on overall catch of GOM cod and should minimize regulatory discarding.

The requested exemption would also remove the restriction preventing vessels from fishing both inside and outside of the GOM BSA on the same trip. The sectors requesting the exemption have argued that the single BSA restriction has severely impacted fishing operations of vessels that traditionally fish on Georges Bank and in the GOM on the same trip. Although recognizing that the single BSA restriction impedes flexibility to fish in multiple stock areas on a trip, we previously determined that the short-term benefits of this measure were necessary to achieve the interim rule's objective of reducing mortality and ensuring the effectiveness of other measures in the interim rule. Specifically, the single GOM BSA restriction was intended to facilitate more effective shore-side enforcement of the 200-lb (90.7 kg) trip limit. It was also intended to help reduce the opportunity for vessels to misreport their catch to ensure that GOM cod catch would be properly accounted for between stock areas.

Reducing the overall catch limit by 30 mt and removing the trip limit more effectively achieves the interim rule's objective of reducing potential cod mortality and, along with additional reporting measures, outweighs the short-term benefit of retaining the single BSA restriction. If the trip limit is no longer in effect, there is less of a need for the GOM BSA restriction to facilitate dockside enforcement.

In consideration of the sectors' request to be exempt from the BSA restriction, we are proposing to replace this requirement with daily catch reporting requirements should we approve the sectors' request. We would still require that sector vessels that declare their intent to fish inside and outside of the GOM BSA on the same trip submit daily vessel monitoring system (VMS) catch reports. Vessels would also be required to submit a VMS catch report prior to moving fishing operations from one BSA to another. This additional reporting requirement would help ensure that catch is properly accounted for. The removal of any incentive to misreport trip catches in relation to the trip limit along with additional reporting requirements to help ensure proper apportioning of catch between BSAs replaces or mitigates the loss of the short-term benefits expected from the single BSA restriction.

When NMFS implemented the interim rule in November 2014, it did not take any action to reduce the GOM cod ACL or ACE allocated to sectors. During public discussion at the September Council meeting at which the Council requested the agency to develop emergency measures for GOM cod, it was clear that any unilateral action to reduce the ACE available to sectors in the middle of the fishing year could have substantial economic impacts to much of the industry. However, in terms of effecting mortality reductions, a change to the ACE available for harvest by the sectors is generally the most effective and direct means to reduce total potential catch. Instead, NMFS imposed a trip limit to reduce the incentive to target GOM cod within the ACE available, recognizing that if the industry continued to encounter GOM cod, mortality would continue largely through regulatory discarding, potentially up to the full allocated ACE level. Although the analysis supporting the interim measures suggested the trip limit could reduce mortality by approximately 20 mt, there was considerable uncertainty around this estimate, primarily due to uncertainty with the amount of discarding that would occur.

In this request for a sector exemption, the sectors are proposing to implement what NMFS did not: A reduction to the ACE available to those sectors for the remainder of the fishing year. Because the fishing industry will continue to fish through the end of the fishing year, and will continue to encounter GOM cod, the sectors' proposed exemption would establish a firm upper limit on total cod mortality and is more likely to be lower than would otherwise be achieved through the interim measures. In addition to an actual reduction in the total potential cod catch, the sectors' proposed exemption would improve the catch yield and reduce the uncertainty of that cod catch.

This exemption would apply only for the remainder of the 2014 fishing year. It is our intent to continue reviewing sector exemption requests included in annual sector operations plans through a proposed and final rulemaking process. However, future mid-year exemption requests, or modifications to existing exemptions, may be considered, and granted or denied, through a shortened notice and comment process similar to this action.

If we can conclude that the exemption request is at least conversation neutral, and if this request is granted, this exemption will apply to all sectors who request it, and sector operations plans and letters of authorizations will be

modified to include these regulatory exemptions. Minor sector exemption modifications may be granted without further notice if they are deemed essential to facilitate these exemptions and have minimal impacts that do not change the scope or impact of the initially approved sector exemption request.

A supplemental information report analyzing the environmental impacts of this exemption request has been developed and is available online for review at *http://www.greateratlantic.fisheries.noaa.gov/regs/.*

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

Dated: February 13, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–03539 Filed 2–18–15; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD781

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its 118th Scientific and Statistical Committee (SSC), SSC sub-working group and its 162nd Council meeting to take actions on fishery management issues in the Western Pacific Region. The Council will also convene meetings of the Pelagic and International Standing Committee and Executive and Budget Standing Committee.

DATES: The SSC sub-working group will be held on Monday, March 9, between 1 p.m. and 4 p.m. The SSC meeting will be held between 8:30 a.m. and 5 p.m. on March 10–12, 2015. The Council's Pelagic and International Standing Committee meeting will be held between 1 p.m. and 3 p.m. on March 14, 2015; Executive and Budget Standing Committee meeting will be held between 3 p.m. and 5 p.m. on March 14, 2015; and the 162nd Council meeting will be held between 8:30 a.m. and 5 p.m. on March 16–18, 2015. In addition, the Council will host a Fishers Forum on March 17, 2015, between 6 p.m. and 9 p.m. For specific times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The SSC Sub-working group on March 9, 2015, 118th SSC on March 10–12, 2015, Pelagic and International Standing Committee and Executive and Budget Standing Committee on March 14, 2015 will be held at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, telephone: (808) 522–8220;

The 162nd Council meeting on March 16–18, 2015 will be held at the Laniakea YWCA-Fuller Hall, 1040 Richards Street, Honolulu, HI 96813, telephone: (808) 538–7061; and

The Fishers Forum on March 17, 2015 will be held at the Harbor View Center, Pier 38, 1129 North Nimitz Highway, Honolulu, HI 96817, telephone: (808) 983–1200.

Background documents will be available from, and written comments should be sent to, Mr. Edwin Ebisui, Chair, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, telephone: (808) 522–8220 or fax: (808) 522–8226.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the SSC and Council will hear recommendations from Council advisory groups. Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the SSC Sub-Working Group

1. Welcome and Introductions
2. Approval of the Agenda
3. Main Hawaiian Island Deep 7 Bottomfish
A. Review of the Center for Independent Experts (CIE) review reports
B. Current status of stock assessments and Acceptable Biological Catch (ABC) specification
C. ABC specification for fishing year 2015–16
5. Public Comments
6. Discussion and Recommendations

Schedule and Agenda for 118th SSC Meeting

8:30 a.m., Tuesday, March 10, 2015

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 117th SSC Meeting Recommendations
4. Report from the Pacific Islands Fisheries Science Center (PIFSC) Director
5. Insular Fisheries
A. Coral reef ecosystem stock assessments
1. Hawaii kumu
2. Hawaii parrotfish
B. Report on the Main Hawaiian Island (MHI) Deep 7 Bottomfish public scoping meeting
C. Report on PIFSC meeting with the Hawaii bottomfish fishermen
D. 2nd Bottomfish Research Coordination Workshop
E. Report on the Center for Independent Experts (CIE) review of the 2014 MHI Deep 7 Bottomfish Stock Assessment
F. NMFS actions on the MHI Bottomfish Annual Catch Limits (ACLs)
G. Public Comment
H. SSC Discussion and Recommendations
6. Program Planning
A. National Standards (NS) Guidelines Proposed Rule
B. NOAA Fisheries Draft Climate Science Strategy
C. Report on the National SSC Workshop V
D. Public Comment
E. SSC Discussion and Recommendations

8:30 a.m., Wednesday, March 11, 2015

7. Pelagic Fisheries
A. Hawaii Yellowfin and Bigeye Commercial Minimum Size Limit
1. Public Meetings
2. Socio-economic studies
3. Yield per Recruit Analyses
B. American Samoa Large Vessel Prohibited Area (LVPA) changes (Action Item)
C. Territorial Bigeye Specification (Action Item)
D. American Samoa longline U.S. Exclusive Economic Zone (EEZ) albacore catch limit (Action Item)
E. Social Capital, Ethnic Diversity, and Economic Outcome in Hawaii's Longline Fishery
E. International Fisheries
1. WCPFC 11th Regular Session
F. Public Comment
G. SSC Discussion and Recommendations
8. Protected Species
A. Endangered Species Act (ESA) Section 7 Consultations for Coral Species
B. Effectiveness of Management Measures Implemented under the False Killer Whale Take Reduction Plan
C. Draft 2014 Marine Mammal Stock Assessment Reports
D. False Killer Whale Stock Boundary Revision

E. Updates on ESA and Marine Mammal Protection Act (MMPA) Actions
1. ESA-listed Threatened Corals Post-Listing Activities
2. Green Turtle Status Review
3. North Pacific Humpback Whale Status Review
4. Other Relevant Actions
F. Public Comment
G. SSC Discussion and Recommendations

8:30 a.m., Thursday, March 12, 2015

9. Other Business
A. 119th SSC Meeting
10. Summary of SSC Recommendations to the Council

Schedule for Council Standing Committee Meetings

1 p.m.–3 p.m., Saturday, March 14, 2015

Pelagic and International Standing Committee

3 p.m.–5 p.m., Saturday, March 14, 2015

Executive and Budget Standing Committee

Schedule and Agenda for 162nd Council Meeting

8:30 a.m.–5 p.m., Monday, March 16, 2015

1. Welcome and Introductions
2. Approval of the 162nd Agenda
3. Approval of the 161st Meeting Minutes
4. Executive Director's Report
5. Agency Reports
A. National Marine Fisheries Service
1. Pacific Islands Regional Office
2. Pacific Islands Fisheries Science Center
B. NOAA Office of General Counsel, Pacific Islands Section
C. U.S. Fish and Wildlife Service
D. Enforcement
1. U.S. Coast Guard
2. NOAA Office of Law Enforcement
3. NOAA Office of General Counsel, Enforcement Section
E. Public Comment
F. Council Discussion and Action
6. Program Planning and Research
A. National Standards Guidelines Proposed Rule
B. Report on the National SSC Workshop V
C. Report on the Fishery Ecosystem Plan Review by Council Family and Public
D. NOAA Fisheries Draft Climate Science Strategy
E. Fisheries Internship and Student Help Project
F. Regional, National and International Outreach & Education
G. Advisory Group Reports and Recommendations
1. Marine Planning and Climate Change Committee
H. Social Science Reports
1. Report on the Regional Fishery Management Council's Social Science Meeting
I. Advisory Panel Recommendations
J. SSC Recommendations
K. Public Comment
L. Council Discussion and Action

8:30 a.m.–5 p.m., Tuesday, March 17, 2015

7. American Samoa Archipelago
A. Motu Lipoti
B. Fono Report
C. Enforcement Issues
D. Community Activities and Issues
1. Report on the Governor's Fisheries Committee
2. Fisheries Development
a. Fish Market Dedication
b. Tri Marine/Samoa Tuna Processors Grand Opening of Canning Ops
3. Marine Recreational Improvement Program (MRIP) & Territorial Science Initiative (TSI) updates
E. Education and Outreach Initiatives
1. American Samoa (AS) lunar calendar completion
2. AS summer high school fisheries & marine resource management course
3. TSI Seafood vendors forum
4. MRIP Fishermen Forum
5. Manu'a Outreach Project Summary
F. Advisory Panel Recommendations
G. SSC Recommendations
H. Public Comment
I. Council Discussion and Action
8. Hawaii Archipelago & Pacific Remote Island Areas (PRIA)
A. Moku Pepa
B. Legislative Report
C. Enforcement
D. Main Hawaiian Islands Bottomfish
1. PIFSC meeting with MHI Bottomfish Fishermen
2. Report on the CIE review of the 2014 MHI Deep 7 Bottomfish Stock Assessment
3. Report on 2nd Hawaii Bottomfish Research Workshop
4. Report on Public Scoping Meetings
E. Community Projects, Activities and Issues
1. Fish Processing Waste—A Valuable co-product from Hawaii Fisheries
2. Hawaii Community Fish Aggregating Devices (FADS)
3. Outreach and Education Report
4. Lahaina Marine Planning Project
5. Report on West Hawai'i Habitat Blueprint Focus Area
F. Hawaiian Islands Humpback Whale National Marine Sanctuary
G. Advisory Panel Recommendations
H. SSC Recommendations
I. Public Comment
J. Council Discussion and Action
9. Protected Species
A. ESA Listed Corals
1. Section 7 Consultations for Coral Species
2. Advanced Notice of Proposed Rulemaking on 4(d) Take Prohibition for Corals
3. Other Relevant Actions
B. Effectiveness of Management Measures Implemented under the False Killer Whale Take Reduction Plan
C. Draft 2014 Marine Mammal Stock Assessment Reports
D. Updates on ESA and MMPA Actions
1. Green Turtle Status Review
2. North Pacific Humpback Whale Status Review
3. Other Relevant Actions
E. ESA Section 7 Integration Policy Directive
F. Managing Green Turtles under the Council's Archipelagic Fishery Ecosystem Plans
G. Advisory Panel Recommendations
H. SSC Recommendations
I. Public Comment
J. Council Discussion and Action
10. Public Comment on Non-agenda Items

6 p.m.–9 p.m., Tuesday, March 17, 2015

Fishers Forum, Stock Assessment

8:30 a.m.–5 p.m., Wednesday, March 18, 2015

11. Mariana Archipelago
A. Guam
1. Isla Informe
2. Legislative Report
3. Enforcement Issues
4. Community Activities and Issues
a. Update on Malesso Community-Based Management Plan (CBMP) implementation
b. Report on Village of Yigo CBMP meeting
c. Report on Manell-Geus Habitat Blueprint Focus Area
d. Report on Indigenous Fishing Rights Initiatives
e. Report on the Guam fishing conflict
B. Commonwealth of Northern Mariana Islands
1. Arongol Falú
2. Legislative Report
3. Enforcement Issues
4. Community Activities and Issues
a. Report on Northern Islands CBMP meeting
b. Report on CNMI Joint Military Training Environmental Impact Study (EIS)
5. Education and Outreach
a. Radio Talk Show
C. Marianas Trench Marine National Monument: Islands, Volcanic, and Trench Units
D. Advisory Panel Recommendations

E. SSC Recommendations
F. Public Comment
G. Council Discussion and Action
12. Pelagic & International Fisheries
A. Hawaii Yellowfin and Bigeye Commercial Minimum Size Limit
1. Public Meetings
2. Socio-economic Considerations
B. American Samoa Large Vessel Prohibited Area Temporary Exemption (Action Item)
C. American Samoa longline EEZ albacore catch limit (Action Item)
D. Territory Longline Bigeye Specification (Action Item)
E. Report on Illegal, Unreported and Unregulated (IUU) and Seafood Labeling
F. International Fisheries
1. WCPFC 11th Regular Session
G. Advisory Panel Recommendations
H. SSC Recommendations
I. Standing Committee Recommendations
J. Public Hearing
K. Council Discussion and Recommendations
13. Administrative Matters
A. Financial Reports
B. Administrative Reports
C. Council Family Changes
1. Advisory Panel Changes
2. Plan Team Changes
D. Meetings and Workshops
E. Other Business
F. Standing Committee Recommendations
G. Public Comment
H. Council Discussion and Action
14. Other Business

Non-Emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 162nd meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 18, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–03556 Filed 2–20–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; National Medal of Technology and Innovation Nomination Application

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office, Commerce.

Title: National Medal of Technology and Innovation Nomination Application.

OMB Control Number: 0651–0060.

Form Number(s):

- No PTO Form Number Associated.

Type of Request: Regular.

Number of Respondents: 50.

Average Hours per Response: 40.

Burden Hours: 2,000.

Cost Burden: $1.47.

Needs and Uses: The public uses the National Medal of Technology and Innovation Nomination Application to recognize through nomination an individual's or company's extraordinary leadership and innovation in technological achievement. The application must be accompanied by six letters of recommendation or support from individuals who have first-hand knowledge of the cited achievement(s).

The Information Quality Guidelines from Section 515 of Public Law 106–554, Treasury and General Government Appropriations Act for Fiscal Year 2001, apply to this information collection and this information collection and its supporting statement comply with all applicable information quality guidelines, *i.e.,* OMB and specific operating unit guidelines.

This proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with all applicable Office of Management and Budget (OMB) and USPTO Information Quality Guidelines.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Paper copies can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0060 copy request'' in the subject line of the message.
- *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 25, 2015 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: February 11, 2015.

Marcie Lovett,

Records Management Division Director, USPTO, Office of the Chief Information Officer.

[FR Doc. 2015–03553 Filed 2–20–15; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request; ''Public User ID Badging''

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office.

Title: Public User ID Badging.

OMB Control Number: 0651–0041.

Form Number(s):

- PTO–2030
- PTO–2224

Type of Request: Regular.

Number of Respondents: 7,121.

Average Hours per Response: The USPTO estimates that it will take the public approximately five and a half minutes (0.09 hours) to complete the information in this collection, including gathering the necessary information, preparing the appropriate form, and

submitting the completed request. The estimated response time for the individual items in this collection ranges from five to ten minutes (0.08 to 0.17 hours) depending on the instruments and practices used.

Burden Hours: 654.42 hours.

Cost Burden: $1,982.

Needs and Uses: The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 41(i)(1) to maintain a Public Search Facility to provide patent and trademark collections for searching and retrieval of information. In order to manage the patent and trademark collections that are available to the public, the USPTO issues online access accounts to customers who wish to use the electronic search systems at the Public Search Facility. Customers may obtain an online access accounts by completing the application at the Public Search Facility reference desk and providing proper identification. Users may renew their accounts by validating and updating the required information and may obtain a replacement for a lost account by providing proper identification.

Under the authority provided in 41 CFR part 102–81, the USPTO issues security identification badges to members of the public who wish to use the facilities at the USPTO. Public users may apply for a security badge in person at the USPTO Office of Security by providing the necessary information and presenting a valid form of identification with photograph. The security badges include a color photograph of the user and must be worn at all times while at the USPTO facilities. The information obtained in this collection constitutes the application available at the Public Search Facility, and allows users to gain a security badge granting them access to that Facility.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits (in the form of security identification badges).

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Paper copies can be obtained by:

- Email: *InformationCollection@uspto.gov.* Include ''0651–0041 copy request'' in the subject line of the message.
- Mail: Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 25, 2015 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: February 13, 2015.

Marcie Lovett,

Records Management Division Director, USPTO, Office of the Chief Information Officer.

[FR Doc. 2015–03571 Filed 2–20–15; 8:45 am]

BILLING CODE 3510–16–P

COUNCIL ON ENVIRONMENTAL QUALITY

Notice To Extend the Comment Period for the Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews

AGENCY: Council on Environmental Quality.

ACTION: Notice of Extension of Comment Period.

SUMMARY: This notice extends the comment period for the proposed guidance published in the **Federal Register** on December 24, 2014, (79 FR 77802, Dec. 24, 2014). The comment period for the proposed guidance, which would have ended on February 23, 2015, is extended for 30 days.

DATES: The comment period is extended to 11:00 p.m. Eastern Standard Time on March 25, 2015.

ADDRESSES: The revised Draft Guidance is available at *http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa.* Comments on the ''Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews'' should be submitted in one of the following ways:

a. Electronically at *http://www.whitehouse.gov/webform/submit-comments-revised-draft-guidance-greenhouse-gas-emissions-and-climate-change-impacts;*

b. By email to *GCC.guidance@ceq.eop.gov;* or

c. By regular mail to the Council on Environmental Quality, ATTN: Horst Greczmiel, 722 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Horst Greczmiel, Associate Director for National Environmental Policy Act Oversight, at (202) 395–5750.

SUPPLEMENTARY INFORMATION: On December 24, 2014, the Council on Environmental Quality (CEQ) published revised draft guidance in the **Federal Register** (79 FR 77802, Dec. 24, 2014) with comments due on or before February 23, 2015. The revised draft guidance discusses how National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4370, analysis and documentation should address greenhouse gas (GHG) emissions and the impacts of climate change.

CEQ has received inquiries from state-based and national industry organizations regarding the 60-day time period to submit comments. The organizations stated that they needed additional time to respond to the rule due to the complex nature of the proposed revisions. Because of the scope of the proposed guidance, and because CEQ has specifically requested the public's comments on various aspects of the guidance in an attempt to benefit from the experiences of all interested parties, CEQ has decided to extend the comment period for an additional 30 days. This notice announces the extension of the public comment period to March 25, 2015.

CEQ posts all comments received electronically on a weekly basis at *http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/comments.* Follow the search instructions on that Web site to view public comments.

Dated: February 18, 2015.

Brenda Mallory,

General Counsel, Council on Environmental Quality.

[FR Doc. 2015–03606 Filed 2–20–15; 8:45 am]

BILLING CODE 3225–F5–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group; Notice of Federal Advisory Committee Closed Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee closed meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the U.S. Strategic Command

Strategic Advisory Group. This meeting will be closed to the public.

DATES: Wednesday, April 1, 2015, from 8:00 a.m. to 5:00 p.m. and Thursday, April 2, 2015, from 8:00 a.m. to 11:00 a.m.

ADDRESSES: Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Sudduth, Designated Federal Officer, (402) 294–4102, 901 SAC Boulevard, Suite 1F7, Offutt AFB, NE 68113–6030.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. App 2, Section 1), the Government in Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, Admiral C.D. Haney, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.* Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: February 18, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–03603 Filed 2–20–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will take place. This meeting is open to the public.

DATES: Wednesday, March 11, 2015, from 8:30 a.m. to 12:15 p.m.; Thursday, March 12, 2015, from 8:30 a.m. to 11:45 a.m.

ADDRESSES: Hyatt Regency—Crystal City, 2799 Jefferson Davis Hwy, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bowling or DACOWITS Staff at 4800 Mark Center Drive, Suite 04J25–01, Alexandria, Virginia 22350–9000. *Robert.d.bowling1.civ@mail.mil.* Telephone (703) 697–2122. Fax (703) 614–6233. Any updates to the agenda or any additional information can be found at *http://dacowits.defense.gov/.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS).

The purpose of the meeting is for the Committee to receive briefings and updates relating to their current work. Four new members will be introduced and sworn in on the first day of the meeting. The Designated Federal Officer will give a status update on the Committee's requests for information. The Committee will receive briefings on increasing female accessions and an update on enlisted women in submarines. Additionally, the Committee will receive briefings on DoD childcare programs and initiatives, and the impacts of state and federal laws on military families. There will also be a public comment period.

Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, interested persons may submit a written statement for consideration by the Defense Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the point of contact listed at the address in **FOR FURTHER INFORMATION CONTACT** no later than 5:00 p.m., Monday, March 9, 2015. If a written statement is not received by Monday, March 9, 2015, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Advisory Committee on Women in the Services Chair and ensure they are provided to the members of the Defense Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement should be submitted. After reviewing the written comments, the Chair and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Pursuant to 41 CFR 102–3.140(d), determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Thursday, March 12, 2015 from 11:30 a.m. to 11:45 a.m. in front of the full Committee. The number of oral presentations to be made will depend on the number of requests received from members of the public.

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to the availability of space.

Meeting Agenda

Wednesday, March 11, 2015, from 8:30 a.m. to 12:15 p.m.

—Welcome, Introductions, Announcements
—Swearing In of New Committee Members
—Briefing—Request for Information Status Update
—Briefing—Increasing Female Accessions
—Briefing—Enlisted Women in Submarines Update

Thursday, March 12, 2015, from 8:30 a.m. to 11:45 a.m.

—Welcome and Announcements
—Briefing—DoD Childcare Programs and Initiatives Overview
—Briefing—State and Federal Laws: Impacts to Military Families
—Public Comment Period

Dated: February 18, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–03555 Filed 2–20–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

[Docket Number 2015–0005]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DFARS 234.2, Earned Value Management System

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection under Control Number 0704–0479 for use through June 30, 2015. DoD is proposing that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by March 25, 2015.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0479, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0479 in the subject line of the message.

○ *Fax:* (571) 372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, at (571) 372–6099. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dfars/index.htm.* Paper copies are available from Mr. Mark Gomersall, OUSD (AT&L) DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Business Systems-Definition and Administration; DFARS 234, Earned Value Management System, OMB Control Number 0704–0479.

Needs and Uses: DFARS clause 252.242–7005 requires contractors to respond to written determinations of significant deficiencies in the contractor's business systems as defined in the clause. The information contractors are required to submit in response to findings of significant deficiencies in their accounting system, estimating system, material management and accounting system and purchasing system has previously been approved by the Office of Management and Budget. This request specifically addresses information required by DFARS clause 252.234–7002, Earned Value Management System, for contractors to respond to determinations of significant deficiencies in a contractor's Earned Value Management System (EVMS). The requirements apply to entities that are contractually required to maintain an EVMS. DoD needs this information to document actions to correct significant deficiencies in contractor business systems. DoD contracting officers use the information to mitigate the risk of unallowable and unreasonable costs being charged on government contracts.

Affected Public: Businesses or other for-profit institutions.

Number of Respondents: 12.

Responses per Respondent: 1.

Annual Responses: 12.

Average Burden per Response: Approximately 676 hours.

Annual Response Burden Hours: 8,112.

Reporting Frequency: On occasion.

Summary of Information Collection

DFARS clause 252.234–7002, Earned Value Management System, requires contractors to respond in writing to initial and final determinations of significant deficiencies in the contractor's business systems as defined in the clause.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–03551 Filed 2–20–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Draft Environmental Impact Statement for the Lower Bois d'Arc Creek Reservoir Project, Fannin County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE) Tulsa District has prepared a Draft Environmental Impact Statement (EIS) to analyze the direct, indirect and cumulative effects of the construction and operation of the proposed Lower Bois d'Arc Creek Reservoir (LBCR) and related actions proposed by the North Texas Municipal Water District (NTMWD) in Fannin County, TX. The Proposed Action is a regional water supply project intended

to provide up to 175,000 acre-feet/year (AFY), with an estimated firm yield of 126,200 AFY, of new water for NTMWD's member cities and direct customers in all or portions of nine counties in northern Texas—Collin, Dallas, Denton, Fannin, Hopkins, Hunt, Kaufman, Rains and Rockwall. Construction of the reservoir and related facilities would result in permanent impacts to approximately 6,180 acres of wetlands and 651,024 linear feet of streams. This action requires authorization from the USACE under Section 404 of the Clean Water Act. The Section 404 permit applicant is the NTMWD.

The Draft EIS was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the USACE's regulations for NEPA implementation (33 Code of Federal Regulations [CFR] parts 230 and 325, Appendices B and C). The USACE, Tulsa District, Regulatory Branch is the lead federal agency responsible for the Draft EIS and information contained in the EIS serves as the basis for a decision whether or not to issue a Section 404 permit. It also provides information for Federal, state and local agencies having jurisdictional responsibility for affected resources.

DATES: Written comments on the Draft EIS will be accepted on or after February 20, 2015 until April 21, 2015. Oral and/or written comments may also be presented at the Public Meeting to be held at 6 p.m. on Tuesday, March 24, 2015 at the Fannin County Multi-Purpose Complex, FM 87, 700 Texas 56, Bonham, TX 75418.

ADDRESSES: Send written comments regarding the Proposed Action and Draft EIS to Andrew R. Commer, USACE, Tulsa District Regulatory Office, 1645 S 101 E Avenue, Tulsa, OK 74128–4609, or via email: *ceswt-ro@usace.army.mil.* Requests to be placed on or removed from the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Andrew R. Commer, U.S. Army Corps of Engineers, Tulsa District, Regulatory Office, at 918–669–7400.

SUPPLEMENTARY INFORMATION: The purpose of the Proposed Action is to provide additional firm annual yield to NTMWD's member cities and direct customers to address anticipated water demands associated with projected growth in the cities and suburbs in the NTMWD service area northeast of Dallas.

The purpose of the Draft EIS is to provide decision-makers and the public with information pertaining to the Proposed Action and alternatives, and to disclose environmental impacts and identify mitigation measures to reduce impacts. NTMWD proposes to build the LBCR with a total storage capacity of approximately 367,609 AF. A dam approximately 10,400 feet (about two miles) long and up to 90 feet high would be constructed, and much of the reservoir footprint would be cleared of trees and built structures. NTMWD also proposes to construct several related facilities or connected actions. These include a raw water intake pump station and electrical substation at the reservoir site, as well as a 90–96 inch diameter buried pipeline to carry raw water from the new reservoir approximately 35 miles in a southwesterly direction to a new water treatment plant and terminal storage reservoir that would be located west of the City of Leonard, also in Fannin County. A number of rural roads within the footprint and in the vicinity of the proposed reservoir would have to be closed or relocated; the most significant of these is FM 1396, which would be relocated to cross the reservoir in a different alignment on an entirely new bridge that would need to be constructed.

An aquatic resources mitigation plan has been prepared by the applicant to comply with the federal policy of ''no overall net loss of wetlands'' and to provide compensatory mitigation, to the extent practicable, for impacts to other waters of the U.S. that would be impacted by construction of the proposed reservoir. NTMWD has purchased a 14,960-acre parcel of land known as the Riverby Ranch, which borders the Red River. This working ranch is located downstream of the proposed project within both the same watershed (Bois d'Arc Creek) and the same county (Fannin). NTMWD acquired the Riverby Ranch specifically because its biophysical features have the potential to provide appropriate mitigation for the proposed project. Additional mitigation would be provided within the proposed reservoir itself and on Bois d'Arc Creek downstream of the reservoir as a result of an operations plan and flow regime established in consultation with the Texas Commission on Environmental Quality (TCEQ), and stipulated in the Draft Water Right Permit issued by TCEQ to NTMWD.

The U.S. Environmental Protection Agency Region VI, U.S. Forest Service, U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department (TPWD) participated as cooperating agencies in the formulation of the Draft EIS.

Copies of the Draft EIS will be available for review at:

1. Bonham Public Library, 305 East 5th Street, Bonham, TX 75418; (903) 583–3128.
2. Sam Rayburn Library, 800 West Sam Rayburn Drive, Bonham, TX 75418; (903) 583–2455.
3. Bertha Voyer Memorial Library, 500 6th Street, Honey Grove, TX 75446; (903)–378–2206.
4. Leonard Public Library, 102 South Main Street, Leonard, TX 75452; (903) 587–2391.
5. North Texas Municipal Water District headquarters, 505 East Brown Street, Wylie, TX 75098.
6. Army Corps of Engineers, Tulsa District, Regulatory Office, 1645 S 101 E Avenue, Tulsa, OK 74128–4609.

Electronic copies of the Draft EIS may be obtained from the Corps' Tulsa District Regulatory Office or its Web site at *http://www.swt.usace.army.mil/Missions/Regulatory/PublicNotices/tabid/4955/Year/2015/Default.aspx.*

Andrew R. Commer,

Chief, Regulatory Office, Tulsa District.

[FR Doc. 2015–03622 Filed 2–20–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board on Coastal Engineering Research. This meeting is open to the public.

DATES: *Dates and Location:* The Board on Coastal Engineering Research will meet from 8:00 a.m. to 4:30 p.m. on March 3, 2015, and reconvene from 8:00 a.m. to 12:00 p.m. on March 4, 2015. Both sessions of the meeting will be held in the Conference Facility, Coastal and Hydraulics Laboratory (CHL), U.S. Army Engineer Research and Development Center, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199. All sessions are open to the public. For more information about the Board, please visit *http://chl.erdc.usace.army.mil/cerb.*

FOR FURTHER INFORMATION CONTACT: Colonel Jeffrey R. Eckstein, Designated Federal Officer (DFO) and Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry

Road, Vicksburg, MS 39180–6199, phone 601–634–2513, or *Jeffrey.R.Eckstein@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Board on Coastal Engineering Research provides broad policy guidance and reviews plans for the conduct of research and the development of research projects in consonance with the needs of the coastal engineering field and the objectives of the U.S. Army Chief of Engineers.

Purpose of the Meeting: The meeting is an Executive Session to review past action items, status reports, research and development strategic directions, and coastal engineering research in the United States.

Agenda: On Tuesday morning, March 3, 2015, meeting logistics, review and status of action items, CHL coastal research and development strategic direction, existing coastal engineering statements of need, and a status report on the Coastal Working Group will be discussed.

On Tuesday afternoon, there will be technology demonstrations of the Ship-Tow Simulator and the CHL Sediment Lab and presentations and discussions on the U.S. Army Corps of Engineers (USACE) Resilience and Harmonization, next steps for Civil Works and Military initiatives, and USACE resilience research and development plans.

On Wednesday, March 4, 2015, the Board will reconvene to discuss a Regional Sediment Management Regional Technical Center of Expertise and coastal engineering research in the United States. A discussion on the September meeting will also be hosted by the U.S. Army Engineer Division, Southwestern.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public. Because seating capacity is limited, advance registration is required. Registration can be accomplished as set forth below. Because the meeting of the Board will be held in a Federal Government facility, security screening is required. A photo ID is required to enter the facility. The name of each person seeking entry will be checked against the list of names of those persons who have registered to attend the meeting. Individuals will be directed to the Coastal and Hydraulics Laboratory. Please note that the guards have a right to inspect vehicles seeking to enter the facility. The Coastal and Hydraulics Laboratory is fully handicap accessible. For additional information about public access procedures, please contact Colonel Eckstein, the Board's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Registration: Individuals who wish to attend the meeting of the Board must register with the DFO by email, the preferred method of contact, no later than February 27, using the electronic mail contact information found in the **FOR FURTHER INFORMATION CONTACT** section, above. The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments or statements with the registration email.

Written Comments and Statements: Pursuant to 41 CFR 102–3.015(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board, in response to the stated agenda of the open meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to Colonel Jeffrey R. Eckstein, DFO, via electronic mail, the preferred mode of submission, as the address listed in the **FOR FURTHER INFORMATION CONTACT** section above. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO will review all submitted written comments or statements and provide them to members of the Board for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the DFO at least five business days prior to the meeting to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chairperson and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting.

Verbal Comments: Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow a member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least five business days in advance to the Board's DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The DFO will log each request, in the order received, and in consultation with the Board Chair, determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment, and whose comments have been deemed relevant under the process described above, will be allotted no more than five minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

David B. Olson,

Federal Register Liaison, U.S. Army Corps of Engineers.

[FR Doc. 2015–03621 Filed 2–20–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0152]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Personal Authentication Service (PAS) for FSA ID

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 25, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0152 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.*

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ian Foss, 202–377–3681.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Personal Authentication Service (PAS) for FSA ID.

OMB Control Number: 1845–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 14,440.

Total Estimated Number of Annual Burden Hours: 1,155.

Abstract: The HEA provides for a maximum amount that a borrower can receive per year and in total. If a borrower receives more than one of these maximum amounts, the borrower is rendered ineligible for further Title IV aid (including Federal Pell Grants, Federal Supplemental Educational Opportunity Grants, Federal Work-Study, and Teacher Education Assistance for Higher Education (TEACH) Grants) unless the borrower repays the excess amount or agreed to repay the excess amount according to the terms and conditions of the promissory note that the borrower signed. Agreeing to repay the excess amount according to the terms and conditions of the promissory note that the borrower signed is called ''reaffirmation'', which is the subject of this collection.

Dated: February 18, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–03562 Filed 2–20–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; District of Columbia Opportunity Scholarship Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information:

District of Columbia Opportunity Scholarship Program (OSP)

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.370A.

Dates:

Applications Available: February 23, 2015.

Deadline for Notice of Intent To Apply: March 25, 2015.

Date of Informational Meeting: The OSP intends to hold a webinar designed to provide technical assistance to interested applicants. Detailed information regarding this webinar will be provided on the OSP Web site at *http://www2.ed.gov/programs/dcchoice/index.html.*

Deadline for Transmittal of Applications: April 24, 2015.

Deadline for Intergovernmental Review: June 23, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The OSP provides low-income students residing in the District of Columbia (DC) an opportunity to receive a scholarship to attend a DC private school of their parents' choice.

Background: The OSP was established in 2004 under the DC School Choice Incentive Act of 2003 (School Choice Incentive Act) (Title III of Division C of the Consolidated Appropriations Act, 2004; Pub. L. 108–199 Stat. 3 (2004)). In 2011, Congress reauthorized the OSP under the Scholarships for Opportunity and Results Act (SOAR Act, Division C of the Pub. L. 112–10).

For FY 2015, the Department will award one grant to an eligible applicant to administer the OSP. The grant will be awarded in the form of a cooperative agreement between the Department and the grantee. This grantee is expected to explain in its application, among other things, how it would recruit and select eligible scholarship applicants in years that scholarships are awarded, serve scholarship students and families in a timely manner, identify and work with participating schools, monitor compliance of participating schools with program and reporting requirements, maintain reliable data regarding the operation of the program, and ensure appropriate coordination with the other entities that conduct activities related to this program.

Application Requirements: The following requirements are from section 3005(b) of the SOAR Act and apply to all applications submitted by eligible entities under this competition. Each entity's application must include a detailed description of—

(A) How the entity will address the priorities described in section 3006 of the SOAR Act;

(B) How the entity will ensure that if more eligible students seek admission in the program of the entity than the program can accommodate, eligible students are selected for admission through a random selection process which gives weight to the priorities described in section 3006 of the SOAR Act;

(C) How the entity will ensure that if more participating eligible students seek admission to a participating school than the school can accommodate, participating eligible students are selected for admission through a random selection process;

(D) How the entity will notify parents of eligible students of the expanded choice opportunities in order to allow the parents to make informed decisions;

(E) The activities that the entity will carry out to provide parents of eligible students with expanded choice opportunities through the awarding of

scholarships under section 3007(a) of the SOAR Act;

(F) How the entity will determine the amount that will be provided to parents under section 3007(a)(2) of the SOAR Act for the payment of tuition, fees, and transportation expenses, if any;

(G) How the entity will seek out private elementary schools and secondary schools in District of Columbia to participate in the program;

(H) How the entity will ensure that each participating school will meet the reporting and other program requirements under the SOAR Act;

(I) How the entity will ensure that participating schools submit to site visits by the entity as determined to be necessary by the entity, except that a participating school may not be required to submit to more than 1 site visit per school year;

(J) How the entity will ensure that participating schools are financially responsible and will use the funds received under section 3007 of the SOAR Act effectively;

(K) How the entity will address the renewal of scholarships to participating eligible students, including continued eligibility; and

(L) How the entity will ensure that a majority of its voting board members or governing organization are residents of District of Columbia.

The entity must also provide in its application an assurance that the entity will comply with all requests regarding any evaluation carried out under section 3009(a) of the SOAR Act.

Definitions

The definitions for the terms ''Elementary school'', ''Parent'', ''Poverty line'', and ''Secondary school'' are from section 3013 of the SOAR Act. The definition for the term ''nonprofit'' is from 34 CFR 77.1(c).

Elementary school means an institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under District of Columbia law.

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

Poverty line means the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act) applicable to a family of the size involved.

Secondary school means an institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under District of Columbia law, except that the term does not include any education beyond grade 12.

Program Authority: SOAR Act (Division C of the P.L. 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, April 15, 2011; 125 Stat. 38, 199–212), as amended by Pub. L. 112–92.

Applicable Regulations: (a) EDGAR in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $13,200,000.

Note: A total award of $13,200,000 will include $12,000,000 to be spent on scholarships and up to $600,000 to be spent on administrative expenses, up to $400,000 to be spent on parental assistance, and up to $200,000 to be spent on student academic assistance.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* To be eligible for an OSP grant, an entity must be either a nonprofit organization or a consortium of nonprofit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Coordination:* An eligible entity must be willing and able to work with other entities affiliated with the Federal and DC governments, as well as with other organizations that might conduct activities integral to the success of the program, including, as appropriate, determining the household income of scholarship recipients and ensuring the ongoing eligibility of schools participating in the program. Additionally, an eligible entity must demonstrate how it will communicate and coordinate with the current grantee, as needed, to ensure a seamless and smooth transition between the 2015–2016 and 2016–2017 school years for families and schools participating in the OSP.

IV. Application and Submission Information

1. *Address to Request Application Package:* Jeanne Gilroy, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W227, Washington, DC 20202–5960 or by email: *DCOSP2015@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: March 25, 2015. The Department will be able to develop a more efficient process for reviewing grant applications if it has a better estimate of the number of entities that intend to apply for funding under this competition. Therefore, the Department strongly encourages each potential applicant to notify the Department by sending a short email message indicating the applicant's intent to submit an application for funding. The email need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Department requests that this email notification be sent to *DCOSP2015@ed.gov.*

Eligible entities that fail to provide this email notification may still apply for funding. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the application requirements and selection criteria that reviewers use to evaluate your application. We suggest you limit the application narrative to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except for titles,

headings, footnotes, quotations, references, captions, charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, or letters of support. However, the page limit does apply to all of the application narrative section.

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the OSP, an application may include business information that the applicant considers proprietary. The Department's regulations define ''business information'' in 34 CFR 5.11.

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: February 23, 2015.

Deadline for Notice of Intent to Apply: March 25, 2015.

Date of Informational Meeting: The OSP intends to hold a webinar designed to provide technical assistance to interested applicants. Detailed information regarding this webinar will be provided on the OSP Web site at *http://www2.ed.gov/programs/dcchoice/index.html.*

Deadline for Transmittal of Applications: April 24, 2015.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 23, 2015.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the OSP, CFDA number 84.370A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written

statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the OSP at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.370, not 84.370A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Jeanne Gilroy, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W227, Washington, DC 20202–5960.

FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.370A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.370A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

In addressing each criterion, applicants are encouraged to make explicit connections to relevant aspects of responses to other selection criteria.

A. *Quality of project services* (20 points).

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

B. *Quality of project personnel* (25 points).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

C. *Adequacy of resources* (20 points).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

D. *Quality of the management plan* (35 points).

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate

circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The long-term performance indicator for this program is whether, at the end of the program, the student achievement gains of participants are greater than those of students in control or comparison groups. Data for the performance measure will be collected through the program evaluation.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Jeanne Gilroy, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W227, Washington, DC 20202–5960. Telephone: (202) 453–6474, or by email: *DCOSP2015@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 18, 2015.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2015–03620 Filed 2–20–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Defense Programs Advisory Committee

AGENCY: Office of Defense Programs, National Nuclear Security Administration, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with title 41, Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Defense Programs Advisory Committee (DPAC) will be renewed for a two-year period beginning on February 12, 2015.

The DPAC will provide advice and recommendations to the Deputy Administrator for Defense Programs on the stewardship and maintenance of the Nation's nuclear deterrent.

Additionally, the renewal of the Committee has been determined to be essential to the conduct of the Department's business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Martin, Office of Defense Programs, at (202) 586–7996.

Issued in Washington, DC, on February 12, 2015.

Amy Bodette,

Committee Management Officer.

[FR Doc. 2015–03591 Filed 2–20–15; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2014–0694; FRL—9922–67–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Requirements and Exemptions for Specific RCRA Wastes (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Requirements and Exemptions for Specific RCRA Wastes (Renewal)'' (EPA ICR No. 1597.11, OMB Control No. 2050–0145) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2015. Public comments were previously requested via the **Federal Register** (79 FR 65652) on November 5, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 25, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2014–0694, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA WJC, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: In 1995, EPA promulgated regulations at 40 CFR part 273 that govern the collection and management of widely-generated hazardous wastes known as ''Universal Wastes.'' Part 273 regulations are designed to ensure facilities collect and properly manage these wastes. EPA needs to collect notifications of Universal Waste management to obtain general information on handlers and to facilitate enforcement of the part 273 regulations, to ensure that Universal Waste is being accumulated responsibly, to collect information on illegal Universal Waste shipments, and lastly to help ensure that Universal Waste is being properly treated, recycled, and/or disposed. In 2001, EPA promulgated regulations in 40 CFR part 266 that provide increased flexibility to facilities managing wastes commonly known as ''Mixed Waste.'' Section 266.345(a) requires that generators or treaters notify EPA or the Authorized State that they are claiming the Transportation and Disposal Conditional Exemption prior to the initial shipment of a waste to a LLRW disposal facility. Finally, the regulations at 40 CFR part 279 establish streamlined procedures for notification, testing, labeling, and recordkeeping including an approach for tracking off-site shipments that allow used oil handlers to use standard business practices (*e.g.,* invoices, bill of lading). Used oil transporters must comply with all applicable packaging, labeling, and placarding requirements of 49 CFR parts 173, 178, and 179. In addition, used oil transporters must report discharges of used oil according to existing 49 CFR part 171 and 33 CFR part 153 requirements.

Form Numbers: None.

Respondents/affected entities: Private Sector and State, Local, or Tribal Governments.

Respondent's obligation to respond: Mandatory (40 CFR part 273), required to obtain or retain a benefit (40 CFR parts 266 and 279).

Estimated number of respondents: 134,280.

Frequency of response: Occasionally.

Total estimated burden: 679,354 hours per year. Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $44,737,952 (per year), includes $10,015,823 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 28,189 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to updating the current Universe and Mixed Waste estimates.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–03541 Filed 2–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0269; FRL–9923–38–OAR]

Proposed Information Collection Request; Comment Request; Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs, and Projects'' (EPA ICR No. 2130.05, OMB Control No. 2060–0561) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR.

DATES: Comments must be submitted on or before April 24, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0269 online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200

Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Astrid Larsen, Transportation and Climate Division, State Measures and Transportation Planning Center, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4812; fax number: 734–214–4052; email address: *larsen.astrid@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported transportation activities are consistent with (''conform to'') the purpose of the state air quality implementation plan (SIP). Transportation activities include transportation plans, transportation improvement programs (TIPs), and federally funded or approved highway or transit projects. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or ''standards'') or interim milestones.

Transportation conformity applies under EPA's conformity regulations at 40 CFR part 93, subpart A, to areas that are designated nonattainment, and those redesignated to attainment after 1990 (''maintenance areas'' with plans developed under Clean Air Act section 175A) for the following transportation-related criteria pollutants: ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). The EPA published the original transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several revisions. EPA develops the conformity regulations in coordination with the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA).

Transportation conformity determinations are required before federal approval or funding is given to certain types of transportation planning documents as well as non-exempt highway and transit projects.[1]

EPA considered the following in renewing the existing ICR:

- Burden estimates for transportation conformity determinations (including both regional and project-level) in current nonattainment and maintenance areas for the ozone, $PM_{2.5}$, PM_{10}, CO, and NO_2 NAAQS;
- Federal burden associated with EPA's adequacy review process for submitted SIP motor vehicle emissions budgets that are to be used in conformity determinations;
- Efficiencies in areas making conformity determinations for multiple NAAQS;
- Differences in conformity resource needs in large and small metropolitan areas and isolated rural areas;
- Burden estimates for the transition from MOVES2010 to MOVES2014:
- Reduced burden as a result of areas no longer determining conformity for the 1997 ozone NAAQS due to revocation[2] anticipated in early 2015; and,
- Reduced burden as a result of areas completing 20 years of maintenance for the PM_{10} and CO NAAQS, at which time transportation conformity is no longer required.

This ICR does not include burden associated with the general development of transportation planning and air quality planning documents for meeting other federal requirements.

Form numbers: None.

Respondents/affected entities: Entities potentially affected by this action are metropolitan planning organizations, local transit agencies, state departments of transportation, and state and local air quality agencies. Federal agencies potentially affected by this action include FHWA, FTA, and EPA.

Respondent's obligation to respond: Mandatory pursuant to Clean Air Act section 176(c) (42 U.S.C. 7506(c)) and 40 CFR part 51 and 93.

Estimated number of respondents: EPA estimates that 126 MPOs will be subject to conformity requirements during the period covered by this ICR and that EPA Regional Offices, the FHWA, and FTA will be involved in interagency consultation, and review of transportation-related conformity determinations performed by MPOs during this process. EPA also estimates that similar consultation will occur for projects in isolated rural areas.

Frequency of response: The information collections described in this ICR must be completed before a transportation plan, TIP, or project conformity determination is made. The Clean Air Act requires conformity to be determined for transportation plans and TIPs every four years. Conformity determinations on projects in metropolitan and isolated rural areas are required on as as-needed bases.

Total estimated burden: 63,237 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,768,668 (per year), includes zero annualized capital or operation and maintenance costs.

Changes in estimates: There is a decrease of 136,200 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to less burden associated with decreased conformity analysis for $PM_{10,}$ CO and 1997 ozone NAAQS, the transition from MOVES2010 to MOVES2014, decreased

[1] Some projects are exempt from all or certain conformity requirements; see 40 CFR 93.126, 93.127, and 93.128.

[2] See *78 FR 34178* (June 3, 2013).

project-level conformity analyses, and decreased EPA adequacy findings.

Dated: February 12, 2015.

Karl Simon,

Director, Transportation and Climate Division, Office of Transportation and Air Quality.

[FR Doc. 2015–03577 Filed 2–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9923–16–Region 6]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for Luminant Generating Company, LLC Steam Electric Generating Stations Martin Lake, Monticello, and Big Brown in Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: Pursuant to Clean Air Act (CAA) Section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an Order, dated January 23, 2015, denying in part three petitions asking the EPA to object to operating permits issued by the Texas Commission on Environmental Quality (TCEQ) to Luminant Generating Company, LLC (Luminant) relating to three coal fired steam electric generating stations (SES) located in East and Northeast Texas. Title V operating permit number O53 was issued by the TCEQ to Luminant for the Martin Lake SES located in Rusk County, Texas. Title V operating permit number O64 was issued to Luminant for the Monticello SES located in Titus County, Texas, while title V operating permit number O65 was issued to Luminant for the Big Brown SES located in Freestone County, Texas. The EPA's January 23, 2015 Order responds to the three petitions submitted by the Environmental Integrity Project (EIP) representing themselves and on behalf of Sierra Club (collectively, the Petitioners): the petition addressing the Martin Lake permit was received on February 26, 2014, while the petitions addressing the Monticello permit and Big Brown permit were both received on March 4, 2014. Sections 307(b) and 505(b)(2) of the Act provide that a petitioner may ask for judicial review of those portions of the Orders that deny objections raised in the petitions by the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307(b) of the Act.

ADDRESSES: You may review copies of the final Orders, the petitions, and other supporting information at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

For Information: Please contact Brad Toups at (214) 665–7258, email address: *toups.brad@epa.gov* or the above EPA, Region 6 address, to view copies of the final Orders, petitions, and other supporting information. You may view the hard copies Monday through Friday, from 9:00 a.m. to 3:00 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final January 23, 2015 Order is available electronically at: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/luminant_response2014.pdf.*

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review, and object, as appropriate, to a title V operating permit proposed by a state permitting authority. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a title V operating permit if the EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The EPA received three petitions from the Petitioners, one dated February 26, 2014 for the Martin Lake permit, and one each dated March 3, 2014 for the Monticello and Big Brown permits, to object to operating permits issued to Luminant Generating Company, LLC relating respectively to facilities located in Rusk, Titus, and Freestone counties, Texas.

The Order issued on January 23, 2015 responds to claim V.A of the Martin Lake Petition (pp. 5–9), the Monticello Petition (pp. 5–11) and the Big Brown Petition (pp. 7–14) raised by EIP, the Sierra Club having withdrawn all of their objections prior to the issuance of the order. The EIP requested that the Administrator object to the proposed operating permits issued by the TCEQ to Luminant on several bases. The three petitions did not raise identical claims; however, three common claims are addressed in the issued order. The remaining issues are to be withdrawn by the petitioner in accordance with a settlement agreement reached on January 22, 2015 between the Petitioner and the EPA.

The claims are described in detail in Section IV of the Order. In summary, the issues raised are that: (1) the Compliance Assurance Monitoring (CAM) provisions in the Martin Lake, Monticello and Big Brown permits do not assure compliance with the applicable particulate matter (PM) emission limit during periods of startup, shutdown, maintenance and malfunction; (2) the record supporting the CAM opacity indicator ranges for PM for Monticello Units 1, 2 and 3 is deficient and not based on reliable data; and (3) the Big Brown permit must be revised to ensure that any credible evidence may be used to demonstrate noncompliance with applicable requirements.

Due to significant overlap in the issues raised in the Petitions and the similarity of the relevant permit conditions in each of the three permits, the EPA is responding to the identified portion of all three Petitions in this Order on January 23, 2015. The EPA's rationale for denying the addressed claims is described in the Order.

Dated: February 9, 2015.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2015–03583 Filed 2–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9923–31–Region 2]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This notice announces EPA's decision to identify certain water quality limited waters and the associated pollutant to be listed pursuant to the Clean Water Act Section 303(d)(2) on New York's list of impaired waters, and requests public comment. Section 303(d)(2) requires that States submit, and EPA approve or disapprove, lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On January 13, 2015, EPA disapproved New York's decision to

exclude Jones Inlet/Jones Bay from its 2014 303(d) list. EPA evaluated existing and readily available data and information and concluded that the applicable narrative water quality standard for nutrients is being exceeded in Jones Inlet/Jones Bay. Based on this evaluation, EPA has determined that Jones Inlet/Jones Bay is not fully attaining the water quality standards established by New York State and should be included on the State's 303(d) list of impaired waters.

EPA is providing the public the opportunity to review its decision to add this water to New York's 303(d) list, as required by 40 CFR 130.7(d)(2). EPA will consider public comments before transmitting its final listing decision to the State.

DATES: Comments must be submitted to EPA on or before March 25, 2015.

ADDRESSES: Comments on the proposed decision should be sent to Dana Flint, U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, NY 10007, email *greenlee.dana@epa.gov,* telephone (212)–637–3635. Oral comments will not be considered. Copies of EPA's letter explaining the rationale for EPA's decision concerning New York's list can be obtained by calling or emailing Mrs. Flint at the address above. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Mrs. Flint to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Dana Flint at (212) 637–3635 or at *greenlee.dana@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings, identify the pollutants causing the impairment, and identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, New York submitted its listing decisions under Section 303(d)(2) to EPA in correspondence dated November 3, 2014, January 5, 2015 and January 7, 2015. On January 13, 2015, EPA partially approved New York's submittal of the 303(d) list, and disapproved New York's decision to exclude Jones Inlet/Jones Bay from the 2014 list. EPA is soliciting public comment on the addition of this water to the State's list, as required by 40 CFR 130.7(d)(2).

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 26, 2015.

Judith A. Enck,

Regional Administrator, U.S. Environmental Protection Agency, Region 2.

[FR Doc. 2015–03578 Filed 2–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9923–33–OA]

Meetings of the Small Community Advisory Subcommittee and the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of meetings.

SUMMARY: The Small Community Advisory Subcommittee (SCAS) will meet via teleconference on Tuesday, March 10, 2015, 1:00 p.m.–2:00 p.m. (EST). The Subcommittee will discuss an EPA Rural Strategy and other small community issues. This is an open meeting. Individuals or organizations wishing to address the Subcommittee meeting will be allowed a maximum of five minutes to present their point of view on issues pertaining to small communities.

The Local Government Advisory Committee (LGAC) will meet via teleconference on Tuesday, March 10, 2015, 2:00 p.m.–3:00 p.m. (EST). The Committee meeting will focus on the Small Community Advisory Subcommittee's action on an EPA Rural Strategy and other LGAC Workgroup actions such as a Water Infrastructure and Resiliency Finance Center, and other LGAC actions.

These are open meetings, and all interested persons are invited to participate. The Subcommittee will hear comments from the public on Tuesday, March 10, 2015, 1:15 p.m.–1:30 p.m. (EST) and the Committee will hear comments from the public 2:15 p.m.–2:30 p.m. (EST) on Tuesday, March 10, 2015. Individuals or organizations wishing to address the Subcommittee or the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *eargle.frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule a time on the agenda. Time will be allotted on a first-come first-serve basis, and the total period for comments may be extended if the number of requests for appearances requires it.

ADDRESSES: The Small Communities Advisory Subcommittee and Local Government Advisory Committee meetings will meet via teleconference. Meeting summaries will be available after the meeting online at *www.epa.gov/ocir/scas_lgac/lgac_index.htm* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Local Government Advisory Committee (LGAC) and Small Communities Advisory Subcommittee (SCAS), contact Frances Eargle, Designated Federal Officer, at (202) 564–3115 or email at *eargle.frances@epa.gov.*

Information on Services for Those with Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or email at *eargle.frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 10, 2015.

Frances Eargle,

Designated Federal Officer. Local Government Advisory Committee.

[FR Doc. 2015–03563 Filed 2–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1196; FRL–9923–36–OAR]

Recent Postings of Broadly Applicable Alternative Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the broadly applicable alternative test method approval decisions the Environmental Protection Agency (EPA) has made under and in support of New Source Performance Standards (NSPS), the National Emission Standards for Hazardous Air Pollutants (NESHAP),

and the Consolidated Federal Air Rule under the Clean Air Act (CAA) in 2014.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each alternative test method approval document is available on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html*. For questions about this notice, contact Ms. Lula H. Melton, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–2910; fax number: (919) 541–0516; email address: *melton.lula@epa.gov*. For technical questions about individual alternative test method decisions, refer to the contact person identified in the individual approval documents.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This notice will be of interest to entities regulated under 40 Code of Federal Regulations (CFR) parts 60 and 63, state, local, and tribal agencies, and the EPA Regional Offices responsible for implementation and enforcement of regulations under 40 CFR parts 60 and 63.

B. How can I get copies of this information?

You may access copies of the broadly applicable alternative test method approval documents from the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html*.

II. Background

Broadly applicable alternative test method approval decisions made by the EPA in 2014 under the NSPS, 40 CFR part 60 and the NESHAP, 40 CFR part 63 are identified in this notice (see Table 1). Source owners and operators may voluntarily use these broadly applicable alternative test methods subject to their specific applicability. Use of these broadly applicable alternative test methods does not change the applicable emission standards.

As explained in a previous **Federal Register** notice published at 72 FR 4257 (January 30, 2007) and found on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html,* the EPA Administrator has the authority to approve the use of alternative test methods to comply with requirements under 40 CFR parts 60, 61, and 63. This authority is found in sections 60.8(b)(3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii). A similar authority is granted in 40 CFR part 65 under section 65.158(a)(2). In the past, we have performed thorough technical reviews of numerous requests for alternatives and modifications to test methods and procedures. Based on these reviews, we have often found that these changes or alternatives would be equally valid and appropriate to apply to other sources within a particular class, category, or subcategory. Consequently, we have concluded that, where a method modification or an alternative method is clearly broadly applicable to a class, category, or subcategory of sources, it is both more equitable and efficient to approve its use for all appropriate sources and situations at the same time.

It is important to clarify that alternative methods are not mandatory but permissive. Sources are not required to employ such a method but may choose to do so in appropriate cases. Source owners or operators should review the specific broadly applicable alternative method approval decision on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* before electing to employ it. As per section 63.7(f)(5), by electing to use an alternative method for 40 CFR part 63 standards, the source owner or operator must continue to use the alternative method until approved otherwise.

The criteria for approval and procedures for submission and review of broadly applicable alternative test methods are outlined at 72 FR 4257 (January 30, 2007). We will continue to announce approvals for broadly applicable alternative test methods on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* and publish a notice annually that summarizes approvals for broadly applicable alternative test methods.

This notice comprises a summary of four such approval documents posted to our Technology Transfer Network from January 1, 2014, through December 31, 2014. The alternative method decision letter/memo number, the reference method affected, sources allowed to use this alternative, and the modification or alternative method allowed are summarized in Table 1 of this notice. Please refer to the complete copies of these approval documents available from the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* as Table 1 serves only as a brief summary of the broadly applicable alternative test methods.

This notice also acknowledges two broadly applicable test method approvals that we retracted in 2014. Broadly applicable alternative test method approvals referred to as ALT–061 and ALT–087 issued on September 22, 2009, and July 27, 2011, respectively, were withdrawn. In the **Federal Register** notices dated February 22, 2010, and February 15, 2012, we announced the approvals of the use of single-point sampling at the centroid of the exhaust when sampling gaseous emissions and diluent gases from federally regulated engines. However, based on comments that we received (on the proposed rule titled, ''Revisions to Test Methods and Testing Regulations,'' published in the **Federal Register** on January 9, 2012) from the Alaska Department of Environmental Conservation in a letter dated March 9, 2012, we no longer believe that this alternative is appropriate for broad applicability. Therefore, we have withdrawn broadly applicable alternative approvals, ALT–061 and ALT–087. Please refer to the withdrawal memo on EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* for details regarding our decision to withdraw ALT–061 and ALT–087.

If you are aware of reasons why a particular alternative test method approval that we issued should not be broadly applicable, we request that you make us aware of the reasons in writing, and we will revisit the broad approval. Any objection to a broadly applicable alternative test method, as well as the resolution of that objection, will be announced on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* and in the subsequent **Federal Register** notice. If we decide to retract a broadly applicable test method, we would continue to grant case-by-case approvals, as appropriate, and would (as states, local and tribal agencies and the EPA Regional Offices should) consider the need for an appropriate transition period for users either to request case-by-case approval or to transition to an approved method.

Dated: February 8, 2015.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 60 AND 63 POSTED BETWEEN JANUARY 2014 AND DECEMBER 2014

Alternative method decision letter/memo number	As an alternative or modification to . . .	For . . .	You may . . .
ALT–105	Method 25A—Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer or Method 25B—Determination of Total Gaseous Organic Concentration Using a Nondispersive Infrared Analyzer.	Sources subject to 40 CFR part 63, subpart BBBBBB; 40 CFR part 63, subpart R, and 40 CFR part 60, subpart XX.	Produce and use vendor certified calibration gases that meet the following requirements: prepared in accordance with ISO 6142; analyzed in accordance with ISO 6143; filled at ISO 17025 accredited laboratories; and have a total expanded uncertainty of less than 1% (relative) with caveats stipulated in the agency's approval letter dated May 12, 2014.
ALT–106	Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography or Method 25A—Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.	Spark ignition internal combustion engines subject to 40 CFR part 60, subpart JJJJ.	Use an alternative testing approach using GC to separate and measure methane and ethane, followed by GC back-flush procedures to measure NMEOC in post-combustion emissions with caveats stipulated in the agency's approval letter dated June 6, 2014.
ALT–107	Test methods to demonstrate initial and annual compliance with CO testing requirements prescribed in paragraph 63.6630(e) of 40 CFR part 63, subpart ZZZZ.	Stationary reciprocating internal combustion engines subject to 40 CFR part 63, subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.	Use a certified and quality assured CO and O_2 CEMS that meet the criteria specified in the agency's approval letter dated November 20, 2013.
ALT–108	The minimum sample volume requirement of 30 dscf when using Method 29—Determination of Metals Emissions from Stationary Sources.	Sources subject to 40 CFR part 63, subpart EEEEEEE, National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.	Use a 2-hour minimum sampling time in lieu of a 30 dscf minimum sample volume when Method 29 is applied.

Source owners or operators should review the specific broadly applicable alternative method approval letter on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* before electing to employ it.

[FR Doc. 2015–03581 Filed 2–20–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Downloadable Security Technology Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the first meeting of the Federal Communications Commission's (FCC or Commission) Downloadable Security Technology Advisory Committee (DSTAC) has been rescheduled for February 23, 2015 at the Commission headquarters in Washington, DC.

DATES: February 23, 2015.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–1573 or Nancy Murphy, *Nancy.Murphy@fcc.gov,* of the Media Bureau, (202) 418–1043.

SUPPLEMENTARY INFORMATION:

The meeting will be held on February 23, 2015, from 10:00 a.m. to 4:00 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW., Washington, DC 20554.

The DSTAC is a Federal Advisory Committee that will ''identify, report, and recommend performance objectives, technical capabilities, and technical standards of a not unduly burdensome, uniform, and technology- and platform-neutral software-based downloadable security system.'' On December 8, 2014, the FCC, pursuant to the Federal Advisory Committee Act, established the charter for the DSTAC.

The meeting on February 23, 2015, will be the first meeting of the DSTAC. The meeting was initially set to be held on February 17, 2015, but was cancelled because of closure of the Federal Government due to snow. At the meeting, the Committee will discuss (i) the scope of the report that it will deliver to the Commission, (ii) the ultimate goals of interested parties with respect to navigation device conditional access and content security, (iii) recommended working groups and the tasks for which they will be responsible, and (iv) any other topics related to the DSTAC's work that may arise.

The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Brendan Murray, DSTAC Designated Federal Officer, by email to *DSTAC@fcc.gov* or by U.S. Postal Service Mail to 445 12th Street SW., Room 4–A726, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202)

418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–03611 Filed 2–18–15; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records Notices

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of revised Privacy Act system notices.

SUMMARY: The FTC is making technical revisions to several of the notices that it is required to publish under the Privacy Act of 1974 to describe its systems of records about individuals. This action is intended to make these notices clearer, more accurate, and up-to-date.

DATES: This notice shall become final and effective on February 23, 2015.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Alex Tang, or Lorielle L. Pankey, Attorneys, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2424.

SUPPLEMENTARY INFORMATION: To inform the public, the FTC publishes in the **Federal Register** and posts on its Web site a ''system of records notice'' (SORN) for each system of records about individuals that the FTC currently maintains within the meaning of the Privacy Act of 1974, as amended, 5 U.S.C. 552a. *See http://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems.* Each SORN describes the records maintained in each system, including the categories of individuals that the records in the system are about (*e.g.,* FTC employees or consumers). Each system notice also contains information explaining how individuals can find out from the agency if that system contains any records about them.

On June 12, 2008, the FTC republished and updated all of the FTC's SORNs, describing all of the agency's systems of records covered by the Privacy Act in a single document for ease of use and reference. 73 FR 33592. To ensure the SORNs remain accurate, FTC staff reviews each SORN on a periodic basis. As a result of this systematic review, the FTC made revisions to several of its SORNs on April 17, 2009, 74 FR 17863, and on August 27, 2010, 75 FR 52749. Based on subsequent review, the FTC is making the following technical revisions to several of its SORNs and one of the appendices.[1]

I. FTC Law Enforcement Systems of Records

FTC–I–8 (Stenographic Reporting Services Request System—FTC). This SORN covers the database system that the FTC uses to log and fulfill requests by FTC attorneys for stenographic services in FTC investigations, litigation and other FTC matters. The Commission is including additional types of records under ''category of records'' and changing the retrievability section to reflect the capabilities of a new internal software program used to track stenographic services. The FTC also is clarifying that the information maintained in this system can include a deponent's home address and that this type of information is destroyed by the FTC when no longer needed.

II. Federal Trade Commission Personnel Systems of Records

FTC–II–1 (General Personnel Records—FTC),
FTC–II–2 (Unofficial Personnel Records—FTC),
FTC–II–3 (Workers' Compensation—FTC),
FTC–II–4 (Employment Application-Related Records—FTC),
FTC–II–8 (Employee Adverse Action and Disciplinary Records—FTC),
FTC–II–10 (Employee Health Care Records—FTC), and
FTC–II–12 (e-Train Learning Management System—FTC).

These SORNs relate to FTC employee records. The Human Resources Management Office (HRMO) is now the Human Capital Management Office (HCMO). We have revised the titles of system managers and other references in these SORNs to reflect this change. For FTC–II–2 (Unofficial Personnel Records—FTC), we also have clarified the retention and disposal section.

FTC–II–7 (Ethics Program Records–FTC). This SORN covers financial disclosure forms, ethics agreements and other records related to conflict of interest determinations. This SORN also pertains to other ethics records about individual FTC employees, including material addressing outside activities, post-employment, and travel reimbursement concerns. The Office of Government Ethics (OGE) has published two Government-wide SORNs that together cover records in this FTC system. See OGE/GOVT–1 (Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records), OGE/GOVT–2 (Confidential Financial Disclosure Reports). See 68 FR 3098, 24744 (2003). We have revised FTC–II–7 to make it more consistent with the OGE SORNs.

FTC–II–11 (Personnel Security, Identity Management, and Access Control Records System—FTC). This SORN covers security-related records for determining the eligibility of FTC employees or other authorized individuals (*e.g.,* on-site contractors) for access to FTC facilities and resources, as well as records related to granting and controlling such access. The FTC has clarified that those materials obtained from the Office of Personnel Management's Federal Investigative Services (OPM–FIS) remain the property of OPM–FIS and are subject to that agency's SORN.[2]

III. Federal Trade Commission Financial Systems of Records

FTC–III–1 (Personnel Payroll System—FTC). This SORN covers payroll processing and retirement records for FTC employees. As noted above, the Human Resources Management Office (HRMO) is now the Human Capital Management Office (HCMO), and the FTC has revised the title of the system manager for this system to reflect this change.

FTC–III–3 (Financial Management System—FTC). This SORN covers FTC records of payments or reimbursements for travel by its employees and others and payments for the acquisition of other goods or services. The FTC has revised FTC–III–3 to update the hyperlink to the related SORN published by Department of the Interior (DOI), which processes and manages financial data for the FTC. *See* DOI–91 (Federal Financial System), 78 FR 55284 (Sept. 10, 2013).

IV. FTC Correspondence Systems of Records

FTC–IV–1 (Consumer Information System—FTC). This SORN covers consumer complaints and information

[1] The FTC is not adding or changing any routine uses of its system records, adding any new systems, or making other significant system changes that would require prior public comment or notice to the Office of Management & Budget (OMB) and Congress. *See* U.S.C. 552a(e)(11) and 552a(r); OMB Circular A–130, Appendix I.

[2] This is OPM/CENTRAL–9 (Personnel Investigations Records), which was most recently amended at 75 FR 28307 (May 20, 2010).

requests received from consumers, as well as identity theft complaints. We have revised the SORN's exemption language to incorporate the pre-existing (k)(2) exemption as set out in 16 CFR 4.13(m)(2) applicable to identity theft records. This merely corrects an inadvertent omission in the 2008 SORN update and republication, rather than establishing any new exemption.[3]

VII. FTC Miscellaneous Systems of Records

FTC–VII–2 (Employee Locator (STAFFID) System—FTC). This SORN tracks and locates employees, contractors, volunteers or others (*e.g.,* students) working for or at the FTC. The FTC is updating the system manager entry to Assistant Director for Infrastructure Operations, Office of the Chief Information Officer.

FTC–VII–3 (Computer Systems User Identification and Access Records—FTC). This SORN covers records that the FTC maintains on those who have access to FTC computer systems in order to monitor and control the usage of such systems. The FTC is revising this SORN to delete the Assistant Chief Information Officer, Operations Assurance, Office of Information and Technology Management, as one of the system managers. The FTC is also updating the title of the remaining system manager, who is the Assistant Director for Infrastructure Operations, Office of the Chief Information Officer.

FTC–VII–4 (Call Detail Records—FTC). This SORN covers records that the FTC maintains on telephone system usage by FTC employees, contractors and other individuals who work at the FTC. Due to an internal reorganization of the agency's information and technology resources, the FTC is revising this SORN to delete the Assistant Chief Information Officer, Customer Services, Office of Information and Technology Management as one of the system managers. The FTC is updating the title of the remaining system manager, who is the Assistant Director for Infrastructure Operations, Office of the Chief Information Officer.

FTC–VII–7 (Information Technology Service Ticket System—FTC). This SORN tracks and fulfills requests made by employees or other individuals for building repairs, maintenance or other administrative services. The FTC is clarifying that this system's purpose also includes registering, tracking and controlling usage of FTC desktop and mobile telephones and other FTC telecommunication devices by individual users. Additionally, the categories of records includes individual users of any of these types of devices. Due to an internal reorganization of the agency's information and technology resources, the FTC is revising this SORN to delete the Assistant Chief Information Officer, Customer Services, Office of Information and Technology Management as one of the system managers. The FTC is updating the title for the existing system manager, who is the Assistant Director for Applications, Office of the Chief Information Officer.

Appendix III (FTC System Locations). This Appendix includes the addresses of all FTC facilities, including its satellite building in Washington, DC, and regional offices. It also explains that the FTC may maintain records in other leased facilities or, in certain cases, may have contractors operate or maintain Privacy Act record systems off-site. The FTC is updating the list of these facilities to include changes to satellite locations in the Washington, DC, area. The entire appendix as revised is set out below.

FTC Systems of Records Notices

Accordingly, the FTC revises and updates its Privacy Act systems of records below as follows:

I. FTC Law Enforcement Systems of Records

* * * * *

FTC–I–8

SYSTEM NAME:

Stenographic Reporting Services Request System—FTC.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FTC staff who have requested stenographic reporting services for depositions, testimony or other transcriptions in FTC proceedings; other FTC staff or contractors involved in processing the request or providing such services; witnesses or other individuals who are deposed or provide testimony at hearings or proceedings in which stenographic reporting services are used. (Businesses, sole proprietorships, or corporations are not covered by this system.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, phone number, mail drop, and FTC organization of the individual requesting stenographic reporting services and other information about the service request, including but not limited to: request number, request status, request submitted date, funding organization name and number, matter name, number and organization, activity code name and number, lead attorney name and number, contract and delivery order number and name, deponent name, witness language, due dates, service date and time, duration time of service, name and number of individuals eligible to purchase the transcripts, name and address of location where deposition will be taken including home addresses when applicable, type of recording device that contains the material to be transcribed, type of formatting required for draft and final copies; recording details such as number of recordings, total minutes, digital file size, total number of tapes/CDs/DVDs; original language of media, specific types of audio and video and the name, address and phone number of anybody other than the requester that is receiving a copy of the transcript.

* * * * *

PURPOSE(S):

To track and fulfill FTC staff requests for stenographic services from the agency's stenographic reporting service contractors; to schedule services with such contractors; to provide information necessary for the contractor to render such services; and for other internal administrative purposes, including to ensure that stenographic services are being properly allocated and authorized, to provide statistical data on service usage for agency managerial and budget purposes, and as source for transcript dates and times for incorporation as appropriate into FTC–I–5 (Matter Management System—FTC) and FTC–VII–6 (Document Management and Retrieval System—FTC).

* * * * *

RETRIEVABILITY:

Data in the system may be retrieved electronically by the name of the individual being deposed or providing testimony, the individual requesting stenographic services, the managing attorney, the fund manager name, the request number, the matter number, the delivery order number, the contract number, or by other data entered into and searchable in the system.

* * * * *

[3] In the 2008 SORN update and republication, the previously separate Identity Theft Complaint Management System was incorporated into the broader Consumer Information System. Pursuant to 5 U.S.C. 552a(k)(2), the Identity Theft Management System was exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a, and the corresponding provisions of 16 CFR 4.13. See FTC Rules of Practice 4.13(m), 16 CFR 4.13(m).

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with Schedule 2 of FTC Records Retention Schedule N1–122–09–1, which was approved by the National Archives and Records Administration. The FTC will destroy home address information for deponents when no longer needed as non-record material.

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II. Federal Trade Commission Personnel Systems of Records

FTC–II–1

SYSTEM NAME:

General Personnel Records—FTC.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Each category of records may include identifying information such as name(s), date of birth, home residence, mailing address, Social Security number, and home telephone number. This system includes, but is not limited to, the contents of the Official Personnel Folder (OPF) maintained by the FTC's Human Capital Management Office (HCMO) and described in the United States Office of Personnel Management (OPM) Guide to Personnel Recordkeeping and in OPM's Government-wide system of records notice for this system, OPM/GOVT–1. (Nonduplicative personnel records maintained by FTC employee managers in other FTC offices are covered by FTC–II–2, Unofficial Personnel Records–FTC.) Records in this system (FTC–II–(1) include copies of current employees' applications for employment, documentation supporting appointments and awards, benefits records (health insurance, life insurance, retirement information, and Thrift Savings Plan information), investigative process documents, personnel actions, other personnel documents, changes in filing requirements, and training documents.

Other records include:

a. Records reflecting work experience, educational level achieved, specialized education or training obtained outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about past and present positions held; grades; salaries; and duty station locations; commendations, awards, or other data reflecting special recognition of an employee's performance; and notices of all personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, reductions in force, resignations, separations, suspensions, approval of disability retirement applications, retirement and removals.

c. Records relating to participation in the Federal Employees' Group Life Insurance Program and Federal Employees Health Benefits Program.

d. Records relating to an Intergovernmental Personnel Act assignment or Federal-private exchange program.

e. Records relating to participation in an agency Federal Executive or SES Candidate Development Program.

f. Records relating to Government-sponsored training or participation in the agency's Upward Mobility Program or other personnel programs designed to broaden an employee's work experiences and for purposes of advancement (*e.g.,* an administrative intern program).

g. Records connected with the Senior Executive Service (SES), for use in making studies and analyses of the SES, preparing reports, and in making decisions affecting incumbents of these positions, *e.g.,* relating to sabbatical leave programs, training, reassignments, and details, that are perhaps unique to the SES and which may or may not be filed in the employee's OPF. These records may also serve as basis for reports submitted to OMB's Executive Personnel and Management Development Group for purposes of implementing the Office's oversight responsibilities concerning the SES.

h. Records on an employee's activities on behalf of the recognized labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

i. To the extent that the records listed here are also maintained in the agency automated personnel or microform records system, those versions of the above records are considered to be covered by this system notice. Any additional copies of these records (excluding performance ratings of record and conduct-related documents maintained by first-line supervisors and managers covered by FTC–II–2) maintained by agencies at field or administrative offices remote from where the original records exist are considered part of this system.

j. Records relating to designations for lump sum death benefits.

k. Records relating to classified information nondisclosure agreements.

l. Records relating to the Thrift Savings Plan (TSP) concerning the starting, changing, or stopping of contributions to the TSP as well as the how the individual wants the investments to be made in the various TSP Funds.

m. Copies of records contained in the Enterprise Human Resources Integration (EHRI) data warehouse (including the Central Employee Record, the Business Intelligence file that provide resources to obtain career summaries, and the electronic Official Personnel Folder (eOPF)) maintained by OPM. These data elements include many of the above records along with additional human resources information such as training, payroll and performance information from other OPM and agency systems of records. A definitive list of EHRI data elements is contained in OPM's Guide to Human Resources Reporting and The Guide to Personnel Data Standards.

n. Emergency contact information for the employee (see, *e.g.,* FTC Form 75), which is kept on the left side of the OPF.

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SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Paper records are maintained in lockable rooms or file cabinets. (In addition, FTC HCMO offices are in a locked suite separate from other FTC offices not generally accessible to the public or other FTC staff.) Access to electronic records is controlled by ''user ID'' and password combinations and/or other appropriate electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Capital Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURES; AND CONTESTING RECORD PROCEDURES:

See Appendix II. Current FTC employees may also request access to their records directly through their designated FTC HCMO contact or managers, as applicable, and may be required to complete a written request form and to show identification to obtain access to their records.

Former FTC employees subsequently employed by another Federal agency should contact the personnel office for their current Federal employer. Former employees who have left Federal service and want access to their official personnel records in storage should

contact the National Personnel Records Center, 111 Winnebago Street, St. Louis, MO 63118–4126.

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FTC–II–2

SYSTEM NAME:

Unofficial Personnel Records—FTC.

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RETENTION AND DISPOSAL:

Records are generally retained in accordance with National Archives and Records Administration (NARA) General Records Schedule (GRS) 1, items 18 (supervisory personnel files) and 23 (employee performance records). A detailed retention schedule for employee performance-related records; which include ratings of record, supporting documentation for those ratings, and any other performance-related material required by agency performance appraisal system, is also set forth in OPM/GOVT–2. In general, supervisory personnel files are destroyed within 1 year after the employee separates or transfers from the agency, and employee performance records that have not been destroyed as obsolete or superseded, or have not been placed in the employee's Official Personnel Folder (OPF), see FTC II–1, are destroyed when they are 4 years old for non-SES appointees, or 5 years old for SES appointments. Where any of these records are needed in connection with an administrative, quasi-judicial or judicial proceeding, they may be retained as needed beyond the retention periods stated in GRS 1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Capital Management Office (HCMO), Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURES; AND CONTESTING RECORD PROCEDURES:

See Appendix II. Current FTC employees may also request access to their records directly through their designated FTC HCMO contact or managers, as applicable, and may be required to complete a written request form and to show identification to obtain access to their records.

Former FTC employees subsequently employed by another Federal agency should contact the personnel office for their current Federal employer. Former employees who have left Federal service and want access to their official personnel records in storage should contact the National Personnel Records Center, 111 Winnebago Street, St. Louis, MO 63118–4126.

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FTC–II–3

SYSTEM NAME:

Workers' Compensation—FTC.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Capital Management Office (HCMO), Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. See DOL/GOVT–1 for information about the system manager and address for that system.

NOTIFICATION PROCEDURE; RECORD ACCESS PROCEDURES; AND CONTESTING RECORD PROCEDURES:

See Appendix II. Current FTC employees may also request access to their records directly through their Human Resources contact or managers as applicable and may be required to complete a written form and show identification to obtain access to their records. See DOL/GOVT–1 for information about the notification, record access and contesting procedures for claims records maintained by DOL.

RECORD SOURCE CATEGORIES:

Employee claiming work-related injury; beneficiaries; witnesses; FTC supervisors, managers, and responsible FTC HRMO staff; DOL; suppliers of health care products and services and their agents and representatives, including physicians, hospitals, and clinics; consumer credit reports, etc.

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FTC–II–4

SYSTEM NAME:

Employment Application-Related Records—FTC.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Capital Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

See OPM/GOVT–5 for information about the system manager and address for OPM's system of records.

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FTC–II–7

SYSTEM NAME:

Ethics Program Records—FTC.

RECORD SOURCE CATEGORIES:

The subject individual or a designated person, such as a trustee, attorney, accountant, banker, or relative; federal officials who review the statements to make conflict of interest determinations; and persons alleging conflict of interests or violations of other ethics laws and persons contacted during any investigation of the allegations.

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FTC–II–8

SYSTEM NAME:

Employee Adverse Action and Disciplinary Records—FTC.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Capital Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

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FTC–II–10

SYSTEM NAME:

Employee Health Care Records—FTC.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Capital Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

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FTC–II–11

SYSTEM NAME:

Personnel Security, Identity Management, and Access Control Records System–FTC.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Names, security investigation reports, adjudication files, card files, and position sensitivity designation files, and other data compiled, generated or used for personnel security clearance; fingerprints, photographs, signatures, and other personal data collected or used in connection with the issuance of FTC identification (credentials); time, date, location, or other data, logs, tapes, or records compiled or generated when such credentials are used to obtain physical or logical access to FTC facilities or resources.

These records are also covered by the applicable system notice published by the Office of Personnel Management-Federal Investigative Services (OPM–FIS), OPM/CENTRAL–9 (Personnel Investigations Records), and any successor system notice that may be published by OPM–FIS for this system. Any materials obtained from OPM–FIS

remain property of OPM–FIS and are subject to OPM/CENTRAL–9.

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FTC–II–12

SYSTEM NAME:

e-Train Learning Management System—FTC.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are FTC employees who registered to attend training courses offered by the Human Capital Management Office.

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PURPOSE(S):

To provide information to agency managers necessary to indicate the training that has been requested and provided to individual employees; to determine course offerings and frequency; and to manage the training program administered by the Human Capital Management Office. Since this system is legally part of the OPM's Government-wide system of records notice for this system, OPM/GOVT–1, it is subject to the same purposes set forth for that system by OPM, see OPM/GOVT–1, or any successor OPM system notice that may be published for this system (visit *www.opm.gov* for more information).

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Capital Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

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RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained, supervisors, managers, and Human Capital Management Office staff responsible for the training program.

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III. Federal Trade Commission Financial Systems of Records

FTC–III–1

SYSTEM NAME:

Personnel Payroll System—FTC.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Capital Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

See DOI–85 for the FPPS system manager and address.

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FTC–III–3

SYSTEM NAME:

Financial Management System—FTC.

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CATEGORIES OF RECORDS IN THE SYSTEM:

For current and former FTC employees, records include names, home addresses, employee supplier numbers, Social Security numbers, banking account numbers for electronic fund transfer payments, invoices and claims for reimbursements.

For non-employee individuals and sole proprietors, records include names, home or business addresses, Social Security numbers, banking account numbers for electronic fund transfer payments, invoices and claims for reimbursement. Records in this system are subject to the Privacy Act only to the extent, if any, they are about an individual within the meaning of the Act, and not if they are about a business or other non-individual.

This system is also covered by the system notice published by the Department of Interior (DOI) for this system, *DOI–91 (Oracle Federal Financials),* or any successor system notice published by DOI for this system.

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IV. FTC Correspondence Systems of Records

FTC–IV–1

SYSTEM NAME:

Consumer Information System—FTC.

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EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system relating to identity theft are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a, and the corresponding provisions of 16 CFR 4.13. See FTC Rules of Practice 4.13(m), 16 CFR 4.13(m).

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VII. FTC Miscellaneous Systems of Records

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FTC–VII–2

SYSTEM NAME:

Employee Locator (STAFFID) System—FTC.

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SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Infrastructure Operations, Office of the Chief Information Officer, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

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FTC–VII–3

SYSTEM NAME:

Computer Systems User Identification and Access Records—FTC.

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SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Infrastructure Operations, Office of the Chief Information Officer, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

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FTC–VII–4

SYSTEM NAME:

Call Detail Records—FTC.

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SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Infrastructure Operations, Office of the Chief Information Officer, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

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FTC–VII–7

SYSTEM NAME:

Information Technology Service Ticket System—FTC.

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CATEGORIES OF RECORDS IN THE SYSTEM:

FTC personnel, consultants, and contractors assigned office telephones, cell phones, or other telecommunications resources; name of requesting individual, organization code, telephone number, date of reported problem, nature of problem, and action taken to resolve problem.

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PURPOSE(S):

To register, track and control usage of office telephones, cell telephones and other telecommunication devices by individual users; to record the receipt of requests for information technology (IT) service by the FTC's enterprise service desk (*i.e.,* help desk) and the actions taken to resolve those requests; to provide agency management with information identifying trends in questions and problems for use in managing the Commission's hardware and software resources. The FTC's help desk, currently operated by a contractor, generates and maintains these records (''service tickets'') in the course of fulfilling requests or orders to create or close email and other network accounts

when an individual begins or ends employment at the FTC, to answer questions or provide assistance when FTC staff have problems with computer or network access or other FTC IT equipment or software issues, etc.

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SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Applications, Office of the Chief Information Officer, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

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Appendix III

Locations of FTC Buildings and Regional Offices

In addition to the FTC's headquarters building at 600 Pennsylvania Avenue NW., Washington, DC 20580, the FTC has a satellite building at 400 7th Street SW., Washington, DC 20024, and also operates the following Regional Offices where Privacy Act records may in some cases be maintained or accessed:

East Central Region, Eaton Center, Suite 200, 1111 Superior Avenue, Cleveland, OH 44114–2507

Midwest Region, 55 West Monroe Street, Suite 1825, Chicago, IL 60603–5001

Northeast Region, Alexander Hamilton U.S. Custom House, One Bowling Green, Suite 318, New York, NY 10004

Northwest Region, 915 Second Avenue, Suite 2896, Seattle, WA 98174

Southeast Region, 225 Peachtree Street NE., Suite 1500, Atlanta, GA 30303

Southwest Region, 1999 Bryan Street, Suite 2150, Dallas, TX 75201

Western Region–San Francisco, 901 Market Street, Suite 570, San Francisco, CA 94103

Western Region–Los Angeles, 10877 Wilshire Boulevard, Suite 700, Los Angeles, CA 90024

In addition, FTC records subject to the Privacy Act may sometimes be maintained at other facilities leased by the FTC or operated by FTC contractors, including by other Federal agencies, or by the National Archives and Records Administration on the FTC's behalf.

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2015–03549 Filed 2–20–15; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF AGRICULTURE

Announcement of the Availability of the Scientific Report of the 2015 Dietary Guidelines Advisory Committee, Solicitation of Written Comments on the Advisory Report, and Invitation for Oral Testimony at a Public Meeting

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services; and Food, Nutrition and Consumer Services and Research, Education, and Economics, U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) and the Department of Agriculture (USDA) (a) announce the availability of the Scientific Report of the 2015 Dietary Guidelines Advisory Committee (Advisory Report); (b) solicit written comments on the Advisory Report; and (c) provide notice of a public meeting to solicit oral comments from the public on the Advisory Report.

DATES: The Advisory Report of the 2015 Dietary Guidelines Advisory Committee (Committee or DGAC) is available for review and public written comment. Written comments will be accepted through midnight E.S.T. on April 8, 2015. The meeting for the public to provide oral testimony to HHS and USDA on the Advisory Report will be held on March 24, 2015, from 8:30 a.m.–1:00 p.m. E.S.T.

ADDRESSES: The Advisory Report is available on the Internet at *www.DietaryGuidelines.gov.* Those participating in providing public oral testimony to HHS and USDA on the Advisory Report are required to attend the public meeting in-person at the National Institutes of Health (NIH) Clinical Center, Building 10, Masur Auditorium, 10 Center Drive, 9000 Rockville Pike, Bethesda, MD 20892. Others wanting to participate by listening to the oral testimony can do so in-person or via webcast on the Internet.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer (DFO), 2015 DGAC, Richard D. Olson, M.D., M.P.H.; Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852: Telephone: (240) 453–8280; Fax: (240) 453–8281; Alternate DFO, 2015 DGAC, Kellie (O'Connell) Casavale, Ph.D., R.D., Nutrition Advisor; Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852: Telephone: (240) 453–8280; Fax: (240) 453–8281; Lead USDA Co-Executive Secretary, Colette I. Rihane, M.S., R.D., Director, Office of Nutrition Guidance and Analysis, Center for Nutrition Policy and Promotion, USDA; 3101 Park Center Drive, Room 1034; Alexandria, VA 22302; Telephone: (703) 305–7600; Fax: (703) 305–3300; and/or USDA Co-Executive Secretary, Shanthy A. Bowman, Ph.D., Nutritionist, Food Surveys Research Group, Beltsville Human Nutrition Research Center, Agricultural Research Service, USDA; 10300 Baltimore Avenue, BARC-West Bldg 005, Room 125; Beltsville, MD 20705–2350; Telephone: (301) 504–0619. The Advisory Report and the agenda for this meeting will be made available on the Internet at *www.DietaryGuidelines.gov.*

SUPPLEMENTARY INFORMATION: Under Section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III) the Secretaries of Health and Human Services (HHS) and Agriculture (USDA) are directed to issue at least every five years a report titled *Dietary Guidelines for Americans.* The law instructs that this publication shall contain nutritional and dietary information and guidelines for the general public, shall be based on the preponderance of scientific and medical knowledge current at the time of publication, and shall be promoted by each federal agency in carrying out any federal food, nutrition, or health program. The *Dietary Guidelines for Americans* was issued voluntarily by HHS and USDA in 1980, 1985, and 1990; the 1995 edition was the first statutorily mandated report, followed by subsequent editions at appropriate intervals. To assist with satisfying the mandate, a discretionary federal advisory committee is established every five years to provide independent, science-based advice and recommendations. The Committee consists of a panel of experts who were selected from the public/private sector. Individuals who were selected to serve on the Committee have current scientific knowledge in the field of human nutrition and chronic disease.

Appointed Committee Members: Fourteen members served on the 2015 Committee. They were appointed by the Secretaries of HHS and USDA in May 2013. Information on the DGAC membership is available at *www.DietaryGuidelines.gov.* As stipulated in the charter, the Committee

terminated because it has completed its mission.

Meeting Agenda: The meeting agenda will include opportunity for the public to give oral testimony to HHS and USDA officials on the Advisory Report.

Meeting Registration: The meeting will be publicly accessible in-person and by webcast on the Internet. Registration is required and is expected to open on March 9, 2015. To register, please go to *www.DietaryGuidelines.gov* and click on the link for meeting registration. To register by phone, please call National Capitol Contracting, Andrea Popp at (703) 243–9696. Registration must include name, affiliation, and phone number or email address.

Webcast Public Participation: After registering, individuals participating by webcast will receive webcast access information via email. Webcast registrants can observe the oral testimony; however, testimony can only be given in-person.

In-Person Public Participation and Building Access: For in-person participants, the meetings will be held in the National Institutes of Health (NIH) Clinical Center (Building 10), as noted above in the Addresses section. Directions will be posted on *www.DietaryGuidelines.gov.* For in-person participants, check-in at the registration desk onsite at the meeting is required and will begin at 8:00 a.m. E.S.T.

Oral Testimony: HHS and USDA invite requests from the public to present three minutes of oral testimony to HHS and USDA officials on the Advisory Report at the March 24, 2015 public meeting.

Registration capacity is limited to 70 individuals confirmed to speak and an additional 10 who are not confirmed to speak but are on stand-by (if time remains) to provide oral testimony. Capacity will be filled in the order received. Confirmation by email will include further instructions for participation. Requests to present oral testimony can be made by going to *www.DietaryGuidelines.gov* and clicking on the link for meeting registration and must include a written outline of the intended testimony not exceeding one page in length. In addition, the public is encouraged to provide written comments (separate from oral testimony) submitted electronically through the public comments database at *www.DietaryGuidelines.gov.*

Written Public Comments: Written comments on the Advisory Report are encouraged from the public and will be accepted through April 8, 2015. Written public comments can be submitted and/or viewed at *www.DietaryGuidelines.gov* using the ''Submit Comments'' and ''Read Comments'' links, respectively. HHS and USDA requests that commenters provide a brief (250 words or less) summary of the points or issues in the comment text box. If commenters are providing literature or other resources, complete citations or abstracts and electronic links to full articles or reports are preferred instead of attaching these documents to the comment. All comments must be received by midnight (E.S.T.) on April 8, 2015, after which the time period for submitting written comments to the federal government expires. The ability to view public comments will continue to be available. Please allow until April 22, 2015, for comment submissions to be processed and posted for viewing.

Meeting Documents: Documents pertaining to the meeting, including a meeting agenda and webcast recording will be available on *www.DietaryGuidelines.gov.* Meeting information will continue to be accessible online, at the NIH Library (see the Addresses section), and upon request at the Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852: Telephone (240) 453–8280; Fax: (240) 453–8281.

Dated: January 13, 2015.

Don Wright,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services.

Dated: January 13, 2015.

Angela Tagtow,

Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.

Dated: January 15, 2015.

Chavonda Jacobs-Young,

Administrator, Agricultural Research Service, U.S. Department of Agriculture.

[FR Doc. 2015–03552 Filed 2–20–15; 8:45 am]

BILLING CODE 4150–32P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3304–FN]

Medicare and Medicaid Program; Continued Approval of the Joint Commission's Psychiatric Hospital Accreditation Program

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

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Joint Commission for continued recognition as a national accrediting organization for psychiatric hospitals that wish to participate in the Medicare or Medicaid programs. A psychiatric hospital that participates in Medicaid must also meet the Medicare conditions of participation (CoPs) as required by statute.

DATES: *Effective Date:* This notice is effective February 25, 2015 through February 25, 2019.

FOR FURTHER INFORMATION CONTACT:
Monda Shaver, (410) 786–3410.
Cindy Melanson, (410) 786–0310.
Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

A healthcare provider may enter into an agreement with Medicare to participate in the program as a psychiatric hospital provided certain requirements are met. Section 1861(f) of the Social Security Act (the Act) establishes criteria for facilities seeking participation as a psychiatric hospital. Regulations concerning Medicare provider agreements in general are at 42 CFR part 489 and those pertaining to the survey and certification for Medicare participation of providers and certain types of suppliers are at 42 CFR part 488. The regulations at 42 CFR part 482 subpart E, set forth the specific conditions that a provider must meet to participate in the Medicare program as a psychiatric hospital.

Generally, to enter into an agreement, a psychiatric hospital must first be certified by a State Survey Agency as complying with the conditions or requirements set forth in part 482 subpart E of our regulations. Thereafter, the psychiatric hospital is subject to regular surveys by a State Survey Agency to determine whether it continues to meet these requirements. However, there is an alternative to certification surveys by state agencies. Accreditation by a national Medicare accreditation program approved by the Centers for Medicare & Medicaid Services (CMS) may substitute for both initial and ongoing state agency review.

Section 1865(a)(1) of the Act provides that, if the Secretary of the Department of Health and Human Services (the Secretary) finds that accreditation of a provider entity by an approved national accrediting organization meets or exceeds all applicable Medicare conditions, we may treat the provider entity as having met those conditions, that is, we may ''deem'' the provider

entity to be in compliance. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

Part 488 subpart A implements the provisions of section 1865 of the Act and requires that a national accrediting organization applying for approval of its Medicare accreditation program must provide CMS with reasonable assurance that its accredited provider entities meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require an accrediting organization to reapply for continued approval of its Medicare accreditation program every 6 years or sooner, as determined by CMS. The Joint Commission's current term of approval as a Medicare accreditation program for psychiatric hospitals expires February 25, 2015.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

III. Provisions of the Proposed Notice

On September 23, 2014, we published a proposed notice in the **Federal Register** (79 FR 56806) entitled ''Continued Approval of the Joint Commission's Psychiatric Hospital Accreditation Program'' announcing the Joint Commission's request for continued approval of its Medicare psychiatric hospital accreditation program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.4 and § 488.8, we conducted a review of the Joint Commission's Medicare psychiatric hospital accreditation application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of the Joint Commission's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its psychiatric hospital surveyors; (4) ability to investigate and respond appropriately to complaints against accredited psychiatric hospitals; and (5) survey review and decision-making process for accreditation.
- A comparison of the Joint Commission's Medicare accreditation program standards to our current Medicare psychiatric hospital conditions of participations (CoPs).
- A documentation review of the Joint Commission's survey process to—

++ Determine the composition of the survey team, surveyor qualifications, and the Joint Commission's ability to provide continuing surveyor training.

++ Compare the Joint Commission's processes to those we require of state survey agencies, including periodic resurvey and the ability to investigate and respond appropriately to complaints against accredited psychiatric hospitals.

++ Evaluate the Joint Commission's procedures for monitoring psychiatric hospitals it has found to be out of compliance with the Joint Commission's program requirements. (This pertains only to monitoring procedures when the Joint Commission identifies non-compliance. If non-compliance is identified by a State Survey Agency through a validation survey, the State Survey Agency monitors corrections as specified at § 488.7(d).)

++ Assess the Joint Commission's ability to report deficiencies to the surveyed psychiatric hospital and respond to the psychiatric hospital's plan of correction in a timely manner.

++ Establish the Joint Commission's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of the Joint Commission's staff and other resources.

++ Confirm the Joint Commission's ability to provide adequate funding for performing required surveys.

++ Confirm the Joint Commission's policies with respect to surveys being unannounced.

++ Obtain the Joint Commission's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the September 23, 2014 proposed notice also solicited public comments regarding whether the Joint Commission's requirements met or exceeded the Medicare CoPs for psychiatric hospitals. We received one comment in response to our proposed notice. The commenter supported our approval of the Joint Commission for continued recognition as a national accrediting organization for psychiatric hospitals that wish to participate in the Medicare or Medicaid programs.

IV. Provisions of the Final Notice

A. Differences Between the Joint Commission's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared the Joint Commission's psychiatric hospital accreditation requirements and survey process with the Medicare CoPs in part 482, and the survey and certification process requirements of parts 488 and 489. Our review and evaluation of the Joint Commission's psychiatric hospital accreditation program application, which were conducted as described in section III of this final notice, identified a number of areas in which, as of the date of this notice, the Joint Commission is in the process of, or has completed, revising its standards in order to ensure that its accredited psychiatric hospitals meet the following regulatory requirements:

- Section 482.61(a)(2), requiring that the medical record include the diagnosis of intercurrent diseases as well as the psychiatric diagnoses.
- Section 482.61(a)(4), requiring that social service records include a social history and reports of interviews with patients, family members, and others.
- Section 482.61(a)(5), requiring that a complete neurological examination be recorded at the time of the admission physical examination.
- Section 482.61(b)(4), requiring that the psychiatric evaluation includes the onset of illness and the circumstances leading to admission.
- Section 482.61(b)(7), requiring that the psychiatric evaluation include an inventory of the patient's assets.
- Section 482.61(c)(1), requiring that the individual comprehensive treatment plan be based on the patient's strengths and disabilities.
- Section 482.61(c)(1)(i), requiring that the treatment plan contain a substantiated diagnosis.
- Section 482.61(c)(1)(v), requiring that the treatment plan contain adequate documentation to justify the diagnosis, treatment, and rehabilitation activities carried out.
- Section 482.61(c)(2), requiring that the treatment plan contain documentation of the treatment received by the patient, in a way that assures all active therapeutic efforts are included.
- Section 482.61(d), requiring that progress notes contain recommendations for revisions in the treatment plan, as indicated, as well as a precise assessment of the patient's

progress in accordance with the original or revised treatment plan.

• Section 482.61(e), requiring that each patient who has been discharged has a documented discharge summary.

• Section 482.62(c), requiring that, if medical and surgical diagnostic and treatment services are not available within the institution, the institution have an agreement with an outside source of these services to ensure that they are immediately available or a satisfactory agreement must be established for transferring patients to a general hospital that participates in the Medicare program.

• Section 482.62(g)(1), requiring that therapeutic activities be appropriate to the needs and interests of patients and be directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

In addition, we determined that the Joint Commission is in the process of, or has completed, revising its accreditation survey processes in order to ensure that they meet the following regulatory requirements:

• Section 488.4(a)(3), regarding the sample sizes required for medical record reviews and the minimum number of medical records to be reviewed during the survey process.

• Section 488.8(a)(2)(v), requiring that complaint data submitted to CMS be accurate.

• Section 488.8(a)(2)(ii), requiring that a process be in place to conduct routine second level survey documentation review to assure that deficiency citations are made at the appropriate level when no ''flags'' have been placed on the survey report through the automated process of the electronic scoring system or the surveyor; that surveyors are adequately equipped and trained to appropriately identify circumstances posing an immediate threat to life and safety; that medical records and credentialing records are sampled appropriately, based on services provided and types of staff employed; and that medical records and credentialing records are reviewed thoroughly, in a uniform and complete manner by surveyors.

• Section 488.9, requiring the Joint Commission to consistently provide CMS access to observe its entire survey process, including surveyors' use of resources provided outside of the accreditation standards manual (for example, discussions with its Standards Interpretation Group, as outlined in the application).

• Section 488.26(b), regarding surveyors' abilities to—

—Accurately and completely document instances of non-compliance at the appropriate level of citation [condition versus standard level citations];

—Ensure that all instances of observed non-compliance are documented in the survey report; and,

—Ensure that surveyors do not minimize the importance of compliance with regulations.

B. Term of Approval

Based on our review and observations described in section III of this final notice, we approve the Joint Commission as a national accrediting organization for psychiatric hospitals that request participation in the Medicare program, effective February 25, 2015 through February 25, 2019.

To verify the Joint Commission's continued compliance with the provisions of this final notice, CMS will conduct a follow-up corporate on-site visit and survey observation within 18 months of the publication date of this notice.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Dated: February 13, 2015.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–03559 Filed 2–20–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0023]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee will meet to discuss safe transit of vessels and cargoes to and from the ports of the Lower Mississippi River. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, March 11, 2015, from 9 a.m. to 12:00 p.m. Written comments for distribution to committee members and for inclusion on the Lower Mississippi River Waterway Safety Advisory Committee Web site must be submitted on or before March 2, 2015. Please note that this meeting may close early if all business is finished.

ADDRESSES: The Committee will meet at the New Orleans Yacht Club, 403 North Roadway Street, New Orleans, LA 70124 *http://noyc.org/wordpress/.*

For information on facilities or services for individuals with disabilities or to request special assistance, please contact Lieutenant Junior Grade Colin Marquis as indicated in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Written comments must be identified by the Docket No. USCG–2015–0023 and submitted by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments (preferred method to avoid delays in processing).

• *Fax:* 202–493–2251.

• *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

• *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number for the Docket Management Facility is 202–366–9329.

Instructions: All submissions must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov.,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* enter the docket number in the ''Search'' field and follow the instructions on the Web site.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Colin Marquis, Alternate Designated Federal Officer of the Lower Mississippi River Waterway Safety Advisory Committee, telephone 504–365–2280, or at *Colin.L.Marquis@uscg.mil.* If you have any questions on reviewing or submitting material to the

docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C. Appendix). The Lower Mississippi River Waterway Advisory Committee is an advisory committee authorized in Section 19 of the Coast Guard Authorization Act of 1991, (Public Law 102–241), as amended by section 621(d) of the Coast Guard Authorization Act of 2010, (Public Law 111–281) and chartered under the provisions of Federal Advisory Committee Act. The Lower Mississippi River Waterway Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to communications, surveillance, traffic management, anchorages, development and operation of the New Orleans Vessel Traffic Service, and other related topics dealing with navigation safety on the Lower Mississippi River as required by the U.S. Coast Guard.

Agenda

The agenda for the March 11, 2015, Committee meeting is as follows:

(1) Opening Remarks.

(2) Introduction;

(3) Roll call of committee members and determination of a quorum;

(4) Approval of the April 2014 minutes.

(5) Old Business:

(a) Status of Action Items from April 2014 Meeting.

(6) Agency Updates:

(a) Southeast Louisiana Flood Protection Authority—East and West

i. Procedures used by Flood Protection Authority—West for Bayou Segnette and Western Closure Complex Gate Closures including Routine Exercises and Response to Tropical Events.

(b) National Oceanic and Atmospheric Association

i. Move to Electronic Navigation Charts.

ii. Digital Accessibility of National Oceanic and Atmosphere Association Chart Data for Navigation, Restoration and Coastal Planning, and Spill and Incident Response.

iii. National Oceanic and Atmosphere Association Physical Oceanographic Real-Time System.

iv. National Oceanic and Atmosphere Association Northern Gulf Operational Forecast System Grid Model Improvements.

v. Surveying and Chart Updates to Navigation Hazards in and around the Southern Bird-foot Delta.

vi. Recognition of Electronic Displays on Tow Boats and Cruise Ships.

vii. Support to the Inner Harbor Navigation Canal Alternate Route Establishment.

(c) Army Corps of Engineers

i. Water Resources Reform and Development Act impacts to Flood Control Structures and Dredging Operations.

(d) Coast Guard

i. Establishment of the Inner Harbor Navigation Canal Alternate Route.

ii. Status of Sensors at 81 Mile Point.

iii. Proposed Liquefied Natural Gas Terminals and Waterway Impacts.

(7) New Business, to include discussion of:

(a) Mile Marker 73 Memorandum of Understanding.

(b) Anchorage Establishment and Amendments.

(c) Systematic Port Planning.

(d) Lower Mississippi River Waterway Safety Advisory Committee Vacancy Notice.

(8) Public comment period.

(9) Adjournment.

There will be a comment period for the Lower Mississippi River Waterway Safety Advisory Committee and comment period for the public after each deliberation and voting, but before each recommendation is formulated. The Committee will review the information presented on each issue, deliberate on any recommendations presented, and formulate recommendations for the Department's consideration. Please note that the public oral comment period may end before the prescribed ending time following the last call for comments. Speakers are requested to limit their comments to 3 minutes. Please contact Lieutenant Junior Grade Colin Marquis listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker. This notice may be viewed in our online docket, USCG–2015–0023, at *http://www.regulations.gov.*

Dated: February 10, 2015.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2015–03542 Filed 2–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will meet in person on March 10–11, 2015, in Reston, Virginia. The meeting will be open to the public.

DATES: The TMAC will meet on Tuesday and Wednesday, March 10–11 2015, from 1:00 p.m.–6:00 p.m. Eastern Daylight Savings Time (EDT). Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held in the auditorium of the United States Geological Survey headquarters building located at 12201 Sunrise Valley Drive Reston, VA 20192. Members of the public who wish to attend the meeting must send an email to *FEMA-TMAC@fema.dhs.gov* (attention Mark Crowell) by 11 p.m. EDT on Thursday, March 5, 2015. Members of the public must check in at the Visitor's entrance security desk; photo identification is required.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in ''**FOR FURTHER INFORMATION CONTACT**'' below as soon as possible.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the ''Supplementary Information'' section below. Associated meeting materials will be available at *www.fema.gov/TMAC* for review by February 23, 2015. Written comments to be considered by the committee at the time of the meeting must be submitted and received by Thursday, March 5, 2015, identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address the email to: *FEMA–RULES@fema.dhs.gov* and CC: *FEMA–TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact detail in the body of the email.

• *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on March 10, 2015, from 3:30 p.m. to 4:00 p.m. and again on March 11, 2015, from 3:15 to 3:45 p.m. Speakers are requested to limit their comments to no more than three minutes. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on Tuesday, March 3, 2015.

FOR FURTHER INFORMATION CONTACT: Mark Crowell, Designated Federal Officer for the TMAC, FEMA, 1800 South Bell Street Arlington, VA 22202, telephone (202) 646–3432, and email *mark.crowell@fema.dhs.gov.* The TMAC Web site is: *http://www.fema.gov/TMAC.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

As required by the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps; and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination; and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) A description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update flood insurance rate maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

The TMAC must also develop recommendations on how to ensure that flood insurance rate maps incorporate the best available climate science to assess flood risks and ensure that FEMA uses the best available methodology to consider the impact of the rise in sea level and future development on flood risk. The TMAC must collect these recommendations and present them to the FEMA Administrator in a future conditions risk assessment and modeling report.

Finally, in accordance with the *Homeowner Flood Insurance Affordability Act of 2014,* the TMAC must develop a review report related to flood mapping in support of the National Flood Insurance Program (NFIP).

Agenda: On March 10, 2015, the TMAC members will discuss (1) the proposed TMAC vision statement. In addition, invited subject matter experts will brief TMAC members on (1) floodplain management (David Stearrett, FEMA), (2) flood risk to insurance rating (Andy Neal, FEMA), and (3) the FEMA Cooperating Technical Partnership program (speakers to be determined). On March 11, 2015, the TMAC members will discuss (1) the adoption of a TMAC vision statement, (2) a report out from the TMAC subcommittees (a. Future Conditions; b. Flood Hazard Risk Generation and Dissemination; and c. Operations, Coordination, and Leveraging), and (3) next steps for TMAC discussions and report development. The full agenda and related briefing materials will be available at *http://www.fema.gov/TMAC.*

Dated: February 18, 2015.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–03615 Filed 2–20–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N041]; [FXES11130800000–154–FF08E00000]

Endangered and Threatened Species; Permits Issued

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

DATES: The permit issuance dates are under **SUPPLEMENTARY INFORMATION.**

SUMMARY: We, the U.S. Fish and Wildlife Service, have issued the following permits to conduct certain activities with endangered species under the authority of the Endangered Species Act, as amended (Act). With some exceptions, the Act prohibits activities with listed species unless a Federal permit is issued that allows such activity.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Marquez, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825; 760–431–9440 (telephone); or *daniel_marquez@fws.gov* (email).

SUPPLEMENTARY INFORMATION: We have issued the following permits in response to recovery permit applications we received under the authority of section 10 of the Act, as amended (16 U.S.C. 1531 *et seq.*). We provide this notice under section 10(d) of the Act. Each permit listed below was issued only after we determined that it was applied for in good faith, that granting the permit would not be to the disadvantage of the listed species, and that the terms and conditions of the permit were consistent with purposes and policy set forth in the Act.

Applicant name	Permit No.	Date issued	Expiration date
CLEVELAND NATIONAL FOREST	041668	8/4/2014	8/3/2018
RYAN, THOMAS P.	097516	4/30/2014	3/15/2015
HELIX ENVIRONMENTAL PLANNING, INC.	778195	6/17/2014	7/26/2015
AMEC ENVIRONMENTAL AND INFRASTRUCTURE, INCORPORATED	785148	4/11/2014	12/15/2015
ROMICH, MIKAEL T.	068799	8/4/2014	12/22/2015
ALLEN, DOUGLAS W.	837448	12/10/2014	2/9/2016

Applicant name	Permit No.	Date issued	Expiration date
COOPER, TRAVIS B.	170389	3/28/2014	7/19/2016
EDWARDS, CLAUDE G.	814215	4/18/2014	4/17/2017
FORDE, ANDREW MCGINN	062907	4/18/2014	4/17/2017
STERLING, JOHN C.	22802B	7/24/2014	7/23/2017
DAVERIN, CYNTHIA JONES	811615	7/28/2014	7/27/2017
CARTER, KAREN J.	24603A	8/4/2014	8/3/2017
SANDOVAL, CRISTINA P.	073205	9/1/2014	8/31/2017
SAN FRANCISCO BAY BIRD OBSERVATORY	34570A	12/10/2014	12/9/2017
CALIFORNIA LIVING MUSEUM	13703B	1/29/2014	1/28/2018
BUSBY, DARIN ANDREW	115373	2/21/2014	2/20/2018
KIMBALL, NICOLE M.	053598	2/21/2014	2/20/2018
CALIFORNIA STATE PARKS, SAN LUIS OBISPO COAST DISTRICT	082237	3/28/2014	3/27/2018
DAVENPORT, ARTHUR E.	802450	3/28/2014	3/27/2018
HAYWORTH, ANITA M.	781084	3/28/2014	3/27/2018
LEMONS, PAUL M.	051248	3/28/2014	3/27/2018
PREITE, ARIANNE B.	095858	3/28/2014	3/27/2018
ICF JONES & STOKES, INC.	795934	4/11/2014	4/10/2018
WINGERT, CARIE M.	217119	4/11/2014	4/10/2018
BRUYEA, GUY P.	837439	6/25/2014	6/24/2018
U.S. GEOLOGICAL SURVEY, WESTERN ECOLOGICAL RESEARCH CENTER, SAN FRANCISCO BAY ESTUARY	020548	7/15/2014	7/14/2018
GORMAN, LAURA ELIZABETH	233367	7/28/2014	7/27/2018
EASTTY, ANDREW BRENT	227185	8/4/2014	8/3/2018
MERKEL & ASSOCIATES, INC.	797999	8/19/2014	8/18/2018
EAST BAY REGIONAL PARK DISTRICT	817400	9/8/2014	9/7/2018
BAILEY, ERIC (RICK) A.	101151	12/3/2014	12/2/2018
WALLACE, ANNE C.	800291	12/10/2014	12/9/2018
GALVIN, J. PAUL	821967	12/24/2014	12/23/2018
NERHUS, BARRY SCOTT	74785A	11/3/2014	1/31/2016
GROSHOLZ, EDWIN D.	045937	7/15/2014	8/16/2016
BLUNDELL, MELISSA ANN–REYES	97717A	4/18/2014	8/19/2016
YOUNG, RYAN R.	062121	2/21/2014	2/20/2017
CHAN, FLORENCE	22780B	8/4/2014	8/3/2017
KEGEL, TRAVIS	27501B	8/4/2014	8/3/2017
FLETT, MARY ANNE	233373	9/8/2014	9/8/2017
GARDINER, RACHEL J.	31222B	11/3/2014	11/2/2017
WIGGINTON, RACHEL D.	30914B	7/28/2014	7/27/2018
EDELSTEIN, DANIEL	101743	12/24/2014	12/23/2018
RANDALL, RYAN C.	76698A	2/21/2014	3/14/2016
FLISIK, TYLER J.	15265B	1/31/2014	1/30/2017
VETTES, BRENNAN C.	20160B	2/14/2014	2/13/2017
HOWARD, PHILLIP J.	15264B	2/21/2014	2/20/2017
SHAW, BRIAN K.	20914B	2/21/2014	2/20/2017
MARTUS, CAROLYN	17852B	3/14/2014	3/13/2017
JOHNSON, ROBERT B.	036935	12/3/2014	12/2/2017
SCHEUERMAN, CLINT M.	44855A	3/7/2014	10/6/2015
LIMM, TAMMY C.	48149A	12/24/2014	12/8/2015
U.S.G.S.–WESTERN ECOLOGICAL RESEARCH CENTER	157216	3/14/2014	1/12/2016
AREA WEST ENVIRONMENTAL, INC.	48210A	12/10/2014	2/9/2016
UNIVERSITY OF CALIFORNIA SACRAMENTO	192702	7/28/2014	3/14/2017
SIEMENS, MITCH C.	190302	12/24/2014	7/25/2017
SWEET, SAMUEL SPENDER	025732	10/2/2014	8/22/2017
LSA ASSOCIATES INCORPORATED	797234	7/15/2014	10/31/2017
SWAIM, KAREN E.	815537	1/16/2014	1/15/2018
STEAD, JONATHAN E.	028223	1/24/2014	1/23/2018
BETTELHEIM, MATTHEW P.	094845	1/31/2014	1/30/2018
KOBERNUS, LAWRENCE P.	205609	2/21/2014	2/20/2018
ORLOFF, SUE G.	075898	2/21/2014	2/20/2018
SLOCOMB, CHRISTINE L.	13691B	2/21/2014	2/20/2018
SCHELL, ROBERT ANTHONY	212445	3/14/2014	3/13/2018
SWOLGAARD, CRAIG A.	20915B	3/14/2014	3/13/2018
WUNDERLICH, VERONICA A.	095860	3/14/2014	3/13/2018
U.S. GEOLOGICAL SURVEY	005956	3/14/2014	3/13/2018
EDA C. EGGEMAN	844030	3/28/2014	3/27/2018
PARDO, SUMMER LYNN	02838B	3/28/2014	3/27/2018
JEPSON PRAIRIE RESERVE/DOCENT PROGRAM	800777	4/11/2014	4/10/2018
NORTH STAR ENGINEERING	22798B	4/11/2014	4/10/2018
SAN FRANCISCO PUBLIC UTILITIES COMMISION, NRLMD	21744B	4/11/2014	4/10/2018
SYCAMORE ENVIRONMENTAL CONSULTANTS, INC.	799564	4/11/2014	4/10/2018
BUREAU OF LAND MANAGEMENT, BAKERSFIELD FIELD OFFICE	037806	4/18/2014	4/17/2018
DIDONATO, JOSEPH E.	213308	4/18/2014	4/17/2018
HALSTEAD, JEFFREY A.	769304	4/18/2014	4/17/2018
HENRY, RYAN N.	031848	4/18/2014	4/17/2018
MARINE SCIENCE INSTITUTE	21778B	4/18/2014	4/17/2018

Applicant name	Permit No.	Date issued	Expiration date
U.S. GEOLOGICAL SURVEY–WESTERN ECOLOGICAL RESEARCH CENTER	045994	6/25/2014	6/24/2018
KNAPP, ROLAND A.	40090B	7/1/2014	6/30/2018
STANISLAUS NATIONAL FOREST	40087B	7/1/2014	6/30/2018
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT	225974	7/15/2014	7/14/2018
SLAUGHTER, CRISTINA VICTORIA	217401	7/24/2014	7/23/2018
PEARSON, AUSTIN J.	108683	7/28/2014	7/27/2018
SUNSHINE, AARON I.	28769B	8/4/2014	8/3/2018
DAYTON, GAGE H.	115370	8/20/2014	8/19/2018
POWELL, SARAH CHRISTINE	063427	8/20/2014	8/19/2018
DALLAS, MITCHELL C.	102310	9/8/2014	9/7/2018
McGINNIS, SAMUEL M.	811894	9/8/2014	9/7/2018
RIVAS, RICHARD T.	093151	9/8/2014	9/7/2018
SMITH, JERRY J.	793640	9/8/2014	9/7/2018
MULLEN, DANIELLE A.	31221B	11/3/2014	11/2/2018
WEINBERG, DANIEL H.	081298	12/2/2014	12/1/2018
POWELL, STEVEN D.	107075	12/3/2014	12/2/2018
GALLAWAY, JODY M.	049693	12/10/2014	12/9/2018
KUNNA, JOHN L.	40218B	12/10/2014	12/9/2018
SCHEIDT, VINCENT N.	788133	12/10/2014	12/9/2018
DAVIS, JOHN H.	110095	12/24/2014	12/23/2018
PAGE, CARL J.	802094	12/24/2014	12/23/2018
TANSLEY TEAM, INCORPORATED	795930	4/11/2014	8/1/2015
COUNTY OF SAN LUIS OBISPO, PUBLIC WORKS DEPT	076257	9/1/2014	8/31/2018
LOVE, JULIE M.	217402	12/3/2014	12/2/2018
PERNICANO, MARTINA	72047A	1/24/2014	10/4/2015
STOCKWELL, CRAIG A.	126141	7/15/2014	10/13/2015
MCLAUGHLIN, DANA H.	43597A	3/14/2014	10/27/2015
PUGH, DALLAS RYAN	79192A	3/28/2014	1/31/2017
NATURAL RESOURCES ASSESSMENT, INC.	831207	1/24/2014	1/23/2018
SHOMO, BRIAN S.	206822	1/24/2014	1/23/2018
MESSIN, JOSEPH E.	022649	1/31/2014	1/30/2018
DALKEY, ANN M.	217663	3/7/2014	3/6/2018
ENNIS, ANASTASIA G.	13639B	3/7/2014	3/6/2018
RICHARD, MICHAEL A.	207867	3/7/2014	3/6/2018
COLLINS, PAUL W.	023895	3/14/2014	3/13/2018
GROSSO, DIANA J.	21700B	3/28/2014	3/27/2018
STEWART, JOSEPH A.E.	25257B	4/11/2014	4/10/2018
DANIELS, BRETT	24256B	4/30/2014	4/29/2018
TREMOR, SCOTT B.	787716	5/29/2014	5/29/2018
YOUNG, CHAD M.	213730	6/25/2014	6/24/2018
TOOTHMAN, MARY H.	40110B	7/1/2014	6/30/2018
JANEKE, DUSTIN SCOTT	045153	7/15/2014	7/14/2018
PERRY, RICK L.	27452B	7/28/2014	7/27/2018
STORRER, JOHN R.	817397	8/4/2014	8/3/2018
CROWE, REBECCA E.	25226B	9/4/2014	9/3/2018
ORR, BRUCE K.	237086	9/8/2014	9/7/2018
PEDERSEN, DIRK T.	198917	9/8/2014	9/7/2018
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE	54614A	10/8/2014	10/7/2018
EZELL, DAVID J.	022181	11/3/2014	11/2/2018
RISCHBIETER, DOUGLAS C.	101154	11/3/2014	11/2/2018
CHATMAN, GREGORY K.	075112	11/3/2014	11/2/2018
KUCERA, THOMAS E.	796835	12/2/2014	12/2/2018
SAN DIEGO NATIONAL WILDLIFE REFUGE COMPLEX	053741	12/10/2014	12/31/2017
SACRAMENTO FISH AND WILDLIFE OFFICE	022333	3/14/2014	11/5/2016
U.S. FISH AND WILDLIFE SERVICE	062618	7/15/2014	12/31/2017
KLAMATH FALLS FISH AND WILDLIFE OFFICE	003314	7/15/2014	12/31/2017
USFWS–STOCKTON FWO	188803	1/31/2014	12/31/2015
ZYCH, ALISA CATHERINE	72045A	4/11/2014	8/16/2015
ANDERSON, RACHEL B.	63330A	7/15/2014	4/19/2016
UNIVERSITY OF CALIFORNIA–DAVIS	027742	9/1/2014	9/13/2016
HINDERLE, DANNA	218901	9/1/2014	1/28/2018
DENISE DUFFY & ASSOCIATES, INC.	091857	2/21/2014	2/20/2018
EDWARDS AIR FORCE BASE	210234	3/28/2014	3/27/2018
HARRINGTON, LUCY G.	20148B	4/11/2014	4/10/2018
GRIMALDO, LENNY F.	36109B	5/9/2014	5/8/2018
U.S. GEOLOGICAL SURVEY	844852	7/1/2014	6/30/2018
UNITED STATES GEOLOGICAL SURVEY–WESTERN ECOLOGICAL RESEARCH CENTER	40112B	7/1/2014	6/30/2018
MENDOCINO REDWOOD COMPANY, LLC	058630	8/15/2014	8/14/2018
MURPHY, AMANDA C.	078657	9/1/2014	8/31/2018
NICESWANGER, JULIE A.	196118	12/3/2014	12/2/2018
MEDICA, PHILIP A.	759747	12/10/2014	12/9/2018
GEI CONSULTANTS, INC.	032198	12/24/2014	12/23/2018

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to Daniel Marquez (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this notice is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Michael Long,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2015–03597 Filed 2–20–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N039; FXES11130800000–154–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before March 25, 2015.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see ADDRESSES (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicants

Permit No. TE–53771B

Applicant: Erin J. Bergman, Lemon Grove, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*), and take (survey by pursuit, handle, and live-capture) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–039640

Applicant: Kris R. Alberts, San Diego, California

The applicant requests a permit amendment to take (locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with population monitoring activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–077388

Applicant: Oregon Zoo, Portland, Oregon

The applicant requests a permit renewal and amendment to take (receive captive produced nestlings, propagate in captivity, handle, provide veterinary care, publicly display, transport, and release into the wild) the California condor (*Gymnogyps californianus*) in conjunction with captive propagation and population management activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–25164A

Applicant: Catherine A. Little, Woodland, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–022360

Applicant: United States Geological Survey, Henderson, Nevada

The applicant requests a permit renewal to remove/reduce to possession the *Swallenia alexandrae* (Eureka Dune grass) and *Oenothera californica* subsp. *eurekensis* (*O. avita* subsp. *e.*) (Eureka Valley evening-primrose) from lands under Federal jurisdiction in conjunction with restoration activities in Inyo County, California, for the purpose of enhancing the species' survival.

Permit No. TE–53825B

Applicant: Zoological Society of San Diego, Escondido, California

The applicant requests a permit to take (harass by survey, locate and monitor nests) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with surveys, population monitoring, and research activities at Marine Corps Base Camp Pendleton and Naval Amphibious Base Coronado, California, for the purpose of enhancing the species' survival.

Permit No. TE–42833A

Applicant: Ian E.D. Maunsell, San Diego, California

The applicant requests a permit renewal to take (harass by survey) the light-footed Ridgway's rail (light-footed clapper r.) (*Rallus obsoletus levipes*) (*R. longirostris l.*) and Yuma Ridgway's rail (Yuma clapper r.) (*Rallus obsoletus yumanensis*) (*R. longirostris y.*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–25864A

Applicant: Richard C. Stolpe, Carlsbad, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities

throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–038701

Applicant: Bonnie L. Peterson, Lakeside, California

The applicant requests a permit renewal and amendment to take (locate and monitor nests, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*), take (harass by survey, locate and monitor nests, and remove brown-headed cowbird eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), take (harass by survey, and locate and monitor nests, capture, handle, handle/float eggs, weigh, band, color-band, and release) the western snowy plover (Pacific Coast population distinct population segment (DPS)) (*Charadrius nivosus nivosus*), take (locate and monitor nests, capture, handle, weigh, band, color-band, and release) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*), take (survey by pursuit, handle, and live-capture) the Quino checkerspot butterfly (*Euphydryas editha quino*), and take (harass by survey) the light-footed Ridgway's rail (light-footed clapper r.) (*Rallus obsoletus levipes*) (*R. longirostris l.*), in conjunction with surveys and population monitoring activities in Los Angeles, Orange, Riverside, San Diego, and Imperial Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–19226A

Applicant: Jillian S. Moore, Oceanside, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities in San Diego, Orange, Riverside, San Bernardino, Imperial, Los Angeles, Ventura, Kern, Santa Barbara, and San Luis Obispo Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–200339

Applicant: Sarah M. Foster, Sacramento, California

The applicant requests a permit amendment to take (harass by survey) the California Ridgway's rail (California clapper r.) (*Rallus obsoletus obsoletus*) (*R. longirostris o.*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–829204

Applicant: Harry Lee Jones, Lake Forest, California

The applicant requests a permit amendment to take (attach transmitters, conduct radio telemetry, and mark) the arroyo toad (arroyo southwestern) (*Anaxyrus californicus*) in conjunction with research and population monitoring activities at Naval Weapons Station Seal Beach Detachment Fallbrook in San Diego County, California, for the purpose of enhancing the species' survival.

Permit No. TE–006328

Applicant: Brian M. Drake, Tehachapi, California

The applicant requests a permit amendment to take (survey, capture, handle and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–060175

Applicant: Teresa L. Gonzalez, La Quinta, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests, and remove brown-headed cowbird eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (locate and monitor nests, and remove brown-headed cowbird eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring activities in San Diego, Orange, Riverside, Los Angeles, San Bernardino, and Ventura Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–095868

Applicant: David A. Kisner, Orcutt, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests, and remove brown-headed cowbird eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (locate and monitor nests, and remove brown-headed cowbird eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–122026

Applicant: Tracy Y. Bailey, Ridgecrest, California

The applicant requests a permit renewal to take (survey, capture, handle and release) the Stephens' kangaroo rat (*Dipodomys stephensi*), San Bernardino kangaroo rat (*Dipodomys merriami parvus*), Pacific pocket mouse (*Perognathus longimembris pacificus*), and Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–56626B

Applicant: Robin E. Dakin, San Jose, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS) and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–20186A

Applicant: Garrett R. Huffman, Yauapai, Arizona

The applicant requests a permit to take (survey by pursuit, handle, and live-capture) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–56489B

Applicant: Jonathan T. Koehler, Napa, California

The applicant requests a permit to take (live-capture, handle, remove/relocate, and release) the California freshwater shrimp (*Syncaris pacifica*) in conjunction with survey, population monitoring, and restoration activities in Napa County, California, for the purpose of enhancing the species' survival.

Permit No. TE–15544A

Applicant: Christine L. Beck, San Diego, California

The applicant requests a permit renewal to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), and take (survey, locate and monitor nests, capture, handle, band, and release) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–824123

Applicant: SWCA Environmental Consultants, San Luis Obispo, California

The applicant requests a permit renewal to take (locate, handle, remove/relocate, and release) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with survey and habitat enhancement activities, and a permit amendment to take (survey, capture, handle, and release) the giant kangaroo rat (*Dipodomys ingens*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and Fresno kangaroo rat (*Dipodomys nitratoides exilis*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–057065B

Applicant: Steven G. Morris, Huntington Beach, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–082233

Applicant: Marcus C. England, Los Angeles, California

The applicant requests a permit amendment to take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–787037

Applicant: Marie Simovich, San Diego, California

The applicant requests a permit amendment to take (collect cysts, juveniles, and adults) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with voucher collection, species identification, and genetic analysis in San Diego County, California, for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Michael Long,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2015–03600 Filed 2–20–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2015–N007; FXES11120100000–156–FF01E00000]

Draft Candidate Conservation Agreement With Assurances, Receipt of Application for an Enhancement of Survival Permit for the Greater Sage-Grouse on Oregon Department of State Lands, and Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Oregon Department of State Lands (DSL) for an enhancement of survival (EOS) permit under the Endangered Species Act of 1973, as amended (ESA). The permit application includes a draft candidate conservation agreement with assurances (CCAA) for the greater sage-grouse, addressing rangeland management activities on Oregon State Trust Lands administered by DSL. The Service also announces the availability of a draft environmental assessment (EA), prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), addressing the proposed CCAA and issuance of an EOS permit. We invite comments from all interested parties on the application, including the draft CCAA and the draft EA.

DATES: To ensure consideration, written comments must be received from interested parties no later than March 25, 2015.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the DSL CCAA.

- *Internet:* Documents may be viewed on the Internet at *http://www.fws.gov/oregonfwo/.*
- *Email: Jeff_Everett@fws.gov.* Include ''DSL CCAA'' in the subject line of the message.
- *U.S. Mail:* U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266.
- *Fax:* 503–231–6195, Attn: DSL CCAA.
- *In-Person Viewing or Pickup:* Documents will be available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR.

FOR FURTHER INFORMATION CONTACT: Jeff Everett or Jennifer Siani, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **ADDRESSES**), telephone: 503–231–6179. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We have received an application from DSL for an EOS permit under section 10(a)(1)(A) the ESA for incidental take of sage-grouse (*Centrocercus urophasianus*). The permit application includes a draft

CCAA prepared by the Service and the DSL to conserve the greater sage-grouse and its habitat on Oregon State Trust lands administered by DSL.

Background Information

Private and other non-Federal property owners are encouraged to enter into CCAAs, in which they voluntarily undertake management activities on their properties to enhance, restore, or maintain habitat benefiting species that are proposed for listing under the ESA, candidates for listing, or species that may become candidates or proposed for listing. Through a CCAA and its associated EOS permit, the Service provides assurances to property owners that they will not be subjected to increased land use restrictions if the covered species become listed under the ESA in the future, provided certain conditions are met.

Application requirements and issuance criteria for EOS permits for CCAAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d), respectively. See also our joint policy on CCAAs, which we published in the **Federal Register** with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (64 FR 32726; June 17, 1999).

On March 23, 2010, the Service determined that listing the greater sage-grouse under the ESA (16 U.S.C. 1538) was warranted, but precluded by the need to address higher priority species first. In anticipation of the potential listing of sage-grouse under the ESA, the DSL requested assistance from the Service in developing a sage-grouse CCAA for rangeland management activities on Oregon State Trust lands.

Proposed Action

The Service proposes to approve the draft CCAA and to issue an EOS permit, both with a term of 30 years, to the DSL for incidental take of greater sage-grouse caused by covered activities, if permit issuance criteria are met. Covered activities on DSL lands would include sage-grouse conservation, rangeland treatments, livestock management, recreation, and existing agricultural operations. Covered activities may be conducted by DSL or their authorized agents including lessees of DSL lands. The area covered under the proposed CCAA is approximately 633,000 acres of Oregon State Trust Lands located in Baker, Crook, Deschutes, Grant, Harney, Lake, Malheur, and Union Counties, Oregon. The covered lands encompass approximately 380,705 acres of low-density sage-grouse habitat (or preliminary general habitat/PGH) and approximately 153,107 acres of core area sage-grouse habitat (or preliminary priority habitat/PPH). Sage-grouse currently use habitats on these lands for lekking (communal breeding displays), late-brood rearing, and wintering.

The draft CCAA describes all of the threats to sage-grouse that have been identified on the covered lands, including: Loss and fragmentation of sagebrush habitat; large wildfires, as well as lack of fire in some areas; encroachment of junipers and other conifers; improper grazing; invasive plants; vegetation treatments that reduce or degrade sagebrush habitat; degradation of riparian areas; drought, as well as catastrophic flooding; disturbance from recreation and other activities; predation; West Nile virus; wild horses and burros; and insecticide use. The CCAAs also describe conservation measures the DSL would implement to address each threat.

Under the CCAA, the DSL would prepare a Sage Grouse Habitat Assessment (SGHA), which would serve as a site-specific plan, for each land parcel under DSL administration. The SGHA would include conservation measures from the draft CCAA that would address all threats occurring on that parcel of land. The Service will review submitted SGHAs and approve them through a letter of concurrence if the SGHAs are consistent with the CCAA, EOS permit terms and conditions, and the CCAA standard. Should the sage-grouse become listed, take authorization would be effective once a minimum of 25 percent of the covered lands have completed and approved SGHAs. The amount of incidental take authorized will be proportional to the acres of habitat where SGHAs are being properly implemented. DSL staff will implement many of the conservation measures identified in the SGHAs, but measures directly related to grazing operations may be included as lessee responsibilities in their annual operating plans.

National Environmental Policy Act Compliance

Approval of a CCAA and issuance of an EOS permit are Federal actions that trigger the need for compliance with NEPA. Pursuant to NEPA, we have prepared a draft EA to analyze the environmental impacts related to the issuance of an EOS permit for sage-grouse and implementation of the conservation measures under the proposed CCAA.

The EA analyses two alternatives: The proposed action, which is described above, and the ''no action'' alternative. Under the no action alternative, the Service would not enter into the CCAA with DSL, nor issue the EOS permit. The Service also considered, but did not analyze in detail, two additional alternatives. The first of these would have required DSL to implement all grazing CMs immediately upon approval of the CCAA. This alternative was rejected, because immediate implementation would have to proceed prior to having the benefit of the completed SGHAs. The second additional alternative was a substantial reduction in the amount of cattle grazing on DSL lands. This alternative was rejected because it would be contrary to the economic purposes of State Trust Lands and could eventually lead to lands being used for other purposes less compatible with conservation of sage-grouse habitat.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, information, opinions, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed permit action. We particularly seek comments on the following: (1) Biological information and relevant data concerning the greater sage-grouse; (2) current or planned activities in the subject area and their possible impacts on the greater sage-grouse; (3) identification of any other environmental issues that should be considered with regard to the proposed permit action; and (4) information regarding the adequacy of the draft CCAA pursuant to the requirements for permits at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comments, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we use in preparing the EA, will be available for public inspection by appointment, during normal business hours, at our Oregon Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

After completion of the EA based on consideration of public comments, we will determine whether adoption of the proposed CCAA warrants a finding of no significant impact or whether an environmental impact statement should be prepared. We will evaluate the proposed CCAA as well as any comments we receive, to determine whether implementation of the proposed CCAA would meet the requirements for issuance of an EOS permit under section 10(a)(1)(A) of the ESA. We will also evaluate whether the proposed permit action would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will consider the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue an EOS permit to the DSL. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*), and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22 and 40 CFR 1506.6, respectively).

Dated: February 10, 2015.

Richard Hannan,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2015–03565 Filed 2–20–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2015–N001; FXES11120100000F2–156–FF01E00000]

Draft Environmental Assessment and Draft Habitat Conservation Plan for the Fender's Blue Butterfly on Private Lands in Yamhill County, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Yamhill Soil and Water Conservation District (SWCD) for an incidental take permit (permit) under the Endangered Species Act of 1973, as amended (ESA). The permit application includes a draft Habitat Conservation Plan (HCP) addressing private land management activities within upland prairie in Yamhill County, Oregon, that may result in the incidental take of the federally endangered Fender's blue butterfly. The Service also announces the availability of a draft environmental assessment (EA) addressing the proposed HCP and issuance of a permit that was prepared in accordance with the National Environmental Policy Act of 1969, as amended (NEPA). We invite comments from all interested parties on the permit application, including the HCP and the EA.

DATES: Written comments on the HCP and the EA must be received from interested parties no later than March 25, 2015.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Yamhill SWCD HCP.

- *Internet:* Documents may be viewed on the Internet at *http://www.fws.gov/oregonfwo/ToolsForLandowners/HabitatConservationPlans/.*
- *Email: OFWOcomment@fws.gov.* Include ''Yamhill SWCD HCP'' in the subject line of the message or comments.
- *U.S. Mail:* State Supervisor, U.S. Fish and Wildlife Service, 2600 SE 98th Ave., Suite 100, Portland, OR 97266.
- *Fax:* 503–231–6195, Attn: Yamhill SWCD HCP.
- *In-Person Viewing or Pickup:* Comments and materials received will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2600 SE 98th Ave., Suite 100, Portland, OR 97266.

FOR FURTHER INFORMATION CONTACT: Richard Szlemp, U.S. Fish and Wildlife Service (see **ADDRESSES**), telephone: 503–231–6179; facsimile: 503–231–6195. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term ''harm,'' as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in our regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Under specified circumstances, the Service may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the ESA contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

(1) The taking will be incidental;

(2) The applicant will prepare a conservation plan that, to the maximum extent practicable, identifies the steps the applicant will take to minimize and mitigate the impact of such taking;

(3) The applicant will ensure that adequate funding for the plan will be provided;

(4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan.

Proposed Action

The Service proposes to approve the HCP and to issue a permit, both with a term of 50 years, to the SWCD for incidental take of the federally endangered Fender's blue butterfly (*Icaricia icarioides fenderi*) caused by covered activities, if permit issuance criteria are met. The permit would allow the SWCD to issue certificates of inclusion to private landowners wanting coverage under the HCP for incidental take of the Fender's blue butterfly. Private landowners who wish to be covered under the permit may apply for a certificate of inclusion to the permit after signing a cooperative agreement with the SWCD. This will allow landowners within identified butterfly habitat in Yamhill County to continue to perform otherwise lawful activities that have the potential to impact the Fender's blue butterfly. To compensate for take impacts, the SWCD will work

with participating landowners to minimize and mitigate their impacts.

The area to be addressed in the HCP (*i.e.,* the covered lands) consists of privately-owned lands in Yamhill County, Oregon, totaling approximately 7,831 acres. The covered lands are primarily rural lands supporting a variety of agricultural activities, some of which have the potential to affect Fender's blue butterflies. Activities proposed for coverage (covered activities) under the HCP include forage production, livestock grazing, vineyard establishment, timber establishment, voluntary habitat restoration, and mitigation and monitoring. Potential impacts caused by covered activities are anticipated to occur within upland prairie habitat in areas that are within the butterfly flight distance (1.2 miles) of known Fender's blue butterfly populations.

Under the HCP, the impacts of ''take'' of the Fender's blue butterfly are being measured by the quantity of the butterfly's host plant, Kincaid's lupine (*Lupinus sulphureus* ssp. *kincaidii*), and nectar resources that are adversely affected. Kincaid's lupine is federally-listed as a threatened species, but there are no take prohibitions for plants on non-Federal lands under the ESA. These impacts are projected based on the acreage of butterfly habitat where the covered activities occur, and the average abundance of Kincaid's lupine and nectar plants in those affected areas. Under the HCP, the total take impact on covered lands is estimated at 0.91 acres over the 50-year permit term.

The HCP includes measures to conserve butterfly habitat, and to avoid and minimize incidental take of the Fender's blue butterfly. Under the HCP, the conservation measures include:

(1) Working with individual landowners and providing technical assistance on means to avoid adverse impacts to the butterfly and its habitat and to implement best management practices for the identified covered activities;

(2) Implementing mitigation measures when impacts to the Fender's blue butterfly and its habitats are unavoidable. Mitigation may be completed by protection of existing butterfly-occupied habitat, habitat enhancement and management that increases the quantity of resources for Fender's blue butterflies beyond pre-existing levels, or a combination of protection and enhancement. Mitigation ratios will be calculated using a product of a site quality multiplier and a base mitigation ratio. The site quality modifier ranges from 0.8 to 1.2, and the base mitigation ratios vary from 1 to 1, to 5 to 1. The HCP assumes an overall average mitigation ratio of 2 to 1 to be applied.

National Environmental Policy Act Compliance

The development of the draft HCP and the proposed issuance of the permit under this plan is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). We have prepared a draft EA to analyze the environmental impacts of three alternatives related to the issuance of a permit and implementation of the conservation program under the proposed HCP. The three alternatives include the proposed action, a no-action alternative, and an individual permit alternative to the issuance of certificates of inclusion under the HCP.

The ''Proposed Action'' alternative is the issuance of a permit to the SWCD and implementation of the HCP.

Under the ''No-action'' alternative, the proposed HCP would not be implemented and no permit would be issued to the SWCD to provide landowners coverage for incidental take of Fender's blue butterfly resulting from covered activities. The no-action alternative would not give landowners regulatory certainty, and actions that could result in take of Fender's blue butterfly would be prohibited under section 9 of the ESA.

Under the individual permit alternative, each landowner who may impact the Fender's blue butterfly and its habitat would complete their own HCP, obtain their own permit, and conduct and pay for their own mitigation, which could delay implementation of a covered activity anywhere from one to three years. The SWCD would also be required to obtain take coverage for any habitat restoration, enhancement, and management activities that are likely to impact and cause take of the Fender's blue butterfly.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed Federal action. We particularly seek comments on the following: (1) Biological data or other information regarding the Fender's blue butterfly and Kincaid's lupine; (2) additional information concerning the range, distribution, population size, and population trends of the butterfly and the lupine; (3) current or planned activities in the subject area and their possible impacts on these species; (4) the presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in Federal project planning by the National Historic Preservation Act; (5) identification of any other environmental issues that should be considered with regard to the permit action; and (6) information regarding the adequacy of the HCP pursuant to the requirements for permits at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we use in preparing the EA, will be available for public inspection by appointment, during normal business hours, at our Oregon Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

After completion of the EA based on consideration of public comments, we will determine whether our proposed approval of the HCP warrants a finding of no significant impact or whether an environmental impact statement should be prepared pursuant to NEPA. We will evaluate the HCP, as well as any comments we receive, to determine whether implementation of the HCP would meet the criteria for issuance of a permit under section 10(a)(1)(B) of the ESA. We will also evaluate whether the proposed permit action would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will consider the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit to the SWCD. We will not make the final NEPA and permit decisions until after the end of the 30-day public comment period on this notice, and we will fully consider all comments we receive during the public comment period.

If we determine that the permit issuance requirements are met, the Service will issue a permit to the SWCD. The SWCD would then begin processing requests from landowners interested in certificates on inclusion under the HCP in order to receive coverage for the incidental take of the Fender's blue butterfly under the permit issued to SWCD.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*), and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22 and 40 CFR 1506.6, respectively).

Dated: January 9, 2015.

Richard Hannan,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2015–03572 Filed 2–20–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX15EE000101100]

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Meeting

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on March 17–18, 2015 at the South Interior Building Auditorium, 1951 Constitution Avenue NW, Washington, DC 20240. The meeting will be held in the first floor Auditorium. The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, was established to advise the Federal Geographic Data Committee (FGDC) on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

- Leadership Dialogue
- FGDC Report (NSDI Strategic Plan Implementation, National Geospatial Data Asset Management Plan, Geospatial Platform)
- Crowd-Sourced Geospatial Data
- Geospatial Privacy
- 3D Elevation Program
- Landsat
- Subcommittee Activities

The meeting will include an opportunity for public comment on March 18. Comments may also be submitted to the NGAC in writing. Members of the public who wish to attend the meeting must register in advance. Please register by contacting Lucia Foulkes at the U.S. Geological Survey (703–648–4142, *lfoulkes@usgs.gov*). Registrations are due by March 13, 2015. While the meeting will be open to the public, registration is required for entrance to the South Interior Building, and seating may be limited due to room capacity.

DATES: The meeting will be held from 8:30 a.m. to 5:30 p.m. on March 17 and from 8:30 a.m. to 4:00 p.m. on March 18.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting is available at *www.fgdc.gov/ngac.*

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2015–03592 Filed 2–20–15; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[145A2100DD.AADD001000.A0E501010.999900]

Renewal of Agency Information Collection for the Bureau of Indian Education Adult Education Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Education (BIE) is submitting to the Office of Management and Budget (OMB) a request for renewal for the collection of information for the Bureau of Indian Education Adult Education Program. The information collection is currently authorized by OMB Control Number 1076–0120, which expires February 28, 2015.

DATES: Interested persons are invited to submit comments on or before March 25, 2015.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to Ms. Juanita Mendoza, Program Analyst, Bureau of Indian Education, U.S. Department of the Interior, 1951 Constitution Avenue NW., MS 312, Washington, DC 20240; or email to: *Juanita.Mendoza@bie.edu.*

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Mendoza, telephone: (202) 208–3559. You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Education (BIE) is seeking renewal of the approval for the information collection conducted under 25 CFR part 46 to manage program resources and for fiscal accountability and appropriate direct services documentation. Approval for this collection expires on February 28, 2015. This information includes an annual report form. No changes are being made to the approved burden hours and forms for this information collection.

II. Request for Comments

On December 9, 2014, the BIE published a notice announcing the renewal of this information collection and provided a 60-day comment period in the **Federal Register** (79 FR 73100). There were no comments received in response to this notice.

The BIE requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0120.

Title: Bureau of Indian Education Adult Education Program.

Brief Description of Collection: Submission of this information allows BIE to manage program resources, for fiscal accountability and appropriate direct services documentation, and to prioritize programs. The information helps manage the resources available to provide education opportunities for adult Indians and Alaska Natives to complete high school graduation requirements and gain new skills and knowledge for self-enhancement. Response is required to obtain a benefit.

Type of Review: Extension without change of currently approved collection.

Respondents: Individuals (Tribal Adult Education Program Administrators).

Number of Respondents: 70 per year, on average.

Total Number of Responses: 70 per year, on average.

Frequency of Response: Once per year.

Estimated Time per Response: 4 hours.

Estimated Total Annual Hour Burden: 280 hours.

Estimated Total Annual Non-Hour Dollar Cost: $200.

Dated: February 13, 2015.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2015–03574 Filed 2–20–15; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP00000 L13110000.PP0000 15XL1109PF]

Notice of Public Meeting, Pecos District Resource Advisory Council Meeting, Lesser Prairie-Chicken Habitat Preservation Area of Critical Environmental Concern (LPC ACEC) Livestock Grazing Subcommittee New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, Bureau of Land Management's (BLM) Pecos District Resource Advisory Council's (RAC) Lesser Prairie-Chicken (LPC) Habitat Preservation Area of Critical Environmental Concerns (ACEC) Livestock Grazing Subcommittee will meet as indicated below.

DATES: The LPC ACEC Subcommittee will meet on March 31, 2015, at the Roswell Field Office, 2909 West Second Street, Roswell, NM 88201, at 1:00 p.m. The public may send written comments to the Subcommittee at the BLM Pecos District Office, 2909 West 2nd Street, Roswell, New Mexico, 88201.

FOR FURTHER INFORMATION CONTACT: Adam Ortega, Range Management Specialist, Roswell Field Office, Bureau of Land Management, 2909 West 2nd Street, Roswell, New Mexico 88201, 575–627–0204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Pecos District RAC elected to create a subcommittee to advise the Secretary of the Interior, through the BLM Pecos District, about possible livestock grazing within the LPC ACEC. Planned agenda includes a discussion of management strategies for the ACEC.

For any interested members of the public who wish to address the Subcommittee, there will be a half-hour public comment period beginning at 2:30 p.m. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited.

Michael H. Tupper,

Deputy State Director, Lands and Resources.

[FR Doc. 2015–03579 Filed 2–20–15; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–459 and 731–TA–1155 (Review)]

Commodity Matchbooks From India; Scheduling of Expedited Five-year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty and countervailing duty orders on commodity matchbooks from India would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* February 6, 2015.

FOR FURTHER INFORMATION CONTACT: Justin Enck (202–205–3363), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On Friday, February 6, 2015, the Commission determined that the domestic interested party group response to its notice of institution (79 FR 65243, November 3, 2014) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record and made available to persons on the Administrative Protective Order service list for these reviews. A public version

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

will be issued pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before Tuesday, March 10, 2015 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by Tuesday, March 10, 2015. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform to the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: February 18, 2015.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–03560 Filed 2–20–15; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission has found the response submitted by domestic interested party D.D. Bean to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 12:00 p.m., Tuesday, February 24, 2015.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determination on five original jurisdiction cases.

CONTACT PERSON FOR MORE INFORMATION: Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: February 18, 2015.

J. Patricia W. Smoot,

Acting Chairman, U.S. Parole Commission.

[FR Doc. 2015–03723 Filed 2–19–15; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Planning Guidance and Instructions for Strategic State Plan and Plan Modifications Submission for Workforce Investment Act Title I and Wagner-Peyser Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Planning Guidance and Instructions for Strategic State Plan and Plan Modifications Submission for Workforce Investment Act Title I and Wagner-Peyser Act,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 25, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201411-1205-003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Planning Guidance and Instructions for Strategic State Plan and Plan Modifications Submission for Workforce Investment Act (WIA), Pub. L. 105–220, Title I and Wagner-Peyser Act, 29 U.S.C. 49 *et seq.,* information collection. The WIA provides the framework for a network of State workforce investment systems designed to meet the needs of the nation's businesses, job seekers, youth, and those who want to further their careers. Title I requires a State to develop five-year strategic plans for this system, which must also contain the detail plans required under the Wagner-Peyser Act. Regulations 20 CFR 661.230 establishes requirements for WIA title I and Wagner-Peyser Act plan modification. WIA section 112, 29 U.S.C. 2822, and Wagner-Peyser Act, 29 U.S.C. 49g, authorize this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a

collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0398.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 28, 2015. The DOL currently seeks to extend PRA authorization for this information collection, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 10, 2014 (79 FR 53786).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0398. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Planning Guidance and Instructions for Strategic State Plan and Plan Modifications Submission for Workforce Investment Act Title I and Wagner-Peyser Act.

OMB Control Number: 1205–0398.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Time Burden: 400 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: February 12, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–03561 Filed 2–20–15; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2015 Allowable Charges for Agricultural Workers' Meals and Travel Subsistence Reimbursement, Including Lodging

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this Notice to announce (1) the allowable charges for 2015 that employers seeking H–2A workers may charge their workers when the employer provides three meals a day, and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim in 2015. The Notice also includes a reminder regarding employers' obligations with respect to overnight lodging costs as part of required subsistence.

DATES: *Effective Date:* This notice is effective on February 23, 2015.

FOR FURTHER INFORMATION CONTACT: William W. Thompson, Acting Administrator, Office of Foreign Labor Certification (OFLC), U.S. Department of Labor, Room C–4312, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

The United States (U.S.) Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary agricultural workers in the U.S. unless the petitioner has received from the Department an H–2A labor certification. The H–2A labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5).

Allowable Meal Charge

Among the minimum benefits and working conditions that the Department requires employers to offer their U.S. and H–2A workers are three meals a day or free and convenient cooking and kitchen facilities. 20 CFR 655.122(g). Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. *Id.*

The Department provides, at 20 CFR 655.173(a), the methodology for determining the maximum amounts that H–2A agricultural employers may charge their U.S. and foreign workers for providing them with three meals per day during employment. This methodology provides for annual adjustments of the previous year's maximum allowable charge based upon updated Consumer Price Index (CPI) data. The maximum charge allowed by 20 CFR 655.173(a) is adjusted by the same percentage as the 12-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food).[1] The OFLC Certifying Officer may also permit an employer to charge workers a higher amount for providing them with three meals a day, if the higher amount is justified and sufficiently documented by the employer, as set forth in 20 CFR 655.173(b).

The Department has determined that the percentage change between December of 2013 and December of 2014 for the CPI–U for Food was 2.4 percent. Accordingly, the maximum an employer is allowed to charge under 20 CFR 655.122(g) shall be no more than $11.86 per day, unless the OFLC Certifying Officer approves a higher charge for a specific employer as authorized under 20 CFR 655.173(b).

Reimbursement for Daily Travel Subsistence

The regulations at 20 CFR 655.122(h) establish that the minimum daily travel subsistence expense for meals, to which a worker is entitled to reimbursement, must be at least as much as the employer would charge for providing the worker with three meals a day during employment (if applicable), but in no event less than the amount

[1] Consumer Price Index—December 2014, published January 16, 2015 at *http://data.bls.gov/pdq/SurveyOutputServlet*

permitted under § 655.173(a), *i.e.* the charge annually adjusted by the 12-month percentage change in CPI–U for Food.

The Department determines the maximum meals component of the daily travel subsistence expense on the standard minimum Continental United States (CONUS) per diem rate as established by the General Services Administration (GSA) at 41 CFR part 301, formerly published in Appendix A, and now found at *www.gsa.gov/perdiem.* The CONUS minimum meals component remains $46.00 per day for 2015.[2] Workers who qualify for travel reimbursement are entitled to reimbursement for meals up to the CONUS meal rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may provide for meal expense reimbursement, with receipts, to 75 percent of the maximum reimbursement for meals of $34.50, as provided for in the GSA per diem schedule. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.173(a) as specified above.

The term ''subsistence'' includes both meals and lodging during travel to and from the worksite. Therefore, an employer is responsible for providing (either paying in advance or reimbursing a worker) the reasonable costs of transportation and daily subsistence between the employer's worksite and the place from which the worker comes to work for the employer, if the worker completes 50 percent of the work contract period. Upon the worker completing the contract, the employer is obligated to pay the return costs. In those instances where a worker must travel to obtain a visa so that the worker may enter the U.S. to come to work for the employer, the employer must pay for the transportation and daily subsistence costs of that part of the travel as well.

As the Department has stated before, we interpret the regulation to require the employer to assume responsibility for the reasonable costs associated with the worker's travel, including transportation, food, and, in those instances where it is necessary, lodging. The minimum and maximum daily travel meal reimbursement amounts are established above. If transportation and lodging are not provided by the employer, the amount an employer must pay for transportation and, where required, lodging, must be no less than (and is not required to be more than) the most economical and reasonable costs. The employer is responsible for those costs necessary for the worker to travel to the worksite if the worker completes 50 percent of the work contract period, but is not responsible for unauthorized detours, and if the worker completes the contract the employer is further responsible for return transportation and subsistence costs, including lodging costs where necessary. This policy also applies to instances where the worker is traveling within the U.S. to the employer's worksite.

For further information on when the employer is responsible for transportation, lodging and meal costs, please see the Department's H–2A Frequently Asked Questions on Travel and Daily Subsistence, which may found on the OFLC Web site: *http://www.foreignlaborcert.doleta.gov/.*

Portia Wu,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2015–03596 Filed 2–20–15; 8:45 am]

BILLING CODE 4510–FP–P

[2] Maximum Per Diem Rates for the Continental United States (CONUS), 79 FR 48168 (August. 15, 2014); see also *www.gsa.gov/perdiem.*

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271; NRC–2015–0034]

Entergy Nuclear Operations, Inc., Vermont Yankee Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a October 31, 2013, request from Entergy Nuclear Operations, Inc. (Entergy or the licensee), from certain regulatory requirements. The exemption would remove the requirement that a licensed senior operator approve the emergency suspension of security measures for Vermont Yankee Nuclear Power Station (VY) during certain emergency conditions or during severe weather.

ADDRESSES: Please refer to Docket ID NRC–2015–0034 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0034. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: James Kim, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4125; email: *James.Kim@nrc.gov.*

I. Background

Entergy is the holder of Renewed Facility Operating License No. DPR–28. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The facility consists of a boiling-water reactor located in Windham County, Vermont.

By letter dated January 12, 2015, (ADAMS Accession No. ML15013A426), Entergy submitted to the NRC the certification, in accordance with Section 50.82(a)(1)(i) and 50.82(a)(1)(ii) of Title 10 of the *Code of Federal Regulations* (10 CFR), indicating it permanently ceased power operations and that the VY reactor vessel was permanently defueled.

II. Request/Action

On October 31, 2013 (ADAMS Accession No. ML13317A077), the licensee requested an exemption from 10 CFR 73.55(p)(1)(i) and 73.55(p)(1)(ii), pursuant to 10 CFR 73.5, ''Specific exemptions.'' Section 73.55(p)(1)(i) and 73.55(p)(1)(ii) require, in part, that the suspension of security measures during certain emergency conditions or during severe weather be approved by a licensed senior operator. The exemption request relates solely to the licensing

requirements specified in the regulations for the staff directing suspension of security measures in accordance with 10 CFR 73.55(p)(1)(i) and 73.55(p)(1)(ii), and would remove the requirement for a licensed senior operator to provide this approval. Instead, the exemption would allow the suspension of security measures during certain emergency conditions or during severe weather by a certified fuel hander (CFH). Portions of the letter dated October 31, 2013, contain sensitive unclassified nonsafeguards information (security-related) and, accordingly, have been withheld from public disclosure.

III. Discussion

Historically, the Commission's security rules have long recognized the potential to suspend security or safeguards measures under certain conditions. Accordingly, 10 CFR 50.54(x) and (y), first promulgated in 1983, allow a licensee to take reasonable steps in an emergency that deviate from license conditions when those steps are ''needed to protect the public health and safety'' and there are no conforming comparable measures. (48 FR 13970; April 1, 1983). As originally promulgated, the deviation from license conditions must be approved by, as a minimum, a licensed senior operator. In 1986, in its final rule, ''Miscellaneous Amendments Concerning the Physical Protection of Nuclear Power Plants'' (51 FR 27817; August 4, 1986), the Commission promulgated 10 CFR 73.55(a), stating in part:

> In accordance with § 50.54 (x) and (y) of Part 50, the licensee may suspend any safeguards measures pursuant to § 73.55 in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specification that can provide adequate or equivalent protection is immediately apparent. This suspension must be approved as a minimum by a licensed senior operator prior to taking the action.

In 1995, the Commission made a number of proposed rule changes to address decommissioning. Among the changes were new regulations that affected § 50.54 (x) and (y) by allowing a non-licensed operator called a ''Certified Fuel Handler,'' in addition to a licensed senior operator, to authorize protective steps. Specifically, in addressing the role of the CFH during emergencies, the Commission stated in the proposed rule, ''Decommissioning of Nuclear Power Reactors'' (60 FR 37379; July 20, 1995):

> The Commission is proposing to amend 10 CFR 50.54(y) to permit a certified fuel handler at nuclear power reactors that have permanently ceased operations and permanently removed fuel from the reactor vessel, subject to the requirements of § 50.82(a) and consistent with the proposed definition of ''Certified Fuel Handler'' specified in § 50.2, to make these evaluations and judgments. A nuclear power reactor that has permanently ceased operations and no longer has fuel in the reactor vessel does not require a licensed individual to monitor core conditions. A certified fuel handler at a permanently shutdown and defueled nuclear power reactor undergoing decommissioning is an individual who has the requisite knowledge and experience to evaluate plant conditions and make these judgments.

In the final rule (61 FR 39298; July 29, 1996), the Commission added the following definition to 10 CFR 50.2: ''*Certified fuel handler* means, for a nuclear power reactor facility, a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission.'' However, the Decommissioning Rule did not propose or make parallel changes to 10 CFR 73.55(a), and did not discuss the role of a non-licensed certified fuel handler.

In the final rule, ''Power Reactor Security Requirements'' (74 FR 13926; March 27, 2009), the NRC relocated and split the security suspension requirements from 10 CFR 73.55(a) to 10 CFR 73.55(p)(1)(i) and (p)(1)(ii). The CFHs were not discussed in the rulemaking, so the requirements of 10 CFR 73.55(p) to use a licensed senior operator remain, even for a site that otherwise no longer operates.

However, pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73, as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

A. The Exemption Is Authorized by Law

The exemption from 10 CFR 73.55(p)(1)(i) and 10 CFR 73.55(p)(1)(ii) would remove the requirement that a licensed senior operator approve the suspension of security measures, under certain emergency conditions or severe weather. The licensee intends to align these regulations with 10 CFR 50.54(y) by using the authority of a non-licensed CFH in place of a licensed senior operator to approve the suspension of security measures during certain emergency conditions or during severe weather.

Per 10 CFR 73.5, the Commission is allowed to grant exemptions from the regulations in 10 CFR part 73, as authorized by law. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. Therefore, the exemption is authorized by law.

B. Will Not Endanger Life or Property or the Common Defense and Security

Removing the requirement to have a licensed senior operator approve suspension of security measures during emergencies or severe weather will not endanger life or property or the common defense and security for the reasons described below.

First, 10 CFR 73.55(p)(2) continues to require that ''[s]uspended security measures must be reinstated as soon as conditions permit.''

Second, the suspension for nonweather emergency conditions under 10 CFR 73.55(p)(1)(i) will continue to be invoked only ''when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.'' Thus, the underlying purpose of 10 CFR 73.55(p)(1)(i) will continue to be to protect public health and safety even after the exemption is granted.

Third, the suspension for severe weather under 10 CFR 73.55(p)(1)(ii) will continue to be used only when ''the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection.'' The requirement to receive input from the security supervisor or manager will remain. The underlying purpose of 10 CFR 73.55(p)(1)(ii) will continue to be to protect the health and safety of the security force.

Additionally, by letter dated October 1, 2014 (ADAMS Accession No. ML14162A209), the NRC approved Entergy's CFH training and retraining program for the VY facility. The NRC staff found that, among other things, the program addresses the safe conduct of decommissioning activities, safe handling and storage of spent fuel, and the appropriate response to plant emergencies. Because the CFH is sufficiently trained and qualified under an NRC-approved program, the NRC staff considers a CFH to have sufficient knowledge of operational and safety concerns, such that allowing a CFH to suspend security measures during the emergencies or severe weather will not

result in undue risk to public health and safety.

In addition, the exemption does not reduce the overall effectiveness of the physical security plan and has no adverse impacts to Entergy's ability to physically secure the site or protect special nuclear material at VY, and thus would not have an effect on the common defense and security. The NRC staff has concluded that the exemption would not reduce security measures currently in place to protect against radiological sabotage. Therefore, removing the requirement for a licensed senior operator to approve the suspension of security measures in an emergency or during severe weather, to allow suspension of security measures to be authorized by a CFH, does not adversely affect public health and safety issues or the assurance of the common defense and security.

C. Is Otherwise in the Public Interest

Entergy's proposed exemption would remove the requirement that a licensed senior operator approve suspension of security measures in an emergency when ''immediately needed to protect the public health and safety'' or during severe weather when ''immediately needed to protect the personal health and safety of security force personnel.'' Without the exemption, the licensee cannot implement changes to its security plan to authorize a CFH to approve the temporary suspension of security regulations during an emergency or severe weather, comparable to the authority given to the CFH by the Commission when it promulgated 10 CFR 50.54(y). Instead, the regulations would continue to require that a licensed senior operator be available to make decisions for a permanently shutdown plant, even though VY no longer requires a licensed senior operator. However, it is unclear how the licensee would implement emergency or severe weather suspensions of security measures without a licensed senior operator. This exemption is in the public interest for two reasons. First, without the exemption, there is uncertainty on how the licensee will invoke temporary suspension of security matters that may be needed for protecting public health and safety or the safety of the security forces during emergencies and severe weather. The exemption would allow the licensee to make decisions pursuant to 73.55(p)(1)(i) & (ii) without having to maintain a staff of licensed senior operators. The exemption would also allow the licensee to have an established procedure in place to allow a trained CFH to suspend security measures in the event of an emergency or severe weather. Second, the consistent and efficient regulation of nuclear power plants serves the public interest. This exemption would assure consistency between the security regulations in 10 CFR part 73 and the operating reactor regulations in 10 CFR part 50, and the requirements concerning licensed operators in 10 CFR part 55. The NRC staff has determined that granting of the licensee's proposed exemption would allow the licensee to designate an alternative position, with qualifications appropriate for a permanently shutdown and defueled reactor, to approve the suspension of security measures during an emergency to protect the public health and safety, and during severe weather to protect the safety of the security force, consistent with the similar authority provided by 10 CFR 50.54(y). Therefore, the exemption is in the public interest.

D. Environmental Considerations

The NRC approval of the exemption to security requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: safeguard plans, and materials control and accounting inventory scheduling requirements; or involve other requirements of an administrative, managerial, or organizational nature.

The Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that approval of the exemption request involves no significant hazards consideration because removing the requirement to have a licensed senior operator approve the security suspension at a defueled shutdown power plant does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted security regulation is unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.,* potential amount of radiation in an accident), nor mitigation. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. The requirement to have a licensed senior operator approve departure from security actions may be viewed as involving either safeguards, materials control, or managerial matters.

Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, the exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee's request for an exemption from the requirements of 10 CFR 73.55(p)(1)(i) and 73.55(p)(1)(ii), which otherwise would require suspension of security measures during emergencies and severe weather, respectively, to be approved by a licensed senior operator. The exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of February 2015.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–03624 Filed 2–20–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298; NRC–2014–0180]

Nebraska Public Power District; Cooper Nuclear Station

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Nebraska Public Power District to withdraw its application dated June 2, 2014, for a proposed amendment to Facility Operating License No. DPR–46. The proposed amendment would have revised the Cooper Nuclear Station Technical Specifications (TS) to update Figure 4.1–1, ''Site and Exclusion Area Boundaries and Low Population Zone,'' to reflect the current site layout.

ADDRESSES: Please refer to Docket ID NRC–2014–0180 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0180. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Siva P. Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1564, email: *Siva.Lingam@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request of Nebraska Public Power District (the licensee) to withdraw its June 2, 2014, application (Agencywide Documents Access and Management System (ADAMS) Accession No. ML14157A006) for a proposed amendment to Facility Operating License No. DPR–46 for the Cooper Nuclear Station, located in Nemaha County, Nebraska.

The proposed amendment would have revised the Cooper Nuclear Station TS to update Figure 4.1–1, ''Site and Exclusion Area Boundaries and Low Population Zone,'' to reflect the current site layout.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 5, 2014 (79 FR 45478). However, by letter dated February 3, 2015 (ADAMS) Accession No. ML15041A664), the licensee withdrew the proposed change.

Dated at Rockville, Maryland, this 11th day of February 2015.

For the Nuclear Regulatory Commission.

Siva P. Lingam,

Project Manager, Plant Licensing Branch IV–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–03623 Filed 2–20–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting

DATE: Weeks of February 23, March 2, 9, 16, 23, 30, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 23, 2015

Thursday, February 26, 2015

2:00 p.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of March 2, 2015—Tentative

Thursday, March 5, 2015

10:00 a.m. Meeting with Advisory Committee on Reactor, Safeguards (Public Meeting), (Contact: Edwin Hackett, 301–415–7360).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of March 9, 2015—Tentative

There are no meetings scheduled for the week of March 9, 2015.

Week of March 16, 2015—Tentative

There are no meetings scheduled for the week of March 16, 2015.

Week of March 23, 2015—Tentative

Thursday, March 26, 2015

9:30 a.m. Briefing on Security Issues (Closed—Ex. 1)

1:30 p.m. Briefing on Security Issues (Closed—Ex. 1)

Friday, March 27, 2015

9:30 a.m. Briefing on Threat Environment Assessment (Closed—Ex. 1)

Week of March 30, 2015—Tentative

There are no meetings scheduled for the week of March 30, 2015.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at 301–415–0442 or via email at *Glenn.Ellmers@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: February 19, 2015.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–03734 Filed 2–19–15; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74282; File No. SR–EDGX–2015–09]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for EDGX Top, EDGX Last Sale, and the BATS One Feed

February 17, 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 2, 2015, EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fee schedule to establish fees for EDGX Top, EDGX Last Sale, and the BATS One Feed, as well as add definitions for terms that apply to market data fees and make certain technical, non-substantive changes.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to establish fees for EDGX Top, EDGX Last Sale, and the BATS One Feed, as well as add definitions for terms that apply to market data fees and make certain technical, non-substantive changes.

Technical, Non-Substantive Changes

The Exchange proposes the following technical, non-substantive amendments to its fee schedule regarding its existing market data fees. First, the Exchange proposes to group all fees for its market data products under a section entitled, ''Market Data Fees.'' Second, the Exchange proposes to rename the section entitled ''EdgeBook Depth Fees'' as the ''EDGX Depth'' to align with a name change within Rule 13.8 that was recently filed with the Commission.[5] Third, the Exchange proposes to amend the name of the section entitled ''EdgeBook Attributed Fees'' as ''EDGX Depth Attributed'' to align with the naming convention of the Exchange's other market data products: EDGX Depth, EDGX Top, and EDGX Last Sale. Fourth, the Exchange proposes to relocate the section entitled ''EDGX Historical Depth Data'' within the new section on market data fees. The Exchange also proposes to replace references to ''EdgeBook Depth X'' with ''EDGX Depth'' to align with the name change within Rule 13.8 discussed above.

Definitions Applicable to Market Data Fees

The Exchange proposes to include in its fee schedule the following defined terms that relate to the Exchange's market data fees. The proposed definitions are designed to provide greater transparency with regard to how the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees.

First, the Exchange proposes to amend and relocate its current definition of a ''Distributor'' contained in its fee schedule. A Distributor is currently defined as ''any entity that receives a market data feed directly from the Exchange or indirectly through another entity and then distributes it either internally (within that entity) (''Internal Distributor'') or externally (outside that entity) (''External Distributor''). All Distributors shall execute a Market Data Vendor Agreement with Direct Edge, Inc., acting on behalf of EDGX Exchange, Inc.'' As amended, a ''Distributor'' will be defined as ''any entity that receives an Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.'' [6] In turn, an Internal Distributor and External Distributor will be separately defined. An Internal Distributor will be defined as a ''Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity.'' [7] An External Distributor will be defined as a ''Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.'' [8]

Secondly, the Exchange proposes to add a definition of ''User'' to its fee schedule. A User will be defined as a ''natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.'' For purposes of its market data fees, the Exchange will distinguish between ''Non-Professional Users'' and ''Professional Users.'' Specifically, a Non-Professional User will be defined as ''a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 73989 (January 5, 2015) (SR–EDGX–2014–36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Top and Last Sale Data Feeds).

[6] The proposed definition of ''Distributor'' is similar to Nasdaq Rule 7047(d)(1).

[7] The proposed definition of ''Internal Distributor'' is similar to Nasdaq Rule 7047(d)(1)(A).

[8] The proposed definition of ''External Distributor'' is similar to Nasdaq Rule 7047(d)(1)(B).

securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt.''[9] A Professional User will be defined as ''any User other than a Non-Professional User.''[10]

EDGX Top and EDGX Last Sale

The Exchange will begin to offer two new data feeds that are also identical to data feeds currently available on the BATS Exchange, Inc. (''BZX'') and BATS Y-Exchange, Inc. (''BYX'' collectively, with BZX, ''BATS''): EDGX Last Sale and EDGX Top.[11] EDGX Last Sale will provide real-time, intraday trade information, including price, volume and time of executions based on orders entered into the System.[12] EDGX Last Sale will not include quotation information. EDGX Top will include top of book quotations and last sale execution information based on orders entered into the System. The quotations made available via EDGX Top will provide an aggregated size and do not indicate the size or number of individual orders at the best bid or ask.

The proposed cost of EDGX Last Sale for an Internal Distributor will be $500 per month. Likewise, the proposed cost of EDGX Top for an Internal Distributor will be $500 per month. The Exchange does not propose to charge per User fees for either EDGX Last Sale or EDGX Top. Therefore, the Exchange will not require an External Distributor of EDGX Last Sale or EDGX Top to count, classify (*e.g.,* professional or non-professional) or report to the Exchange information regarding the customers to which they provide the data. Instead, the Exchange proposes to charge an External Distributor of EDGX Last Sale a flat fee of $1,250 per month. The Exchange also proposes to charge an External Distributor of EDGX Top a flat fee of $1,250 per month. End Users will not have to pay the Exchange for EDGX Last Sale or EDGX Top, nor will end Users be required to enter into contracts with the Exchange. The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors of EDGX Top or EDGX Last Sale will not be charged a Distributor Fee for their first three (3) months. Subscribers to either EDGX Top or EDGX Last Sale may also receive, upon request and at no additional cost, EDGX Last Sale or EDGX Top, as applicable. The Exchange believes that the proposed pricing model is simple and easy for data recipients to comply with, and thus, will result in a minimal additional administrative burden for data recipients with respect to EDGX Last Sale and EDGX Top.

BATS One Feed

The Commission recently approved a proposed rule change by the Exchange to establish a new market data product called the BATS One Feed.[13] The BATS One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on EDGX and its affiliated exchanges[14] and for which the BATS Exchanges report quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[15] The BATS One Feed also contains the individual last sale information for the BATS Exchanges (collectively with the aggregate BBO, the ''BATS One Summary Feed''). In addition, the BATS One Feed contains optional functionality which will enable recipients to elect to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels for all securities that are traded on the BATS Exchanges in addition to the BATS One Summary Feed (''BATS One Premium Feed''). For each price level on one of the BATS Exchanges, the BATS One Premium Feed will include a two-sided quote and the number of shares available to buy and sell at that particular price level.

The Exchange uses the following data feeds to create the BATS One Summary Feed and the BATS One Premium Feed, each of which is available to other vendors: EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, and each of which have been previously published by the Commission.[16] A vendor that wishes to create a product like the BATS One Summary Feed could instead subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale.[17] The BATS Exchanges are the exclusive distributors of these individual data feeds from which certain data elements are taken to create the BATS One Feed as well as the feeds that a vendor may use to create a product like the BATS One Summary Feed. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to received [sic], the individual data feeds or the feeds that may be used to create a product like the BATS One Feed would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients.[18]

The Exchange proposes to amend its fee schedule to incorporate fees related to the BATS One Feed. The Exchange proposes to charge different fees to vendors depending on whether the vendor elects to receive: (i) The BATS One Summary Feed; or (ii) the optional BATS One Premium Feed. These fees include the following, each of which are described in detail below: (i) Distributor

[9] The proposed definition of ''Professional User'' is similar to Nasdaq Rule 7047(d)(3)(A).

[10] The proposed definition of ''Non-Professional User'' is similar to Nasdaq Rule 7047(d)(3)(B).

[11] *See supra* note 5. *See also* BATS Rule 11.22(d) and (g).

[12] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc).

[13] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the BATS One Feed) (''BATS One Approval Order'').

[14] EDGX's affiliated exchanges are BZX, BYX, and EDGA Exchange, Inc. (''EDGA'', together with EDGX, BZX, and BYX, the ''BATS Exchanges''). On January 31, 2014, Direct Edge Holdings LLC (''DE Holdings''), the former parent company of the Exchange and EDGA, completed its business combination with BATS Global Markets, Inc., the parent company of BATS and BYX. *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–43, SR–EDGA–2014–34). Upon completion of the business combination, DE Holdings and BATS Global Markets, Inc. each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named ''BATS Global Markets Holdings, Inc.,'' changed its name to ''BATS Global Markets, Inc.''

[15] The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement fees for the BATS One Feed.

[16] *See* Securities Exchange Act Release Nos. 66864 (April 26, 2012), 77 FR 26064 (May 2, 2012) (SR–EDGX–2012–14); 66863 (April 26, 2012), 77 FR 26059 (May 2, 2012) (SR–EDGA–2012–15); 69936 (July 3, 2013), 78 FR 41483 (July 10, 2013) (SR–BATS–2013–39); 69935 (July 3, 2013), 78 FR 47447 (July 10, 2013) (SR–BYX–2013–023). *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

[17] *See supra* note 5. *See also* BZX and BYX Rules 11.22(d) and (g).

[18] *See* BATS One Approval Order, *supra* note 13. The Exchange notes that a vendor can obtain the underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. *Id.*

Fees;[19] (ii) Usage Fees for both Professional and Non-Professional Users;[20] (iii) Enterprise Fees;[21] and (iv) a Data Consolidation Fee. The amount of each fee may differ depending on whether they use the BATS One Feed data for internal or external distribution. Vendors that distribute the BATS One Feed data both internally and externally will be subject to the higher of the two Distributor Fees.

Internal Distributor Fees. As proposed, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of $10,000 per month. The Exchange also proposes that each Internal Distributor shall pay a fee of $15,000 per month where they elect to receive the BATS One Premium Feed. The Exchange does not propose to charge any User fees for the BATS One Feed where the data is received and subsequently internally distributed to Professional or Non-Professional Users.

External Distributor Fees. The Exchange proposes to charge those firms that distribute the BATS One Feed externally a fee of $5,000 per month for the BATS One Summary Feed. As proposed, each External Distributor shall pay a fee of $12,500 per month where they elect to receive the BATS One Premium Feed.

The BATS One Feed is comprised of data included in EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.[22] Currently, an External Distributor could create a competing product to the BATS One Premium Feed[23] by purchasing the [sic] each of these depth of book products from the individual BATS Exchanges and then performing its own aggregation and consolidation functions. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is $12,500 per month,[24] equal to the $12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could instead subscribe to the following data feeds: EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale,[25] and then perform their own aggregation and consolidation function. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is $5,000 per month,[26] equal to the $5,000 per month External Distributor Fee proposed for the BATS One Summary Feed. To ensure that vendors could compete with the Exchange by creating the same product as the BATS One Feed and selling it to their clients, the Exchange proposes to charge External Distributors an External Distributor fee that equals the combined External Distributor fees for each of the individual feeds listed above.

The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors of the BATS One Summary Feed will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS One Feed.[27] The New External Distributor Fee Credit will not be available to External Distributors of the BATS One Premium Feed. The Exchange does not believe the New External Distributor Credit would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to charge those who receive the BATS One Feed from External Distributors different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of $10.00 per User for receipt of the BATS One Summary Feed or $15.00 per User who elects to also receive the BATS One Premium Feed. Non-Professional Users will be assessed a monthly fee of $0.25 per user for the BATS One Summary Feed or $0.50 per user where they elects to receive the BATS One Premium Feed.

External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.[28] Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of the BATS One Feed, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the BATS One Feed. However, where a device is dedicated specifically to a single individual, the Distributor should

[19] The Exchange notes that Distributor Fees as well as the distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 7019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release Nos. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[20] The Exchange notes that User fees as well as the distinctions based on professional and non-professional users have been previously filed with or approved by the Commission by Nasdaq and the New York Stock Exchange, Inc. (''NYSE''). *See* Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102).

[21] The Exchange notes that Enterprise fees have been previously filed with or approved by the Commission by Nasdaq, NYSE and the CTA/CQ Plans. *See* Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–20140011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR–NYSE–2013–58); 70010 (July 19, 2013) (File No. SR–CTA/CQ–2013–04).

[22] *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

[23] Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

[24] The monthly External Distributor fee is $2,500 per month for EDGX Depth, $2,500 per month for EDGA Depth, $2,500 for BYX Depth, and $5,000 for BZX Depth.

[25] *See supra* note 5. *See also* BATS Rule 11.22(d) and (g).

[26] The monthly External Distributor fee is $1,250 per month for EDGX Top and EDGX Last Sale (as proposed herein), free for EDGA Top and EDGA Last Sale, $1,250 for BYX Top and BYX Last Sale, and $2,500 for BZX Top and BZX Last Sale. *See* SR–EDGA–2015–09 and SR–BYX–2015–09. *See also* the BZX Fee Schedule *available at http://www.batstrading.com/support/fee_schedule/bzx/.*

[27] The Exchange notes that just as a third party vendor could choose to offer special pricing in order to incentivize data recipients to perform necessary development and other work in order to receive and distribute a new data product, the Exchange has proposed pricing to incentivize data recipients to take and distribute the BATS One Feed.

[28] Requiring that every person or device to which they provide the data is counted by the Distributor receiving the BATS One Feed is similar to the NYSE Unit-of-Count Policy. The only difference is that the NYSE Unit-of-Count Policy requires the counting of users receiving a market data product through both internal and external distribution. Because the Exchange proposes to charge Usage Fees solely to recipient firms who's Users receive data from an external distributor and not through internal distribution, it only requires the counting of Users by Distributors that disseminate the BATS One Feed externally.

count only the individual and need not count the device.

• The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the BATS One Feed, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the BATS One Feed (*e.g.,* a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.

• External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.

• If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the BATS One Feed. For example, an External Distributor will be subject to a $12,500 monthly Distributor Fee where they elect to receive the BATS One Premium Feed. If that External Distributor reports User quantities totaling $12,500 or more of monthly usage of the BATS One Premium Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $11,500 of monthly usage, it will pay a net of $1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. In every case the Exchange will receive at least $12,500 in connection with the distribution of the BATS One Feed (through a combination of the External Distribution Fee and per User Fees).

Enterprise Fee. The Exchange also proposes to establish a $50,000 per month Enterprise Fee that will permit a recipient firm who receives the BATS Summary Feed portion of the BATS One Feed from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users and $100,000 per month for recipient firms who elect to receive the BATS One Premium Feed. For example, if a recipient firm had 15,000 Professional Users who each receive the BATS One Summary Feed portion of the BATS One Feed at $10.00 per month, then that recipient firm will pay $150,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $50,000 for an unlimited number of Professional and Non-Professional Users for the BATS Summary Feed portion of the BATS One Feed. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of the BATS One Feed if it wishes such User to be covered by an Enterprise Fee rather than by per-User fees. A recipient firms that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. The Enterprise Fee would be in addition to the applicable Distributor Fee.

Data Consolidation Fee

The Exchange also proposes to charge External Distributors of the BATS One Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. As stated above, the Exchange creates the BATS One Feed from data derived from the EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.[29] The Exchange notes that an External Distributor could create a competing product to the BATS One Feed based on these individual data feeds, or, alternatively, the applicable Top and Last Sale products offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. The Exchanges [sic] believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes that vendors could readily offer a product similar to the BATS One Feed on a competitive basis at a similar cost.

The Exchange does not propose to charge Internal Distributors the separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feed. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of $10,000 per month, as compared to $5,000, which is the total of the underlying feeds.[30] Each Internal Distributor shall pay a fee of $15,000 per month where they elect to receive the BATS One Premium Feed, as compared to $12,500, which is the total cost of the underlying depth feeds.[31] The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. Therefore, the Exchange does not propose to charge Internal Distributors a separate Data Consolidation Fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[32] in general, and furthers the objectives of Section 6(b)(4),[33] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

Technical, Non-Substantive Changes

The Exchange believes that the non-substantive changes to its fee schedule are reasonable because they are designed to align with a previous name change within Rule 13.8 and the naming convention of the Exchange's other market data products: EDGX Depth, the EDGX Top, and EDGX Last Sale. The Exchange notes that none of the proposed non-substantive changes are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

[29] *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

[30] *See supra* note 26.

[31] *See supra* note 24.

[32] 15 U.S.C. 78f.

[33] 15 U.S.C. 78f(b)(4).

Definitions Applicable to Market Data Fees

The Exchange believes that the proposed definitions are reasonable because they are designed to provide greater transparency to Members with regard to how the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees. These definitions are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Lastly, the proposed definitions are based on existing rules of the Nasdaq Stock Market LLC (''Nasdaq'').[34]

EDGX Top and EDGX Last Sale

The Exchange believes that its proposed fees for EDGX Last Sale and EDGX Top are consistent with Section 6(b)(4) of the Act [35] because they provide for an equitable allocation of reasonable dues, fees, and other charges among its members and other recipients of Exchange data. The Exchange also believes the proposed fees for EDGX Last Sale and EDGX Top are reasonable and equitable in light of the benefits to data recipients. To the extent consumers do purchase the data products, the revenue generated will offset the Exchange's fixed costs of operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. It will also help the Exchange cover its costs in developing and running that platform, as well as ongoing infrastructure costs. EDGX Last Sale and EDGX Top would be distributed and purchased on a voluntary basis, in that neither the Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Lastly, the Exchange also believes that the proposed amendments to its fee schedule are reasonable and non-discriminatory because it [sic] will apply uniformly to all Members.

BATS One Feed

The Exchange also believes that the proposed fees for the BATS One Feed are consistent with Section 6(b) of the Act,[36] in general, and Section 6(b)(4) of the Act,[37] in particular, in that it [sic] they provide for an equitable allocation of reasonable fees among Users and recipients of the data and are not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[38] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[39] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fee structure on an equivalent basis. The BATS One Feed would be distributed and purchased on a voluntary basis, in that neither the BATS Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. In addition, any customer that wishes to purchase one or more of the individual data feeds offered by the BATS Exchanges would be able to do so.

The Exchange has taken into consideration its affiliated relationship with EDGA, BYX, and BZX in its design of the BATS One Feed to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients with no greater cost than the Exchange.[40]

In addition, vendors and subscribers that do not wish to purchase the BATS One Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed. To enable such competition, the Exchange is offering the BATS One Feed on terms that a subscriber of those underlying feeds could offer a competing product if it so chooses.

The Exchange notes that the use of the BATS One Feed is entirely optional. Firms have a wide variety of alternative market data products from which to choose, including the Exchanges' own underlying data products, the Nasdaq and the NYSE proprietary data products described in this filing,[41] and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of

[34] The proposed definition of ''Distributor'' is similar to Nasdaq Rule 7047(d)(1). The proposed definition of ''Internal Distributor'' is similar to Nasdaq Rule 7047(d)(1)(A). The proposed definition of ''External Distributor'' is similar to Nasdaq Rule 7047(d)(1)(B). The proposed definition of ''Professional User'' is similar to Nasdaq Rule 7047(d)(3)(A). The proposed definition of ''Non-Professional User'' is similar to Nasdaq Rule 7047(d)(3)(B).

[35] 15 U.S.C. 78f(b)(4).

[36] 15 U.S.C. 78f.

[37] 15 U.S.C. 78f(b)(4).

[38] 15 U.S.C. 78k–1.

[39] *See* 17 CFR 242.603.

[40] *See* BATS One Approval Order, *supra* note 13. The Exchange notes that a vendor can obtain the underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. *Id.*

[41] *See infra* note 55.

alternatives to the BATS One Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute the BATS One Feed, prospective Users likely would not subscribe to, or would cease subscribing to, the BATS One Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the BATS One Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the BATS One Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[42]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for the BATS One Feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for the BATS One Feed is reasonable because it provides an additional method for retail investors to access the BATS One Feed data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[43] Offering the BATS One Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to fees for comparable products offered by the NYSE, Nasdaq, and under the CTA and CQ Plans. Specifically, Nasdaq offers Nasdaq Basic, which includes best bid and offer and last sale data for Nasdaq and the FINRA/Nasdaq TRF, for a monthly fee of $26 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $350,000 per month for internal distribution to an unlimited number of professional users or $365,000 per month for external distribution for up to 16,000 professional users, plus $2 for each additional professional user over 16,000.[44] The NYSE offers BQT, which provides BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT. To obtain BQT, subscribers must purchase the [sic] each underlying data feed for a monthly fee of $18 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $365,000 per month for an unlimited number of professional users. The NYSE does not offer an enterprise license for non-professional users. The Exchange's proposed per-User Fees are lower than the NYSE's and Nasdaq's fees. In addition, the Exchange is proposing Professional and Non-Professional User fees and Enterprise Fees that are less than the fees currently charged by the CTA and CQ Plans. Under the CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of $20-$50 per device, depending on the number of professional subscribers, and $1.00 per non-professional subscriber, depending on the number of non-professional subscribers.[45] A monthly enterprise fee of $686,400 is available under which a U.S. registered broker-dealer may distribute data to an unlimited number of its own employees and its non-professional subscriber brokerage account customers. Finally, in contrast to Nasdaq UTP and the CTA and CQ Plans, the Exchange also will permit enterprise distribution by a non-broker-dealer.

Enterprise Fee. The proposed Enterprise Fee for the BATS One Feed is reasonable as the fee proposed is less than the enterprise fees currently charged for underlying data feeds for NYSE BQT, Nasdaq Basic, and consolidated data distributed under the Nasdaq UTP and the CTA and CQ Plans. In addition, the Enterprise Fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the BATS One Feed, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the BATS One Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes

[42] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm. See also* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[43] *See, e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing nonprofessional fees for CTA data); Nasdaq Rules 7023(b), 7047.

[44] *See* Nasdaq Rule 7047.

[45] *See* CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at *https://cta.nyxdata.com/CTA.*

that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of users.

Distributor Fee. The Exchange believes that the proposed Distributor Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.[46] The Exchange believes that the Distributor Fees for the BATS One Feed are reasonable and fair in light of alternatives offered by other market centers. First, although the Internal Distributor fee is higher than those of competitor products, there are no User fees assessed for Users that receive the BATS One Feed data through an Internal Distributor, which results in a net cost that is lower than competitor products for many data recipients and will be easier to administer.

The proposed Distributor Fees for the BATS One Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the BATS One Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as it [sic] equals the combined fee of subscribing to each individual data feed of the BATS Exchanges, which have been previously published by the Commission.[47] Currently, an External Distributor that seeks to create a competing product to the BATS One Premium Feed [48] would need to purchase each of the depth of book products from the individual BATS Exchanges and then perform its own aggregation and consolidation functions.[49] The combined external distributor fees for these individual depth of book feeds of the BATS Exchanges is $12,500 per month,[50] equal to the $12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could alternatively subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale, and then perform their own aggregation and consolidation function. The combined external distributor fees for these individual data feeds of the BATS Exchanges is $5,000 per month,[51] equal to the $5,000 per month External Distributor Fee proposed for the BATS One Summary Feed. In addition, the Exchange believes it is reasonable to not charge External Distributors a Distribution Fee during their first three (3) months and does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

Data Consolidation Fee

The Exchange believes that the proposed $1,000 per month Data Consolidation Fee charged to External Distributors who receive the BATS One Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange also notes that its proposed $1,000 per month Data Consolidation Fee is identical to an access fee charged by the NYSE for BQT, which is also designed to represent the value of the data aggregation function provided by the NYSE in constructing it BQT feed.[52]

The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all External Distributor who subscribe to the BATS One Feed will be charged the same fee. The Exchange believes it is reasonable and not unfairly discriminatory to not charge Internal Distributor a separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feed. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of $10,000 per month as compared to $5,000, which is the total of the underlying feeds.[53] Each Internal Distributor shall pay a fee of $15,000 per month where they elect to receive the BATS One Premium Feed as compared to $12,500, which is the total cost of the underlying depth feeds.[54] The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable would not permit unfair discrimination.

In addition, a vendor could create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with the BATS One Feed pricing. The Exchanges believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. Therefore, the Exchange believes the proposed pricing would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing as discussed further below.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[46] The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[47] *See supra* notes 15 and 16.

[48] Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

[49] As discussed, the Exchange proposes to charge External Distributors a separate Data Consolidation Fee to reflect the value of the consolidation function performed by the Exchange.

[50] *See supra* note 24.

[51] *See supra* note 26.

[52] *See* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[53] *See supra* note 26.

[54] *See supra* note 24.

Technical, Non-Substantive Changes

The proposed name changes to EdgeBook and Depth and EdgeBook Attributed will not result in any burden on competition. The proposed amendments are not designed to address and competitive issues, but rather provide consistency amongst the naming conventions used for the Exchange market data products, resulting in additional clarity and transparency to Members, Users, and the investing public regarding the Exchange's market data products. The Exchange notes that none of the proposed non-substantive changes are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion.

Definitions Applicable to Market Data Fees

The proposed definitions applicable to market data fees will not result in any burden on competition. The proposed definitions are not designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees for market data. These definitions are intended to make the Fee Schedule clearer and less confusing for investors and are not designed to have a competitive impact.

EDGX Top and EDGX Last Sale

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price EDGX Last Sale and EDGX Top are constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities (''TRF'') that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGX Last Sale and EDGX Top compete with a number of alternative products. For instance, EDGX Last Sale and EDGX Top do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks (''ECN'') that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to EDGX last sale prices and top-of-book quotations though integrated with the prices of other markets on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGX Last Sale and EDGX Top, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

BATS One Feed

The BATS One Feed will enhance competition because it not only provides content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. The BATS One Feed provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.[55] As previously stated, the fees for the BATS One Feed are significantly lower than alternative exchange products. The BATS One Feed is less expensive per professional user and more than 85% less expensive for an enterprise license for professional users (50% less for non-professional users) when compared to a similar competitor exchange product, offering firms a lower cost alternative for similar content.

Although the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the BATS One Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed BATS One Feed. Any entity that receives, or elects to received, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients and at a similar cost.[56]

The proposed pricing the Exchange would charge clients for the BATS One Feed compared to the cost of the

[55] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (''TRF'')); Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR–NYSE–2014–40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No.1, To Establish the NYSE Best Quote & Trades (''BQT'') Data Feed); *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

[56] *See* BATS One Approval Order, *supra* note 13.

individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange would charge for the BATS One Feed would not be lower than the cost to a vendor of receiving the underlying data feeds. The pricing the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The Distributor Fees that the Exchange intends to propose for the BATS One Feed would not be less than the combined fee of subscribing to each individual data feed.[57] In addition, the Exchange believes that not charging External Distributors a Distribution Fee during their first three (3) months would not impede a vendor from creating a competing product. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period and offer a competing product on a similar basis as the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because it is identical to a similar fee charged by the NYSE for its BQT feed and a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. The Exchanges believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes the proposed pricing, including the New External Distributor Fee Credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing.

Finally, the Exchange notes that there is already actual competition for products similar to the BATS One Feed. The NYSE offers BQT which provides BBO and last sale information for the NYSE, NYSE Arca Equities, Inc. and NYSE MKT LLC.[58] Nasdaq already offers Nasdaq Basic, a filed market data product, and through its affiliate, offers NLS Plus which provides a unified view of last sale information similar to the BATS One Feed.[59] The existence of these competing data products demonstrates that there is ample, existing competition for products such as the BATS One Feed and the fees associated by such products is constrained by competition.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the BATS One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[60] and paragraph (f)(2) of Rule 19b–4 thereunder.[61] 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–EDGX–2015–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2015–09. 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

[57] The combined external distribution fee for the individual depth of book data feeds of the BATS Exchanges is $12,500 per month. The monthly External Distributor fee is $2,500 per month for the EDGX Depth, $2,500 per month for the EDGA Depth, $2,500 for BYX Depth, and $5,000 for BZX Depth. The combined external distribution fee for the individual top and last sale data feed of the BATS Exchanges is $5,000 per month. The monthly External Distributor fee is $1,250 per month for EDGX Top and EDGX Last Sale, free for EDGA Top and EDGA Last Sale, $1,250 for BYX Top and BYX Last Sale, and $2,500 for BZX Top and BZX Last Sale. *See* SR–EDGA–2015–09 and SR–BYX–2015–09. *See also* the BZX Fee Schedule *available at http://www.batstrading.com/support/fee_schedule/bzx/*

[58] See supra note 55.

[59] Id.

[60] 15 U.S.C. 78s(b)(3)(A)(ii).

[61] 17 CFR 240.19b–4(f)(2).

public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of EDGX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2015–09 and should be submitted on or before March 16, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

Brent J. Fields,

Secretary.

[FR Doc. 2015–03538 Filed 2–20–15; 8:45 am]

BILLING CODE 8011–01–P

[62] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74281; File No. SR–NYSE–2015–06]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Adopting New Rule 124 to Conduct a Midday Auction and Amending Rule 104 to Codify the Obligation of Designated Market Makers to Facilitate the Midday Auction

February 17, 2015.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 2, 2015, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is 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 adopt new Rule 124 to conduct a daily single-priced auction at a specified time in lower-volume securities (''Midday Auction'') and amend Rule 104 to codify the obligation of Designated Market Makers (''DMM'') to facilitate the Midday Auction. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rule 124 to conduct a daily Midday Auction and amend Rule 104 to reflect that the DMM's obligation to facilitate reopenings includes the Midday Auction.

The Exchange proposes to adopt new Rule 124 to conduct a Midday Auction in a subset of NYSE-listed securities that have a consolidated average daily trading volume (''CADV'') of 1,000,000 shares or less and have been designated by the Exchange (the ''Midday Auction Stocks''). The Midday Auction is intended to consolidate volume, including orders of larger blocks of stock, for price discovery purposes in lower-volume securities to provide market participants with a single-priced execution intraday to supplement the existing opening and closing auctions.[4] The Exchange believes the proposed parameters for which stocks would be eligible to participate is reasonably designed to include those stocks that would benefit from such price discovery. The Exchange further believes that providing the Exchange with the ability to designate which stocks within those parameters are eligible for the Midday Auction is appropriate because it would provide the Exchange with the ability to add or remove stocks depending on the individual trading characteristics of a stock. As proposed, the Exchange would update the list of Midday Auction Stocks at least quarterly.[5]

The Exchange proposes to conduct one Midday Auction in each Midday Auction Stock per trading day.[6] The Midday Auction would not be conducted on trading days the Exchange is scheduled to close before 4:00 p.m. ET or if the security is halted, paused, suspended, or not opened for trading at the time of the Midday Auction.[7] For example, if during the pause preceding the Midday Auction (described below), a pause pursuant to the Plan to Address Extraordinary Market Volatility (''LULD Plan'') [8] or regulatory halt were triggered, the Exchange would not conduct a Midday Auction and instead would reopen the security pursuant to the procedures for reopening following a LULD Plan pause or regulatory halt.

Beginning at a time specified by the Exchange between 11 a.m. ET and 2 p.m. ET,[9] the Exchange would pause trading on the Exchange only in the Midday Auction Stocks for five minutes in order to provide market participants with an opportunity to enter interest intended for the auction (the ''Midday Auction Pause'').[10] During the Midday Auction Pause, the Exchange would suspend automatic executions and publish a zero quote on both the public and proprietary data feeds.[11]

[4] The Exchange notes that NYSE-listed securities with a CADV of 1,000,000 shares or less represent approximately 16 percent of the consolidated volume of all NYSE-listed securities.

[5] *See* Proposed Rule 124(a)(1).

[6] *See* Proposed Rule 124(a)(3).

[7] *See* Proposed Rule 124(a)(2).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File no. 4–631).

[9] The Exchange proposes to specify the time of the Midday Auction Pause by Trader Update.

[10] *See* Proposed Rule 124(b). Under Rule 104(a)(1)(B)(ii), the DMM's quoting obligations are suspended during a trading pause and do not re-commence until after the first regular way transaction on the primary listing market in the security following such pause. The Exchange believes that DMMs would also be relieved of their quoting obligations pursuant to Rule 104(a)(1)(B)(ii) during the Midday Auction Pause.

[11] *See id.* Because the Midday Auction would be intended to occur daily at the same time in specified securities, the Exchange believes that the publication of a zero quote condition would signal to the market that the Midday Auction Pause has begun. The Exchange therefore does not propose, nor does it believe it necessary, to disseminate an indication over the Consolidated Quote System or Consolidated Tape that a security is in a Midday Auction Pause.

In order to maximize the interest eligible to participate in the Midday Auction, during the Midday Auction Pause, the Exchange would maintain resting orders on the Exchange's book that are eligible to participate in a reopening.[12] The Exchange would also accept new orders that are eligible to participate in the Midday Auction.[13] The Exchange notes that Market-on-Open (''MOO'') and Limit-on-Open (''LOO'') Orders, which are existing order types available for openings and reopenings, would be accepted during the Midday Auction Pause. The Exchange would also accept and process cancellations of new and resting orders during the Midday Auction Pause,[14] which is how the Exchange processes orders during a trading halt or LULD Plan pause.

Because a Midday Auction Stock would be paused on the Exchange only, during the Midday Auction Pause, the Exchange proposes to continue re-pricing sell short orders, including MOO and LOO Orders, consistent with Rule 440B(e) (Short Sales).[15] The Exchange also proposes to continuously re-price and/or cancel orders, including MOO and LOO Orders, consistent with Rule 80C(a)(5).[16] In addition, in order to attract contra-side interest, during a Midday Auction Pause, the Exchange would publish Order Imbalance Information as defined in Rule 15(c)[17] approximately every five seconds.[18]

At the end of the Midday Auction Pause, the Exchange proposes to conduct the Midday Auction by reopening the Midday Auction Stocks at a single equilibrium price in the same manner as in Rule 123D (Openings and Halts in Trading) for reopenings, with two exceptions. Accordingly, as with reopenings following a regulatory halt or LULD Plan pause, the DMM registered in the security would be responsible for facilitating the Midday Auction in a manner similar to how an opening or reopening would be conducted. This includes the DMM supplying liquidity as needed, as provided for in Rule 104(a)(2), and conducting the Midday Auction either manually or electronically, as provided for in Rule 123D(1).[19] Rule 104(a)(2) sets forth the DMM's obligation to facilitate openings and reopenings for each of the securities in which the DMM is registered as required under Exchange rules, which may include providing liquidity as needed. To specify that the DMM has a similar obligation for the Midday Auction, the Exchange proposes to amend Rule 104(a)(2) by adding the clause ''including the Midday Auction'' following ''reopenings.''

The first proposed exception to Rule 123D is based on the manner that the Exchange reopens securities following a LULD Plan pause, as set forth in Rule 80C(b)(2)(A). As currently the case for reopenings pursuant to Rule 80C(b)(2)(A), the Exchange proposes that for Midday Auctions, indications may be published to the Consolidated Tape, but they are not required. In addition, prior Floor Official approval is not required and if an indication is published, it would not need to be updated before the Midday Auction and the Midday Auction may occur outside of any prior indication. Moreover, a Midday Auction would not be subject to the requirements that (i) a minimum of three minutes must elapse between the first indication and the Midday Auction, or (ii) if more than one indication is published, a minimum of one minute must elapse before the Midday Auction.[20]

The second proposed exception to Rule 123D would be that the Midday Auction would not execute at a price outside of the LULD Price Bands, as provided for in Rule 80C(a)(4).[21] Although the LULD Plan provides that reopenings are not subject to the Plan,[22] the Exchange believes that because trading in Midday Auction Stocks would be continuing on other markets, the Midday Auction should execute consistent with the Price Bands in effect at the time of the Midday Auction. As noted above, to facilitate a Midday Auction priced consistent with the LULD Price Bands, the Exchange would be re-pricing both market and limit interest that is eligible to participate in the Midday Auction.

Because the Midday Auction is intended to be conducted the same as a reopening pursuant to Rule 123D (except as provided for in the two exceptions), the Exchange proposes to specify that orders would participate in the Midday Auction in the same manner that such orders would participate in openings or reopenings. The Exchange further proposes to specify that orders that are not eligible to participate in openings or reopenings pursuant to Exchange rule would not participate in the Midday Auction.[23]

Generally, the Exchange expects that DMMs would facilitate the Midday Auction electronically as close to the end of the Midday Auction Pause as feasible. However, if there is a significant imbalance or Floor broker crowd interest, the DMM would have the ability, as is the case today with all Exchange auctions, to manually conduct the Midday Auction to provide greater opportunity for equilibrium in any imbalance of orders. The Exchange proposes that if there is a significant imbalance in a Midday Auction Stock at the end of the Midday Auction Pause, with the approval of a Floor Governor or two Floor Officials, the Midday Auction Pause may be converted to an order imbalance halt.[24] In practice, this would provide the DMMs with flexibility to conduct a Midday Auction manually, but convert to an order imbalance halt if attracting offsetting interest would delay the Midday Auction. The benefit of converting to an order imbalance halt is that it would signal to the public that there is an order imbalance in a symbol, and provide the DMM with the ability to reopen the security pursuant to Rule 123D, without either of the above-described exceptions applicable to the Midday Auction.[25] In such case, the reopening would not be subject to the LULD Price Bands, and as proposed, orders re-priced pursuant to proposed Rule 124(b)(6) would be re-filed according to the original order instructions and the security would be

[12] *See* Proposed Rule 124(b)(1).

[13] *See* Proposed Rule 124(b)(2).

[14] *See* Proposed Rule 124(b)(3).

[15] *See* Proposed Rule 124(b)(4).

[16] *See* Proposed Rule 124(b)(5).

[17] Order Imbalance Information reflects real-time order imbalances that accumulate prior to the opening or reopening transaction on the Exchange and the price at which interest eligible to participate in an opening or reopening transaction may be executed in full. Order Imbalance Information disseminated pursuant to Rule 15(c) includes all interest eligible for execution in the opening or reopening transaction of a security in Exchange systems. *See* Rule 15(c)(1).

[18] *See* Proposed Rule 124(b)(6).

[19] *See* Proposed Rule 124(c).

[20] *See* Proposed Rule 123(c)(1).

[21] *See* Proposed Rule 124(c)(2). The Exchange will be submitting separately a request for exemptive relief pursuant to Rule 611(d) of Regulation NMS that the Midday Auction be exempted from the requirements of Rule 611 of Regulation NMS, 17 CFR 242.600 *et seq.,* because it operates, in substance, in the same way as a single-priced reopening transaction, which is an existing exception to the Order Protection Rule under Rule 611(b)(3).

[22] *See* LULD Plan, *supra* note 8 at section VI(A)(1).

[23] *See* Proposed Rule 124(d).

[24] *See* Proposed Rule 123(e). The Exchange notes that the current procedure for invoking a trading halt requires the approval of a Floor Governor or two Floor Officials. *See* Rule 123D(1) (''Once trading has commenced, trading may only be halted with the approval of a Floor Governor or two Floor Officials.'')

[25] The Exchange notes that when it halts a security for an order imbalance halt, which is a non-regulatory halt, the Exchange disseminates via the public data feeds that a symbol is subject to an order imbalance halt. *See* Consolidated Tape System CTS Output Multicast Interface Specification, at 95, 141, and 142, available at *https://www.ctaplan.com/.*

reopened pursuant to the procedures set forth in Rule 123D.[26]

Because of the technology changes associated with the proposed rule change, the Exchange proposes to announce the implementation date via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[27] in general, and furthers the objectives of section 6(b)(5) of the Act,[28] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed Midday Auction would perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because it would provide opportunity for price discovery and an intra-day execution for thinly-traded securities. More specifically, the Exchange believes that the proposed Midday Auction would provide investors with an intra-day price discovery mechanism during which potential trading volumes may be consolidated, thereby providing more certainty of an execution opportunity during the trading day. In addition, because volume would be consolidated for the auction, investors with large blocks of stock could use the Midday Auction to execute those orders without impacting the price of the stock, which could occur if a large order were entered during continuous, intra-day trading. As proposed, the Exchange would make the Midday Auction available for Exchange-listed securities with a CADV of 1,000,000 shares or less, which represent approximately 16% of all NYSE-listed securities by consolidated volume, and that have been designated by the Exchange. The Exchange believes that making the Midday Auction available for symbols with a CADV of 1,000,000 shares or less is appropriate because symbols with this volume of trading are more likely to have wider spreads and less certainty of an intraday execution.

The Exchange further believes that designating the list of Midday Auction Stocks from within this category, and updating the list at least quarterly, would perfect the mechanism of a free and open market and a national market system because it would provide the Exchange with the ability to add or remove stocks from eligibility for the Midday Auction depending on the trading characteristics of an individual security. For example, a security with a CADV of 1,000,000 shares or less may have tight spreads and regular intraday trading opportunities; such a symbol would be less likely to benefit from a Midday Auction.

Similarly, the Exchange believes that providing the Exchange with discretion of when the Midday Auction Pause period would begin, provided it is between 11 a.m. ET and 2 p.m. ET, would perfect the mechanism of a free and open market and a national market system because it would enable the Exchange to change when the Midday Auction occurs in order to respond to market events. The Exchange believes that the proposed window for the Midday Auction is designed to be a period after the opening and before the closing when additional price discovery for a Midday Auction Stock would be warranted. The Exchange notes that as proposed, regardless of the time, it would conduct only one Midday Auction per day in Midday Auction Stocks. The Exchange further notes that it would provide advance notice of the timing of the Midday Auction by Trader Update.

The Exchange believes that the proposed Midday Auction Pause would perfect the mechanism of a free and open market and national market system because it is designed to pause intra-day trading only on the Exchange to provide investors with time to enter interest for the Midday Auction, including MOO and LOO Orders. The Exchange notes that the proposed five-minute period for the Midday Auction Pause is based on the time frame for a LULD Plan pause. Because the Midday Auction is intended for similar purpose to a LULD Pause, *i.e.,* to consolidate volume for price discovery purposes, the Exchange believes that the proposed five-minute period is appropriate and consistent with the Act. The Exchange notes that the proposed Midday Auction Pause would pause trading only on the Exchange and therefore investors would continue to have intra-day executions opportunities on other markets during the Midday Auction Pause.

The Exchange further believes that the proposed Midday Auction, which would be conducted in the same manner as set forth in the reopening procedures in Rule 123D, would perfect the mechanism of a free and open market and national market system because the Exchange would use an established auction process for the Midday Auction. Specifically, as proposed, the DMM assigned to a Midday Auction Stock would be responsible for facilitating the Midday Auction in a manner similar to how an opening or reopening would be conducted. This includes the DMM supplying liquidity as needed, as provided for in Rule 104(a)(2), and conducting the Midday Auction either manually or electronically, as provided for in Rule 123D(1). In addition, the Exchange would process orders during the Midday Auction in a manner similar to how orders are handled during a trading halt or LULD trading pause, including accepting MOO and LOO Orders to participate in the Midday Auction. The Exchange would also publish Order Imbalance Information during a Midday Auction Pause, thereby providing investors and the public with information about the pricing of the Midday Auction. The Exchange would also follow established procedures for publishing indications during a Midday Auction Pause that are based on how indications may be published during LULD trading pauses pursuant to Rule 80C(b)(2)(A). The Exchange believes that replicating established reopening processes for the Midday Auction would provide transparency and certainty to investors and the public who are already familiar with the Exchange's auction process for openings and reopenings.

The Exchange also believes that the proposal to price a Midday Auction consistent with the LULD price bands in effect at the time of the auction would perfect the mechanism of a free and open market and national market system because it would assure that the Midday Auction would not be priced outside of the established parameters for trading in that security at a given time. In particular, because trading in a Midday Auction Stock would be paused only on the Exchange, the Exchange believes it is appropriate to maintain deference to the prices that are occurring on other markets and price the Midday Auction consistent with the Price Bands.

The Exchange notes that if there is a significant imbalance in a Midday Auction Stock, the Midday Auction Pause could be converted to an order

[26] *See* Proposed Rule 124(e).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

imbalance halt with the approval of a Floor Governor or two Floor Officials, which is the existing process for invoking a halt on the Exchange pursuant to Rule 123D. The Exchange believes that invoking an order imbalance halt, which would similarly halt trading on the Exchange only, would be appropriate because it would provide notice to the public of an order imbalance in a stock and an opportunity for the price discovery process to continue consistent with Rule 123D, including the requirement for publishing indications. The Exchange believes that for a significant order imbalance, using the existing reopening process rather than a Midday Auction would perfect the mechanism of a free and open market and national market system and protect investors and the public interest because it would provide an opportunity for greater price discovery that would not be restricted by LULD Price Bands.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed Midday Auction would only pause trading on the Exchange and would not prevent market participants from directing order flow in Midday Auction Stocks to other markets and trading venues during the auction. The proposed Midday Auction would also be available to all market participants on the Exchange each day at the same time. Further, the Exchange believes that by providing an additional opportunity to execute orders in thinly-traded securities hours before the close of trading, the proposed rule change would further the price discovery process and enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–NYSE–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–NYSE–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 the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–06 and should be submitted on or before March 16, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Brent J. Fields,

Secretary.

[FR Doc. 2015–03537 Filed 2–20–15; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2015–0005]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections and one new information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2015–0005].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than April 24, 2015. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Data Exchange Request Form—0960–NEW. SSA maintains approximately 3,000 data exchange agreements and regularly receives new requests from Federal, State, local, and foreign governments, as well as private organizations, to share data electronically. SSA engages in various forms of data exchanges from Social Security number verifications to computer matches for benefit eligibility, depending on the requestor's business needs. Section 1106 of the Social Security Act (Act) requires we consider the requestor's legal authority to receive the data, our disclosure policies, systems' feasibility, systems' security, and costs before entering into a data exchange agreement. We will use Form SSA–157, Data Exchange Request Form, for this purpose. Requesting agencies, governments, or private organizations will use the form when voluntarily initiating a request for data exchange from SSA. Respondents are Federal, State, local, and foreign governments, as well as private organizations seeking to share data electronically with SSA.

Type of Request: This is a new information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–157	60	1	30	30

2. Request for Withdrawal of Application—20 CFR 404.640—0960–0015. Form SSA–521 documents the information SSA needs to process the withdrawal of an application for benefits. A paper Form SSA–521 is our preferred instrument for executing a withdrawal request; however, any written request for withdrawal signed by the claimant or a proper applicant on the claimant's behalf will suffice. Individuals who wish to withdraw their applications for benefits complete Form SSA–521, or sign the completed form for each request to withdraw. SSA uses the information from the SSA–521 to process the request for withdrawal. The respondents are applicants for Retirement, Survivors, Disability, and Health Insurance benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total estimated annual burden (hours)
SSA–521	39,000	1	5	3,250

3. Statement of Self-Employment Income—20 CFR 404.101, 404.110, 404.1096(a)–(d)—0960–0046. To qualify for insured status and thus collect Social Security benefits, self-employed individuals must demonstrate they earned the minimum amount of self-employment income (SEI) in a current year. SSA uses Form SSA–766, Statement of Self-Employment Income, to collect the information we need to determine if the individual will have at least the minimum amount of SEI needed for one or more quarters of coverage in the current year. Based on the information we obtain, we may credit additional quarters of coverage to give the individual insured status thus expediting benefit payments. Respondents are self-employed individuals who may be eligible for Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total estimated annual burden (hours)
SSA–766	2,500	1	5	208

4. Request for Workers' Compensation/Public Disability Benefit Information—20 CFR 404.408(e)—0960–0098. Claimants for Social Security disability payments who are also receiving Worker's Compensation/Public Disability Benefits (WC/PDB) must notify SSA about their WC/PDB, so the agency can reduce claimants' Social Security disability payments accordingly. If claimants provide necessary evidence, such as a copy of their award notice, benefit check, etc., that is sufficient verification. In cases where claimants cannot provide such evidence, SSA uses Form SSA–1709. The entity paying the WC/PDB benefits, its agent (such as an insurance carrier), or an administering public agency complete this form. The respondents are Federal, State, and local agencies, insurance carriers, and public or private self-insured companies administering WC/PDB benefits to disability claimants.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total estimated annual burden (hours)
SSA–1709	120,000	1	15	30,000

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 25, 2015. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

Application for Mother's or Father's Insurance Benefits—20 CFR 404.339–404.342, 20 CFR 404.601–404.603—0960–0003. Section 202(g) of the Act provides for the payment of monthly benefits to the widow or widower of an insured individual if the surviving spouse is caring for the deceased worker's child (who is entitled to Social Security benefits). SSA uses the information on Form SSA–5–BK to determine an individual's eligibility for mother's or father's insurance benefits. The respondents are individuals caring for a child of the deceased worker who is applying for mother's or father's insurance benefits under the Old Age, Survivors, and Disability Insurance program.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total estimated annual burden (hours)
SSA–5–F6 (paper)	1,611	1	15	403
Modernized Claim System (MCS)	26,045	1	15	6,511
MCS/Signature Proxy	26,044	1	14	6,077
Total	53,700	.....	.....	12,991

Dated: February 18, 2015.

Faye Lipsky,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2015–03545 Filed 2–20–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 29, 2014

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 302. 201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2014–0209.

Date Filed: November 26, 2014.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: December 17, 2014.

Description

Application of Air Cargo Global, s.r.o. (''ACG'') requesting a foreign air carrier permit and exemption authority to enable ACG to engage in foreign scheduled and charter air transportation of property and mail between any point or points in the United States and any point or points outside the United States, and any other transportation authorized by additional rights made available to European Community carriers in the future.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2015–03546 Filed 2–20–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 15, 2014

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 302. 201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2014–0194.

Date Filed: November 12, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 3, 2014.

Description

Application of Northern Air Cargo, Inc. (''NAC'') requesting a blanket open skies certificate of public convenience and necessity that will allow NAC to provide scheduled foreign air transportation of property and mail between the United States and all countries with which the United States has entered into an open skies agreement, as well as any country with which the United States may in the future entered into an open skies agreement, once the agreement is being applied by both countries. NAC also requests on an expedited basis a corresponding exemption authorizing NAC to provide the services described above pending issuance of a certificate of public and necessity.

Docket Number: DOT–OST–2014–0195.

Date Filed: November 13, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 2014.

Description

Application of WestJet Encore Limited (''WestJet Encore'') requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the Government of

the United States of America and the Government of Canada in order to engage in: (i) Scheduled foreign air transportation of persons, property and mail from points behind Canada via Canada and intermediate points to a point or points in the United States and beyond; (ii) charter foreign air transportation of persons, property and mail from any point or points in Canada and any point or points in the United States and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Canada for the purpose of carrying local traffic between Canada and the United States; and (iii) other charter transportation pursuant to the prior approval requirements. WestJet Encore further requests exemption authority to the extent necessary to enable it to provide the services described above pending issuance of a foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate. It also requests a statement of authorization to the extent necessary to enable WestJet Encore to operate U.S.-Canada transborder service on behalf of WestJet under the ''WestJet'' name.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2015–03548 Filed 2–20–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Notice.

SUMMARY: By **Federal Register** notice (See 79 FR 77594–77595, December 24, 2014) the National Park Service (NPS) and the Federal Aviation Administration (FAA) invited interested persons to apply to fill two existing openings and one upcoming opening on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). The notice invited interested persons to apply to fill two currently vacant seats representing environmental concerns and one future opening to represent Native American interests. This notice informs the public of the persons selected to fill these current and future vacancies.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3808, email: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181, and subsequently amended in the FAA Modernization and Reform Act of 2012. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The current NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are as follows:

Heidi Williams representing general aviation; Alan Stephen, Matt Zuccaro, and Mark Francis representing commercial air tour operators; Michael Sutton and Dick Hingson representing environmental interests with two open seats; and Rory Majenty and Martin Begaye representing Native American tribes. Rory Majenty's seat expires on April 2, 2015.

Selection

The persons selected to fill the two open seats representing environmental concerns are Nicholas Miller and Mark Belles. Their 3-year terms will begin on the day of this **Federal Register** notice publication. The person selected to fill the upcoming open seat representing Native American concerns is Leigh Kuwanwisiwma. Mr. Kuwanwisiwma's 3-year term will begin on April 3, 2015.

Issued in Hawthorne, CA on February 11, 2015.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2015–03558 Filed 2–18–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

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

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 75 State projects involving the acquisition of vehicles and equipment on the condition that they be assembled in the U.S.

DATES: The effective date of the waiver is February 24, 2015.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, 202–366–1562, or via email at *gerald.yakowenko@dot.gov*. For legal questions, please contact Mr. Jomar Maldonado, FHWA Office of the Chief Counsel, 202–366–1373, or via email at *jomar.maldonado@dot.gov*. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Electronic Access.

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at *http://www.archives.gov* and the Government

Publishing Office's database at *http://www.access.gpo.gov/nara.*

Background

This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 75 State projects involving the acquisition of vehicles (including sedans, vans, pickups, trucks, buses, and street sweepers) and equipment (such as electric charging station and trail grooming equipment) on the condition that they be assembled in the U.S. The waiver would apply to approximately 950 vehicles. The requests, available at *http://www.fhwa.dot.gov/construction/contracts/cmaq141124.cfm,* are incorporated by reference into this notice. These projects are being undertaken to implement air quality improvement, safety, and mobility goals under FHWA's Congestion Mitigation and Air Quality Improvement Program; National Bridge and Tunnel Inventory and Inspection Program; and the Recreational Trails Program.

Title 23, Code of Federal Regulations, section 635.410 requires that steel or iron materials (including protective coatings) that will be permanently incorporated in a Federal-aid project must be manufactured in the U.S. For FHWA, this means that all the processes that modified the chemical content, physical shape or size, or final finish of the material (from initial melting and mixing, continuing through the bending and coating) occurred in the U.S. The statute and regulations create a process for granting waivers from the Buy America requirements when its application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. In 1983, FHWA determined that it was both in the public interest and consistent with the legislative intent to waive Buy America for manufactured products other than steel manufactured products. However, FHWA's national waiver for manufactured products does not apply to the requests in this notice because they involve predominately steel and iron manufactured products. The FHWA's Buy America requirements do not have special provisions for applying Buy America to ''rolling stock'' such as vehicles or vehicle components (see 49 U.S.C. 5323(j)(2)(C), 49 CFR 661.11, and 49 U.S.C. 24405(a)(2)(C) for examples of Buy America rolling stock provisions for other DOT agencies).

Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers that produce the vehicles and vehicle components identified in this notice in such a way that their steel and iron elements are manufactured domestically. The FHWA's Buy America requirements were tailored to the types of products that are typically used in highway construction, which generally meet the requirement that steel and iron materials be manufactured domestically. In today's global industry, vehicles are assembled with iron and steel components that are manufactured all over the world. The FHWA is not aware of any domestically produced vehicle on the market that meets FHWA's Buy America requirement to have all its iron and steel be manufactured exclusively in the U.S. For example, the Chevrolet Volt, which was identified by many commenters in a November 21, 2011, **Federal Register** Notice (76 FR 72027) as a car that is made in the U.S., is comprised of only 45 percent of U.S. and Canadian content according to the National Highway Traffic Safety Administration's Part 583 American Automobile Labeling Act Report Web page *(http://www.nhtsa.gov/Laws+&+Regulations/Part+583+American+Automobile+Labeling+Act+(AALA)+Reports*). Moreover, there is no indication of how much of this 45 percent content is U.S.-manufactured (from initial melting and mixing) iron and steel content.

In accordance with Division A, section 122 of the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L. 112–284), FHWA published a notice of intent to issue a waiver on its Web site at *http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=101* on November 25, 2014. The FHWA received 17 comments in response to the publication. Eight commenters including; Puget Sound Clean Air Agency, Port of Seattle, Chicago Metropolitan Agency for Planning, and Virginia DOT support granting a waiver. Four commenters objected to the waiver, and five others provided general statements regarding domestic manufacturing and the U.S. economy. None of the four commenters objecting to the waiver identified a manufacturer that meets the Buy America requirements for the vehicles and equipment listed in the November 25, 2014 notice.

Based on FHWA's conclusion that there are no domestic manufacturers that can produce the vehicles and equipment identified in this notice in such a way that steel and iron materials are manufactured domestically, and after consideration of the comments received, FHWA finds that application of FHWA's Buy America requirements to these products is inconsistent with the public interest (23 U.S.C. 313(b)(1) and 23 CFR 635.410(c)(2)(i)). However, FHWA believes that it is in the public interest and consistent with the Buy America requirements to impose the condition that the vehicles and the vehicle components be assembled in the U.S. Requiring final assembly to be performed in the U.S. is consistent with past guidance to FHWA Division Offices on manufactured products (see Memorandum on Buy America Policy Response, Dec. 22, 1997, *http://www.fhwa.dot.gov/programadmin/contracts/122297.cfm*). A waiver of the Buy America requirement without any regard to where the vehicle is assembled would diminish the purpose of the Buy America requirement. Moreover, in today's economic environment, the Buy America requirement is especially significant in that it will ensure that Federal Highway Trust Fund dollars are used to support and create jobs in the U.S. This approach is similar to the conditional waivers previously given for various vehicle projects. Thus, so long as the final assembly of the 75 State projects occurs in the U.S., applicants to this waiver request may proceed to purchase these vehicles and equipment consistent with the Buy America requirement.

In accordance with the provisions of section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Technical Corrections Act of 2008 (Pub. L. 110–244), FHWA is providing this notice of its finding that a public interest waiver of Buy America requirements is appropriate on the condition that the vehicles and equipment identified in the notice be assembled in the U.S. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: February 13, 2015.

Gregory G. Nadeau,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2015–03564 Filed 2–20–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35879 (Sub-No. 1)]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: Partial revocation of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board revokes the class exemption as it pertains to the trackage rights described in Docket No. FD 35879 [1] to permit the trackage rights to expire at midnight on October 31, 2015, in accordance with the agreement of the parties, subject to the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

DATES: This decision is effective on March 25, 2015. Petitions to stay must be filed by March 5, 2015. Petitions for reconsideration must be filed by March 16, 2015.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to Docket No. FD 35879 (Sub-No. 1) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on BNSF's representative: Karl Morell, Ball Janik LLP, Suite 225, 655 Fifteenth St. NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

[1] In that docket, on November 25, 2014, BNSF Railway Company (BNSF) filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice addressed an agreement in which Union Pacific Railroad Company (UP) granted local trackage rights to BNSF over UP's lines extending between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles. *See BNSF Ry.—Temporary Trackage Rights Exemption—Union Pac. R.R.,* FD 35879 (STB served Dec. 11, 2014). BNSF notes that, because the trackage rights covered by that docket are ''local'' rather than ''overhead'' rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8).

Decided: February 18, 2015.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–03598 Filed 2–20–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Information Collection Renewal; Comment Request; Anti-Money Laundering Programs for Insurance Companies and Non-Bank Residential Mortgage Lenders and Originators

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN invites comment on the renewal of information collections in existing regulations requiring insurance companies and non-bank mortgage lenders and originators to develop and implement written anti-money laundering programs reasonably designed to prevent those financial institutions from being used to facilitate money laundering and the financing of terrorist activities. This request for comments is being made pursuant to the Paperwork Reduction Act (''PRA'') of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before April 24, 2015.

ADDRESSES: Written comments should be submitted to: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Attention: Anti-Money Laundering Program Comments—Insurance Companies and Non-Bank Residential Mortgage Lenders and Originators. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* again with a caption, in the body of the text, ''Attention: Anti-Money Laundering Program Comments—Insurance Companies and Non-Bank Residential Mortgage Lenders and Originators.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 800–767–2825 or email *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act (''BSA''), Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829(b), 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, among other things, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1]

Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury to administer the BSA has been delegated to the Director of FinCEN.

The information collected and retained under the regulations addressed in this notice assists federal, state, and local law enforcement as well as regulatory authorities in the identification, investigation, and prosecution of money laundering and other matters. In accordance with the requirements of the PRA, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, the following information is presented concerning the recordkeeping requirements listed below.

Title: Anti-money laundering programs for insurance companies, 31 CFR 1025.210 and non-bank residential mortgage lenders and originators, 31 CFR 1029.210.

Office of Management and Budget (''OMB'') Control Number: 1506–0035.

Abstract: Insurance companies and non-bank residential mortgage lenders and originators are required to establish and maintain written anti-money laundering programs. A copy of the written program must be maintained for five years.

Current Action: Renewal of current regulations.

Type of Review: Renewal of a currently approved information collection.

Affected Public: Businesses and other for-profit institutions.

Estimated Number of Respondents: 1,200 Insurance Companies and 31,000

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56.

Non-Bank Residential Mortgage Lender and Originators.

Estimated Number of Responses: 1,200 Insurance Companies and 31,000 Non-Bank Residential Mortgage Lender and Originators.

Estimated Number of Hours: 1,200 Insurance Companies and 31,000 Non-Bank Residential Mortgage Lender and Originators.

Total Estimated Burden Hours: 43,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 13, 2015.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2015–03580 Filed 2–20–15; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Information Collection; Comment Request; Renewal Without Change of Anti-Money Laundering Programs for Money Services Businesses, Mutual Funds, and Operators of Credit Cards Systems

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, the Financial Crimes Enforcement Network (''FinCEN'') invites comment on a proposed renewal, without change, to information collections found in existing regulations requiring money services businesses, mutual funds, and operators of credit card systems to develop and implement written anti-money laundering programs reasonably designed to prevent those financial institutions from being used to facilitate money laundering and the financing of terrorist activities. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before April 24, 2015.

ADDRESSES: Written comments should be submitted to: Policy Division, Financial Crimes Enforcement Network, U.S Department of the Treasury, P.O. Box 39, Vienna, VA 22183. *Attention:* PRA Comments—AML Requirements for money services businesses, mutual funds, and operators of credit card systems. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov* with the caption in the body of the text, ''Attention: PRA Comments—AML Requirements for money services businesses, mutual funds, and operators of credit card systems.'' All submissions received must include the agency name and the specific OMB control number for this notice.

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 800–767–2825 or email *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act (''BSA''), Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829(b), 12 U.S.C.1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, among other things, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury to administer the BSA has been delegated to the Director of FinCEN. The information collected and retained under the regulations addressed in this notice assist federal, state, and local law enforcement as well as regulatory authorities in the identification, investigation, and prosecution of money laundering and other matters. In accordance with the requirements of the PRA, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, the following information is presented concerning the recordkeeping requirements listed below.

Title: Anti-money laundering programs for money services businesses (31 CFR 1022.210),[2] Anti-money laundering programs for mutual funds (31 CFR 1024.210), and Anti-money laundering programs for operators of credit card systems (31 CFR 1028.210).

Office of Management and Budget (''OMB'') Control Number: 1506–0020.

Abstract: MSBs, mutual funds, and operators of credit card systems are required to develop and implement written anti-money laundering programs. FinCEN recognizes a three hour burden for the initial development of an AML program. FinCEN further estimates an annual burden of one hour for maintenance of the program (*i.e.,* review and update as necessary). In view of the limited information providers and sellers of prepaid access (a type of MSB) are required to maintain, and the degree of automation available to them, FinCEN estimates an annual maintenance burden of two minutes for each prepaid card issued for this MSB subset.[3] A copy of the written

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56.

[2] The term money services business (''MSB'') includes dealer in foreign exchange, check casher, issuer or seller of traveler's checks or money orders, provider of prepaid access, money transmitter, U.S. Postal Service, and seller of prepaid access. *See* 31 CFR 1010.100(ff).

[3] Providers and sellers of prepaid access are required to collect and maintain the customer's name, date of birth, address, and identification number for five years. This collection is automated. FinCEN estimates that approximately 2,583,300 prepaid cards are issued annually.

program must be maintained for five years.

Current Action: Renewal without change to the existing regulations.

Affected Public: Businesses and other for-profit institutions.

Burden: Estimated Number of Respondents: 327,206.

31 CFR 1022.210 = 324,100.
31 CFR 1024.210 = 3,000.
31 CFR 1028.210 = 6.

Estimated Number of Responses: 2,838,406.

31 CFR 1022.210 = 2,835,400.
31 CFR 1024.210 = 3,000.
31 CFR 1028.210 = 6.

Estimated at one hour per respondent.

31 CFR 1022.210 = 252,100.[4]
31 CFR 1024.210 = 3,000.
31 CFR 1028.210 = 6.

Estimated Number of Hours: 255,106.

Estimated at two minutes per prepaid card issued.

31 CFR 1022.210 = 86,110.[5]

Estimated Total Number of hours: 341,216

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 13, 2015.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2015–03586 Filed 2–20–15; 8:45 am]

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[4] FinCEN estimates that it will take each MSB that is *not* a prepaid provider one hour to respond to this information collection, for a total of 252,100 hours. FinCEN estimates that it will take each MSB that *is* a prepaid provider two minutes per prepaid card issued, for a total of 86,100 hours. Combined, the estimated hourly burden for MSBs is 338,210.

[5] Ibid.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Information Collection; Comment Request; Renewal of Suspicious Activity Reporting Requirements by Brokers or Dealers in Securities and Futures Commission Merchants and Introducing Brokers in Commodities.

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN invites comment on the renewal of an information collection requirement for the recordkeeping and reporting of suspicious activities by brokers or dealers in securities and futures commission merchants (FCMs) and introducing brokers in commodities (IBs).[1] The Bank Secrecy Act Suspicious Activity Report, (''BSAR'')[2] will be used by these entities to report suspicious activity to FinCEN. This request for comments also covers 31 CFR 1023.320, relating to reports by brokers or dealers in securities of suspicious transactions, and 31 CFR 1026.320, reports by futures commission merchants and introducing brokers in commodities of suspicious transactions. This request for comments is being made pursuant to the Paperwork Reduction Act (''PRA'') of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before April 24, 2015.

ADDRESSES: Written comments should be submitted to: Policy Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, ''Attention: PRA Comments—SAR Requirements-Securities and Futures Industries.'' Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* again with a caption, in the body of the text, ''Attention: PRA Comments—SAR Requirements-Securities and Futures Industry.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 800–767–2825 or email *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act (''BSA''), Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829(b), 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, among other things, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[3]

Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions. The authority of the Secretary of the Treasury to administer the BSA has been delegated to the Director of FinCEN. The final Broker-Dealer SAR rule can be found at 31 CFR 1023.320. The final FCM–IB SAR rule can be found at 31 CFR 1026.320.

The information collected is required to be provided pursuant to 31 U.S.C. 5318(g), 31 CFR 1023.320 and 31 CFR 1026.320. This information will be made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel, and to the registered securities and futures associations and national exchanges (so-called self-

[1] The federal functional regulator for the securities industry is the U.S. Securities and Exchange Commission (''SEC'') and, for the futures industry, it is the Commodity Futures Trading Commission (''CFTC'').

[2] The BSAR was approved by the Office of Management and Budget (''OMB'') under control number 1506–0065. The BSAR is a single report that replaced previous individual SAR forms for depository institutions, casinos, money services businesses, securities brokers or dealers, mutual funds, futures commission merchants, introducing brokers in commodities, and insurance companies,

[3] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56.

regulatory organizations) for use in official performance of their duties, for regulatory purposes, and in investigations and proceedings involving domestic and international money laundering, terrorist financing, tax violations, fraud, and other financial crimes.

Broker-dealers, futures commission merchants, and introducing brokers in commodities required to report suspicious transactions, or reporting such transactions voluntarily, will be subject to the protection from liability contained in 31 U.S.C. 5318(g)(3) and to the prohibition contained in 31 U.S.C. 5318(g)(2) against notifying any person involved in the transaction that a suspicious activity report has been filed.

Title: Suspicious Activity Reporting by Brokers or Dealers in Securities and Futures Commission Merchants and Introducing Brokers in Commodities (31 CFR 1023.320, and 31 CFR 1026.320).

OMB Number: 1506–0019.

Abstract: This notice renews the SAR reporting and recordkeeping requirements for the above mentioned entities. Additionally, this notice updates the title of the information collection under this OMB control number to specifically define the entities addressed under this number.

Form Number: FinCEN Form 111 (BSAR).[4]

Type of Review: Renewal and update of a currently approved information collection.

Affected public: Businesses or other for-profit institutions.

Frequency: As required.

Estimated Reporting and Recordkeeping Burden: 1 hour.[5]

Estimated Number of Respondents: 8,300.

Estimated Total Annual Responses: 8,300.

Estimated Total Annual Reporting and Recordkeeping Burden: 8,300 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

[4] *See* footnote 2.

[5] The reporting and recordkeeping burden of the regulations (31 CFR 1023.320 and 1026.320) is reflected in the burden for the BSAR as approved under 1506–0065. This listed burden is assigned to maintain control number 1506–0019 active as a reporting requirement for 31 CFR 1023.320 and 1026.320.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 13, 2015.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Seismic Surveys in Cook Inlet, Alaska; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 140912776–5025–01]

RIN 0648–BE53

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Seismic Surveys in Cook Inlet, Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from Apache Alaska Corporation (Apache) for authorization to take marine mammals, by harassment, incidental to its proposed oil and gas exploration seismic survey program in Cook Inlet, Alaska, between March 1, 2015, and February 29, 2020. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue regulations and subsequent Letters of Authorization (LOAs) to Apache to incidentally harass marine mammals.

DATES: Comments and information must be received no later than March 25, 2015.

ADDRESSES: You may submit comments on this document, identified by 0648–BE53, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to: *www.regulations.gov,* enter NOAA–NMFS–2014–0144 in the ''Search'' box, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* 301–713–0376, Attn: Sara Young.

Comments regarding any aspect of the collection of information requirement contained in this proposed rule should be sent to NMFS via one of the means stated here and to the Office of Information and Regulatory Affairs, NEOB–10202, Office of Management and Budget (OMB), Attn: Desk Office, Washington, DC 20503, *OIRA@omb.eop.gov.*

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted 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).

An electronic copy of the application, containing a list of references used in this document, and the Draft Environmental Assessment (EA) may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this proposed rule may also be viewed, by appointment, during regular business hours at the above address. To help NMFS process and review comments more efficiently, please use only one method to submit comments.

FOR FURTHER INFORMATION CONTACT: Sara Young or Ben Laws, Office of Protected Resources, NMFS, (301) 427–8484.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On July 11, 2014, NMFS received a complete application from Apache requesting authorization for the take of six marine mammal species incidental to an oil and gas exploration seismic program in Cook Inlet, AK, over the course of 5 years. The proposed activity would occur for approximately 8–9 months annually over the course of a 5-year period between March 1, 2015 and February 29, 2020. In-water airguns will only be active for approximately 2–3 hours during each of the slack tide periods. There are approximately four slack tide periods in a 24-hour period; therefore, airgun operations will be active during approximately 8–12 hours per day, if weather conditions allow. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: Seismic airgun operations. Take, by Level B Harassment only, of individuals of six species or stocks of marine mammals is anticipated to result from the specified activity.

This is the fourth request (but first request for 5-year regulations and annual LOAs) that NMFS has received from Apache for takes of marine mammals incidental to conducting a seismic survey program in Cook Inlet. On April 30, 2012, NMFS issued a 1-year Incidental Harassment Authorization (IHA) to Apache for their first season of seismic acquisition in Cook Inlet (77 FR 27720). NMFS issued a second 1-year IHA to Apache in February 2013 (78 FR 12720, February 25, 2013). However, no seismic operations occurred in 2013. Most recently, NMFS issued a third IHA to Apache on March 4, 2014 to conduct 3D seismic survey operations in Cook Inlet (79 FR 13626, March 11, 2014). The third IHA expires on December 31, 2014.

Description of the Specified Activity

Overview

Apache has acquired over 850,000 acres of oil and gas leases in Cook Inlet since 2010 with the primary objective to explore for and develop oil and gas resources in Cook Inlet. Apache proposes to conduct oil and gas seismic surveys in Cook Inlet, Alaska, in an area that encompasses approximately 5,684 km² (2,195 mi²) of intertidal and offshore areas. This area is slightly larger than that shown in Apache's MMPA application and corresponds with the request contained in their Biological Assessment and Figure 1 in this document, which is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm#apache2020.* Vessels will lay and retrieve nodal sensors on the sea floor in periods of low current, or, in the case of the intertidal area, during high tide over a 24-hour period. In deep water, a hull or pole mounted pinger system will be used to determine the exact location of the nodes. The two instruments used in this technique are a transceiver (operating at 33–55kHz with a maximum source level of 188 dB re 1 μPa at 1 meter) and a transponder (operating at 35–50kHz with a maximum source level of 188 dB re 1 μPa at 1 meter). Apache proposes to use two synchronized vessels. Each source vessel will be equipped with compressors and 2,400 cubic inch (in³) airgun arrays. Additionally, one of the source vessels will be equipped with a 440 in³ shallow water source array, which can be deployed at high tide in the intertidal area in less than 1.8 m (6 ft) of water. The two source vessels do not fire the airguns simultaneously; rather, each vessel fires a shot every 24 seconds, leaving 12 seconds between shots.

The operation will utilize two source vessels, three cable/nodal deployment and retrieval operations vessels, a mitigation/monitoring vessel, a node re-charging and housing vessel, and two small vessels for personnel transport and node support in the extremely shallow waters in the intertidal area. Water depths for the proposed program will range from 0–128 m (0–420 ft).

Seismic surveys are designed to collect bathymetric and sub-seafloor data that allow the evaluation of potential shallow faults, gas zones, and archeological features at prospective exploration drilling locations. In the spring of 2011, Apache conducted a seismic test program to evaluate the feasibility of using new nodal (no cables) technology seismic recording equipment for operations in Cook Inlet. This test program found and provided important input to assist in finalizing the design of the 3D seismic program in Cook Inlet (the nodal technology was determined to be feasible). Apache began seismic onshore acquisition on the west side of Cook Inlet in September 2011 and offshore acquisition in May 2012 under an IHA issued by NMFS for April 30, 2012 through April 30, 2013 (77 FR 27720, May 11, 2012). Apache continued seismic data acquisition for approximately 3 months in spring and summer 2014 in compliance with an IHA issued on March 4, 2014 (79 FR 13626, March 11, 2014).

Dates and Duration

Apache proposes to acquire offshore/transition zone operations for approximately 8 to 9 months in offshore areas in open water periods from March 1 through December 31 annually over the course of 5 years. During each 24-hour period, seismic support activities may be conducted throughout the entire period; however, in-water airguns will only be active for approximately 2–3 hours during each of the slack tide periods. There are approximately four slack tide periods in a 24-hour period; therefore, airgun operations will be active during approximately 8–12 hours per day, if weather conditions allow. Two airgun source vessels will work concurrently on the spread, acquiring source lines approximately 12 km (7.5 mi) in length. Apache anticipates that a crew can acquire approximately 6.2 km² (2.4 mi²) per day, assuming a crew can work 8–12 hours per day. Thus, the actual survey duration each year will take approximately 160 days over the course of 8 to 9 months. The vessels will be mobilized out of Homer or Anchorage with resupply runs occurring multiple times per week out of Homer, Anchorage, or Nikiski.

Specified Geographic Region

Each phase of the Apache program would encounter land, intertidal transition zone, and marine environments in Cook Inlet, Alaska. However, only the portions occurring in the intertidal zone and marine environments have the potential to take marine mammals. The land-based portion of the proposed program would not result in underwater sound levels that would rise to the level of a marine mammal take.

The proposed location of Apache's acquisition plan is depicted in Figure 1 in this document. The total proposed seismic survey data acquisition locations encompass approximately 5,684 km² (2,195 mi²) of intertidal and offshore areas. This area is approximately 18% larger than the area contained in Apache's MMPA application. The additional area proposed for seismic survey data acquisition considered in this proposed rule (and not originally noted in Apache's MMPA application) is located in northern Cook Inlet near the Susitna Delta region. Apache would only operate in a portion of this entire area between March 1 and December 31 each year. There are numerous factors that influence the survey areas, including the geology of the Cook Inlet area, other permitting restrictions (*i.e.,* commercial fishing, Alaska Department of Fish and Game refuges), seismic imaging of leases held by other entities with whom Apache has agreements (*e.g.,* data sharing), overlap of sources and receivers to obtain the necessary seismic imaging data, and general operational restrictions (ice, weather, environmental conditions, marine life activity, etc.). Water depths for the program will range from 0–128 m (0–420 ft).

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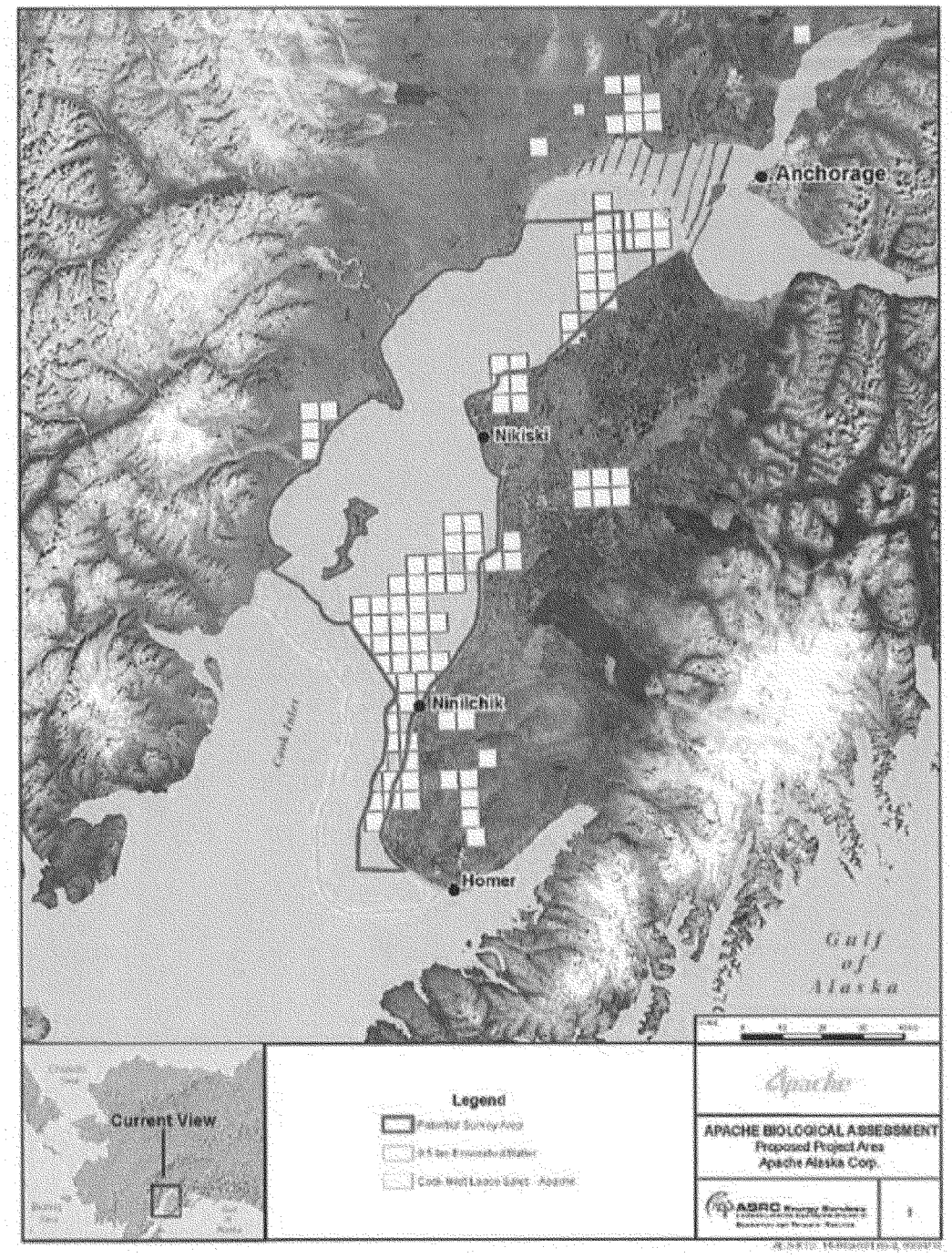

Figure 1. Proposed Project Area for Apache's 2015-2020 3D Seismic Survey Program

Detailed Description of Activities

(1) Recording System

The recording system is an autonomous system ''nodal'' (*i.e.,* no cables), made up of at least two types of nodes; one for the land and one for the intertidal and marine environment. For the land operator, a single-component sensor land node will be used (see Figure 3 in Apache's application); the inter-tidal and marine zone operators will use a submersible multi-component system made up of three velocity sensors and a hydrophone (see Figure 4 in application). These systems have the ability to record continuous data. Inline receiver intervals for the node systems will be 50 m (165 ft). The nodes are deployed in patches for the seismic source and deployed for up to 15 days. The deployment length is limited by battery length and data storage capacity.

The geometry methodology that Apache will use to gather seismic data is called *patch shooting.* This type of seismic survey requires the use of multiple vessels for cable layout/pickup, recording, and sourcing. Operations begin by laying node lines on the seafloor parallel to each other with a node line spacing of

approximately 402 m (1,320 ft). Apache's patch will have 6–8 node lines (receivers) that generally run perpendicular to the shoreline for transition zones and parallel to the shoreline for offshore areas. The node lines will be separated by either 402 or 503 m (1,320 or 1,650 ft). Inline spacing between nodes will be 50 m (165 ft). The node vessels will lay the entire patch on the seafloor prior to the airgun activity. Individual vessels are capable of carrying up to 400 nodes. With three node vessels operating simultaneously, a patch can be laid down in a single 24-hour period, weather permitting. A sample transition zone patch is depicted in Figure 5 in Apache's application. A sample offshore patch is depicted in Figure 6 in Apache's application.

As the patches are acquired, the node lines will be moved either side-to-side or inline to the next patch's location. Figure 7 in Apache's application depicts multiple side-to-side patches that are acquired individually but when seamed together at the processing phase, create continuous coverage along the coastline.

(2) Sensor Positioning

Transition Zone/Offshore Components: Once the nodes are in place on the seafloor, the exact position of each node is required. There are several techniques used to locate the nodes on the seafloor, depending on the depth of the water. In very shallow water, the node positions are either surveyed by a land surveyor when the tide is low, or the position is accepted based on the position at which the navigator has laid the unit.

In deeper water, a technique known as Ultra-Short Baseline (USBL) will be used. This technique uses a hull or pole mounted pinger to send a signal to a transponder which is attached to each node. The transponders are coded, and the crew knows which transponder goes with which node prior to the layout. The transponder's response (once pinged) is added together with several other responses to create a suite of ranges and bearings between the pinger boat and the node. Those data are then calculated to precisely position the node. In good conditions, the nodes can be interrogated as they are laid out. It is also common for the nodes to be pinged after they have been laid out. The pinger that will be used is a Sonardyne Shallow Water Cable Positioning system. The two instruments used are a Scout USBL Transceiver that operates at a frequency of 33–55 kilohertz (kHz) at a max source level of 188 decibels referenced to one micro Pascal (dB re 1 μPa) at 1 m; and a LR USBL Transponder that operates at a frequency of 35–50 kHz at a source level of 185 dB re 1 μPa at 1 m.

Onshore/Intertidal Components: Onshore and intertidal locating of source and receivers will be accomplished with Differential Global Positioning System/roving units (DGPS/RTK) equipped with telemetry radios which will be linked to a base station established on the *M/V Arctic Wolf* or similar vessel. Survey crews will have both helicopter and light tracked vehicle support. Offshore sound sources and receivers will be positioned with an integrated navigation system utilizing DGPS/RTK link to the land located base stations. The integrated navigation system will be capable of many features that are critical to efficient safe operations. The system will include a hazard display system that can be loaded with known obstructions or exclusion zones. Typically the vessel displays are also loaded with the day-to-day operational hazards, buoys, etc. This display gives a quick reference when a potential question regarding positioning or tracking arises. In the case of inclement weather, the hazard display can and has been used to vector vessels to safety.

(3) Seismic Source

Transition Zone/Offshore Components: Apache proposes to use two synchronized source vessels in time. The source vessels, *M/V Peregrine Falcon* and the *M/V Arctic Wolf* (or similar vessels), will be equipped with compressors and 2,400 in^3 airgun arrays (1,200 in^3, if feasible). The *M/V Peregrine Falcon,* or similar, will be equipped with a 440 in^3 shallow water source, which it can deploy at high tide in the intertidal area in less than 1.8 m (6 ft) of water. Most of the airgun sound energy is contained at frequencies below approximately 500 Hz. The modeled broadband source level for the array was 251 dB re 1uPa peak and 238 dB re 1 μPa rms. Source lines are oriented perpendicular to the node lines and parallel to the beach (see red lines on Figure 5 in Apache's application). The two source vessels will traverse source lines of the same patch using a shooting technique called *ping/pong.* The *ping/pong* methodology will have the first source boat commence the source effort. As the first airgun pop is initiated, the second gun boat is sent a command and begins a countdown to pop its guns 12 seconds later than the first vessel. The first source boat would then take its second pop 12 seconds after the second vessel has popped and so on. The vessels try to manage their speed so that they cover approximately 50 m (165 ft) between pops. The objective is to generate source positions for each of the two arrays close to a 50 m (165 ft) interval along each of the source lines in a patch. Vessel speeds range from 2–4 knots (2.3–4.6 miles/hour [mph]). The source effort will average 8–12 hours per day.

Each source line is approximately 12.9 km (8 mi) long. A single vessel is capable of acquiring a source line in approximately 1 hour. With two source vessels operating simultaneously, a patch of approximately 3,900 source points can be acquired in a single day assuming a 10–12 hour source effort. When the data from the patch of nodes have been acquired, the node vessels pick up the patch and roll it to the next location. The pickup effort takes approximately 18 hours.

Onshore/Intertidal Components: The onshore source effort will be shot holes. These holes are drilled every 50 m (165 ft) along source lines which are orientated perpendicular to the receiver lines and parallel to the coast. To access the onshore drill sites, Apache would use a combination of helicopter portable and tracked vehicle drills. At each source location, Apache will drill to the prescribed hole depth of approximately 10 m (35 ft) and load it with 4 kilograms (kg) (8.8 pounds [lbs]) of explosive (likely Orica OSX Pentolite Explosive). The hole will be capped with a ''smart cap'' that will make it impossible to detonate the explosive without the proper blaster. At the request of NMFS, Apache conducted sound source verification (SSV) of the onshore shot hole to determine if underwater received sound levels exceeded the NMFS thresholds for harassment. The results of the SSV confirmed received sound levels in the water are not expected to exceed NMFS's MMPA harassment thresholds (see Appendix A of Apache's application), therefore, onshore sources are not discussed further in this application. However, in the event that the planned charge depth of 10 m (33 ft) is unattainable due to loose sediments collapsing the bore hole, then an SSV will be conducted on the new land-based charge depths to determine if they are within NMFS thresholds.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS's jurisdiction that could occur near operations in Cook Inlet include four cetacean species: beluga whale (*Delphinapterus leucas*), killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), and gray whale (*Eschrichtius robustus*) and two pinniped species: harbor seal (*Phoca*

vitulina richardsi) and Steller sea lions (*Eumetopias jubatus*). The marine mammal species that is likely to be encountered most widely (in space and time) throughout the period of the planned surveys is the harbor seal. While killer and gray whales and Steller sea lions have been sighted in upper Cook Inlet, their occurrence is considered rare in that portion of the Inlet.

Of the six marine mammal species likely to occur in the proposed marine survey area, Cook Inlet beluga whales and one stock of Steller sea lions are listed as endangered under the ESA (Steller sea lions are divided into two distinct population segments (DPSs), an eastern and a western DPS; the relevant DPS in Cook Inlet is the western DPS). The eastern DPS was recently removed from the endangered species list (78 FR 66139, November 4, 2013)).

TABLE 1—TABLE OF STOCKS EXPECTED TO OCCUR IN THE PROJECT AREA

Species	Stock	ESA/ MMPA status; [1] Strategic (Y/N)	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Relative occurrence in Cook Inlet; season of occurrence.
Gray whale	Eastern North Pacific	-; N	19,126 (0.071; 18,017; 2007)	Rare migratory visitor; late winter.
Killer whale	Alaska Resident	-;N	2,347 (N/A; 2,084; 2009)	Occasionally sighted in Lowe Cook Inlet.
	Gulf of Alaska, Aleutian Island, Bering Sea Transient.	-:N	345 (N/A; 303; 2003).	
Beluga whale	Cook Inlet	E/D;Y	312 (0.10; 280; 2012)	Use upper Inlet in summer and lower in winter: annual.
Harbor porpoise	Gulf of Alaska	-;Y	31,046 (0.214; 25,987; 1998)	Widespread in the Inlet: annual (less in winter).
Steller sea lion	Western DPS	E/D;Y	79,300 (N/A; 45,659; 2012)	Primarily found in lower Inlet.
Harbor seal	Alaska—Cook Inlet	-;N	22,900 (0.053; 21,896; 2006)	Frequently found in upper and lower inlet; annual (more in northern Inlet in summer).

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the specie's (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

Pursuant to the ESA, critical habitat has been designated for Cook Inlet beluga whales and Steller sea lions. The proposed action falls within critical habitat designated in Cook Inlet for beluga whales but is not within critical habitat designated for Steller sea lions. On April 11, 2011, NMFS announced the two areas of beluga whale critical habitat (76 FR 20180) comprising 7,800 km² (3,013 mi²) of marine habitat. Designated beluga whale Critical Habitat Area 1 consists of 1,909 km² of Cook Inlet, north of Three Mile Creek and Point Possession. Critical Habitat Area 1 contains shallow tidal flats or mudflats and mouths of rivers that provide important areas for foraging, calving, molting, and escape from predators. High concentrations of beluga whales are often observed in these areas from spring through fall. Critical Habitat Area 2 consists of 5,891 km² located south of Critical Habitat Area 1 and includes nearshore areas along western Cook Inlet and Kachemak Bay. Critical Habitat Area 2 consists of known fall and winter foraging and transit habitat for beluga whales, as well as spring and summer habitat for smaller concentrations of beluga whales. Apache's total proposed oil and gas exploration seismic operations area is 5,684 km², of which a smaller portion would be surveyed over an eight to nine month period annually. Approximately 711 km² of Apache's proposed seismic survey area is in the designated beluga whale Critical Habitat Area 1 and approximately 4,200 km² is in the designated beluga whale Critical Habitat Area 2.

There are several species of mysticetes that have been observed infrequently in lower Cook Inlet, including minke whale (*Balaenoptera acutorostrata*), humpback whale (*Megaptera novaeangliae*), and fin whale (*Balaenoptera physalus*). Because of their infrequent occurrence in the location of seismic acquisition, they are not included in this proposed rule. Sea otters also occur in Cook Inlet. However, sea otters are managed by the U.S. Fish and Wildlife Service and are therefore not considered further in this proposed rule.

Cetaceans

1. Beluga Whales

Despite the ESA listing and critical habitat designations already mentioned, Cook Inlet beluga whales have not made significant progress towards recovery. Data indicate that the Cook Inlet population of beluga whales (which was listed in 2008) has been decreasing at a rate of 0.6 percent annually between 2002 and 2012 (Allen and Angliss, 2014). One review of the status of the population indicated that there is an 80% chance that the population will decline further (Hobbs and Shelden, 2008).

Cook Inlet beluga whales reside in Cook Inlet year-round although their distribution and density changes seasonally. Factors that are likely to influence beluga whale distribution within the inlet include prey availability, predation pressure, sea-ice cover and other environmental factors, reproduction, sex and age class, and human activities (Rugh *et al.,* 2000; NMFS 2008). Seasonal movement and density patterns as well as site fidelity appear to be closely linked to prey availability, coinciding with seasonal salmon and eulachon concentrations (Moore *et al.,* 2000). For example, during spring and summer, beluga whales are generally concentrated near the warmer waters of river mouths where prey availability is high and predator occurrence is low (Huntington 2000; Moore *et al.,* 2000). During the

winter (November to April), belugas disperse throughout the upper and mid-inlet areas, with animals found between Kalgin Island and Point Possession (Rugh *et al.,* 2000). During these months, there are generally fewer observations of beluga whales in the Anchorage and Knik Arm area (NMML 2004; Rugh *et al.,* 2004).

Beluga whales use several areas of the upper Cook Inlet for repeated summer and fall feeding. The primary hotspots for beluga feeding include the Big and Little Susitna rivers, Eagle Bay to Eklutna River, Ivan Slough, Theodore River, Lewis River, and Chickaloon River and Bay (NMFS, 2008). Availability of prey species appears to be the most influential environmental variable affecting Cook Inlet beluga whale distribution and relative abundance (Moore *et al.,* 2000). The patterns and timing of eulachon and salmon runs have a strong influence on beluga whale feeding behavior and their seasonal movements (Nemeth *et al.,* 2007; NMFS, 2008). The presence of prey species may account for the seasonal changes in beluga group size and composition (Moore *et al.,* 2000). Aerial and vessel-based monitoring conducted by Apache during the March 2011 2D test program in Cook Inlet reported 33 beluga sightings. One of the sightings was of a large group (~25 individuals on March 27, 2011) of feeding/milling belugas near the mouth of the Drift River. If belugas are present during the late summer/early fall, they are more likely to occur in shallow areas near river mouths in upper Cook Inlet. For example, no beluga whales were sighted in Trading Bay during the SSV conducted in September 2011 because during that time of year they are more likely to be in the upper regions of Cook Inlet.

2. Killer Whales

In general, killer whales are rare in upper Cook Inlet. Transient killer whales are known to feed on beluga whales, and resident killer whales are known to feed on anadromous fish (Shelden *et al.,* 2003). The availability of these prey species largely determines the likeliest times for killer whales to be in the area. Between 1993 and 2004, 23 sightings of killer whales were reported in the lower Cook Inlet during aerial surveys by Rugh *et al.* (2005). Surveys conducted over a span of 20 years by Shelden *et al.* (2003) reported 11 sightings in upper Cook Inlet between Turnagain Arm, Susitna Flats, and Knik Arm. No killer whales were spotted during surveys by Funk *et al.* (2005), Ireland *et al.* (2005), Brueggeman *et al.* (2007a, 2007b, 2008), or Prevel Ramos *et al.* (2006, 2008). Eleven killer whale strandings have been reported in Turnagain Arm, six in May 1991 and five in August 1993. NMFS aerial survey data spanning 13 years conducted in June each year have reported sightings ranging from 0 to 33 whales in a single year. Sightings data can be found in Table 5 of Apache's application. Therefore, very few killer whales, if any, are expected to approach or be in the vicinity of the action area.

3. Harbor Porpoise

Previously estimated density for harbor porpoises in Cook Inlet is 7.2 per 1,000 km^2 (Dahlheim *et al.,* 2000), suggesting that only a small number use Cook Inlet. Data from NMFS aerial surveys (Table 5 in Apache's application) flown annually in June from 2000–2012 sighted anywhere from 0 to 100 porpoises in a single season. The densities derived from this data range from 0 to 0.014 animals per km^2. Harbor porpoise have been reported in lower Cook Inlet from Cape Douglas to the West Foreland, Kachemak Bay, and offshore (Rugh *et al.,* 2005). Small numbers of harbor porpoises have been consistently reported in upper Cook Inlet between April and October, but more recent observations have recorded higher numbers (Prevel Ramos *et al.,* 2008). Prevel Ramos *et al.* (2008) reported 17 harbor porpoises from spring to fall 2006, while other studies reported 14 in the spring of 2007 (Brueggeman *et al.* 2007) and 12 in the fall of 2007 (Brueggeman *et al.* 2008). During the spring and fall of 2007, 129 harbor porpoises were reported between Granite Point and the Susitna River; however, the reason for the increase in numbers of harbor porpoise in the upper Cook Inlet remains unclear and the disparity between this result and past sightings suggests that it may be an anomaly. The spike in reported sightings occurred in July, which was followed by sightings of 79 harbor porpoises in August, 78 in September, and 59 in October 2007. It is important to note that the number of porpoises counted more than once was unknown, which suggests that the actual numbers are likely smaller than those reported. In 2012, Apache marine mammal observers recorded 137 sightings of 190 estimated individuals; a similar count to the 2007 spike previously observed. In addition, recent passive acoustic research in Cook Inlet by the Alaska Department of Fish and Game and the National Marine Mammal Laboratory have indicated that harbor porpoises occur in the area more frequently than previously thought, particularly in the West Foreland area in the spring (NMFS 2011); however overall numbers are still unknown at this time.

4. Gray Whale

Numbers of gray whales in Cook Inlet are small compared to the overall population (18,017 individuals). However, Apache marine mammal observers recorded nine sightings of nine individuals (including possible resights of the same animals) from May-July 2012. Of those sightings, seven were observed from project vessels, and two were observed from land-based observation stations. The eastern North Pacific gray whales observed in Cook Inlet are likely migrating to summer feeding grounds in the Bering, Chukchi, and Beaufort Seas, though a small number feed along the coast between Kodiak Island and northern California (Matkin, 2009; Carretta *et al.,* 2014). NMFS aerial surveys flown annually in June have not sighted a gray whale during survey season since 2001. Occurrences in the seismic survey area (especially in the upper parts of the Inlet) are expected to be low.

Pinnipeds

Two species of pinnipeds may be encountered in Cook Inlet: Harbor seal and Steller sea lion.

1. Harbor Seals

Harbor seals inhabit the coastal and estuarine waters of Cook Inlet. Historically, harbor seals have been more abundant in lower Cook Inlet than in upper Cook Inlet (Rugh *et al.* 2005a,b). Harbor seals are non-migratory; their movements are associated with tides, weather, season, food availability, and reproduction. The major haulout sites for harbor seals are located in lower Cook Inlet, and their presence in the upper inlet coincides with seasonal runs of prey species. For example, harbor seals are commonly observed along the Susitna River and other tributaries along upper Cook Inlet during the eulachon and salmon migrations (NMFS, 2003). During aerial surveys of upper Cook Inlet in 2001, 2002, and 2003, harbor seals were observed 24 to 96 km (15 to 60 mi) south-southwest of Anchorage at the Chickaloon, Little Susitna, Susitna, Ivan, McArthur, and Beluga Rivers (Rugh *et al.,* 2005). NMFS aerial surveys flown in June have reported sightings ranging from 956 to 2037 harbor seals over the course of surveys from 2000 to 2012. Apache aerial observers recorded approximately 900 harbor seals north of the Forelands in 2012 (Lomac-MacNair *et al.,* 2013). Moreover, preliminary reports from Apache's 2014 vessel, aerial, and land observations suggest

harbor seals may be more abundant north of the Forelands than previously understood. During the 2D test program in March 2011, two harbor seals were observed by vessel-based PSOs. On March 25, 2011, one harbor seal was observed approximately 400 m (0.2 mi) from the *M/V Miss Diane.* At the time of the observation, the vessel was operating the positioning pinger, and PSOs instructed the operator to implement a shut-down. The pinger was shut down for 30 minutes while PSOs monitored the area and re-started the device when the animal was not sighted again during the 30 minute site clearing protocol. No unusual behaviors were reported during the time the animal was observed. The second harbor seal was observed on March 26, 2011, by vessel-based PSO onboard the *M/V Dreamcatcher* approximately 4,260 m (2.6 mi) from the source vessel, which was operating the 10 in^3 airgun at the time. NMFS and Apache do not anticipate encountering large haulouts of seals (the closest haulout site to the action area is located on Kalgin Island, which is approximately 22 km [14 mi] south of the McArthur River), but we do expect to see curious individual harbor seals; especially during large fish runs in the various rivers draining into Cook Inlet.

Important harbor seal life functions, such as breeding and molting may occur within portions of Apache's proposed survey area in June and August, but the co-occurrence is expected to be minimal. From November through January, harbor seals leave Cook Inlet to forage in Shelikof Strait (Boveng *et al.,* 2007).

2. Steller Sea Lion

Two separate stocks of Steller sea lions are recognized within U.S. waters: An eastern DPS, which includes animals east of Cape Suckling, Alaska; and a western DPS, which includes animals west of Cape Suckling (NMFS, 2008). Individuals in Cook Inlet are considered part of the western DPS, which is listed as endangered under the ESA.

Regional variation in trends in Steller sea lion pup counts in 2000–2012 is similar to that of non-pup counts (Johnson and Fritz, 2014). Overall, there is strong evidence that pup counts in the western stock in Alaska increased (1.45 percent annually). Between 2004 and 2008, Alaska western non-pup counts increased only 3%: Eastern Gulf of Alaska (Prince William Sound area) counts were higher and Kenai Peninsula through Kiska Island counts were stable, but western Aleutian counts continued to decline. Johnson and Fritz (2014) analyzed western Steller sea lion population trends in Alaska and noted that there was strong evidence that non-pup counts in the western stock in Alaska increased between 2000 and 2012 (average rate of 1.67 percent annually). However, there continues to be considerable regional variability in recent trends across the range in Alaska, with strong evidence of a positive trend east of Samalga Pass and strong evidence of a decreasing trend to the west (Allen and Angliss, 2014).

Steller sea lions primarily occur in lower, rather than upper Cook Inlet and are rarely sighted north of Nikiski on the Kenai Peninsula. NMFS aerial surveys conducted in June, primarily in lower Cook Inlet, have sighted 0 to 104 Stellers during survey seasons ranging from 2000 to 2012. Haul-outs and rookeries are located near Cook Inlet at Gore Point, Elizabeth Island, Perl Island, and Chugach Island (NMFS, 2008). No Steller sea lion haul-outs or rookeries are located in the vicinity of the proposed seismic survey. Furthermore, no sightings of Steller sea lions were reported by Apache during the 2D test program in March 2011. During the 3D seismic survey, one Steller sea lion was observed from the *M/V Dreamcatcher* on August 18, 2012, during a period when the air guns were not active. Although Apache has requested takes of Steller sea lions, Steller sea lions would be rare in the action area during seismic survey operations.

Apache's application contains more information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2013 SAR is available on the Internet at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ak2013_final.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that components (*e.g.,* seismic airgun operations, vessel movement) of the specified activity, including mitigation, may impact marine mammals. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Proposed Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

Operating active acoustic sources, such as airgun arrays, has the potential for adverse effects on marine mammals. The majority of anticipated impacts would be from the use of acoustic sources.

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data. Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (note that animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 30 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- Phocid pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 100 kHz; and
- Otariid pinnipeds in Water: Functional hearing is estimated to occur between approximately 100 Hz and 40 kHz.

As mentioned previously in this document, six marine mammal species (four cetacean and two pinniped

species) are likely to occur in the proposed seismic survey area. Of the four cetacean species likely to occur in Apache's proposed project area, one is classified as a low-frequency cetacean (gray whale), two are classified as mid-frequency cetaceans (*i.e.,* beluga and killer whales), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise) (Southall *et al.,* 2007). Of the two pinniped species likely to occur in Apache's proposed project area, one is classified as a phocid (*i.e.,* harbor seal), and one is classified as an otariid (*i.e.,* Steller sea lion). A species's functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

1. Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun pulses might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.,* 1995). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.,* 1995).

Tolerance: Numerous studies have shown that pulsed sounds from air guns are often readily detectable in the water at distances of many kilometers. Numerous studies have also shown that marine mammals at distances more than a few kilometers from operating survey vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. In general, pinnipeds and small odontocetes (toothed whales) seem to be more tolerant of exposure to air gun pulses than baleen whales. Although various toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times, mammals of both types have shown no overt reactions. Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. Weir recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hr) for humpback and sperm whales according to the airgun array's operational status (*i.e.,* active versus silent).

Behavioral Disturbance: Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. These behavioral reactions are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification have the potential to be biologically significant if the change affects growth, survival, or reproduction. Examples of behavioral modifications that could impact growth, survival or reproduction include:

- Drastic changes in diving/surfacing/swimming patterns that lead to stranding (such as those associated with beaked whale strandings related to exposure to military mid-frequency tactical sonar);
- Habitat abandonment (temporary or permanent) due to loss of desirable acoustic environment; and
- Disruption of feeding or social interaction resulting in significant energetic costs, inhibited breeding, or cow-calf separation.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007).

Toothed whales. Few systematic data are available describing reactions of toothed whales to noise pulses. However, systematic work on sperm whales is underway (Tyack *et al.,* 2003), and there is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.,* Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005).

Seismic operators and marine mammal observers sometimes see dolphins and other small toothed whales near operating airgun arrays, but, in general, there seems to be a tendency for most delphinids to show some limited avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing. Nonetheless, there have been indications that small toothed whales sometimes move away or maintain a somewhat greater distance from the vessel when a large array of airguns is operating than when it is silent (*e.g.,* Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003). The beluga may be a species that (at least in certain geographic areas) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 10–20 km (6.2–12.4 mi) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might have been avoiding the seismic operations at distances of 10–20 km (6.2–12.4 mi) (Miller *et al.,* 2005).

Captive bottlenose dolphins and (of more relevance in this project) beluga whales exhibit changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2002, 2005). However, the animals tolerated high received levels of sound (pk–pk level >200 dB re 1 μPa) before exhibiting aversive behaviors.

Observers stationed on seismic vessels operating off the United Kingdom from 1997–2000 have provided data on the occurrence and behavior of various toothed whales exposed to seismic pulses (Stone, 2003; Gordon *et al.,* 2004). Killer whales were found to be significantly farther from large airgun arrays during periods of shooting compared with periods of no shooting. The displacement of the median distance from the array was approximately 0.5 km (0.3 mi) or more. Killer whales also appear to be more tolerant of seismic shooting in deeper water.

Reactions of toothed whales to large arrays of airguns are variable and, at least for delphinids, seem to be confined to a smaller radius than has been observed for mysticetes. However, based on the limited existing evidence, belugas should not be grouped with delphinids in the ''less responsive'' category.

Pinnipeds. Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources proposed for use. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of

airguns by pinnipeds and only slight (if any) changes in behavior. Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of Arctic ice seals exposed to seismic pulses (Harris *et al.,* 2001; Moulton and Lawson, 2002). These seismic projects usually involved arrays of 6 to 16 airguns with total volumes of 560 to 1,500 in^3. The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal sightings tended to be farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). However, these avoidance movements were relatively small, on the order of 100 m (328 ft) to a few hundreds of meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by. Seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. Similarly, seals are often very tolerant of pulsed sounds from seal-scaring devices (Mate and Harvey, 1987; Jefferson and Curry, 1994; Richardson *et al.,* 1995a). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.,* 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinniped individuals or populations.

Masking: Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

Masking occurs when anthropogenic sounds and signals (that the animal utilizes) overlap at both spectral and temporal scales. For the airgun sound generated from the proposed seismic surveys, sound will consist of low frequency (under 500 Hz) pulses with extremely short durations (less than one second). Lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. There is little concern regarding masking near the sound source due to the brief duration of these pulses and relatively longer silence between air gun shots (approximately 12 seconds). However, at long distances (over tens of kilometers away), due to multipath propagation and reverberation, the durations of airgun pulses can be ''stretched'' to seconds with long decays (Madsen *et al.,* 2006), although the intensity of the sound is greatly reduced.

This could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009); however, no baleen whales are expected to occur within the proposed action area. Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior by shifting call frequencies, and/or increasing call volume and vocalization rates. For example, blue whales are found to increase call rates when exposed to seismic survey noise in the St. Lawrence Estuary (Di Iorio and Clark, 2010). The North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increase call frequency (Parks *et al.,* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *et al.,* 2000). Additionally, beluga whales have been known to change their vocalizations in the presence of high background noise possibly to avoid masking calls (Au *et al.,* 1985; Lesage *et al.,* 1999; Scheifele *et al.,* 2005). Although some degree of masking is inevitable when high levels of manmade broadband sounds are introduced into the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Structured signals, such as the echolocation click sequences of small toothed whales, may be readily detected even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.,* 1995). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio. In the cases of higher frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.,* 1986; Dubrovskiy, 1990; Bain *et al.,* 1993; Bain and Dahlheim, 1994). Toothed whales, and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.,* 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.,* 1999). A few marine mammal species are known to increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.,* 1993, 1999; Terhune, 1999; Foote *et al.,* 2004; Parks *et al.,* 2007, 2009; Di Iorio and Clark, 2009; Holt *et al.,* 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of

marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Directional hearing has been demonstrated at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.,* 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of sound generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Although in the case of the seismic survey, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS.

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002b, 2003, 2005a, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the proposed seismic surveys in Cook Inlet. Cetaceans generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or consistent as those of cetaceans, and occasionally they seem to be attracted to operating seismic vessels (NMFS, 2010).

Non-auditory Physical Effects: Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (*i.e.,* beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it

mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses; autonomic nervous system responses; neuroendocrine responses; or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle, 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response due to exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to anthropogenic sound exposure, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to anthropogenic sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (*e.g.,* elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the effects of sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, we assume that reducing a marine mammal's ability to gather information about its environment and communicate with other members of its species would induce stress, based on data that terrestrial animals exhibit those responses under similar conditions (NRC, 2003) and because marine mammals use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses. However, marine mammals also might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS. Resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses. Additionally, no beaked whale species occur in the proposed seismic survey area.

In general, very little is known about the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. There is no definitive evidence that any of these effects occur

even for marine mammals in close proximity to large arrays of airguns. In addition, marine mammals that show behavioral avoidance of seismic vessels, including belugas and some pinnipeds, are especially unlikely to incur non-auditory impairment or other physical effects. Therefore, it is unlikely that such effects would occur during Apache's proposed surveys given the brief duration of exposure and the planned monitoring and mitigation measures described later in this document.

Stranding and Mortality: Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.* 1993; Ketten 1995). Airgun pulses are less energetic and their peak amplitudes have slower rise times. To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to air gun pulses, even in the case of large air gun arrays.

However, in numerous past IHA notices for seismic surveys, commenters have referenced two stranding events allegedly associated with seismic activities, one off Baja California and a second off Brazil. NMFS has addressed this concern several times, including in the **Federal Register** notice announcing the IHA for Apache's first seismic survey in 2012. Without new information, NMFS does not believe that this issue warrants further discussion. For information relevant to strandings of marine mammals, readers are encouraged to review NMFS's response to comments on this matter found in 69 FR 74905 (December 14, 2004), 71 FR 43112 (July 31, 2006), 71 FR 50027 (August 24, 2006), 71 FR 49418 (August 23, 2006), and 77 FR 27720 (May 11, 2012).

It should be noted that strandings related to sound exposure have not been recorded for marine mammal species in Cook Inlet. Beluga whale strandings in Cook Inlet are not uncommon; however, these events often coincide with extreme tidal fluctuations (''spring tides'') or killer whale sightings (Shelden *et al.,* 2003). For example, in August 2012, a group of Cook Inlet beluga whales stranded in the mud flats of Turnagain Arm during low tide and were able to swim free with the flood tide. No strandings or marine mammals in distress were observed during the 2D test survey conducted by Apache in March 2011, and none were reported by Cook Inlet inhabitants. Furthermore, no strandings were reported during seismic survey operations conducted under the April 2012 IHA. As a result, NMFS does not expect any marine mammals will incur serious injury or mortality in Cook Inlet or strand as a result of the proposed seismic survey.

2. Potential Effects From Pingers on Marine Mammals

Active acoustic sources other than the airguns have been proposed for Apache's 5-year oil and gas exploration seismic survey program in Cook Inlet. The specifications for the pingers (source levels and frequency ranges) were provided earlier in this document. In general, pingers are known to cause behavioral disturbance and are commonly used to deter marine mammals from commercial fishing gear or fish farms. Due to the potential to change marine mammal behavior, shut downs described for airguns will also be applied to pinger use.

3. Potential Effects From Aircraft Noise on Marine Mammals

Apache plans to utilize aircraft to conduct aerial surveys near river mouths in order to identify locations or congregations of beluga whales and other marine mammals prior to the commencement of operations. The aircraft will not be used every day but will be used for surveys near river mouths. Aerial surveys will fly at an altitude of 305 m (1,000 ft) when practicable and weather conditions permit. In the event of a marine mammal sighting, aircraft will try to maintain a radial distance of 457 m (1,500 ft) from the marine mammal(s). Aircraft will avoid approaching marine mammals from head-on, flying over or passing the shadow of the aircraft over the marine mammals.

Studies on the reactions of cetaceans to aircraft show little negative response (Richardson *et al.,* 1995). In general, reactions range from sudden dives and turns and are typically found to decrease if the animals are engaged in feeding or social behavior. Whales with calves or in confined waters may show more of a response. Generally there has been little or no evidence of marine mammals responding to aircraft overflights when altitudes are at or above 305 m (1,000 ft), based on three decades of flying experience in the Arctic (NMFS, unpublished data). Based on long-term studies that have been conducted on beluga whales in Cook Inlet since 1993, NMFS expect that there will be no effects of this activity on beluga whales or other cetaceans. No change in beluga swim directions or other noticeable reactions have been observed during the Cook Inlet aerial surveys flown from 183 to 244 m (600 to 800 ft) (*e.g.,* Rugh *et al.,* 2000). By applying the operational requirements discussed above, sound levels underwater are not expected to rise to the level of take.

The majority of observations of pinnipeds reacting to aircraft noise are associated with animals hauled out on land or ice. There are few data describing the reactions of pinnipeds in water to aircraft (Richardson *et al.,* 1995). In the presence of aircraft, pinnipeds hauled out for pupping or molting generally became alert and then rushed or slipped (when on ice) into the water. Stampedes often result from this response and may increase pup mortality due to crushing or an increase rate of pup abandonment. The greatest reactions from hauled out pinnipeds were observed when low flying aircraft passed directly above the animal(s) (Richardson *et al.,* 1995). Although noise associated with aircraft activity could cause hauled out pinnipeds to rush into the water, there are no known haul out sites in the vicinity of the survey site. Therefore, the operation of aircraft during the seismic survey is not expected to result in the harassment of pinnipeds. To minimize the noise generated by aircraft, Apache will follow NMFS's Marine Mammal Viewing Guidelines and Regulations found on the Internet at: *http://www.alaskafisheries.noaa.gov/protectedresources/mmv/guide.htm.*

Vessel Impacts

Vessel activity and noise associated with vessel activity will temporarily increase in the action area during Apache's seismic survey as a result of the operation of nine vessels. To minimize the effects of vessels and noise associated with vessel activity, Apache will follow NMFS's Marine Mammal Viewing Guidelines and Regulations and will alter heading or speed if a marine mammal gets too close to a vessel. In addition, vessels will be operating at slow speed (2–4 knots) when conducting surveys and in a purposeful manner to and from work sites in as direct a route as possible. Marine mammal monitoring observers and passive acoustic devices will alert vessel captains as animals are detected to ensure safe and effective measures are applied to avoid coming into direct contact with marine mammals. Therefore, NMFS neither anticipates nor authorizes takes of marine mammals from ship strikes.

Odontocetes, such as beluga whales, killer whales, and harbor porpoises, often show tolerance to vessel activity; however, they may react at long distances if they are confined by ice, shallow water, or were previously

harassed by vessels (Richardson *et al.,* 1995). Beluga whale response to vessel noise varies greatly from tolerance to extreme sensitivity depending on the activity of the whale and previous experience with vessels (Richardson *et al.,* 1995). Reactions to vessels depend on whale activities and experience, habitat, boat type, and boat behavior (Richardson *et al.,* 1995) and may include behavioral responses, such as altered headings or avoidance (Blane and Jaakson, 1994; Erbe and Farmer, 2000); fast swimming; changes in vocalizations (Lesage *et al.,* 1999; Scheifele *et al.,* 2005); and changes in dive, surfacing, and respiration patterns.

There are few data published on pinniped responses to vessel activity, and most of the information is anecdotal (Richardson *et al.,* 1995). Generally, sea lions in water show tolerance to close and frequently approaching vessels and sometimes show interest in fishing vessels. They are less tolerant when hauled out on land; however, they rarely react unless the vessel approaches within 100–200 m (330–660 ft; reviewed in Richardson *et al.,* 1995).

Entanglement

Although some of Apache's equipment contains cables or lines, the risk of entanglement is extremely remote. Additionally, mortality from entanglement is not anticipated. The material used by Apache and the amount of slack is not anticipated to allow for marine mammal entanglements.

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat and other marine species are associated with elevated sound levels produced by airguns and other active acoustic sources. However, other potential impacts to the surrounding habitat from physical disturbance are also possible. This section describes the potential impacts to marine mammal habitat from the specified activity. Because the marine mammals in the area feed on fish and/or invertebrates there is also information on the species typically preyed upon by the marine mammals in the area. As noted earlier, upper Cook Inlet is an important feeding and calving area for the Cook Inlet beluga whale, and critical habitat has been designated for this species in the proposed seismic survey area.

Common Marine Mammal Prey in the Project Area

Fish are the primary prey species for marine mammals in upper Cook Inlet. Beluga whales feed on a variety of fish, shrimp, squid, and octopus (Burns and Seaman, 1986). Common prey species in Knik Arm include salmon, eulachon and cod. Harbor seals feed on fish such as pollock, cod, capelin, eulachon, Pacific herring, and salmon, as well as a variety of benthic species, including crabs, shrimp, and cephalopods. Harbor seals are also opportunistic feeders with their diet varying with season and location. The preferred diet of the harbor seal in the Gulf of Alaska consists of pollock, octopus, capelin, eulachon, and Pacific herring (Calkins, 1989). Other prey species include cod, flat fishes, shrimp, salmon, and squid (Hoover, 1988). Harbor porpoises feed primarily on Pacific herring, cod, whiting (hake), pollock, squid, and octopus (Leatherwood *et al.,* 1982). In the upper Cook Inlet area, harbor porpoise feed on squid and a variety of small schooling fish, which would likely include Pacific herring and eulachon (Bowen and Siniff, 1999; NMFS, unpublished data). Killer whales feed on either fish or other marine mammals depending on genetic type (resident versus transient respectively). Killer whales in Knik Arm are typically the transient type (Shelden *et al.,* 2003) and feed on beluga whales and other marine mammals, such as harbor seal and harbor porpoise. The Steller sea lion diet consists of a variety of fishes (capelin, cod, herring, mackerel, pollock, rockfish, salmon, sand lance, etc.), bivalves, squid, octopus, and gastropods.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.,* 1981) and possibly avoid predators (Wilson and Dill, 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background sound level.

Fishes produce sounds that are associated with behaviors that include territoriality, mate search, courtship, and aggression. It has also been speculated that sound production may provide the means for long distance communication and communication under poor underwater visibility conditions (Zelick *et al.,* 1999), although the fact that fish communicate at low-frequency sound levels where the masking effects of ambient noise are naturally highest suggests that very long distance communication would rarely be possible. Fishes have evolved a diversity of sound generating organs and acoustic signals of various temporal and spectral contents. Fish sounds vary in structure, depending on the mechanism used to produce them (Hawkins, 1993). Generally, fish sounds are predominantly composed of low frequencies (less than 3 kHz).

Since objects in the water scatter sound, fish are able to detect these objects through monitoring the ambient noise. Therefore, fish are probably able to detect prey, predators, conspecifics, and physical features by listening to environmental sounds (Hawkins, 1981). There are two sensory systems that enable fish to monitor the vibration-based information of their surroundings. The two sensory systems, the inner ear and the lateral line, constitute the acoustico-lateralis system.

Although the hearing sensitivities of very few fish species have been studied to date, it is becoming obvious that the intra- and inter-specific variability is considerable (Coombs, 1981). Nedwell *et al.* (2004) compiled and published available fish audiogram information. A noninvasive electrophysiological recording method known as auditory brainstem response is now commonly used in the production of fish audiograms (Yan, 2004). Popper and Carlson (1998) and the Navy (2001) found that fish generally perceive underwater sounds in the frequency range of 50–2,000 Hz, with peak sensitivities below 800 Hz. Even though some fish are able to detect sounds in the ultrasonic frequency range, the thresholds at these higher frequencies tend to be considerably higher than those at the lower end of the auditory frequency range.

Fish are sensitive to underwater impulsive sounds due to swim bladder resonance. As the pressure wave passes through a fish, the swim bladder is rapidly squeezed as the high pressure wave, and then the under pressure component of the wave, passes through the fish. The swim bladder may repeatedly expand and contract at the high sound pressure levels, creating pressure on the internal organs surrounding the swim bladder.

Literature relating to the impacts of sound on marine fish species can be divided into the following categories: (1) Pathological effects; (2) physiological effects; and (3) behavioral effects. Pathological effects include lethal and sub-lethal physical damage to fish; physiological effects include primary and secondary stress responses; and behavioral effects include changes in exhibited behaviors of fish. Behavioral

changes might be a direct reaction to a detected sound or a result of the anthropogenic sound masking natural sounds that the fish normally detect and to which they respond. The three types of effects are often interrelated in complex ways. For example, some physiological and behavioral effects could potentially lead to the ultimate pathological effect of mortality. Hastings and Popper (2005) reviewed what is known about the effects of sound on fishes and identified studies needed to address areas of uncertainty relative to measurement of sound and the responses of fishes. Popper *et al.* (2003/2004) also published a paper that reviews the effects of anthropogenic sound on the behavior and physiology of fishes.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona, 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.,* 1993). In general, fish react more strongly to pulses of sound rather than a continuous signal (Blaxter *et al.,* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.,* 1983; Ona, 1988; Ona and Godo, 1990) have shown that fish react when the sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish such as cod and herring when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken, 1992; Olsen, 1979; Ona and Godo, 1990; Ona and Toresen, 1988). However, other researchers have found that fish such as polar cod, herring, and capelin are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.,* 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.,* 1995).

Carlson (1994), in a review of 40 years of studies concerning the use of underwater sound to deter salmonids from hazardous areas at hydroelectric dams and other facilities, concluded that salmonids were able to respond to low-frequency sound and to react to sound sources within a few feet of the source. He speculated that the reason that underwater sound had no effect on salmonids at distances greater than a few feet is because they react to water particle motion/acceleration, not sound pressures. Detectable particle motion is produced within very short distances of a sound source, although sound pressure waves travel farther.

Potential Impacts to the Benthic Environment

Apache's seismic survey requires the deployment of a submersible recording system in the inter-tidal and marine zones. An autonomous ''nodal'' (*i.e.,* no cables) system would be placed on the seafloor by specific vessels in lines parallel to each other with a node line spacing of 402 m (0.25 mi). Each nodal ''patch'' would have six to eight node lines parallel to each other. The lines generally run perpendicular to the shoreline. An entire patch would be placed on the seafloor prior to airgun activity. As the patches are surveyed, the node lines would be moved either side to side or inline to the next location. Placement and retrieval of the nodes may cause temporary and localized increases in turbidity on the seafloor. The substrate of Cook Inlet consists of glacial silt, clay, cobbles, pebbles, and sand (Sharma and Burrell, 1970). Sediments like sand and cobble dissipate quickly when suspended, but finer materials like clay and silt can create thicker plumes that may harm fish; however, the turbidity created by placing and removing nodes on the seafloor would settle to background levels within minutes after the cessation of activity.

In addition, seismic noise will radiate throughout the water column from airguns and pingers until it dissipates to background levels. No studies have demonstrated that seismic noise affects the life stages, condition, or amount of food resources (fish, invertebrates, eggs) used by marine mammals, except when exposed to sound levels within a few meters of the seismic source or in few very isolated cases. Where fish or invertebrates did respond to seismic noise, the effects were temporary and of short duration. Consequently, disturbance to fish species due to the activities associated with the seismic survey (*i.e,* placement and retrieval of nodes and noise from sound sources) would be short term and fish would be expected to return to their pre-disturbance behavior once seismic survey activities cease.

Based on the preceding discussion, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Mitigation Measures Proposed by Apache

For the proposed mitigation measures, Apache listed the following protocols to be implemented during its seismic survey program in Cook Inlet.

1. Operation of Mitigation Airgun at Night

Apache proposes to conduct both daytime and nighttime operations. Nighttime operations would be initiated only if a ''mitigation airgun'' (typically the 10 in^3) has been continuously operational from the time that PSO monitoring has ceased for the day. Seismic activity would not ramp up from an extended shut-down (*i.e.,* when the airgun has been down with no activity for at least 10 minutes) during nighttime operations, and survey activities would be suspended until the following day. At night, the vessel captain and crew would maintain lookout for marine mammals and would order the airgun(s) to be shut down if marine mammals are observed in or about to enter the established exclusion zones.

2. Exclusion and Disturbance Zones

Apache proposes to establish exclusion zones to avoid Level A harassment (''injury exclusion zone'') of all marine mammals and to avoid Level B harassment (''disturbance exclusion zone'') for groups of five or more killer whales or harbor porpoises detected within the designated zones. The injury exclusion zone will correspond to the area around the source within which received levels equal or exceed 180 dB re 1 μPa [rms] for cetaceans and 190 dB re 1 μPa [rms] for pinnipeds and Apache will shut down or power down operations if any marine mammals are seen approaching or entering this zone (more detail below). The disturbance exclusion zone will correspond to the area around the source within which received levels equal or exceed 160 dB re 1 μPa [rms] and Apache will implement power down and/or shutdown measures, as appropriate, if

any beluga whales or group of five or more killer whales or harbor porpoises are seen entering or approaching the disturbance exclusion zone.

3. Power Down and Shutdown Procedures

A power down is the immediate reduction in the number of operating energy sources from a full array firing to a mitigation airgun. A shutdown is the immediate cessation of firing of all energy sources. The arrays will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full arrays but is outside the applicable exclusion zone of the single source. If a marine mammal is sighted within the applicable exclusion zone of the single energy source, the entire array will be shutdown (*i.e.,* no sources firing). Following a power down or a shutdown, airgun activity will not resume until the marine mammal has clearly left the applicable injury or disturbance exclusion zone. The animal will be considered to have cleared the zone if it: (1) Is visually observed to have left the zone; (2) has not been seen within the zone for 15 minutes in the case of pinnipeds and small odontocetes; or (3) has not been seen within the zone for 30 minutes in the case of large odontocetes, including killer whales and belugas.

4. Ramp-Up Procedures

A ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of air guns firing until the full volume is achieved. The purpose of a ramp-up (or ''soft start'') is to ''warn'' cetaceans and pinnipeds in the vicinity of the airguns and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the proposed seismic survey, the seismic operator will ramp up the airgun array slowly. NMFS proposes that the rate of ramp-up to be no more than 6 dB per 5-minute period. Ramp-up is used at the start of airgun operations, after a power- or shut-down, and after any period of greater than 10 minutes in duration without airgun operations (*i.e.,* extended shutdown).

A full ramp-up after a shutdown will not begin until there has been a minimum of 30 minutes of observation of the applicable exclusion zone by PSOs to assure that no marine mammals are present. The entire exclusion zone must be visible during the 30-minute lead-in to a full ramp up. If the entire exclusion zone is not visible, then ramp-up from a cold start cannot begin. If a marine mammal(s) is sighted within the injury exclusion zone during the 30-minute watch prior to ramp-up, ramp-up will be delayed until the marine mammal(s) is sighted outside of the zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes and pinnipeds (*e.g.* harbor porpoises, harbor seals, and Steller sea lions), or 30 minutes for large odontocetes (*e.g.,* killer whales and beluga whales).

5. Speed or Course Alteration

If a marine mammal is detected outside the Level A injury exclusion zone and, based on its position and the relative motion, is likely to enter that zone, the vessel's speed and/or direct course may, when practical and safe, be changed to also minimize the effect on the seismic program. This can be used in coordination with a power down procedure. The marine mammal activities and movements relative to the seismic and support vessels will be closely monitored to ensure that the marine mammal does not approach within the applicable exclusion radius. If the mammal appears likely to enter the exclusion radius, further mitigative actions will be taken, *i.e.,* either further course alterations, power down, or shut down of the airgun(s).

6. Measures for Beluga Whales and Groups of Killer Whales and Harbor Porpoises

The following additional protective measures for beluga whales and groups of five or more killer whales and harbor porpoises are proposed. Specifically, a 160-dB vessel monitoring zone would be established and monitored in Cook Inlet during all seismic surveys. If a beluga whale or groups of five or more killer whales and/or harbor porpoises are visually sighted approaching or within the 160-dB disturbance zone, survey activity would not commence until the animals are no longer present within the 160-dB disturbance zone. Whenever beluga whales or groups of five or more killer whales and/or harbor porpoises are detected approaching or within the 160-dB disturbance zone, the airguns may be powered down before the animal is within the 160-dB disturbance zone, as an alternative to a complete shutdown. If a power down is not sufficient, the sound source(s) shall be shut-down until the animals are no longer present within the 160-dB zone.

Additional Mitigation Measures Proposed by NMFS

In addition to the mitigation measures proposed by Apache, NMFS proposes implementation of the following mitigation measures.

Apache must not operate airguns within 10 miles (16 km) of the mean higher high water (MHHW) line of the Susitna Delta (Beluga River to the Little Susitna River) between April 15 and October 15. The purpose of this mitigation measure is to protect beluga whales in the designated critical habitat in this area that is important for beluga whale feeding and calving during the spring and fall months. The range of the setback required by NMFS was designated to protect this important habitat area and also to create an effective buffer where sound does not encroach on this habitat. This seasonal exclusion is proposed to be in effect from April 15–October 15. Activities can occur within this area from October 16–April 14.

The mitigation airgun will be operated at approximately one shot per minute, only during daylight and when there is good visibility, and will not be operated for longer than 3 hours in duration. In cases when the next start-up after the turn is expected to be during lowlight or low visibility, use of the mitigation airgun may be initiated 30 minutes before darkness or low visibility conditions occur and may be operated until the start of the next seismic acquisition line. The mitigation gun must still be operated at approximately one shot per minute.

NMFS proposes that Apache must suspend seismic operations if a live marine mammal stranding is reported in Cook Inlet coincident to, or within 72 hours of, seismic survey activities involving the use of airguns (regardless of any suspected cause of the stranding). The shutdown must occur if the animal is within a distance two times that of the 160 dB isopleth of the largest airgun array configuration in use. This distance was chosen to create an additional buffer beyond the distance at which animals would typically be considered harassed, as animals involved in a live stranding event are likely compromised, with potentially increased susceptibility to stressors, and the goal is to decrease the likelihood that they are further disturbed or impacted by the seismic survey, regardless of what the original cause of the stranding event was. Shutdown procedures will remain in effect until NMFS determines and advises Apache that all live animals involved in the stranding have left the

area (either of their own volition or following herding by responders).

Finally, NMFS proposes that if any marine mammal species are encountered, during seismic activities for which take is not authorized, that are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms), then Apache must alter speed or course, power down or shut-down the sound source to avoid take of those species.

Mitigation Conclusions

NMFS has carefully evaluated Apache's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measures are expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of seismic airguns, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of seismic airguns or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of seismic airguns or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Apache submitted information regarding marine mammal monitoring to be conducted during seismic operations as part of the proposed rule application. That information can be found in Sections 12 and 14 of the application. The monitoring measures may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures proposed by the applicant or prescribed by NMFS should contribute to or accomplish one or more of the following top-level goals:

1. An increase in our understanding of the likely occurrence of marine mammal species in the vicinity of the action, *i.e.,* presence, abundance, distribution, and/or density of species.
2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (*e.g.* sound or visual stimuli), through better understanding of one or more of the following: the action itself and its environment (*e.g.* sound source characterization, propagation, and ambient noise levels); the affected species (*e.g.* life history or dive pattern); the likely co-occurrence of marine mammal species with the action (in whole or part) associated with specific adverse effects; and/or the likely biological or behavioral context of exposure to the stressor for the marine mammal (*e.g.* age class of exposed animals or known pupping, calving or feeding areas).
3. An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.,* at what distance or received level).
4. An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: the long-term fitness and survival of an individual; or the population, species, or stock (*e.g.,* through effects on annual rates of recruitment or survival).
5. An increase in our understanding of how the activity affects marine mammal habitat, such as through effects on prey sources or acoustic habitat (*e.g.,* through characterization of longer-term contributions of multiple sound sources to rising ambient noise levels and assessment of the potential chronic effects on marine mammals).
6. An increase in understanding of the impacts of the activity on marine mammals in combination with the impacts of other anthropogenic activities or natural factors occurring in the region.
7. An increase in our understanding of the effectiveness of mitigation and monitoring measures.
8. An increase in the probability of detecting marine mammals (through improved technology or methodology), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals.

Monitoring Results From Previously Authorized Activities

As noted earlier in this document, NMFS has issued three IHAs to Apache for this same proposed activity. No

seismic surveys were conducted under the IHA issued in February 2013 (became effective March 1, 2013). Apache conducted seismic operations under the first IHA issued in April 2012. Below is a summary of the results from the monitoring conducted in accordance with the April 2012 IHA.

Marine mammal monitoring was conducted in central Cook Inlet between May 6 and September 30, 2012, which resulted in a total of 6,912 hours of observations. Monitoring was conducted from the two seismic survey vessels, a mitigation/monitoring vessel, four land platforms, and an aerial platform (either a helicopter or small fixed wing aircraft). PSOs monitored from the seismic vessels, mitigation/monitoring vessel, and land platforms during all daytime seismic operations. Aerial overflights were conducted 1–2 times daily over the survey area and surrounding coastline, including the major river mouths, to monitor for larger concentrations of marine mammals in and around the survey site. Passive acoustic monitoring (PAM) took place from the mitigation/monitoring vessel during all nighttime seismic survey operations and most daytime seismic survey operations. During the entire 2012 survey season, Apache's PAM equipment yielded only six confirmed marine mammal detections, one of which was a Cook Inlet beluga whale.

Six identified species and three unidentified species of marine mammals were observed from the vessel, land, and aerial platforms between May 6 and September 30, 2012. The species observed included Cook Inlet beluga whales, harbor seals, harbor porpoises, Steller sea lions, gray whales, and California sea lions. PSOs also observed unidentified species, including a large cetacean, pinniped, and marine mammal. The gray whale and California sea lion were not included in the 2012 IHA, so mitigation measures were implemented for these species to prevent unauthorized takes. There were a total of 882 sightings and an estimated 5,232 individuals (the number of individuals is typically higher than the number of sightings because a single sighting may consist of multiple individuals). Harbor seals were the most frequently observed marine mammal at 563 sightings of approximately 3,471 individuals, followed by beluga whales with 151 sightings of approximately 1,463 individuals, harbor porpoises with 137 sightings of approximately 190 individuals, and gray whales with 9 sightings of 9 individuals. Steller sea lions were observed on three separate occasions (4 individuals), and two California sea lions were observed once. No killer whales were observed during seismic survey operations conducted under the 2012 IHA.

A total of 88 exclusion zone clearing delays, 154 shutdowns, 7 power downs, 23 shutdowns following a power down, and one speed and course alteration were implemented under the 2012 IHA. Exclusion zone clearing delays, shutdowns, and shutdowns following a power down occurred most frequently during harbor seal sightings (n=61, n=110, n=14, respectively), followed by harbor porpoise sightings (n=18, n=28, n=6, respectively), and then beluga whale sightings (n=5, n=6, n=3, respectively). Power downs occurred most frequently with harbor seal (n=3) and harbor porpoise (n=3) sightings. One speed and course alteration occurred in response to a beluga whale sighting.

Based on the information from the 2012 monitoring report, NMFS has determined that Apache complied with the conditions of the 2012 IHA, and we conclude that these results support our original findings that the mitigation measures set forth in the 2012 Authorization effected the least practicable impact on the species or stocks.

Although Apache did not conduct any seismic survey operations under the 2013 IHA, they still conducted marine mammal monitoring surveys between May and August 2013. During those aerial surveys, Apache detected a total of three marine mammal species: beluga whale; harbor porpoise; and harbor seal. A total of 718 individual belugas, three harbor porpoises, and 919 harbor seals were sighted. Of the 718 observed belugas, 61 were calves. All of the calf sightings occurred in the Susitna Delta area, with the exception of a couple south of the Beluga River and a couple in Turnagain Arm. More than 60 percent of the beluga calf sightings occurred in June (n=39).

Proposed Monitoring Measures

1. Visual Vessel-Based Monitoring

Vessel-based monitoring for marine mammals would be done by experienced PSOs throughout the period of marine survey activities. PSOs would monitor the occurrence and behavior of marine mammals near the survey vessel during all daylight periods (nautical dawn to nautical dusk) during operation and during most daylight periods when airgun operations are not occurring. PSO duties would include watching for and identifying marine mammals, recording their numbers, distances, and reactions to the survey operations, and documenting ''take by harassment'' as defined by NMFS.

A minimum number of six PSOs (two per source vessel and two per support vessel) would be required onboard the survey vessel to meet the following criteria: (1) 100 percent monitoring coverage during all periods of survey operations in daylight (nautical twilight-dawn to nautical twilight-dusk; (2) maximum of 4 consecutive hours on watch per PSO; and (3) maximum of 12 hours of watch time per day per PSO.

PSO teams would consist of NMFS-approved field biologists. An experienced field crew leader would supervise the PSO team onboard the survey vessel. Apache currently plans to have PSOs aboard three vessels: the two source vessels (*M/V Peregrine Falcon* and *M/V Arctic Wolf*) and one support vessel (*M/V Dreamcatcher*). Two PSOs would be on the source vessels, and two PSOs would be on the support vessel to observe and implement the exclusion, power down, and shut down areas. When marine mammals are about to enter or are sighted within designated harassment and exclusion zones, airgun or pinger operations would be powered down (when applicable) or shut down immediately. The vessel-based observers would watch for marine mammals during all periods when sound sources are in operation and for a minimum of 30 minutes prior to the start of airgun or pinger operations after an extended shut down.

Crew leaders and most other biologists serving as observers would be individuals with experience as observers during seismic surveys in Alaska or other areas in recent years.

The observer(s) would watch for marine mammals from the best available vantage point on the source and support vessels, typically the flying bridge. The observer(s) would scan systematically with the unaided eye and 7×50 reticle binoculars. Laser range finders would be available to assist with estimating distance on the two source vessels. Personnel on the bridge would assist the observer(s) in watching for marine mammals.

All observations would be recorded in a standardized format. Data would be entered into a custom database using a notebook computer. The accuracy of the data would be verified by computerized validity data checks as the data are entered and by subsequent manual checks of the database. These procedures would allow for initial summaries of the data to be prepared during and shortly after the completion of the field program, and would facilitate transfer of the data to statistical, geographical, or other

programs for future processing and achieving. When a mammal sighting is made, the following information about the sighting would be recorded:

• Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the PSO, apparent reaction to activities (*e.g.,* none, avoidance, approach, paralleling, etc.), closest point of approach, and behavioral pace;

• Time, location, speed, activity of the vessel (*e.g.,* seismic airguns off, pingers on, etc.), sea state, ice cover, visibility, and sun glare; and

• The positions of other vessel(s) in the vicinity of the PSO location.

The ship's position, speed of support vessels, and water temperature, water depth, sea state, ice cover, visibility, and sun glare would also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

2. Visual Shore-Based Monitoring

In addition to the vessel-based PSOs, Apache proposes to utilize a shore-based station daily, to visually monitor for marine mammals. The location of the shore-based station would need to be sufficiently high to observe marine mammals; the PSOs would be equipped with pedestal mounted ''big eye'' (20x110) binoculars. The shore-based PSOs would scan the area prior to, during, and after the airgun operations and would be in contact with the vessel-based PSOs via radio to communicate sightings of marine mammals approaching or within the project area. This communication will allow the vessel-based observers to go on a ''heightened'' state of alert regarding occurrence of marine mammals in the area and aid in timely implementation of mitigation measures.

3. Aerial-Based Monitoring

When practicable, Apache proposes to utilize helicopter or fixed-wing aircraft to conduct aerial surveys of the project area prior to the commencement of operations in order to identify locations of congregations of beluga whales. Apache proposes to conduct daily aerial surveys. Daily surveys will be scheduled to occur at least 30 minutes and no more than 120 minutes prior to any seismic-related activities (including but not limited to node laying/retrieval or airgun operations). Daily aerial surveys will also occur on days that there may be no seismic activities. Aerial surveys are proposed to occur along and parallel to the shoreline throughout the project area as well as the eastern and western shores of central and northern Cook Inlet.

Weather and safety permitting, aerial surveys would fly at an altitude of 305 m (1,000 ft). In the event of a marine mammal sighting, aircraft would attempt to maintain a radial distance of 457 m (1,500 ft) from the marine mammal(s). Aircraft would avoid approaching marine mammals from head-on, flying over or passing the shadow of the aircraft over the marine mammal(s). By following these operational requirements, aerial surveys are not expected to harass marine mammals (Richardson *et al.,* 1995; Blackwell *et al.,* 2002).

Based on data collected from Apache during its survey operations conducted under the April 2012 and March 2014 IHAs, NMFS determined that the foregoing monitoring measures will allow Apache to identify animals nearing or entering the Level B disturbance exclusion zone with a reasonably high degree of accuracy.

Reporting Measures

Immediate reports will be submitted to NMFS if 25 belugas are detected in the Level B disturbance exclusion zone to evaluate and make necessary adjustments to monitoring and mitigation. If the number of detected takes for any marine mammal species is met or exceeded, Apache will immediately cease survey operations involving the use of active sound sources (*e.g.,* airguns and pingers) and notify NMFS.

1. Weekly Reports

Apache would submit a weekly field report to NMFS Headquarters as well as the Alaska Regional Office, no later than close of business each Thursday during the weeks when in-water seismic survey activities take place. The weekly field reports would summarize species detected (number, location, distance from seismic vessel, behavior), in-water activity occurring at the time of the sighting (discharge volume of array at time of sighting, seismic activity at time of sighting, visual plots of sightings, and number of power downs and shutdowns), behavioral reactions to in-water activities, and the number of marine mammals exposed.

2. Monthly Reports

Monthly reports will be submitted to NMFS for all months during which in-water seismic activities take place. The monthly report will contain and summarize the following information:

• Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings.

• Species, number, location, distance from the vessel, and behavior of any sighted marine mammals, as well as associated seismic activity (number of power-downs and shutdowns), observed throughout all monitoring activities.

• An estimate of the number (by species) of: (i) Pinnipeds that have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 190 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited; and (ii) cetaceans that have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited.

• A description of the implementation and effectiveness of the: (i) terms and conditions of the Biological Opinion's Incidental Take Statement (ITS); and (ii) mitigation measures of the LOA. For the Biological Opinion, the report shall confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness for minimizing the adverse effects of the action on ESA-listed marine mammals.

3. Annual Reports

Apache would submit an annual report to NMFS's Permits and Conservation Division within 90 days after the end of every operating season but no later than 60 days before the expiration of each annual LOA during the five-year period. The annual report would include:

• Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals).

• Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare).

• Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover.

• Analyses of the effects of survey operations.

• Sighting rates of marine mammals during periods with and without

seismic survey activities (and other variables that could affect detectability), such as: (i) Initial sighting distances versus survey activity state; (ii) closest point of approach versus survey activity state; (iii) observed behaviors and types of movements versus survey activity state; (iv) numbers of sightings/individuals seen versus survey activity state; (v) distribution around the source vessels versus survey activity state; and (vi) numbers of animals detected in the 160 dB harassment (disturbance exclusion) zone.

NMFS would review the draft annual reports. Apache must then submit a final annual report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft annual report. If NMFS decides that the draft annual report needs no comments, the draft report shall be considered to be the final report.

4. Notification of Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Apache shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, her designees, and the Alaska Regional Stranding Coordinators. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Apache to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Apache may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Apache would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, her designees, and the NMFS Alaska Stranding Hotline. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with Apache to determine whether modifications in the activities are appropriate.

In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the authorized activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Apache shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, her designees, the NMFS Alaska Stranding Hotline, and the Alaska Regional Stranding Coordinators within 24 hours of the discovery. Apache shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the proposed seismic survey program with proposed mitigation. Anticipated impacts to marine mammals are associated with noise propagation from the sound sources (*e.g.,* airguns and pingers) used in the seismic survey; no take is expected to result from the detonation of explosives onshore, as supported by the SSV study, from vessel strikes because of the slow speed of the vessels (2–4 knots), or from aircraft overflights, as surveys will be flown at a minimum altitude of 305 m (1,000 ft) and at 457 m (1,500 ft) when marine mammals are detected.

Apache requests authorization to take six marine mammal species by Level B harassment. These six marine mammal species are: Cook Inlet beluga whale; killer whale; harbor porpoise; gray whale; harbor seal; and Steller sea lion.

For impulse sounds, such as those produced by airgun(s) used in the seismic survey, NMFS uses the 160 dB re 1 μPa (rms) isopleth to indicate the onset of Level B harassment. The current Level A (injury) harassment threshold is 180 dB (rms) for cetaceans and 190 dB (rms) for pinnipeds. The NMFS annual aerial survey data provided in Table 5 of Apache's application was used to derive density estimates for each species (number of individuals/km^2).

Applicable Zones for Estimating ''Take by Harassment''

To estimate potential takes by Level B harassment for this proposed rule, as well as for mitigation radii to be implemented by PSOs, ranges to the 160 dB (rms) isopleths were estimated at three different water depths (5 m, 25 m, and 45 m) for nearshore surveys and at 80 m for channel surveys. The distances to this threshold for the nearshore survey locations are provided in Table 2 in Apache's application and correspond to the three transects modeled at each site in the onshore, nearshore, and parallel to shore directions. To estimate take by Level B harassment, Apache used the largest value from each category. The distances to the thresholds for the channel survey locations are provided in Table 4 in Apache's application and correspond to the broadside and endfire directions. The areas ensonified to the 160 dB isopleth for the nearshore survey are provided in Table 3 in Apache's application. The area ensonified to the 160 dB isopleth for the channel survey is 517 km^2.

Compared to the airguns, the relevant isopleths for the positioning pinger is quite small. The distances to the 190, 180, and 160 dB (rms) isopleths are 1 m, 3 m, and 25 m (3.3, 10, and 82 ft), respectively.

Estimates of Marine Mammal Density

Apache used one method to estimate densities for Cook Inlet beluga whales and another method for the other marine mammals in the area expected to be taken by harassment. Both methods are described in this document.

1. Beluga Whale Density Estimates

In consultation with staff from NMFS's National Marine Mammal Laboratory (NMML) during development of the second IHA in early 2013, Apache used a habitat-based model developed by Goetz *et al.* (2012a). Information from that model has once again been used to estimate densities of beluga whales in Cook Inlet and we consider it to be the best available information on beluga density. A summary of the model is provided here, and additional detail can be found in Goetz *et al.* (2012a). To develop NMML's estimated densities of belugas, Goetz et al. (2012a) developed a model based on aerial survey data, depth soundings, coastal substrate type, environmental sensitivity index, anthropogenic disturbance, and anadromous fish streams to predict beluga densities throughout Cook Inlet. The result of this work is a beluga density map of Cook Inlet, which easily sums the belugas predicted within a given geographic area. NMML developed its predictive habitat model from the distribution and group size of beluga whales observed between 1994 and 2008. A 2-part ''hurdle'' model (a hurdle model in which there are two processes, one generating the zeroes and one generating the positive values) was applied to describe the physical and anthropogenic factors that influence (1) beluga presence (mixed model logistic regression) and (2) beluga count data (mixed model Poisson regression). Beluga presence was negatively associated with sources of anthropogenic disturbance and positively associated with fish availability and access to tidal flats and sandy substrates. Beluga group size was positively associated with tidal flats and proxies for seasonally available fish. Using this analysis, Goetz *et al.* (2012) produced habitat maps for beluga presence, group size, and the expected number of belugas in each 1 km^2 cell of Cook Inlet. The habitat-based model developed by NMML uses a Geographic Information System (GIS). A GIS is a computer system capable of capturing, storing, analyzing, and displaying geographically referenced information; that is, data identified according to location. However, the Goetz *et al.* (2012) model does not incorporate seasonality into the density estimates. Rather, Apache factors in seasonal considerations of beluga density into the design of the survey tracklines and locations (as discussion in more detail later in this document) in addition to other factors such as weather, ice conditions, and seismic needs.

2. Non-beluga Whale Species Density Estimates

Densities of other marine mammals in the proposed project area were estimated from the annual aerial surveys conducted by NMFS for Cook Inlet beluga whale between 2000 and 2012 in June (Rugh *et al.,* 2000, 2001, 2002, 2003, 2004b, 2005b, 2006, 2007; Shelden *et al.,* 2008, 2009, 2010, 2012; Hobbs *et al.,* 2011). These surveys were flown in June to collect abundance data of beluga whales, but sightings of other marine mammals were also reported. Although these data were only collected in one month each year, these surveys provide the best available relatively long term data set for sighting information in the proposed project area. The general trend in marine mammal sighting is that beluga whales and harbor seals are seen most frequently in upper Cook Inlet, with higher concentrations of harbor seals near haul out sites on Kalgin Island and of beluga whales near river mouths, particularly the Susitna River. The other marine mammals of interest for this rule (killer whales, gray whales, harbor porpoises, Steller sea lions) are observed infrequently in upper Cook Inlet and more commonly in lower Cook Inlet. In addition, these densities are calculated based on a relatively large area that was surveyed, much larger than the proposed area for a given year of seismic data acquisition. Furthermore, these annual aerial surveys are conducted only in June (numbers from August surveys were not used because the area surveyed was not provided), so it does not account for seasonal variations in distribution or habitat use of each species.

Table 5 in Apache's application provides a summary of the results of each annual NMFS aerial survey conducted in June from 2000 to 2012. The total number of individuals sighted for each survey by year is reported, as well as total hours for the entire survey and total area surveyed. To estimate density of marine mammals, total number of individuals (other species) observed for the entire survey area by year (surveys usually last several days) was divided by the approximate total area surveyed for each year (density = individuals/km^2). As noted previously, the total number of animals observed for the entire survey includes both lower and upper Cook Inlet, so the total number reported and used to calculate density is higher than the number of marine mammals anticipated to be observed in the project area. In particular, the total number of harbor seals observed on several surveys is very high due to several large haul outs in lower and middle Cook Inlet. The table below (Table 2) provides average density estimates for gray whales, harbor seals, harbor porpoises, killer whales, and Steller sea lions over the 2000–2012 period.

TABLE 2—ANIMAL DENSITIES IN COOK INLET

Species	Average density (animals/km^2)
Gray whale	5.33E–05
Harbor seal	0.24931
Harbor porpoise	0.003895
Killer whale	0.000748
Steller sea lion	0.008281

Calculation of Takes by Harassment

1. Beluga Whales

As a result of discussions with NMFS, Apache has used the NMML model (Goetz et al., 2012a) for the estimate of takes in this proposed rule. Apache has established two zones (Zone 1 and Zone 2) and proposes to conduct seismic surveys within all, or part of these zones; to be determined as weather, ice, and priorities dictate.

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Figure 2: A map of Apache survey area divided into Zone 1 and Zone 2

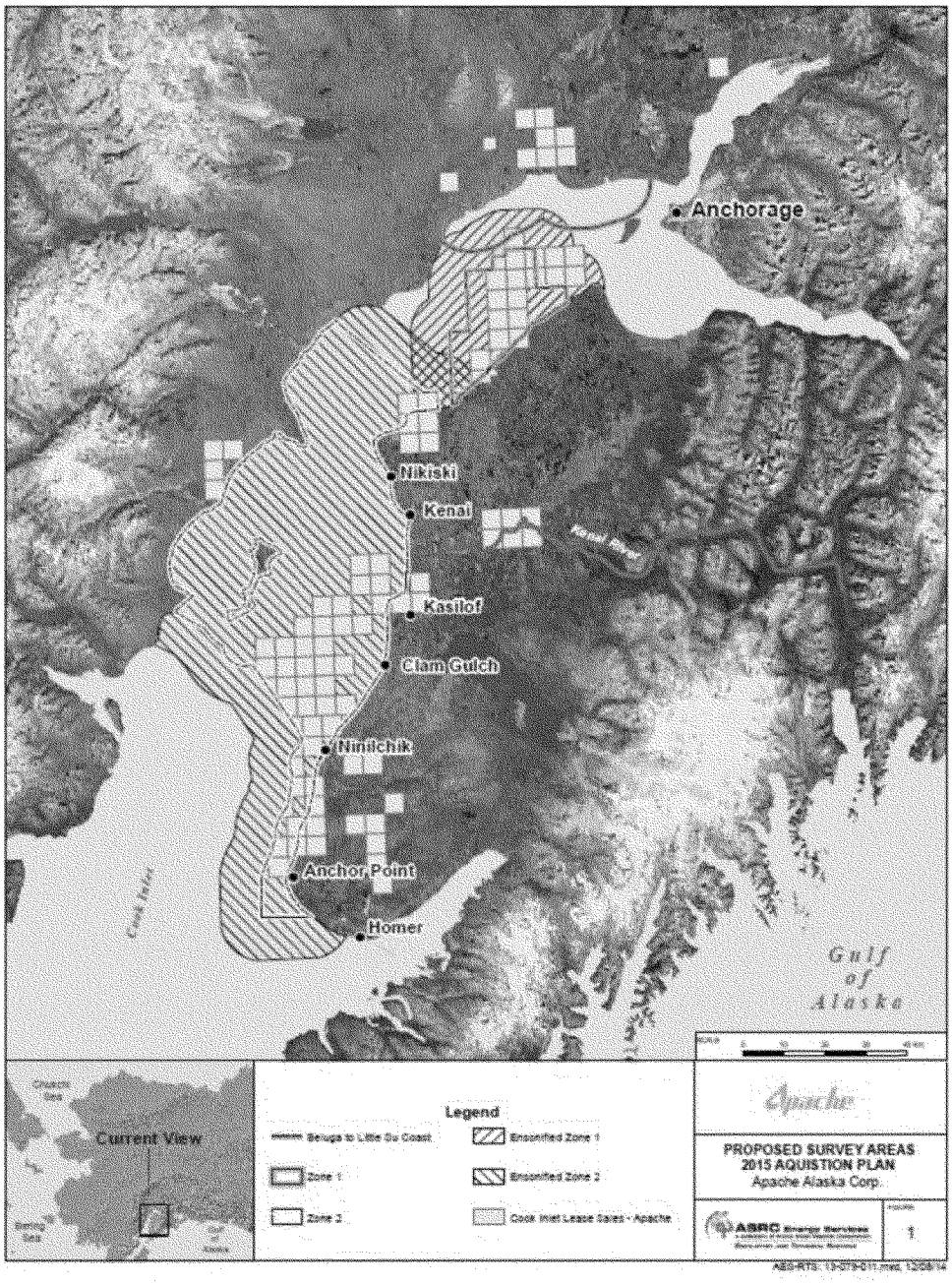

Figure 2: A map of Apache survey area divided into Zone 1 and Zone 2

Based on information using Goetz *et al.* model (2012a), Apache derived one density estimate for beluga whales in Upper Cook Inlet (*i.e.,* north of the Forelands) and another density estimate for beluga whales in Lower Cook Inlet (*i.e.,* south of the Forelands). The density estimate for Upper Cook Inlet is 0.0212 and is 0.0056 for Lower Cook Inlet. Apache's annual seismic operational area would be determined as weather, ice, and priorities dictate. Apache has requested a maximum allowed take for Cook Inlet beluga whales of 30 individuals. During each annual LOA (if issued), Apache would operate in a portion of the total seismic operation area of 5,684 km² (2,195 mi²), such that when one multiplies the anticipated beluga whale density based on the seismic survey operational area times the area to be ensonified to the 160-dB isopleth of 9.5 km (5.9 mi), estimated takes will not exceed 30 beluga whales in a given year

In order to estimate when that level is reached, Apache has developed a formula based on the total area of each seismic survey project zone (including the 160 dB buffer) and the average density of beluga whales for each zone.

TABLE 3—EXPECTED BELUGA WHALE TAKES, TOTAL AREA OF ZONE, AND AVERAGE BELUGA WHALE DENSITY ESTIMATES

	Expected Beluga takes from NMML model (including the 160 dB buffer)	Total area of zone (km²) (including the 160 dB buffer)	Average take density (dx)
Zone 1	28	1319	d1 = 0.0212
Zone 2	29	5160	d2 = 0.0056

Apache will limit surveying in the proposed seismic survey area (Zones 1 and 2 presented in Figure 2 of Apache's application) to ensure a maximum of 30 beluga takes during each open water season. In order to ensure that Apache does not exceed 30 beluga whale takes, Apache developed the following equation:

$$\text{Equation 1: } d_1A_1 + d_2A_2 \leq 30 \text{ Beluga Takes}$$

$$* \; d_x = \frac{\text{Expected Beluga Takes from the NMML model in Zone X}}{\text{Total Area of Zone X including 160 dB buffer}}$$

$$* \; A_x = \text{Actual Area Surveyed (km}^2\text{) including 160 dB buffer in Zone X}$$

This formula also allows Apache to have flexibility to prioritize survey locations in response to local weather, ice, and operational constraints. Apache may choose to survey portions of a zone or a zone in its entirety, and the analysis in this proposed rule takes this into account. For the 2015 season, Apache is proposing to survey the same area that was authorized in 2014, which uses the same delineation of Zone 1 and Zone 2 as the previous IHA. Using this formula, if Apache surveys the entire area of Zone 1 (1,319 km²), then essentially none of Zone 2 will be surveyed because the input in the calculation denoted by d_2A_2 would essentially need to be zero to ensure that the total allotted proposed take of beluga whales is not exceeded. The use of this formula will ensure that Apache's proposed seismic program, including the 160 dB buffer, will not exceed 30 calculated beluga takes.

Apache proposes to initially limit actual survey areas, including 160 dB buffer zones, to satisfy the formula denoted here. Operations are required to cease once Apache has conducted seismic data acquisition in an area where multiplying the applicable density by the total ensonified area out to the 160-dB isopleth equaled 30 beluga whales, using the equation provided above.

2. Other Marine Mammal Species

The estimated number of other Cook Inlet marine mammals that may be potentially harassed during the seismic surveys was calculated by multiplying the average density estimates (presented in Table 2 in this document) by the area ensonified by levels ≥160 dB re μPa rms (see Appendix C and Appendix D in Apache's application for more information).

Apache anticipates that a crew will collect seismic data for 8–12 hours per day over approximately 160 days over the course of 8 to 9 months each year. It is assumed that over the course of these 160 days, 100 days would be working in the offshore region and 60 days in the shallow, intermediate, and deep nearshore region. Of those 60 days in the nearshore region, 20 days would be in each depth. It is important to note that environmental conditions (such as ice, wind, fog) will play a significant role in the actual operating days; therefore, these estimates are conservative in order to provide a basis for probability of encountering these marine mammal species in the project area.

NMFS calculated the number of potential exposure instances for each non-beluga species using the density information derived from NMFS aerial surveys conducted from 2000–2012. These animal densities were multiplied by the number of days in each water depth (shallow, intermediate, deep, or offshore) as well as the estimated ensonified area per day for each water depth. This method is likely an overestimation of take as it represents every possible instance of take, without allowing for repeated take of individuals, which is possible with resident species.

The number of estimated takes by harassment was calculated using the total ensonified area of 7,096km² for the proposed survey area. This area was multiplied by a contingency factor of 25% to account for any necessary repeats of tracklines.

Total ensonified project area (7,096km²) + 25% of total area = 8,870km²

This total area was multiplied by the average density that was calculated for each species in the area (Table 2 in this document). As this estimation method does not account for any new animals transiting in and out of the project area, the calculated value was then multiplied by a turnover factor. The turnover factor is a value assigned by species that accounts for movement of new animals into the survey area. The assigned turnover estimates are based on estimates derived by Wood et al. 2012 in a density estimation for a 3D seismic survey environmental impact report. The turnover estimates range from 1 to 2.5, with a turnover factor of 1 assigned to residential species and 2.5 assigned to transitory species.

Table 3 below outlines the calculation of encounter probabilities for non-beluga species and how they were calculated.

TABLE 4—ENCOUNTER PROBABILITY OF NON-BELUGA SPECIES PER SEASON

Species	Density estimate (individuals/km2)	Exposure instances	Ensonified area (km²)	Ensonified area with contingency factor (km²)	Turnover factor	Exposure estimate (individuals)
Gray whale	5.33E–05	4.6	7096	8870	2.5	1.2
Harbor seal	0.24931	21,435.7	7096	8870	1	2211.4
Harbor porpoise	0.003895	334.9	7096	8870	1	34.5
Killer whale	0.000748	64.3	7096	8870	1.25	8.3
Steller sea lion	0.008281	712.0	7096	8870	1	73.5

Summary of Proposed Level B Harassment Takes

Table 4 here outlines the density estimates used to estimate Level B harassment takes, the requested Level B harassment take levels, the abundance of each species in Cook Inlet, the percentage of each species or stock estimated to be taken, and current population trends.

TABLE 5—DENSITY ESTIMATES, PROPOSED LEVEL B HARASSMENT TAKE LEVELS, SPECIES OR STOCK ABUNDANCE, PERCENTAGE OF POPULATION PROPOSED TO BE TAKEN, AND SPECIES TREND STATUS

Species	Average density (#individuals/km²)	Proposed level B take	Abundance	Percentage of population	Trend
Beluga Whale	Upper = 0.0212 Lower = 0.0056	30	312	9.6	Decreasing
Harbor Seal	0.24931	2,211	22,900	9.7	Stable
Harbor Porpoise	0.003895	35	31,046	0.11	No reliable information
Killer Whale	0.000748	8	1,123 (resident) 345 (transient)	0.71 2.31	Resident stock possibly increasing Transient stock stable
Steller Sea Lion	0.008281	73	79,300	0.09	Decreasing but with regional variability (some stable or increasing)
Gray Whale	5.33E–05	1	19,126	0.005	Stable/increasing

The following table applies the proposed Level B harassment take levels from Table 4 and expands them to a 5 year timeline, spanning the entire duration of the proposed rule.

TABLE 6—PROPOSED LEVEL B HARASSMENT TAKE LEVELS FOR 5 YEAR PERIOD

Species	Annual proposed level B take	Project total (5 Year) level B take
Beluga Whale	30	150
Harbor Seal	2,211	11,055
Harbor Porpoise	35	175
Killer Whale	8	40
Steller Sea Lion	73	365
Gray Whale	1	5

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, feeding, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

Given the proposed mitigation and related monitoring, no injuries or

mortalities are anticipated to occur as a result of Apache's proposed seismic survey in Cook Inlet, and none are proposed to be authorized. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. The number of takes that are anticipated and proposed to be authorized are expected to be limited to short-term Level B behavioral harassment. The seismic airguns do not operate continuously over a 24-hour period. Rather airguns are operational for a few hours at a time totaling about 12 hours a day.

Both Cook Inlet beluga whales and the western stock of Steller sea lions are listed as endangered under the ESA. Both stocks are also considered depleted under the MMPA. The estimated annual rate of decline for Cook Inlet beluga whales was 0.6 percent between 2002 and 2012. Steller sea lion trends for the western stock are variable throughout the region with some decreasing and others remaining stable or even indicating slight increases. The other four species that may be taken by harassment during Apache's proposed seismic survey program are not listed as threatened or endangered under the ESA nor as depleted under the MMPA.

Odontocete (including Cook Inlet beluga whales, killer whales, and harbor porpoises) reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. When in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 10–20 km (6–12 mi) of seismic vessels during aerial surveys (Miller *et al.,* 2005). However, as noted above, Cook Inlet belugas are more accustomed to anthropogenic sound than beluga whales in the Beaufort Sea. Therefore, the results from the Beaufort Sea surveys do not directly relate to potential reactions of Cook Inlet beluga whales. Also, due to the dispersed distribution of beluga whales in Cook Inlet during winter and the concentration of beluga whales in upper Cook Inlet from late April through early fall, belugas would likely occur in small numbers in the majority of Apache's proposed survey area during the majority of Apache's annual operational timeframe of March through December. For the same reason, it is unlikely that animals would be exposed to received levels capable of causing injury.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''. Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of marine mammal habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions. In addition, NMFS proposes to seasonally restrict seismic survey operations in locations known to be important for beluga whale feeding, calving, or nursing. The primary location for these biological life functions occur in the Susitna Delta region of upper Cook Inlet. NMFS proposes to implement a 16 km (10 mi) seasonal exclusion from seismic survey operations in this region from April 15-October 15. The highest concentrations of belugas are typically found in this area from early May through September each year. NMFS has incorporated a 2-week buffer on each end of this seasonal use timeframe to account for any anomalies in distribution and marine mammal usage.

Mitigation measures such as controlled vessel speed, dedicated marine mammal observers, non-pursuit, and shutdowns or power downs when marine mammals are seen within defined ranges designed both to avoid injury and disturbance will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects of the seismic survey are expected to be short-term, with no lasting biological consequence. Therefore, the exposure of cetaceans to sounds produced by Apache's proposed seismic survey operation is not anticipated to have an effect on annual rates of recruitment or survival of the affected species or stocks.

Some individual pinnipeds may be exposed to sound from the proposed seismic surveys more than once during the timeframe of the project. Taking into account the mitigation measures that are planned, effects on pinnipeds are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''. Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of pinniped habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions. In addition, the area where the survey will take place is not known to be an important location where pinnipeds haul out. The closest known haul-out site is located on Kalgin Island, which is about 22 km from the McArther River. More recently, some large congregations of harbor seals have been observed hauling out in upper Cook Inlet. However, mitigation measures and restrictions will be implemented to help reduce impacts to the animals. Therefore, the exposure of pinnipeds to sounds produced by this phase of Apache's proposed seismic survey is not anticipated to have an effect on annual rates of recruitment or survival on those species or stocks.

The addition of nine vessels, and noise due to vessel operations associated with the seismic survey, would not be outside the present experience of marine mammals in Cook Inlet, although levels may increase locally. Given the large number of vessels in Cook Inlet and the apparent habituation to vessels by Cook Inlet beluga whales and the other marine mammals that may occur in the area, vessel activity and noise is not expected to have effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Potential impacts to marine mammal habitat were discussed previously in this document (see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect annual rates of recruitment or survival of marine mammals in the area. Based on the size of Cook Inlet where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere. Additionally, seismic survey operations will not occur in the primary beluga feeding and calving habitat during times of high use by those animals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total annual marine mammal take from Apache's proposed seismic survey will have a negligible impact on

the affected marine mammal species or stocks.

Small Numbers

The requested takes proposed to be authorized annually represent 9.6 percent of the Cook Inlet beluga whale population of approximately 312 animals (Allen and Angliss, 2014), 0.71 percent of the Alaska resident stock and 2.31 percent of the Gulf of Alaska, Aleutian Island and Bering Sea stock of killer whales (1,123 residents and 345 transients), 0.11 percent of the Gulf of Alaska stock of approximately 31,046 harbor porpoises, and 0.005 percent of the eastern North Pacific stock of approximately 19,126 gray whales. The take requests presented for harbor seals represent 9.7 percent of the Cook Inlet/Shelikof stock of approximately 22,900 animals. The requested takes proposed for Steller sea lions represent 0.09 percent of the western stock of approximately 79,300 animals. These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment.

NMFS finds that any incidental take reasonably likely to result annually from the effects of the proposed activities, as proposed to be mitigated through this rulemaking and LOA process, will be limited to small numbers of the affected species or stock. In addition to the quantitative methods used to estimate take, NMFS also considered qualitative factors that further support the ''small numbers'' determination, including: (1) The seasonal distribution and habitat use patterns of Cook Inlet beluga whales, which suggest that for much of the time only a small portion of the population would be accessible to impacts from Apache's activity, as most animals are found in the Susitna Delta region of Upper Cook Inlet from early May through September; (2) other cetacean species and Steller sea lions are not common in the seismic survey area; (3) the proposed mitigation requirements, which provide spatio-temporal limitations that avoid impacts to large numbers of belugas feeding and calving in the Susitna Delta and limit exposures to sound levels associated with Level B harassment; (4) the proposed monitoring requirements and mitigation measures described earlier in this document for all marine mammal species that will further reduce impacts and the amount of takes; and (5) monitoring results from previous activities that indicated low numbers of beluga whale sightings within the Level B disturbance exclusion zone and low levels of Level B harassment takes of other marine mammals. Therefore, NMFS determined that the numbers of animals likely to be taken is small.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Relevant Subsistence Uses

The subsistence harvest of marine mammals transcends the nutritional and economic values attributed to the animal and is an integral part of the cultural identity of the region's Alaska Native communities. Inedible parts of the whale provide Native artisans with materials for cultural handicrafts, and the hunting itself perpetuates Native traditions by transmitting traditional skills and knowledge to younger generations (NOAA, 2007).

The Cook Inlet beluga whale has traditionally been hunted by Alaska Natives for subsistence purposes. For several decades prior to the 1980s, the Native Village of Tyonek residents were the primary subsistence hunters of Cook Inlet beluga whales. During the 1980s and 1990s, Alaska Natives from villages in the western, northwestern, and North Slope regions of Alaska either moved to or visited the south central region and participated in the yearly subsistence harvest (Stanek, 1994). From 1994 to 1998, NMFS estimated 65 whales per year (range 21–123) were taken in this harvest, including those successfully taken for food and those struck and lost. NMFS has concluded that this number is high enough to account for the estimated 14 percent annual decline in the population during this time (Hobbs *et al.,* 2008). Actual mortality may have been higher, given the difficulty of estimating the number of whales struck and lost during the hunts. In 1999, a moratorium was enacted (Public Law 106–31) prohibiting the subsistence take of Cook Inlet beluga whales except through a cooperative agreement between NMFS and the affected Alaska Native organizations. Since the Cook Inlet beluga whale harvest was regulated in 1999 requiring cooperative agreements, five beluga whales have been struck and harvested. Those beluga whales were harvested in 2001 (one animal), 2002 (one animal), 2003 (one animal), and 2005 (two animals). The Native Village of Tyonek agreed not to hunt or request a hunt in 2007, when no co-management agreement was to be signed (NMFS, 2008a).

On October 15, 2008, NMFS published a final rule that established long-term harvest limits on the Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence purposes (73 FR 60976). That rule prohibits harvest for a 5-year period (2008–2012), if the average abundance for the Cook Inlet beluga whales from the prior five years (2003–2007) is below 350 whales. The next 5-year period that could allow for a harvest (2013–2017), would require the previous five-year average (2008–2012) to be above 350 whales. The 2008 Cook Inlet Beluga Whale Subsistence Harvest Final Supplemental Environmental Impact Statement (NMFS, 2008a) authorizes how many beluga whales can be taken during a 5-year interval based on the 5-year population estimates and 10-year measure of the population growth rate. Based on the 2008–2012 5-year abundance estimates, no hunt occurred between 2008 and 2012 (NMFS, 2008a). The Cook Inlet Marine Mammal Council, which managed the Alaska Native Subsistence fishery with NMFS, was disbanded by a unanimous vote of the Tribes' representatives on June 20, 2012. At this time, no harvest is expected in 2015 or, likely, in 2016. Residents of the Native Village of Tyonek are the primary subsistence users in the Knik Arm area.

Data on the harvest of other marine mammals in Cook Inlet are lacking. Some data are available on the subsistence harvest of harbor seals, harbor porpoises, and killer whales in Alaska in the marine mammal stock assessments. However, these numbers are for the Gulf of Alaska including Cook Inlet, and they are not indicative of the harvest in Cook Inlet.

There is a low level of subsistence hunting for harbor seals in Cook Inlet. Seal hunting occurs opportunistically among Alaska Natives who may be fishing or travelling in the upper Inlet near the mouths of the Susitna River, Beluga River, and Little Susitna River. Some data are available on the subsistence harvest of harbor seals, harbor porpoises, and killer whales in Alaska in the marine mammal stock assessments. However, these numbers are for the Gulf of Alaska including Cook Inlet, and they are not indicative of the harvest in Cook Inlet. Some detailed information on the subsistence harvest of harbor seals is available from past studies conducted by the Alaska Department of Fish & Game (Wolfe *et al.,* 2009). In 2008, 33 harbor seals were taken for harvest in the Upper Kenai-Cook Inlet area. In the same study, reports from hunters stated that harbor seal populations in the area were increasing (28.6%) or remaining stable (71.4%). The specific hunting regions identified were Anchorage, Homer, Kenai, and Tyonek, and hunting generally peaks in March, September, and November (Wolfe *et al.,* 2009).

Potential Impacts to Subsistence Uses

Section 101(a)(5)(A) also requires NMFS to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The primary concern is the disturbance of marine mammals through the introduction of anthropogenic sound into the marine environment during the proposed seismic survey. Marine mammals could be behaviorally harassed and either become more difficult to hunt or temporarily abandon traditional hunting grounds. However, the proposed seismic survey should not have any impacts to beluga harvests as none currently occur in Cook Inlet. Additionally, subsistence harvests of other marine mammal species are limited in Cook Inlet.

Plan of Cooperation or Measures To Minimize Impacts to Subsistence Hunts

Regulations at 50 CFR 216.104(a)(12) require LOA applicants for activities that take place in Arctic waters to provide a Plan of Cooperation or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. NMFS regulations define Arctic waters as waters above 60° N. latitude.

Since November 2010, Apache has met and continues to meet with many of the villages and traditional councils throughout the Cook Inlet region. During these meetings, no concerns have been raised regarding potential conflict with subsistence harvest. Past meetings have been held with Alexander Creek, Knikatnu, Native Village of Tyonek, Salamatof, Tyonek Native Corporation, Ninilchik Traditional Council, Ninilchik Native Association, Village of Eklutna, Kenaitze Indian Tribe, and Cook Inlet Region, Inc.

Additionally, Apache met with the Cook Inlet Marine Mammal Council (CIMMC) to describe the project activities and discuss subsistence concerns. The meeting provided information on the time, location, and features of the proposed program, opportunities for involvement by local people, potential impacts to marine mammals, and mitigation measures to avoid impacts. Discussions regarding marine seismic operations continued with the CIMMC until its disbandment.

In 2014, Apache held meetings or discussions regarding project activities with the following entities: Native Village of Tyonek, Tyonek Native Corporation, Cook Inlet Region, Inc., Ninilchik Native Association, Ninilchik Tribal Council, Salamatof Native Association, Cook Inlet Keeper, Alaska Salmon Alliance, Upper Cook Inlet Drift Association, and the Kenai Peninsula Fisherman's Association. Further, Apache has placed posters in local businesses, offices, and stores in nearby communities and published newspaper ads in the Peninsula Clarion.

Apache has identified the following features that are intended to reduce impacts to subsistence users:

- In-water seismic activities will follow mitigation procedures to minimize effects on the behavior of marine mammals and, therefore, opportunities for harvest by Alaska Native communities; and
- Regional subsistence representatives may support recording marine mammal observations along with marine mammal biologists during the monitoring programs and will be provided with annual reports.

Apache and NMFS recognize the importance of ensuring that ANOs and federally recognized tribes are informed, engaged, and involved during the permitting process and will continue to work with the ANOs and tribes to discuss operations and activities. On February 6, 2012, in response to requests for government-to-government consultations by the CIMMC and Native Village of Eklutna, NMFS met with representatives of these two groups and a representative from the Ninilchik. We engaged in a discussion about the proposed IHA for phase 1 of Apache's seismic program, the MMPA process for issuing an IHA, concerns regarding Cook Inlet beluga whales, and how to achieve greater coordination with NMFS on issues that impact tribal concerns. NMFS contacted the local Native Villages to inform them of our receipt of an application from Apache to promulgate regulations and issue subsequent annual LOAs in August 2014.

Unmitigable Adverse Impact Analysis and Preliminary Determination

The project will not have any effect on beluga whale harvests because no beluga harvest will take place in 2015, nor is one likely to occur in the other years that would be covered by the 5-year regulations and associated LOAs. Additionally, the proposed seismic survey area is not an important native subsistence site for other subsistence species of marine mammals. Also, because of the relatively small proportion of marine mammals utilizing Cook Inlet, the number harvested is expected to be extremely low. Therefore, because the proposed program would result in only temporary disturbances, the seismic program would not impact the availability of these other marine mammal species for subsistence uses.

The timing and location of subsistence harvest of Cook Inlet harbor seals may coincide with Apache's project, but because this subsistence hunt is conducted opportunistically and at such a low level (NMFS, 2013c), Apache's program is not expected to have an impact on the subsistence use of harbor seals.

NMFS anticipates that any effects from Apache's proposed seismic survey on marine mammals, especially harbor seals and Cook Inlet beluga whales, which are or have been taken for subsistence uses, would be short-term, site specific, and limited to inconsequential changes in behavior and mild stress responses. NMFS does not anticipate that the authorized taking of affected species or stocks will reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (1) Causing the marine mammals to abandon or avoid hunting areas; (2) directly displacing subsistence users; or (3) placing physical barriers between the marine mammals and the subsistence hunters; and that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from Apache's proposed activities.

Endangered Species Act (ESA)

There are two marine mammal species listed as endangered under the

ESA with confirmed or possible occurrence in the proposed project area: The Cook Inlet beluga whale and the western DPS of Steller sea lion. In addition, the proposed action would occur within designated critical habitat for the Cook Inlet beluga whale. NMFS's Permits and Conservation Division has initiated consultation with NMFS' Alaska Region Protected Resources Division under section 7 of the ESA on the promulgation of 5-year regulations and the subsequent issuance of annual LOAs to Apache under section 101(a)(5)(A) of the MMPA. This consultation will be concluded prior to issuing any final rule.

National Environmental Policy Act (NEPA)

NMFS has prepared a Draft Environmental Assessment (EA) for the issuance of regulations and associated LOAs to Apache for the proposed oil and gas exploration seismic survey program in Cook Inlet. The Draft EA has been made available for public comment concurrently with this proposed rule (see **ADDRESSES**). NMFS will either finalize the EA and prepare a FONSI or prepare an Environmental Impact Statement prior to issuance of the final rule (if issued).

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Apache Alaska Corporation is the only entity that would be subject to the requirements in these proposed regulations. Apache Alaska Corporation is a part of Apache Corporation, which has operations and locations in the United States, Canada, Australia, Egypt, and the United Kingdom (North Sea), employs thousands of people worldwide, and has a market value in the billions of dollars. Therefore, Apache is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS and the OMB Desk Officer (see **ADDRESSES**).

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: February 9, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Subpart N is added to part 217 to read as follows:

Subpart N—Taking Marine Mammals Incidental to Seismic Surveys in Cook Inlet, Alaska

Sec.

217.130 Specified activity and specified geographical region.
217.131 Effective dates.
217.132 Permissible methods of taking.
217.133 Prohibitions.
217.134 Mitigation requirements.
217.135 Requirements for monitoring and reporting.
217.136 Letters of Authorization.
217.137 Renewals and modifications of Letters of Authorization.

Subpart N—Taking Marine Mammals Incidental to Seismic Surveys in Cook Inlet, Alaska

§ 217.130 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Apache Alaska Corporation (Apache) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to oil and gas exploration seismic survey program operations.

(b) The taking of marine mammals by Apache may be authorized in a Letter of Authorization (LOA) only if it occurs within the intertidal transition zone and marine environment of Cook Inlet, Alaska.

§ 217.131 Effective dates.

[Reserved]

§ 217.132 Permissible methods of taking.

(a) Under LOAs issued pursuant to § 216.106 of this chapter and § 217.136, the Holder of the LOA (hereinafter ''Apache'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.130(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 217.130(a) is limited to the indicated number of takes on an annual basis of the following species and is limited to Level B harassment:

(1) Cetaceans:

(i) Beluga whale (Delphinapterus leucas)—30;

(ii) Harbor porpoise (Phocoena phocoena)—35;

(iii) Killer whale (Orcinus orca)—10;

(iv) Gray whale (Eschrichtius robustus)—2;

(2) Pinnipeds:

(i) Harbor seal (Phoca vitulina)—2,211; and

(ii) Steller sea lion (Eumetopias jubatus)—75.

§ 217.133 Prohibitions.

Notwithstanding takings contemplated in § 217.130 and authorized by a LOA issued under § 216.106 of this chapter and § 217.136, no person in connection with the activities described in § 217.130 of this chapter may:

(a) Take any marine mammal not specified in § 217.132(b);

(b) Take any marine mammal specified in § 217.132(b) other than by incidental Level B harassment;

(c) Take a marine mammal specified in § 217.132(b) if the National Marine Fisheries Service (NMFS) determines such taking results in more than a negligible impact on the species or stocks of such marine mammal;

(d) Take a marine mammal specified in § 217.132(b) if NMFS determines such taking results in an unmitigable adverse impact on the species or stock

of such marine mammal for taking for subsistence uses; or

(e) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under § 216.106 of this chapter and § 217.136.

§ 217.134 Mitigation requirements.

When conducting the activities identified in § 217.130(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 217.136 must be implemented. These mitigation measures include but are not limited to:

(a) *General conditions:* (1) If any marine mammal species not listed in § 217.132(b) are observed during conduct of the activities identified in § 217.130(a) and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms), Apache must avoid such exposure (*e.g.,* by altering speed or course or by power down or shutdown of the sound source).

(2) If the allowable number of takes on an annual basis listed for any marine mammal species in § 217.132(b) is exceeded, or if any marine mammal species not listed in § 217.132(b) is exposed to SPLs greater than or equal to 160 dB re 1 μPa (rms), Apache shall immediately cease survey operations involving the use of active sound sources (*e.g.,* airguns and pingers), record the observation, and notify NMFS Office of Protected Resources.

(3) Apache must notify the Office of Protected Resources, NMFS at least 48 hours prior to the start of seismic survey activities each year.

(4) Apache shall conduct briefings as necessary between vessel crews, marine mammal monitoring team, and other relevant personnel prior to the start of all survey activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) *Visual monitoring:* (1) Apache shall establish zones corresponding to the area around the source within which SPLs are expected to equal or exceed relevant acoustic criteria. These zones shall be established as exclusion zones (shutdown zones) to avoid Level A harassment of any marine mammal, Level B harassment of beluga whales, or Level B harassment of aggregations of five or more killer whales or harbor porpoises. For all marine mammals other than beluga whales or aggregations of five or more harbor porpoises or killer whales, the Level B harassment zone shall be established as a disturbance zone and monitored as described in § 217.135(a)(1). These zones shall be defined as follows:

(i) For the full-power airgun array (2,400 in3), the Level B harassment zone (160 dB re 1 μPa [rms]) shall be of 9,500 m radial distance, the Level A harassment zone for cetaceans (180 dB re 1 μPa [rms]) shall be of 1,400 m radial distance; and the Level A harassment for pinnipeds (190 dB re 1 μPa [rms]) shall be of 380 m radial distance.

(ii) For the shallow-water source (440 in3), the Level B harassment zone (160 dB re 1 μPa [rms]) shall be of 2,500 m radial distance, the Level A harassment zone for cetaceans (180 dB re 1 μPa [rms]) shall be of 310 m radial distance; and the Level A harassment for pinnipeds (190 dB re 1 μPa [rms]) shall be of 100 m radial distance.

(iii) For the mitigation gun (10 in3), the Level B harassment zone (160 dB re 1 μPa [rms]) shall be of 280 m radial distance and a single Level A harassment zone of 10 m radial distance shall be established.

(iv) During use of pingers, Apache shall establish a Level B harassment zone (160 dB re 1 μPa [rms]) of 25 m radial distance.

(2) Vessel-based monitoring for marine mammals must be conducted before, during, and after all activity identified in § 217.130(a) that is conducted during daylight hours (defined as nautical twilight-dawn to nautical twilight-dusk), and shall begin not less than thirty minutes prior to the beginning of survey activity, continue throughout all survey activity that occurs during daylight hours, and conclude not less than thirty minutes following the cessation of survey activity. Apache shall use a sufficient number of qualified protected species observers (PSO) to ensure one hundred percent visual observation coverage during all periods of daylight survey operations with maximum limits of four consecutive hours on watch and twelve hours of watch time per day per PSO. One PSO must be a supervisory field crew leader. A minimum of two qualified PSOs shall be on watch at all times during daylight hours on each source and support vessel (except during brief meal and restroom breaks, when at least one PSO shall be on watch).

(i) A qualified PSO is a third-party trained biologist, with prior experience as a PSO during seismic surveys and the following minimum qualifications:

(A) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(B) Advanced education in biological science or related field (undergraduate degree or higher required);

(C) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);

(D) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(E) Sufficient training, orientation, or experience with the survey operation to provide for personal safety during observations;

(F) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when survey activities were conducted; dates and times when survey activities were suspended to avoid exposure of marine mammals to sound within defined exclusion zones; and marine mammal behavior; and

(G) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(ii) PSOs must have access to binoculars (7 × 50 with reticle rangefinder; Fujinon or equivalent quality), laser rangefinder, and bigeye binoculars (25 × 150) and shall scan the surrounding waters from the best available suitable vantage point with the naked eye and binoculars. At least one PSO shall scan the surrounding waters during all daylight hours using bigeye binoculars.

(iii) PSOs shall also conduct visual monitoring

(A) While the airgun array and nodes are being deployed or recovered from the water and

(B) During periods of good visibility when the sound sources are not operating for comparison of animal abundance and behavior.

(iv) PSOs shall be on watch at all times during daylight hours when survey operations are being conducted, unless conditions (*e.g.,* fog, rain, darkness) make observations impossible. The lead PSO on duty shall make this determination. If conditions deteriorate during daylight hours such that the sea surface observations are halted, visual observations must resume as soon as conditions permit.

(3) Survey activity must begin during periods of good visibility, which is defined as daylight hours when weather (*e.g.,* fog, rain) does not obscure the relevant exclusion zones within maximum line-of-sight. In order to begin survey activity, the relevant exclusion zones must be clear of marine mammals

for not less than thirty minutes. If marine mammals are present within or are observed approaching the relevant exclusion zone during this thirty-minute pre-clearance period, the start of survey activity shall be delayed until the animals are observed leaving the zone of their own volition and/or outside the zone or until fifteen minutes (for pinnipeds and harbor porpoises) or thirty minutes (for beluga whales, killer whales, and gray whales) have elapsed without observing the animal. While activities will be permitted to continue during low-visibility conditions, they must have been initiated following proper clearance of the exclusion zone under acceptable observation conditions and must be restarted, if shut down for greater than ten minutes for any reason, using the appropriate exclusion zone clearance procedures.

(c) *Ramp-up and shutdown:* (1) Survey activity involving the full-power airgun array or shallow-water source must be initiated, following appropriate clearance of the exclusion zone, using accepted ramp-up procedures. Ramp-up is required at the start of survey activity and at any time following a shutdown of ten minutes or greater. Ramp-up shall be implemented by starting the smallest single gun available and increasing the operational array volume in a defined sequence such that the source level of the array shall increase in steps not exceeding approximately 6 dB per five-minute period. PSOs shall continue monitoring the relevant exclusion zones throughout the ramp-up process and, if marine mammals are observed within or approaching the zones, a power down or shutdown shall be implemented and ramp-up restarted following appropriate exclusion zone clearance procedures as described in paragraph (b)(3) of this section.

(2) Apache must shut down or power down the source, as appropriate, immediately upon detection of any marine mammal approaching or within the relevant Level A exclusion zone or upon detection of any beluga whale or aggregation of five or more harbor porpoises or killer whales approaching or within the relevant Level B exclusion zone. Power down is defined as reduction of total airgun array volume from either the full-power airgun array (2,400 in3) or the shallow-water source (440 in3) to a single mitigation gun (maximum 10 in3). Power down must be followed by shutdown in the event that the animal(s) approach the exclusion zones defined for the mitigation gun. Detection of any marine mammal within an exclusion zone shall be recorded and reported weekly, as described in § 217.135(c)(2), to NMFS Office of Protected Resources.

(i) When a requirement for power down or shutdown is triggered, the call for implementation shall be made by the lead PSO on duty and Apache shall comply. Any disagreement with a determination made by the lead PSO on duty shall be discussed after implementation of power down or shutdown, as appropriate.

(ii) Following a power down or shutdown not exceeding ten minutes, Apache shall follow the ramp-up procedure described in paragraph (c)(1) of this section to return to full-power operation.

(iii) Following a shutdown exceeding ten minutes, Apache shall follow the exclusion zone clearance, described in paragraph (b)(3) of this section, and ramp-up procedures, described in paragraph (c)(1) of this section, before returning to full-power operation.

(3) Survey operations may be conducted during low-visibility conditions (*e.g.,* darkness, fog, rain) only when such activity was initiated following proper clearance of the exclusion zone under acceptable observation conditions, as described in paragraph (b)(3) of this section, and there has not been a shutdown exceeding ten minutes. Following a shutdown exceeding ten minutes during low-visibility conditions, survey operations must be suspended until the return of good visibility. During low-visibility conditions, vessel bridge crew must implement shutdown procedures if marine mammals are observed.

(d) *Additional mitigation:* (1) The mitigation airgun must be operated at approximately one shot per minute, and use of the gun may not exceed three consecutive hours. Ramp-up may not be used to circumvent the three-hour limitation on mitigation gun usage. Usage of the mitigation gun shall be limited by when feasible, employing a turn protocol of complete shutdown followed by pre-clearance and ramp-up such that full power is reached prior to returning to trackline (rather than using the mitigation gun throughout the turn) and turning on mitigation gun at least thirty minutes prior to nautical-twilight dusk when nighttime ramp-up is anticipated.

(2) Apache may alter speed or course during seismic operations if a marine mammal, based on its position and relative motion, appears likely to enter the relevant exclusion zone and such alteration may result in the animal not entering the zone. If speed or course alteration is not safe or practicable, or if after alteration the marine mammal still appears likely to enter the zone, power down or shutdown must be implemented.

(3) Apache shall not operate airguns within 16 km of the mean higher high water (MHHW) line of the Susitna Delta (Beluga River to the Little Susitna River) between April 15 and October 15.

(4) Apache must suspend survey operations if a live marine mammal stranding is reported within 19 km of the seismic source vessel coincident to or within 72 hours of survey activities involving the use of airguns, regardless of any suspected cause of the stranding. A live stranding event is defined as a marine mammal found on a beach or shore and unable to return to the water; on a beach or shore and able to return to the water but in apparent need of medical attention; or in the water but unable to return to its natural habitat under its own power or without assistance.

(i) Apache must immediately implement a shutdown of the airgun array upon becoming aware of the live stranding event.

(ii) Shutdown procedures shall remain in effect until NMFS determines that all live animals involved in the stranding have left the area (either of their own volition or following responder assistance).

(iii) Within 48 hours of the notification of the live stranding event, Apache must inform NMFS where and when they were operating airguns and at what discharge volumes.

(iv) Apache must appoint a contact who can be reached at any time for notification of live stranding events. Immediately upon notification of the live stranding event, this person must order the immediate shutdown of the survey operations.

§ 217.135 Requirements for monitoring and reporting.

(a) *Visual monitoring program:* (1) Disturbance zones shall be established as described in § 217.134(b)(1), and shall encompass the Level B harassment zones not defined as exclusion zones in § 217.134(b)(1). These zones shall be monitored to maximum line-of-sight distance from established vessel- and shore-based monitoring locations. If marine mammals other than beluga whales or aggregations of five or greater harbor porpoises or killer whales are observed within the disturbance zone, the observation shall be recorded and communicated as necessary to other PSOs responsible for implementing shutdown/power down requirements and any behaviors documented.

(2) Apache shall utilize a shore-based station to visually monitor for marine mammals. The shore-based station must

be staffed by PSOs under the same minimum requirements described in § 217.134(b)(2), must be located appropriately to monitor the area ensonified by that day's survey operations, must be of sufficient height to observe marine mammals within the ensonified area; and must be equipped with pedestal-mounted bigeye (25 × 150) binoculars. The shore-based PSOs shall scan the defined exclusion and disturbance zones prior to, during, and after survey operations, and shall be in contact with vessel-based PSOs via radio to communicate sightings of marine mammals approaching or within the defined zones.

(3) When weather conditions allow for safety, Apache shall utilize helicopter or fixed-wing aircraft to conduct daily aerial surveys of the project area prior to the commencement of operations in order to identify locations of beluga whale aggregations (five or more whales) or cow-calf pairs. Daily surveys shall be scheduled to occur at least thirty but no more than 120 minutes prior to any seismic survey-related activities (including but not limited to node laying/retrieval or airgun operations) and shall also occur on days when there may be no survey activities. Aerial surveys shall occur along and parallel to the shoreline throughout the project area as well as the eastern and western shores of central and northern Cook Inlet in the vicinity of the survey area.

(i) When weather conditions allow for safety, aerial surveys shall fly at an altitude of 305 m (1,000 ft). In the event of a marine mammal sighting, aircraft shall attempt to maintain a lateral distance of 457 m (1,500 ft) from the animal(s). Aircraft shall avoid approaching marine mammals head-on, flying over or passing the shadow of the aircraft over the animal(s).

(ii) [Reserved].

(4) PSOs must use NMFS-approved data forms and shall record the following information when a marine mammal is observed:

(i) Effort information, including vessel name; PSO name; survey type; date; time when survey (observing and activities) began and ended; vessel location (latitude/longitude) when survey (observing and activities) began and ended; vessel heading and speed (knots).

(ii) Environmental conditions while on visual survey, including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, ice cover (percent of surface, ice type, and distance to ice if applicable), cloud cover, sun glare, and overall visibility to the horizon (in distance).

(iii) Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions).

(iv) Activity information, such as the number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*e.g.,* pre-ramp-up survey, ramp-up, power down, shutdown, testing, shooting, ramp-up completion, end of operations, nodes).

(v) When a marine mammal is observed, the following information shall be recorded: Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform, aerial, land); PSO who sighted the animal; time of sighting; vessel location at time of sighting; water depth; direction of vessel's travel (compass direction); direction of animal's travel relative to the vessel (drawing is preferred); pace of the animal; estimated distance to the animal and its heading relative to vessel at initial sighting; identification of the animal (genus/species/sub-species, lowest possible taxonomic level, or unidentified; also note the composition of the group if there is a mix of species); estimated number of animals (high/low/best); estimated number of animals by cohort (when possible; adults, yearlings, juveniles, calves, group composition, etc.); description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics); detailed behavioral observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior); animal's closest point of approach and/or closest distance from the center point of the airgun array; platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other).

(vi) Description of any actions implemented in response to the sighting (*e.g.,* delays, power down, shutdown, ramp-up, speed or course alteration); time and location of the action should also be recorded.

(vii) If mitigation action was not implemented when required, description of circumstances.

(viii) Description of all use of mitigation gun.

(5) The data listed in § 217.135(a)(4)(i–ii) shall also be recorded at the start and end of each watch and during a watch whenever there is a change in one or more of the variables.

(b*) Onshore seismic effort:* (1) When conducting onshore seismic effort, in the event that a shot hole charge depth of 10 m is not consistently attainable due to loose sediments collapsing the bore hole, a sound source verification study must be conducted on the new land-based charge depths.

(2) [Reserved].

(c) Reporting:

(1) Apache must immediately report to NMFS at such time as 25 total beluga whales (cumulative total during period of validity of LOA) have been detected within the 160-dB re 1 μPa (rms) exclusion zone, regardless of shutdown or power down procedures implemented, during seismic survey operations.

(2) Apache must submit a weekly field report to NMFS Office of Protected Resources each Thursday during the weeks when in-water seismic survey activities take place. The weekly field reports shall summarize species detected (number, location, distance from seismic vessel, behavior), in-water activity occurring at the time of the sighting (discharge volume of array at time of sighting, seismic activity at time of sighting, visual plots of sightings, and number of power downs and shutdowns), behavioral reactions to in-water activities, and the number of marine mammals exposed to sound at or exceeding relevant thresholds.

(3) Apache must submit a monthly report, no later than the fifteenth of each month, to NMFS Office of Protected Resources for all months during which in-water seismic survey activities occur. These reports must summarize the information described in paragraph (a)(4) of this section and shall also include:

(i) An estimate of the number (by species) of:

(A) Pinnipeds that have been exposed to sound (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 190 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited; and

(B) Cetaceans that have been exposed to sound (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited.

(ii) A description of the implementation and effectiveness of the terms and conditions of the Biological Opinion's Incidental Take Statement and mitigation measures of the LOA.

For the Biological Opinion, the report shall confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness in minimizing the adverse effects of the action on Endangered Species Act-listed marine mammals.

(4) Apache shall submit an annual report to NMFS Office of Protected Resources covering a given calendar year within ninety days of the last day of airgun operation or at least sixty days before the requested date of any subsequent LOA, whichever comes first. The annual report shall include summaries of the information described in paragraph (a)(4) of this section and shall also include:

(i) Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(ii) Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare);

(iii) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(iv) Analyses of the effects of survey operations; and

(v) Sighting rates of marine mammals during periods with and without seismic survey activities (and other variables that could affect detectability), such as:

(A) Initial sighting distances versus survey activity state;

(B) Closest point of approach versus survey activity state;

(C) Observed behaviors and types of movements versus survey activity state;

(D) Numbers of sightings/individuals seen versus survey activity state;

(E) Distribution around the source vessels versus survey activity state; and

(F) Numbers of marine mammals (by species) detected in the 160, 180, and 190 dB re 1 μPa (rms) zones.

(5) Apache shall submit a final annual report to the Office of Protected Resources, NMFS, within thirty days after receiving comments from NMFS on the draft report.

(d) *Notification of dead or injured marine mammals.* (1) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury, or mortality, Apache shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(iv) Description of marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source use in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s); and

(ix) Photographs or video footage of the animal(s). Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Apache to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Apache may not resume their activities until notified by NMFS.

(2) In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Apache shall immediately report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, NMFS. The report must include the same information identified in § 217.135(d)(1). If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described in § 217.134(d)(4) must be implemented. NMFS will work with Apache to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the LOA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Apache shall report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Apache shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described in § 217.134(d)(4) must be implemented. In this case, NMFS will notify Apache when activities may resume.

§ 217.136 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Apache must apply for and obtain a LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Apache may apply for and obtain a renewal of the Letter of Authorization.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Apache must apply for and obtain a modification of the Letter of Authorization as described in § 217.137.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 217.137 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.136 for the activity identified in § 217.130(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 217.137(c)(1)), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For a LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 217.137(c)(1)) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.136 for the activity identified in § 217.130(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management*—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Apache regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Apache's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies*—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.132(b), an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 43, 45, et al.

Operation and Certification of Small Unmanned Aircraft Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 43, 45, 47, 61, 91, 101, 107, and 183

[Docket No.: FAA–2015–0150; Notice No. 15–01]

RIN 2120–AJ60

Operation and Certification of Small Unmanned Aircraft Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to amend its regulations to adopt specific rules to allow the operation of small unmanned aircraft systems in the National Airspace System. These changes would address the operation of unmanned aircraft systems, certification of their operators, registration, and display of registration markings. The proposed rule would also find that airworthiness certification is not required for small unmanned aircraft system operations that would be subject to this proposed rule. Lastly, the proposed rule would prohibit model aircraft from endangering the safety of the National Airspace System.

DATES: Send comments on or before April 24, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–0150 using any of the following methods:

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

Privacy: 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.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Lance Nuckolls, Office of Aviation Safety, Unmanned Aircraft Systems Integration Office, AFS–80, Federal Aviation Administration, 490 L'Enfant Plaza East, SW., Suite 3200, Washington, DC 20024; telephone (202) 267–8447; email *UAS-rule@faa.gov.*

For legal questions concerning this action, contact Alex Zektser, Office of Chief Counsel, International Law, Legislation, and Regulations Division, AGC–220, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *Alex.Zektser@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

This rulemaking is promulgated under the authority described in the FAA Modernization and Reform Act of 2012 (Public Law 112–95). Section 333 of Public Law 112–95 directs the Secretary of Transportation [1] to determine whether ''certain unmanned aircraft systems may operate safely in the national airspace system.'' If the Secretary determines, pursuant to section 333, that certain unmanned aircraft systems may operate safely in the national airspace system, then the Secretary must ''establish requirements for the safe operation of such aircraft systems in the national airspace system.'' [2]

This rulemaking is also promulgated pursuant to 49 U.S.C. 40103(b)(1) and (2), which charge the FAA with issuing regulations: (1) To ensure the safety of aircraft and the efficient use of airspace; and (2) to govern the flight of aircraft for purposes of navigating, protecting and identifying aircraft, and protecting individuals and property on the ground. In addition, 49 U.S.C. 44701(a)(5), charges the FAA with prescribing regulations that the FAA finds necessary for safety in air commerce and national security.

Finally, the model-aircraft component of this rulemaking incorporates the statutory mandate in section 336(b) that preserves the FAA's authority, under 49 U.S.C. 40103(b) and 44701(a)(5), to pursue enforcement ''against persons operating model aircraft who endanger the safety of the national airspace system.''

List of Abbreviations and Acronyms Frequently Used in This Document

AC Advisory Circular
AGL Above Ground Level
ACR Airman Certification Representative
ARC Aviation Rulemaking Committee
ATC Air Traffic Control
CAFTA–DR Dominican Republic-Central America-United States Free Trade Agreement
CAR Civil Air Regulation
CFI Certified Flight Instructor
CFR Code of Federal Regulations
COA Certificate of Waiver or Authorization
DPE Designated Pilot Examiner
FR Federal Register
FSDO Flight Standards District Office
ICAO International Civil Aviation Organization
NAFTA North American Free Trade Agreement
NAS National Airspace System
NOTAM Notice to Airmen
NPRM Notice of Proposed Rulemaking
NTSB National Transportation Safety Board
PIC Pilot in Command
Pub. L. Public Law
PMA Parts Manufacturer Approval
TFR Temporary Flight Restriction
TSA Transportation Security Administration
TSO Technical Standard Order
UAS Unmanned Aircraft System
U.S.C. United States Code

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[1] The primary authority for this rulemaking is based on section 333 of Public Law 112–95 (Feb. 14, 2012). In addition, this rulemaking also relies on FAA statutory authorities. Thus, for the purposes of this rulemaking, the terms ''FAA,'' ''the agency,'' ''DOT,'' and ''the Secretary,'' are used synonymously throughout this document.

[2] Public Law 112–95, section 333(c). In addition, Public Law 112–95, section 332(b)(1) requires the Secretary to issue ''a final rule on small unmanned aircraft systems that will allow for civil operation of such systems in the national airspace system, to the extent the systems do not meet the requirements for expedited operational authorization under sections 333 of [Pub. L. 112–95].''

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I. Executive Summary

A. Purpose of the Regulatory Action

This rulemaking proposes operating requirements to allow small unmanned aircraft systems (small UAS) to operate for non-hobby or non-recreational purposes. A small UAS consists of a small unmanned aircraft (which, as defined by statute, is an unmanned aircraft weighing less than 55 pounds [3]) and equipment necessary for the safe and efficient operation of that aircraft. The FAA has accommodated non-recreational small UAS use through various mechanisms, such as special airworthiness certificates, exemptions, and certificates of waiver or authorization (COA). This proposed rule would be the next phase of integrating small UAS into the NAS.

The following are examples of possible small UAS operations that could be conducted under this proposed framework:

- Crop monitoring/inspection;
- Research and development;
- Educational/academic uses;
- Power-line/pipeline inspection in hilly or mountainous terrain;
- Antenna inspections;
- Aiding certain rescue operations such as locating snow avalanche victims;
- Bridge inspections;
- Aerial photography; and
- Wildlife nesting area evaluations.

Because of the potential societally beneficial applications of small UAS, the FAA has been seeking to incorporate the operation of these systems into the national airspace system (NAS) since 2008. In April 2008, the FAA chartered the small UAS Aviation Rulemaking Committee (ARC). In April 2009, the ARC provided the FAA with recommendations on how small UAS could be safely integrated into the NAS. Since that time, the FAA has been working on a rulemaking to incorporate small UAS operations into the NAS.

In 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). Section 333 of Public Law 112–95 directed the Secretary to determine whether UAS operations posing the least amount of public risk and no threat to national security could safely be operated in the NAS and if so, to establish requirements for the safe operation of these systems in the NAS, prior to completion of the UAS comprehensive plan and rulemakings required by section 332 of Public Law 112–95. As part of its ongoing efforts to integrate UAS operations in the NAS in accordance with section 332, and as authorized by section 333 of Public Law 112–95, the FAA is proposing to amend its regulations to adopt specific rules for the operation of small UAS in the NAS.

Based on our experience with the certification, exemption, and COA process, the FAA has developed the framework proposed in this rule to enable certain small UAS operations to commence upon adoption of the final rule and accommodate technologies as they evolve and mature. This proposed framework would allow small UAS operations for many different non-recreational purposes, such as the ones discussed previously, without requiring airworthiness certification, exemption, or a COA.

[3] Public Law 112–95, sec. 331(6).

B. Summary of the Major Provisions of the Regulatory Action

Specifically, the FAA is proposing to add a new part 107 to Title 14 Code of Federal Regulations (14 CFR) to allow for routine civil operation of small UAS in the NAS and to provide safety rules for those operations. Consistent with the statutory definition, the proposed rule defines small UAS as those UAS weighing less than 55 pounds. To mitigate risk, the proposed rule would limit small UAS to daylight-only operations, confined areas of operation, and visual-line-of-sight operations. This proposed rule also addresses aircraft registration and marking, NAS operations, operator certification, visual observer requirements, and operational limits in order to maintain the safety of the NAS and ensure that they do not pose a threat to national security. Below is a summary of the major provisions of the proposed rule.

SUMMARY OF MAJOR PROVISIONS OF PROPOSED PART 107

Operational Limitations	• Unmanned aircraft must weigh less than 55 lbs. (25 kg). • Visual line-of-sight (VLOS) only; the unmanned aircraft must remain within VLOS of the operator or visual observer. • At all times the small unmanned aircraft must remain close enough to the operator for the operator to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses. • Small unmanned aircraft may not operate over any persons not directly involved in the operation. • Daylight-only operations (official sunrise to official sunset, local time). • Must yield right-of-way to other aircraft, manned or unmanned. • May use visual observer (VO) but not required. • First-person view camera cannot satisfy ''see-and-avoid'' requirement but can be used as long as requirement is satisfied in other ways. • Maximum airspeed of 100 mph (87 knots). • Maximum altitude of 500 feet above ground level. • Minimum weather visibility of 3 miles from control station. • No operations are allowed in Class A (18,000 feet & above) airspace. • Operations in Class B, C, D and E airspace are allowed with the required ATC permission. • Operations in Class G airspace are allowed without ATC permission • No person may act as an operator or VO for more than one unmanned aircraft operation at one time. • No operations from a moving vehicle or aircraft, except from a watercraft on the water. • No careless or reckless operations. • Requires preflight inspection by the operator. • A person may not operate a small unmanned aircraft if he or she knows or has reason to know of any physical or mental condition that would interfere with the safe operation of a small UAS. • Proposes a microUAS category that would allow operations in Class G airspace, over people not involved in the operation, and would require airman to self-certify that they are familiar with the aeronautical knowledge testing areas.
Operator Certification and Responsibilities	• Pilots of a small UAS would be considered ''operators''. • Operators would be required to: ○ Pass an initial aeronautical knowledge test at an FAA-approved knowledge testing center. ○ Be vetted by the Transportation Security Administration. ○ Obtain an unmanned aircraft operator certificate with a small UAS rating (like existing pilot airman certificates, never expires). ○ Pass a recurrent aeronautical knowledge test every 24 months. ○ Be at least 17 years old. ○ Make available to the FAA, upon request, the small UAS for inspection or testing, and any associated documents/records required to be kept under the proposed rule. ○ Report an accident to the FAA within 10 days of any operation that results in injury or property damage. ○ Conduct a preflight inspection, to include specific aircraft and control station systems checks, to ensure the small UAS is safe for operation.
Aircraft Requirements	• FAA airworthiness certification not required. However, operator must maintain a small UAS in condition for safe operation and prior to flight must inspect the UAS to ensure that it is in a condition for safe operation. Aircraft Registration required (same requirements that apply to all other aircraft). • Aircraft markings required (same requirements that apply to all other aircraft). If aircraft is too small to display markings in standard size, then the aircraft simply needs to display markings in the largest practicable manner.
Model Aircraft	• Proposed rule would not apply to model aircraft that satisfy all of the criteria specified in section 336 of Public Law 112–95. • The proposed rule would codify the FAA's enforcement authority in part 101 by prohibiting model aircraft operators from endangering the safety of the NAS.

Operator Certification: Under the proposed rule, the person who manipulates the flight controls of a small UAS would be defined as an ''operator.'' A small UAS operator would be required to pass an aeronautical knowledge test and obtain an unmanned aircraft operator certificate with a small UAS rating from the FAA before operating a small UAS. In order to maintain his or her operator certification, the operator would be

required to pass recurrent knowledge tests every 24 months subsequent to the initial knowledge test. These tests would be created by the FAA and administered by FAA-approved knowledge testing centers. Although a specific distant vision acuity standard is not being proposed, this proposed rule would require the operator to keep the small unmanned aircraft close enough to the control station to be capable of seeing that aircraft through his or her unaided (except for glasses or contact lenses) visual line of sight. The operator would also be required to actually maintain visual line of sight of the small unmanned aircraft if a visual observer is not used.

Visual Observer: Under the proposed rule, an operator would not be required to work with a visual observer, but a visual observer could be used to assist the operator with the proposed visual-line-of-sight and see-and-avoid requirements by maintaining constant visual contact with the small unmanned aircraft in place of the operator. While an operator would always be required to have the capability for visual line of sight of the small unmanned aircraft, this proposed rule would not require the operator to exercise this capability if he or she is augmented by at least one visual observer. No certification requirements are being proposed for visual observers. A small UAS operation would not be limited in the number of visual observers involved in the operation, but the operator and visual observer(s) must remain situated such that the operator and any visual observer(s) are all able to view the aircraft at any given time. The operator and visual observer(s) would be permitted to communicate by radio or other communication-assisting device, so they would not need to remain in close enough physical proximity to allow for unassisted oral communication.

Since the operator and any visual observers would be required to be in a position to maintain or achieve visual line of sight with the aircraft at all times, the proposed rule would effectively prohibit a relay or ''daisy-chain'' formation of multiple visual observers by requiring that the operator must always be capable of seeing the small unmanned aircraft. Such arrangements would potentially expand the area of a small UAS operation and pose an increased public risk if there is a loss of aircraft control.

Operational Scope: A small UAS operator would be required to see and avoid all other users of the NAS in the area in which the small UAS is operating. The proposed rule contains operating restrictions designed to help ensure that the operator is able to yield right-of-way to other aircraft at all times.

The proposed rule would limit the exposure of small unmanned aircraft to other users of the NAS by restricting small UAS operations in controlled airspace. Specifically, small UAS would be prohibited from operating in Class A airspace, and would require prior permission from Air Traffic Control to operate in Class B, C, or D airspace, or within the lateral boundaries of the surface area of Class E airspace designated for an airport. The risk of collision with other aircraft would be further reduced by limiting small UAS operations to a maximum airspeed of 87 knots (100 mph) and a maximum altitude of 500 feet above ground.

Further, in order to enable maximum visibility for small UAS operation, the proposed rule would restrict small UAS to daylight-only operations (sunrise to sunset), and impose a minimum weather-visibility of 3 statute miles (5 kilometers) from the small UAS control station.

Aircraft Maintenance: Under the proposed rule, the operator of a small UAS would be required to conduct a preflight inspection before each flight operation, and determine that the small UAS (aircraft, control station, launch and recovery equipment, etc.) is safe for operation.

Airworthiness: Pursuant to section 333(b)(2) of Public Law 112–95, the Secretary has determined that small UAS subject to this proposed rule would not require airworthiness certification because the safety concerns associated with small UAS operation would be mitigated by the other provisions of this proposed rule. Rather, this proposed rule would require the operator to ensure that the small UAS is in a condition for safe operation by conducting an inspection prior to each flight.

Registration and Marking: This proposed rule would apply to small unmanned aircraft the current registration requirements that apply to all aircraft. Once a small unmanned aircraft is registered, this proposed rule would require that aircraft to display its registration marking in a manner similar to what is currently required of all aircraft.

C. Costs and Benefits

This proposed rule reflects the fact that technological advances in small UAS have led to a developing commercial market for their uses by providing a safe operating environment for them and for other aircraft in the NAS. In time, the FAA anticipates that the proposed rule would provide an opportunity to substitute small UAS operations for some higher risk manned flights, such as inspecting towers, bridges, or other structures. The use of small unmanned aircraft would avert potential fatalities and injuries to those in the aircraft and on the ground. It would also lead to more efficient methods of performing certain commercial tasks that are currently performed by other methods. The FAA has not quantified the benefits for this proposed rulemaking because we lack sufficient data. The FAA invites commenters to provide data that could be used to quantify the benefits of this proposed rule.

For any commercial operation occurring because this rule is enacted, the operator/owner of that small UAS will have determined the expected revenue stream of the flights exceeds the cost of the flights operation. In each such case this rule helps enable new markets to develop.

The costs are shown in the table below.

TOTAL AND PRESENT VALUE COST SUMMARY BY PROVISION

[Thousands of current year dollars]

Type of cost	Total costs (000)	7% P.V. (000)
Applicant/small UAS operator:		
Travel Expense	$151.7	$125.9
Knowledge Test Fees	2,548.6	2,114.2
Positive Identification of the Applicant Fee	434.3	383.7
Owner:		
Small UAS Registration Fee	85.7	70.0
Time Resource Opportunity Costs:		

TOTAL AND PRESENT VALUE COST SUMMARY BY PROVISION—Continued

[Thousands of current year dollars]

Type of cost	Total costs (000)	7% P.V. (000)
Applicants Travel Time	296.1	245.3
Knowledge Test Application	108.9	90.2
Physical Capability Certification	20.0	17.7
Knowledge Test Time	1,307.1	1,082.9
Small UAS Registration Form	220.5	179.7
Change of Name or Address Form	14.9	12.3
Knowledge Test Report	154.9	128.5
Pre-flight Inspection	Not quantified	
Accident Reporting	Minimal cost	
Government Costs:		
TSA Security Vetting	1,026.5	906.9
FAA—sUAS Operating Certificate	39.6	35.0
FAA—Registration	394.3	321.8
Total Costs	6,803.1	5,714.0

* Details may not add to row or column totals due to rounding.

II. Background

This NPRM addresses the operation, airman certification, and registration of civil small UAS.

A small UAS consists of a small unmanned aircraft and associated elements that are necessary for the safe and efficient operation of that aircraft in the NAS. Associated elements that are necessary for the safe and efficient operation of the aircraft include the interface that is used to control the small unmanned aircraft (known as a control station) and communication links between the control station and the small unmanned aircraft. A small unmanned aircraft is defined by statute as ''an unmanned aircraft weighing less than 55 pounds.'' [4] Due to the size of a small unmanned aircraft, the FAA envisions considerable potential business and non-business applications, particularly in areas that are hard to reach for a manned aircraft.

The following are examples of possible small UAS operations that could be conducted under this proposed framework:

- Crop monitoring/inspection;
- Research and development;
- Educational/academic uses;
- Power-line/pipeline inspection in hilly or mountainous terrain;
- Antenna inspections;
- Aiding certain rescue operations such as locating snow avalanche victims;
- Bridge inspections;
- Aerial photography; and
- Wildlife nesting area evaluations.

The following sections discuss: (1) The public risk associated with small UAS operations; (2) the current legal framework governing small UAS operations; and (3) the FAA's ongoing efforts to incorporate small UAS operations into the NAS.

A. Analysis of Public Risk Posed by Small UAS Operations

Small UAS operations pose risk considerations that are different from the risk considerations associated with manned-aircraft operations. On one hand, certain operations of a small unmanned aircraft, discussed more fully in section III.D of this preamble, have the potential to pose significantly less risk to persons and property than comparable operations of a manned aircraft. The typical total takeoff weight of a general aviation aircraft is between 1,300 and 6,000 pounds. By contrast, the total takeoff weight of a small unmanned aircraft is less than 55 pounds. Consequently, because a small unmanned aircraft is significantly lighter than a manned aircraft, in the event of a mishap, the small unmanned aircraft would pose significantly less risk to persons and property on the ground. As such, a small UAS operation whose parameters are well defined so it does not pose a significant risk to other aircraft would also pose a smaller overall public risk or threat to national security than the operation of a manned aircraft.

However, even though small UAS operations have the potential to pose a lower level of public risk in certain types of operations, the unmanned nature of the small UAS operations raises two unique safety concerns that are not present in manned-aircraft operations. The first safety concern is whether the person operating the small unmanned aircraft, who would be physically separated from that aircraft during flight, would have the ability to see manned aircraft in the air in time to prevent a mid-air collision between the small unmanned aircraft and another aircraft. As discussed in more detail below, the FAA's regulations currently require each person operating an aircraft to maintain vigilance ''so as to see and avoid other aircraft.'' [5] This is one of the fundamental principles for collision avoidance in the NAS.

For manned-aircraft operations, ''see and avoid'' is the responsibility of persons on board an aircraft. By contrast, small unmanned aircraft operations have no human beings physically on the unmanned aircraft with the same visual perspective and the ability to see other aircraft in the manner of a manned-aircraft pilot. Thus, the challenge for small unmanned aircraft operations is to ensure that the person operating the small unmanned aircraft is able to see and avoid other aircraft.

In considering this issue, the FAA examined to what extent existing technology could provide a solution to this problem. The FAA notes that advances in technologies that use ground-based radar and aircraft sensors to detect the reply signals from aircraft ATC transponders have provided significant improvement in the ability to detect other aircraft in close proximity to each other. The Traffic Collision Avoidance System also has the ability to provide guidance to flight crews to maneuver appropriately to avoid a mid-air collision. Both of these technologies have done an excellent job in reducing the mid-air collision rate between manned aircraft. Unfortunately, the equipment required to utilize these widely available technologies is

[4] Sec. 331(6) of Public Law 112–95.

[5] 14 CFR 91.113(b).

currently too large and heavy to be used in small UAS operations. Until this equipment is miniaturized to the extent necessary to make it viable for use in small UAS operations, existing technology does not appear to provide a way to resolve the ''see and avoid'' problem with small UAS operations without maintaining human visual contact with the small unmanned aircraft during flight.

The second safety concern with small UAS operations is the possibility that, during flight, the person operating the small UAS may become unable to use the control interface to operate the small unmanned aircraft due to a failure of the control link between the aircraft and the operator's control station. This is known as a loss of positive control. This situation may result from a system failure or because the aircraft has been flown beyond the signal range or in an area where control link communication between the aircraft and the control station is interrupted. A small unmanned aircraft whose flight is unable to be directly controlled could pose a significant risk to persons, property, or other aircraft.

B. Current Statutory and Regulatory Structure Governing Small UAS

Due to the lack of an onboard pilot, small unmanned aircraft are unable to see and avoid other aircraft in the NAS. Therefore, small UAS operations conflict with the FAA's current operating regulations codified in 14 CFR part 91 that apply to general aviation. Specifically, at the heart of the part 91 operating regulations is § 91.113(b), which requires each person operating an aircraft to maintain vigilance ''so as to see and avoid other aircraft.''

The FAA created this requirement in a 1968 rulemaking that combined two previous aviation regulatory provisions, Civil Air Regulations (CAR) §§ 60.13(c) and 60.30.[6] Both of the provisions that were combined to create the ''see and avoid'' requirement of § 91.113(b) were intended to address aircraft collision-awareness problems by requiring that a pilot on board the aircraft look out of the aircraft during flight to observe whether other aircraft are on a collision path with his or her aircraft. Those provisions did not contemplate the use of technology to substitute for the human vision of a pilot on board the aircraft. Similarly, there is no evidence that those provisions contemplated a pilot fulfilling his or her ''see and avoid'' responsibilities from outside the aircraft. To the contrary, CAR section 60.13(c) stated that one of the problems it intended to address was ''preoccupation by the pilot with cockpit duties,'' which indicates that the regulation contemplated the presence of a pilot on board the aircraft.

Because the regulations that resulted in the see-and-avoid requirement of § 91.113(b) did not contemplate that this requirement could be complied with by a pilot who is outside the aircraft, § 91.113(b) currently requires an aircraft pilot to have the perspective of being inside the aircraft as that aircraft is moving in order to see and avoid other aircraft. Since the operator of a small UAS does not have this perspective, operation of a small UAS could not meet the see and avoid requirement of § 91.113(b) at this time.

In addition to currently being prohibited by § 91.113(b), there are also statutory considerations that apply to small UAS operations. Specifically, even though a small UAS is different from a manned aircraft, the operation of a small UAS still involves the operation of an aircraft. This is because the FAA's statute defines an ''aircraft'' as ''any contrivance invented, used, or designed to navigate or fly in the air.'' 49 U.S.C. 40102(a)(6). Since a small unmanned aircraft is a contrivance that is invented, used, and designed to fly in the air, a small unmanned aircraft is an aircraft for purposes of the FAA's statutes.[7]

Because a small UAS involves the operation of an ''aircraft,'' this triggers the FAA's registration and certification statutory requirements. Specifically, subject to certain exceptions, a person may not operate a civil aircraft that is not registered. 49 U.S.C. 44101(a). In addition, a person may not operate a civil aircraft in air commerce without an airworthiness certificate. 49 U.S.C. 44711(a)(1). Finally, a person may not serve in any capacity as an airman on a civil aircraft being operated in air commerce without an airman certificate. 49 U.S.C. 44711(a)(2)(A).[8]

The term ''air commerce,'' as used in the FAA's statutes, is defined broadly to include ''the operation of aircraft within the limits of a Federal airway, or the operation of aircraft that directly affects, or may endanger safety in foreign or interstate air commerce.'' 49 U.S.C. 40102(a)(3). Because of this broad definition, the National Transportation Safety Board (NTSB) has held that ''any use of an aircraft, for purpose of flight, constitutes air commerce.''[9] Courts that have considered this issue have reached similar conclusions that ''air commerce,'' as defined in the FAA's statute, encompasses a broad range of commercial and non-commercial aircraft operations.[10]

Accordingly, because ''air commerce'' encompasses such a broad range of aircraft operations, a civil small unmanned aircraft cannot currently be operated, for purposes of flight, if: (1) It is not registered (49 U.S.C. 44101(a)); (2) it does not possess an airworthiness certificate (49 U.S.C. 44711(a)(1)); and (3) the airman operating the aircraft does not possess an airman certificate (49 U.S.C. 44711(a)(2)(A)). However, the FAA's current processes for issuing airworthiness and airman certificates were designed to be used for manned aircraft and do not take into account the considerations associated with civil small UAS.

Specifically, obtaining a type certificate and a standard airworthiness certificate, which permits the widest range of aircraft operation, currently takes about 3 to 5 years. Because the pertinent existing regulations do not differentiate between manned and unmanned aircraft, a small UAS is currently subject to the same airworthiness certification process as a manned aircraft. However, it is not practically feasible for many small UAS manufacturers to go through the certification process required of manned aircraft. This is because small UAS technology is rapidly evolving at this time, and consequently, if a small UAS manufacturer goes through a 3-to-5-year process to obtain a type certificate, which enables the issuance of a standard airworthiness certificate, the small UAS would be technologically outdated by the time it completed the certification process. For example, advances in lightweight battery technology may allow new lightweight transponders and power sources within the next 3 to 5 years that are currently unavailable for small UAS operations.

The FAA notes that there are several other certification options available to

[6] *Pilot Vigilance,* 33 FR 10505 (July 24, 1968).

[7] Public Law 112–95 reaffirmed that an unmanned aircraft is indeed an aircraft by defining an unmanned aircraft as ''an *aircraft* that is operated without the possibility of direct human intervention from within or on the aircraft.'' Sec. 331(8), Public Law 112–95 (emphasis added).

[8] The statutes also impose other requirements that are beyond the scope of this rulemaking. For example, 49 U.S.C. 44711(a)(4) prohibits a person from operating as an air carrier without an air-carrier operating certificate.

[9] *Administrator* v. *Barrows,* 7 N.T.S.B. 5, 8–9 (1990).

[10] *See, e.g., United States* v. *Healy,* 376 U.S. 75, 84–85 (1964) (holding that ''air commerce'' is not limited to commercial airplanes); *Hill* v. *NTSB,* 886 F.2d 1275, 1280 (10th Cir. 1989) (''[t]he statutory definition of ''air commerce'' is therefore clearly not restricted to interstate flights occurring in controlled or navigable airspace''); *United States* v. *Drumm,* 55 F. Supp. 151, 155 (D. Nev. 1944) (''any operation of any aircraft in the air space either directly affects or may endanger safety in, interstate, overseas, or foreign air commerce'').

small UAS manufacturers and operators who do not wish to go through the process of obtaining a type certificate and standard airworthiness certificate. However, because each of these options has significant limitations, these options do not provide flexibility for most routine small UAS operations. These certification options are as follows:

• A special airworthiness certificate in the experimental category may be issued to UAS pursuant to 14 CFR 21.191–21.195. This certificate is time-limited, and cannot be used for any activities other than research and development, market surveys, and crew training.

• A special flight permit may be issued pursuant to 14 CFR 21.197. At this time, however, a special flight permit for a UAS is limited to production flight testing of new production aircraft.[11]

• A special airworthiness certificate in the restricted category is issued pursuant to 14 CFR 21.25(a). There are two options for obtaining this certificate.

First, pursuant to § 21.25(a)(2), a certificate may be issued for aircraft accepted by an Armed Force of the United States and later modified for a special purpose.

Second, pursuant to § 21.25(a)(1), a certificate may be issued for aircraft used in special purpose operations, which consist of:

(1) agricultural operations;
(2) forest and wildlife conservation;
(3) aerial surveying;
(4) patrolling (pipelines, power lines, and canals);
(5) weather control;
(6) aerial advertising; and
(7) any other operation specified by the FAA.

As can be seen from the above list, the current certification options are limited to very specific purposes. Accordingly, they do not provide sufficient flexibility for most routine civil small UAS operations within the NAS.

In addition to obtaining an airworthiness certificate, any person serving as an airman in the operation of a small UAS must obtain an airman certificate. 49 U.S.C. 44711(a)(2)(A). The statute defines an ''airman'' to include an individual who is ''in command, or as pilot, mechanic, or member of the crew, who navigates aircraft when under way.'' 49 U.S.C. 40102(a)(8)(A). Because the person operating the small UAS is in command and is a member of the crew who navigates the aircraft, that person is an airman and must obtain an airman certificate.

Under current pilot certification regulations, depending on the type of operation, the operator of the small UAS currently must obtain either a private pilot certificate or a commercial pilot certificate. A private pilot certificate cannot be used to operate a small UAS for compensation or hire unless the flight is only incidental to the operator's business or employment.[12] Typically, to obtain a private pilot certificate, the small UAS operator currently has to: (1) Receive training in specific aeronautical knowledge areas; (2) receive training from an authorized instructor on specific areas of aircraft operation; (3) obtain a minimum of 40 hours of flight experience; and (4) obtain a third-class airman medical certificate.[13] Conversely, holding at least a commercial pilot certificate allows the small UAS to generally be used for compensation or hire, but is more difficult to obtain. In addition to the requirements necessary to obtain a private pilot certificate, applicants for a commercial pilot certificate currently need to also obtain 250 hours of flight time, satisfy extensive testing requirements, and obtain a second-class airman medical certificate.[14]

While these airman certification requirements are necessary for manned aircraft operations, they impose an unnecessary burden for many small UAS operations. This is because a person typically obtains a private or commercial pilot certificate by learning how to operate a manned aircraft. Much of that knowledge would not be applicable to small UAS operations because a small UAS is operated differently than a manned aircraft. In addition, the knowledge currently necessary to obtain a private or commercial pilot certificate would not equip the certificate holder with the tools necessary to safely operate a small UAS. Specifically, applicants for a private or commercial pilot certificate currently are not trained in how to deal with the ''see-and-avoid'' and loss-of-positive-control safety issues that are unique to small unmanned aircraft. Thus, requiring persons wishing to operate a small UAS to obtain a private or commercial pilot certificate imposes the cost of certification on those persons, but does not result in a significant safety benefit because the process of obtaining the certificate does not equip those persons with the tools necessary to mitigate the public risk posed by small UAS operations.

Recognizing the problem of applying the operating rules of part 91 to small UAS operations and the cost imposed on small UAS operations by existing certification processes, the FAA fashioned a temporary solution. Specifically, the FAA issued an advisory circular (AC) 91–57 and a policy statement elaborating on AC 91–57, which provide guidance for the safe operation of ''model aircraft.'' The policy statement defines a ''model aircraft'' as a UAS that is used for hobby or recreational purposes.[15] The policy statement explains that AC 91–57:

> [E]ncourages good judgment on the part of operators so that persons on the ground or other aircraft in flight will not be endangered. The AC contains among other things, guidance for site selection. Users are advised to avoid noise sensitive areas such as parks, schools, hospitals, and churches. Hobbyists are advised not to fly in the vicinity of spectators until they are confident that the model aircraft has been flight tested and proven airworthy. Model aircraft should be flown below 400 feet above the surface to avoid other aircraft in flight. The FAA expects that hobbyists will operate these recreational model aircraft within visual line-of-sight.[16]

Neither AC 91–57 nor the associated policy statement contains any registration or certification requirements.[17]

To date, the FAA has used its discretion[18] to not bring enforcement action against model-aircraft operations that comply with AC 91–57. However, the use of discretion to permit continuing violation of FAA statutes and regulations is not a viable long-term solution for incorporating UAS operations into the NAS. Additionally, because AC 91–57 and the associated policy statement are limited to model aircraft, they do not apply to non-recreational UAS operations. Thus, even with the use of enforcement discretion, because of the difficulty of obtaining the

[11] A special flight permit for production flight testing is not limited to small UAS and can be obtained for unmanned aircraft weighing more than 55 pounds. We emphasize, however, that a special flight permit is limited at this time to production flight testing and will include operational requirements and limitations.

[12] *See* 14 CFR 61.113.

[13] *See* 14 CFR part 61, Subpart E and § 61.23(a)(3)(i).

[14] *See* 14 CFR part 61, Subpart F and § 61.23(a)(2).

[15] *See Unmanned Aircraft Operations in the National Airspace System,* 72 FR 6689, 6690 (Feb. 13, 2007) (explaining how AC 91–57 functions).

[16] *Id.*

[17] The policy statement did, however, explain the COA process that is currently used to allow public aircraft operations with UAS. This process is discussed in detail in section III.C of this preamble. As discussed in that section, this proposed rule would allow public aircraft operations with UAS to voluntarily comply with proposed part 107, but would otherwise leave the existing public aircraft operations COA process unchanged.

[18] As used in this context, ''discretion'' refers to the FAA's power to decide whether to commence an enforcement action.

requisite certification for a small UAS and because operation of a small UAS would violate the see-and-avoid requirement of § 91.113(b), non-recreational civil small UAS operations are effectively prohibited at this time.

C. Integrating Small UAS Operations Into the NAS

To address the issues discussed above, the FAA chartered the small UAS Aviation Rulemaking Committee (ARC) on April 10, 2008. On April 1, 2009, the ARC provided the FAA with recommendations on how small UAS could be safely integrated into the NAS.[19] In 2013, the U.S. Department of Transportation issued a comprehensive plan and subsequently the FAA issued a roadmap of its efforts to achieve safe integration of UAS operations into the NAS.[20]

In 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). In section 332(b) of Public Law 112–95, Congress directed the Secretary to issue a final rule on small unmanned aircraft systems that will allow for civil operations of such systems in the NAS.[21] In section 333 of Public Law 112–95, Congress also directed the Secretary to determine whether ''certain unmanned aircraft systems may operate safely in the national airspace system.'' To make a determination under section 333, we must assess ''which types of unmanned aircraft systems, if any, as a result of their size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line of sight do not create a hazard to users of the national airspace system or the public or pose a threat to national security.'' Public Law 112–95, Sec. 333(b)(1). The Secretary must also determine whether a certificate of waiver or authorization, or airworthiness certification is necessary to mitigate the public risk posed by the unmanned aircraft systems that are under consideration. Public Law 112–95, Sec. 333(b)(2). If the Secretary determines that certain unmanned aircraft systems may operate safely in the NAS, then the Secretary must ''establish requirements for the safe operation of such aircraft systems in the national airspace system.'' Public Law 112–95, Sec. 333(c). The flexibility provided for in section 333 did not extend to airman certification and security vetting, aircraft marking, or registration requirements.

As noted above, section 333(b)(2) provided the Secretary of Transportation with discretionary power as to whether airworthiness certification should be required for certain small UAS.[22] As discussed previously, the FAA's statute normally requires an aircraft being flown outdoors to possess an airworthiness certificate.[23] However, subsection 333(b)(2) allows for the determination that airworthiness certification is not necessary for certain small UAS. The key determinations that must be made in order for UAS to operate under the authority of section 333 are: (1) The operation must not create a hazard to users of the national airspace system or the public; and (2) the operation must not pose a threat to national security.[24] In making these determinations, we must consider the following factors: Size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line of sight. Of these factors, operation within visual line of sight is a primary factor for evaluation. At this point in time, we have determined that technology has not matured to the extent that would allow small UAS to be used safely in lieu of visual line of sight without creating a hazard to other users of the NAS or the public, or posing a threat to national security.

This construction of section 333 is a reasonable interpretation that is consistent with the statutory text and reflects Congressional intent in adopting the provision. We invite comments on whether there are well-defined circumstances and conditions under which operation beyond the line of sight would pose little or no additional risk to other users of the NAS, the public, or national security. Finally, we invite comments on the technologies and operational capabilities or procedures needed to allow UAS flights beyond visual line of sight, and how such technologies, capabilities and procedures could be accommodated under this rule or in a future rulemaking.

As a result of its ongoing integration efforts, the FAA seeks to change its regulations to take the first step in the process of integrating small UAS operations into the NAS. This proposal would utilize the airworthiness-certification flexibility provided by Congress in section 333 of Public Law 112–95, and allow some small UAS operations to commence in the NAS.[25]

In addition, to further facilitate the integration of UAS into the NAS, the FAA has selected six test sites to test UAS technology and operations. As of August 2014, all of the UAS test sites, which were selected based on geographic and climatic diversity, are operational and will remain in place for the next 5 years to help us gather operational data to foster further integration, as well as evaluate new technologies. In addition, the FAA is in the process of selecting a new UAS Center of Excellence which will also serve as another resource for these activities. The FAA invites comments on how it can improve or further leverage its test site program to encourage innovation, safe development and UAS integration into the NAS.

III. Discussion of the Proposal

As discussed in the previous section, in order to determine whether certain UAS may operate safely in the NAS pursuant to section 333, the Secretary must find that the operation of the UAS would not: (1) Create a hazard to users of the NAS or the public; or (2) pose a threat to national security. The Secretary must also determine whether small UAS operations subject to this proposed rule pose a safety risk sufficient to require airworthiness certification. The following preamble sections discuss the specific components of this proposed rule, and in section III.J below, we explain how these components work together and allow the Secretary to make the statutory findings required by section 333.

A. Incremental Approach and Privacy

The FAA began its small UAS rulemaking in 2005. In its initial approach to this rulemaking, which the FAA utilized from 2005 until November 2013, the FAA attempted to implement the ARC's recommendations and craft a rule that encompassed the widest possible range of small UAS operations. This approach utilized a regulatory structure similar to the one that the FAA uses for manned aircraft. Specifically, small UAS operations that pose a low risk to people, property, and other

[19] A copy of the small UAS ARC Report and Recommendations can be found in the docket for this rulemaking.

[20] *http://www.faa.gov/about/initiatives/uas/media/uas_roadmap_2013.pdf*

[21] As discussed in more detail further in the preamble, the FAA Modernization and Reform Act of 2012 also contained a provision prohibiting the FAA from issuing rules and regulations for model aircraft meeting certain criteria specified in section 336 of the Act.

[22] Public Law 112–95, sec. 333(b)(2).

[23] 49 U.S.C. 44711(a)(1).

[24] Public Law 112–95, sec. 333(b)(1).

[25] As discussed in section III.B.6 below, 14 CFR part 107 that would be created by this proposed rule would not apply to model aircraft that satisfy all of the statutory criteria specified in section 336 of Public Law 112–95. The FAA has recently published an interpretive rule for public comment explaining the statutory criteria of section 336. *See Interpretation of the Special Rule for Model* Aircraft, 79 FR 36172, 36175 (June 25, 2014).

aircraft would have been subject to less stringent regulation while small UAS operations posing a greater risk would have been subject to more stringent regulation in order to mitigate the greater risk.

In exploring this approach, the FAA found that, as discussed previously, there are two unique safety issues associated with UAS: (1) Extending ''see and avoid'' anti-collision principles to a pilot that is not physically present on the aircraft; and (2) loss of positive control of the unmanned aircraft. In addition, at the time that it was considering this approach, the FAA did not have the discretion necessary to exempt these aircraft from the statutory requirement for airworthiness certification, as the section 333 authority did not come into effect until February 14, 2012. As a result of these issues, the FAA's original broadly-scoped approach to the rulemaking effort took significantly longer than anticipated. Consequently, the FAA decided to proceed with multiple incremental UAS rules rather than a single omnibus rulemaking in order to utilize the flexibility with regard to airworthiness certification that Congress provided in section 333.

Accordingly, at this time, the FAA is proposing a rule that, pursuant to section 333 of Public Law 112–95, will integrate small UAS operations posing the least amount of risk. Because these operations pose the least amount of risk, this proposed rule would treat the entire spectrum of operations that would be subject to this rule in a similar manner by imposing less stringent regulatory burdens that would ensure that the safety and security of the NAS would not be reduced by operation of these UAS. In the meantime, the FAA will continue working on integrating UAS operations that pose greater amounts of risk, and will issue notices of proposed rulemaking for those operations once the pertinent issues have been addressed, consistent with the approach set forth in the UAS Comprehensive Plan for Integration and FAA roadmap for integration.[26] Once the entire integration process is complete, the FAA envisions the NAS populated with UAS that operate well beyond the operational limits proposed in this rule. Those UAS will be regulated differently than the UAS that would be integrated through this rule, and will be addressed in subsequent rulemakings. The FAA has selected this approach because it would allow lower-risk small UAS operations to be incorporated into the NAS immediately instead of waiting until the issues associated with higher-risk UAS operations are resolved.

The approach of this proposal is meant to address low risk operations; to the greatest extent possible, it takes a data-driven, risk-based approach to defining specific regulatory requirements for small UAS operations. It is well understood that regulations that are articulated in terms of the desired outcomes (*i.e.,* ''performance standards'') are generally preferable to those that specify the means to achieve the desired outcomes (*i.e.,* ''design'' standards). According to Office of Management and Budget Circular A–4 (''Regulatory Analysis''), performance standards ''give the regulated parties the flexibility to achieve the regulatory objectives in the most cost-effective way.''[27]

Design standards have a tendency to lock in certain approaches that limit the incentives to innovate and may effectively prohibit new technologies altogether. The distinction between design and performance standards is particularly important where technology is evolving rapidly, as is the case with small UAS.

In this proposal, the regulatory objectives are to enable integration of small UAS into the NAS in a manner that does not impose unacceptable risk to other aircraft, people, or property. The FAA seeks comment on whether there are additional requirements that could be specified in ways that are more performance-oriented in order to minimize any disincentives to develop new technologies that achieve the regulatory objectives at lower cost.

Recently, the FAA, with the approval of the Secretary, has been issuing exemptions in accordance with 14 CFR part 11 and section 333 of Public Law 112–95 to accommodate an increasing number of small UAS operations that are not for hobby or recreational purposes. If adopted, this rule will eliminate the need for the vast majority of these exemptions. The exemption process will continue to be available for UAS operations that fall outside the parameters of this rule. Such operations may involve the use of more advanced technologies that are not yet mature at the time of this rulemaking.

The FAA also notes that, because UAS-associated technologies are rapidly evolving at this time, new technologies could come into existence after this rule is issued or existing technologies may evolve to the extent that they establish a level of reliability sufficient to allow those technologies to be relied on for risk mitigation. These technologies may alleviate some of the risk concerns that underlie the provisions of this rulemaking like the line of sight rule. Accordingly, the FAA invites comments as to whether the final rule should relax operating restrictions on small UAS equipped with technology that addresses the concerns underlying the operating limitations of this proposed rule, for instance through some type of deviation authority (such as a letter of authorization or a waiver).

The FAA also notes that privacy concerns have been raised about unmanned aircraft operations. Although these issues are beyond the scope of this rulemaking, recognizing the potential implications for privacy and civil rights and civil liberties from the use of this technology, and consistent with the direction set forth in the Presidential Memorandum, *Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems* (February 15, 2015), the Department and FAA will participate in the multi-stakeholder engagement process led by the National Telecommunications and Information Administration (NTIA) to assist in this process regarding privacy, accountability, and transparency issues concerning commercial and private UAS use in the NAS. We also note that state law and other legal protections for individual privacy may provide recourse for a person whose privacy may be affected through another person's use of a UAS.

The FAA conducted a privacy impact assessment (PIA) of this rule as required by section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) and section 208 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2889 (Dec. 17, 2002). The assessment considers any impacts of the proposed rule on the privacy of information in an identifiable form. The FAA has determined that this proposed rule would impact the FAA's handling of personally identifiable information (PII). As part of the PIA that the FAA conducted as part of this rulemaking, the FAA analyzed the effect this impact might have on collecting, storing, and

[26] Section 332(a) of Public Law 112–95 requires the Secretary of Transportation to develop a comprehensive plan to safely accelerate the integration of civil UAS into the NAS. This plan must be developed in consultation with representatives of the aviation industry, federal agencies that employ UAS technology in the NAS, and the UAS industry. Section 332(a) also requires the Secretary of Transportation to develop a 5-year roadmap for the introduction of civil UAS into the NAS. Both the comprehensive plan and the roadmap were published in November 2013.

[27] *http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf*

disseminating PII and examined and evaluated protections and alternative information handling processes in developing the proposed rule in order to mitigate potential privacy risks.

As proposed, the process for granting unmanned aircraft operator certificates with a small UAS rating would be brought in line with the process for granting traditional airman certificates. Thus, the privacy implications of this rule to the privacy of the information that would be collected, maintained, stored, and disseminated by the FAA in accordance with this rule are the same as the privacy implications of the FAA's current airman certification processes. These privacy impacts have been analyzed by the FAA in the following Privacy Impact Assessments for the following systems: Civil Aviation Registry Applications (AVS Registry); the Integrated Airman Certification and Ratings Application (IACRA); and Accident Incident Database. These Privacy Impact Assessments are available in the docket for this rulemaking and at *http://www.dot.gov/individuals/privacy/privacy-impact-assessments#Federal* Aviation Administration (FAA).

B. Applicability

To integrate small UAS operations into the NAS, this proposed rule would create a new part in title 14 of the CFR: Part 107. Subject to the exceptions discussed below, proposed part 107 would prescribe the rules governing the registration, airman certification, and operation of civil small UAS within the United States. As mentioned previously, a small UAS is a UAS that uses an unmanned aircraft weighing less than 55 pounds. This proposed rule would allow non-recreational small UAS to operate in the NAS. The operations enabled by this proposed rule would include business, academic, and research and development flights, which are hampered by the current regulatory framework.

Under this proposal, the regulations of part 107, which are tailored to address the risks associated with small UAS operations, would apply to small UAS operations in place of certain existing FAA regulations that impede civil small UAS operations. Specifically, for small UAS operations, the requirements of proposed part 107 would generally replace the airworthiness provisions of part 21, the airman certification provisions of part 61, and the operating limitations of part 91.

However, proposed part 107 would not apply to all small UAS operations. For the reasons discussed below, proposed part 107 would not apply to: (1) Air carrier operations; (2) external load and towing operations; (3) international operations; (4) foreign-owned aircraft that are ineligible to be registered in the United States; (5) public aircraft; (6) certain model aircraft; and (7) moored balloons, kites, amateur rockets, and unmanned free balloons.

1. Air Carrier Operations

When someone is transporting persons or property by air for compensation, that person is considered an air carrier by statute and is required to obtain an air carrier operating certificate.[28] Because there is an expectation of safe transportation when payment is exchanged, air carriers are subject to more stringent regulations to mitigate the risks posed to persons or non-operator-owned property on the aircraft.

The FAA notes that some industries may desire to transport property via UAS.[29] Proposed part 107 would not prohibit this type of transportation so long as it is not done for compensation and the total weight of the aircraft, including the property, is less than 55 pounds. For example, research and development operations transporting property could be conducted under proposed part 107, as could operations by corporations transporting their own property within their business under the other provisions of this proposed rule.

The FAA seeks comment on whether UAS should be permitted to transport property for payment within the other proposed constraints of the rule, *e.g.,* the ban on flights over uninvolved persons, the requirements for line of sight, and the intent to limit operations to a constrained area. The FAA also seeks comment on whether a special class or classes of air carrier certification should be developed for UAS operations.

2. External Load and Towing Operations

The FAA considered allowing small unmanned aircraft to conduct external-load operations and to tow other aircraft or objects. These operations involve a greater level of public risk due to the dynamic nature of external-load configurations and inherent risks associated with the flight characteristics of a load that is carried, or extends, outside the aircraft fuselage and may be jettisonable. These types of operations may also involve evaluation of the aircraft frame for safety performance impacts, which may require airworthiness certification.

Given the risks associated with external load and towing operations, the FAA cannot find that a certification is not required. However, the FAA invites comments, with supporting documentation, on whether external-load UAS operations and towing UAS operations should be permitted, whether they would require airworthiness certification, whether they would require higher levels of airman certification, whether they would require additional operational limitations, and on other relevant issues.

3. International Operations

At this time, the FAA also proposes to limit this rulemaking to small UAS operations conducted entirely within the United States. The International Civil Aviation Organization (ICAO) recognizes that:

> The safe integration of UAS into non-segregated airspace will be a long-term activity with many stakeholders adding their expertise on such diverse topics as licensing and medical qualification of UAS crew, technologies for detect and avoid systems, frequency spectrum (including its protection from unintentional or unlawful interference), separation standards from other aircraft, and development of a robust regulatory framework.[30]

ICAO has further stated that ''[u]nmanned aircraft . . . are, indeed aircraft; therefore existing [ICAO standards and recommended practices] SARPs apply to a very great extent. The complete integration of UAS at aerodromes and in the various airspace classes will, however, necessitate the development of UAS-specific SARPs to supplement those already existing.'' [31] ICAO has begun to issue and amend SARPs to specifically address UAS operations. For example, the standard contained in paragraph 3.1.9 of Annex 2 (Rules of the Air) to the Convention on International Civil Aviation states that ''A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the conditions specified in Appendix 4.'' This appendix sets forth detailed conditions ICAO Member States must require of civil UAS operations for the ICAO Member State to comply with the Annex 2, paragraph 3.1.9 standard. ICAO standards in Annex 7 (Aircraft Nationality and Registration Marks) to the Convention also require remotely

[28] 49 U.S.C. 44711(a)(4).

[29] Property that is transported as an external load is discussed in the next section of the preamble.

[30] *ICAO Circular 328 (Unmanned Aircraft Systems (UAS))* (2011).

[31] *Id.*

piloted aircraft to ''carry an identification plate inscribed with at least its nationality or common mark and registration mark'' and be ''made of fireproof metal or other fireproof material of suitable physical properties.'' For remotely piloted aircraft, this identification plate must be ''secured in a prominent position near the main entrance or compartment or affixed conspicuously to the exterior of the aircraft if there is no main entrance or compartment.''

While we embrace the basic principle that UAS operations should minimize hazards to persons, property or other aircraft, we believe that it is possible to achieve this goal with respect to certain small UAS operations in a much less restrictive manner than current ICAO standards require. Accordingly, the FAA proposes, for the time being, to limit the applicability of proposed part 107 to small UAS operations that are conducted entirely within the United States. The FAA envisions that international operations would be dealt with in a future FAA rulemaking. The FAA believes that the experience that the FAA will gain with UAS operations under this rule will assist with future rulemakings. The FAA also anticipates that ICAO will continue to revise and more fully develop its framework for UAS operations to better reflect the diversity of UAS operations and types of UAS and to distinguish the appropriate levels of regulation in light of those differences.

The FAA notes that under Presidential Proclamation 5928, the territorial sea of the United States, and consequently its territorial airspace, extends to 12 nautical miles from the baselines of the United States determined in accordance with international law. Thus, UAS operating in the airspace above the U.S. territorial sea would be operating within the United States for the purposes of this proposed rule.

The FAA also emphasizes that proposed part 107 would not prohibit small UAS operators from operating in international airspace or in other countries; however, the proposed rule also would not provide authorization for such operations. UAS operations that do not take place entirely within the United States would need to obtain all necessary authorizations from the FAA and the relevant foreign authorities outside of the part 107 framework, as that framework would not apply to operations that do not take place entirely within the United States. It is important to note that Article 8 of the Convention on International Civil Aviation, to which the U.S. is a party, provides:

> No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization by that State and in accordance with the terms of such authorization. Each contracting State undertakes to insure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft.

Accordingly, UAS operations in foreign countries may not take place without the required authorizations and permission of that country.

4. Foreign-Owned Aircraft That Are Ineligible for U.S. Registration

The FAA proposes to limit the scope of this rulemaking to U.S.-registered aircraft. Under 49 U.S.C. 44103 and 14 CFR 47.3, an aircraft can be registered in the United States only if it is not registered under the laws of a foreign country and meets one of the following ownership criteria:

- The aircraft is owned by a citizen of the United States;
- The aircraft is owned by a permanent resident of the United States;
- The aircraft is owned by a corporation that is not a citizen of the United States, but that is organized and doing business under U.S. Federal or state law and the aircraft is based and primarily used in the United States; or
- The aircraft is owned by the United States government or a state or local governmental entity.

An aircraft that does not satisfy the above criteria is typically owned by a foreign person or entity and is subject to special operating rules.[32] As previously noted, the ICAO framework for international UAS operations is at a relatively early stage in its development. Accordingly, proposed part 107 would only apply to small unmanned aircraft that meet the criteria specified in § 47.3, which must be satisfied in order for an aircraft to be eligible for U.S. registration. The FAA notes existing U.S. international trade obligations do permit certain kinds of operations, known as specialty air services. Specialty air services are generally defined as any specialized commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, including but not limited to aerial mapping, aerial surveying, aerial photography, forest fire management, firefighting, aerial advertising, glider towing, parachute jumping, aerial construction, helilogging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services. The FAA will consult with the Secretary to determine the process through which it might permit foreign-owned small unmanned aircraft to operate in the United States. The FAA invites comments on the inclusion of foreign-registered small unmanned aircraft in this new framework.

As provided by 49 U.S.C. 40105(b)(1)(A), the FAA Administrator must carry out his responsibilities under Part A (Air Commerce and Safety) of title 49, United States Code, consistently with the obligations of the U.S. Government under international agreements. The FAA invites comments regarding whether the proposed rule needs to be modified to ensure that it is consistent with any relevant obligations of the United States under international agreements.

5. Public Aircraft Operations

This proposed rule would also not apply to public aircraft operations with small UAS that are not operated as civil aircraft. This is because public aircraft operations, such as those conducted by the Department of Defense, the National Aeronautics and Space Administration, and the National Oceanic and Atmospheric Administration, are not required to comply with civil airworthiness or airman certification requirements to conduct operations. However, these operations are subject to the airspace and air-traffic rules of part 91, which include the ''see and avoid'' requirement of § 91.113(b). Because unmanned aircraft operations currently are incapable of complying with § 91.113(b), the FAA has required public aircraft operations that use unmanned aircraft to obtain an FAA-issued Certificate of Waiver or Authorization (COA) providing the public aircraft operation with a waiver/deviation from the ''see and avoid'' requirement of § 91.113(b).

The existing COA system has been in place for over eight years, and has not caused any significant human injuries or other significant adverse safety impacts.[33] Accordingly, this proposed rule would not abolish the COA system. However, this proposed rule would provide public aircraft operations with greater flexibility by giving them the option to declare an operation to be a civil operation and comply with the provisions of proposed part 107 instead

[32] *See, e.g.,* 14 CFR part 91, subpart H (specifying operating rules for foreign civil aircraft).

[33] The FAA has been issuing COAs to public aircraft operations using UAS for over 20 years; however, prior to 2005, those COAs were issued using different processes.

of seeking a COA from the FAA. Because proposed part 107 would address the risks associated with small UAS operations, there would be no adverse safety effects from allowing public aircraft operations to be voluntarily conducted under proposed part 107.[34]

6. Model Aircraft

Proposed part 107 would not apply to model aircraft that satisfy all of the criteria specified in section 336 of Public Law 112–95. Section 336 of Public Law 112–95 defines a model aircraft as an ''unmanned aircraft that is—(1) capable of sustained flight in the atmosphere; (2) flown within visual line of sight of the person operating the aircraft; and (3) flown for hobby or recreational purposes.'' [35] Because section 336 of Public Law 112–95 defines a model aircraft as an ''unmanned aircraft,'' a model aircraft that weighs less than 55 pounds would fall into the definition of small UAS under this rule.

However, Public Law 112–95 specifically prohibits the FAA from promulgating rules regarding model aircraft that meet all of the following statutory criteria: [36]

- The aircraft is flown strictly for hobby or recreational use;
- The aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;
- The aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;
- The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and
- When flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation.

Because of the statutory prohibition on FAA rulemaking regarding model aircraft that meet the above criteria, model aircraft meeting these criteria would not be subject to the provisions of proposed part 107. Likewise, operators of model aircraft excepted from part 107 by the statute would not need to hold an unmanned aircraft operator's certificate with a small UAS rating. However, the FAA emphasizes that because the prohibition on rulemaking in section 336 of Public Law 112–95 is limited to model aircraft that meet all of the above statutory criteria, model aircraft weighing less than 55 pounds that fail to meet all of the statutory criteria would be subject to proposed part 107.

In addition, although Public Law 112–95 excepted certain model aircraft from FAA rulemaking, it specifically states that the law's exception does not limit the Administrator's authority to pursue enforcement action against those model aircraft operators that ''endanger the safety of the national airspace system.'' [37] This proposed rule would codify the FAA's enforcement authority in part 101 by prohibiting model aircraft operators from endangering the safety of the NAS.

The FAA also notes that it recently issued an interpretive rule explaining the provisions of section 336 and concluding that ''Congress intended for the FAA to be able to rely on a range of our existing regulations to protect users of the airspace and people and property on the ground.'' [38] In this interpretive rule, the FAA gave examples of existing regulations the violation of which could subject model aircraft to enforcement action. Those regulations include:

- Prohibitions on careless or reckless operation and dropping objects so as to create a hazard to persons or property (14 CFR 91.13 and 91.15);
- Right-of-way rules for converging aircraft (14 CFR 91.113);
- Rules governing operations in designated airspace (14 CFR part 73 and §§ 91.126 through 91.135); and
- Rules relating to operations in areas covered by temporary flight restrictions and notices to airmen (NOTAMs) (14 CFR 91.137 through 91.145).[39]

The FAA notes that the above list is not intended to be an exhaustive list of all existing regulations that apply to model aircraft meeting the statutory criteria of Public Law 112–95, section 336. Rather, as explained in the interpretive rule, ''[t]he FAA anticipates that the cited regulations are the ones that would most commonly apply to model aircraft operations.'' [40]

7. Moored Balloons, Kites, Amateur Rockets, and Unmanned Free Balloons

Lastly, proposed part 107 would not apply to moored balloons, kites, amateur rockets, and unmanned free balloons. These types of aircraft currently are regulated by the provisions of 14 CFR part 101. Because these aircraft are already incorporated into the NAS through part 101 and because the safety risks associated with these specific aircraft are already mitigated by the regulations of part 101, there is no need to make these aircraft subject to the provisions of proposed part 107.

C. Definitions

Proposed part 107 would create a new set of definitions to address the unique aspects of a small UAS. Those proposed definitions are as follows.

1. Control Station

Proposed part 107 would define a ''control station'' as an interface used by the operator to control the flight path of the small unmanned aircraft. In a manned aircraft, the interface used by the pilot to control the flight path of the aircraft is a part of the aircraft and is typically located inside the aircraft flight deck. Conversely, the interface used to control the flight path of a small unmanned aircraft is typically physically separated from the aircraft and remains on the ground during aircraft flight. Defining the concept of a control station would clarify the interface that is considered part of the small UAS under this regulation.

2. Corrective Lenses

Proposed part 107 would also define ''corrective lenses'' as spectacles or contact lenses. As discussed in the Operating Rules section of this preamble, this proposed rule would require the operator and/or visual observer to have visual line of sight of the small unmanned aircraft with vision that is not enhanced by any device other than corrective lenses. This is because spectacles and contact lenses do not restrict a user's peripheral vision while other vision-enhancing devices may restrict that vision. Because peripheral vision is necessary in order for the operator and/or visual observer to be able to see and avoid other air traffic in the NAS, this proposed rule would limit the circumstances in which vision-enhancing devices other than spectacles or contact lenses may be used.

[34] The FAA notes that section 334(b) of Public Law 112–95 requires the FAA to develop standards regarding the operation of public UAS by December 31, 2015.

[35] Sec. 336(c) of Public Law 112–95.

[36] Sec. 336(a) of Public Law 112–95.

[37] Sec. 336(b) of Public Law 112–95.

[38] *Interpretation of the Special Rule for Model Aircraft,* 79 FR 36172, 36175 (June 25, 2014). This document was issued as a notice of interpretation and has been in effect since its issuance on June 25, 2014. However, we note that the FAA has invited comment on this interpretation, and may modify the interpretation as a result of comments that were received.

[39] *Id.* at 36175–76.

[40] *Id.* at 36176.

3. Operator and Visual Observer

Because of the unique nature of small UAS operations, this proposed rule would create two new crewmember positions: The operator and the visual observer. These positions are discussed further in section III.D.1 of this preamble.

4. Small Unmanned Aircraft

Public Law 112–95 defines a ''small unmanned aircraft'' as ''an unmanned aircraft weighing less than 55 pounds.''[41] This statutory definition of small unmanned aircraft does not specify whether the 55-pound weight limit refers to the total weight of the aircraft at the time of takeoff (which would encompass the weight of the aircraft and any payload on board), or simply the weight of an empty aircraft.

This proposed rule would define a small unmanned aircraft as an unmanned aircraft weighing less than 55 pounds, including everything that is on board the aircraft. The FAA proposes to interpret the statutory definition of small unmanned aircraft as referring to total weight at the time of takeoff because heavier aircraft generally pose greater amounts of public risk in the event of an accident. In the event of a crash, a heavier aircraft can do more damage to people and property on the ground. The FAA also notes that this approach would be similar to the approach that the FAA has taken with other aircraft, such as large aircraft, light-sport aircraft, and small aircraft.[42]

5. Small Unmanned Aircraft System (Small UAS)

This proposed rule would define a small UAS as a small unmanned aircraft and its associated elements (including communication links and the components that control the small unmanned aircraft) that are required for the safe and efficient operation of the small unmanned aircraft in the NAS. Except for one difference, this proposed definition would be similar to the definition of ''unmanned aircraft system'' provided in Public Law 112–95.[43] The difference between the two definitions is that the proposed definition in this rule would not refer to a pilot-in-command because, as discussed further in this preamble, this proposed rule would create a new position of operator to replace the traditional manned-aviation positions of pilot and pilot-in-command for small UAS operations.

6. Unmanned Aircraft

Lastly, this proposed rule would define an unmanned aircraft as an aircraft operated without the possibility of direct human intervention from within or on the aircraft. This proposed definition would codify the definition of ''unmanned aircraft'' specified in Public Law 112–95.[44]

D. Operating Rules

As discussed earlier in this preamble (section III.A), instead of a single omnibus rulemaking that applies to all small UAS operations, the FAA has decided to proceed incrementally and issue a rule governing small UAS operations that pose the least amount of risk. Subpart B of this proposed rule would specify the operating constraints of these operations. The FAA emphasizes that it intends to conduct future rulemaking(s) to incorporate into the NAS small UAS operations that pose a greater level of risk than the operations that would be permitted by this proposed rule. However, those operations present additional safety issues that the FAA needs more time to address. In the meantime, under this proposed rule, operations that could be conducted within the proposed operational constraints would be incorporated into the NAS.

The FAA also considered whether to further subdivide small UAS into different categories of unmanned aircraft that would be regulated differently based on their weight, operational characteristics, and operating environment. This subdivision would have been based on five category groups (Groups A through E). Each of these groups would have been regulated based on its specific weight and operating characteristics.

This is the framework that the FAA used in its initial approach to this rulemaking. However, because this framework attempted to integrate a wide range of UAS operations posing different risk profiles whose integration raised policy questions on which data was either limited or unavailable, the FAA's initial approach would have been unduly burdensome on all UAS groups that would have been covered under that approach. For example, UAS in Group A, which posed the least safety risk under the FAA's initial framework, would have been required to: (1) Obtain a permit to operate (PTO) from the FAA, which would have to be renewed after one year; (2) file quarterly reports with the FAA providing their operational data; (3) establish a level of airworthiness that would be sufficient to obtain an airworthiness certification (the initial approach would have merged airworthiness certification into the PTO); (4) obtain a pilot certificate by passing a knowledge test, a practical test, and completing required ground training with an FAA-certificated instructor; (5) obtain a NOTAM from the FAA prior to conducting certain UAS operations (the operator would do this by filing notice with the FAA); and (6) maintain records documenting the complete maintenance history of the UAS.

After extensive deliberation, the FAA ultimately determined that such a regulatory framework was too complex, costly, and burdensome for both the public and the FAA. The FAA then examined the entire small UAS category of aircraft (unmanned aircraft weighing less than 55 pounds) in light of the new authority provided for under section 333 of Public Law 112–95 and determined that appropriate operational risk mitigations could be developed to allow the entire category of small UAS to avoid airworthiness certification and be subject to the least burdensome level of regulation that is necessary to protect the safety and security of the NAS. Furthermore, the FAA decided to also substantially simplify the operational limitations and airman (operator) certification requirements in a manner that would equally accommodate all types of small UAS business users with the least amount of complexity and regulatory burden.

The FAA believes that treating small UAS as a single category without airworthiness certification would accommodate a large majority of small UAS businesses and other non-recreational users of UAS. The operational limits in this proposed rule would mitigate risk associated with small UAS operations in a way that would provide an equivalent level of safety to the NAS with the least amount of burden to business and other non-recreational users of even the smallest UAS. The FAA invites comments, with supporting documentation, on whether the regulation of small UAS should be further subdivided based on the size, weight, and operating environment of the small UAS.

1. Micro UAS Classification

In addition to part 107 as proposed, the FAA is considering including a

[41] Sec. 331(6) of Public Law 112–95.

[42] *See* 14 CFR 1.1 (referring to ''takeoff weight'' for large, light-sport, and small aircraft in the definitions for those aircraft).

[43] Sec. 331(9) of Public Law 112–95. Public Law 112–95 defines an ''unmanned aircraft system'' as ''an unmanned aircraft and associated elements (including communication links and the components that control the unmanned aircraft) that are required for the pilot in command to operate safely and efficiently in the national airspace system.''

[44] Sec. 331(8) of Public Law 112–95.

micro UAS classification. This classification would be based on the UAS ARC's recommendations, as well as approaches adopted in other countries that have a separate set of regulations for micro UAS.

In developing this micro UAS classification, the FAA examined small UAS policies adopted in other countries. In considering other countries' aviation policies, the FAA noted that each country has its unique aviation statutory and rulemaking requirements, which may include that country's unique economic, geographic, and airspace density considerations. Canada is our only North American neighbor with a regulatory framework for small UAS. The chart below summarizes Transport Canada's operational limitations for micro UAS (4.4 pounds (2 kilograms) and under) and compares it with the regulatory framework in proposed part 107 as well as the micro UAS classification that the FAA is considering.

COMPARISON OF CANADIAN RULES GOVERNING MICRO UAS CLASS WITH PROVISIONS OF PROPOSED PART 107 AND MICRO UAS SUB-CLASSIFICATION

Provision	Canada	Small UAS NPRM	Micro UAS Sub-classification
Definition of Small UAS	Up to 4.4 lbs (2 kg)	Up to 55 lbs (24 kg)	Up to 4.4 lbs (2 kg).
Maximum Altitude Above Ground	300 feet	500 feet	400 feet.
Airspace Limitations	Only within Class G airspace	Allowed within Class E in areas not designated for an airport. Otherwise, need ATC permission. Allowed within Class B, C and D with ATC permission. Allowed in Class G with no ATC permission.	Only within Class G airspace.
Distance from people and structures	100 feet laterally from any building, structure, vehicle, vessel or animal not associated with the operation and 100 feet from any person.	Simply prohibits UAS operations over any person not involved in the operations (unless under a covered structure).	Flying over any person is permitted.
Ability to extend operational area	No	Yes, from a waterborne vehicle	No.
Autonomous operations	No	Yes	No.
Aeronautical knowledge required	Yes; ground school	Yes; applicant would take knowledge test.	Yes; applicant would self-certify.
First person view permitted	No	Yes, provided operator is visually capable of seeing the small UAS.	No.
Operator training required	Yes, ground school	No	No.
Visual observer training required	Yes	No	No.
Operator certificate required	No	Yes (must pass basic UAS aeronautical test).	Yes (no knowledge test required).
Preflight safety assessment	Yes	Yes	Yes.
Operate within 5 miles of an airport	No	Yes	No.
Operate in a congested area	No	Yes	Yes.
Liability insurance	Yes, $100,000 CAN	No	No.
Daylight operations only	Yes	Yes	Yes.
Aircraft must be made out of frangible materials.	No	No	Yes.

The FAA is considering the following provisions for the micro UAS classification:

- The unmanned aircraft used in the operation would weigh no more than 4.4 pounds (2 kilograms). This provision would be based on the ARC's recommendations and on how other countries, such as Canada, subdivide their UAS into micro or lightweight UAS;
- The unmanned aircraft would be made out of frangible materials that break, distort, or yield on impact so as to present a minimal hazard to any person or object that the unmanned aircraft collides with. Examples of such materials are breakable plastic, paper, wood, and foam. This provision would be based on the ARC's recommendations;
- During the course of the operation, the unmanned aircraft would not exceed an airspeed of 30 knots. This provision would be based on the ARC's recommendation, which was concerned with damage that could be done by unmanned aircraft flying at higher speeds;
- During the course of the operation, the unmanned aircraft would not travel higher than 400 feet above ground level (AGL). This provision would be based on the ARC's recommendations;
- The unmanned aircraft would be flown within visual line of sight; first-person view would not be used during the operation; and the aircraft would not travel farther than 1,500 feet away from the operator. These provisions would be based on ARC recommendations and Canada's requirements for micro UAS;
- The operator would maintain manual control of the flight path of the unmanned aircraft at all times, and the operator would not use automation to control the flight path of the unmanned aircraft. This provision would be based on ARC recommendations and Canada's requirements for micro UAS;
- The operation would be limited entirely to Class G airspace. This provision would be based on Canada's requirements for micro UAS; and
- The unmanned aircraft would maintain a distance of at least 5 nautical miles from any airport. This provision would be based on Canada's requirements for micro UAS.

The operational parameters discussed above may provide significant additional safety mitigations. Specifically, a very light (micro) UAS operating at lower altitudes and at lower speeds, that is made up of materials that break or yield easily upon impact, may pose a much lower risk to persons, property, and other NAS users than a UAS that does not operate within these

parameters. Additionally, limiting the micro UAS operation entirely to Class G airspace, far away from an airport, and in close proximity to the operator (as well as limiting the unmanned aircraft's flight path to the operator's constant manual control) would significantly reduce the risk of collision with another aircraft. Accordingly, because the specific parameters of a micro UAS operation described above would provide additional safety mitigation for those operations, the FAA's micro UAS approach would allow micro UAS to operate directly over people not involved in the operation. Under the FAA's micro UAS approach, the operator of a micro UAS also would be able to operate using a UAS airman certificate with a different rating (an unmanned aircraft operator certificate with a micro UAS rating) than the airman certificate that would be created by proposed part 107. No knowledge test would be required in order to obtain an unmanned aircraft operator certificate with a micro UAS rating; instead, the applicant would simply submit a signed statement to the FAA stating that he or she has familiarized him or herself with all of the areas of knowledge that are tested on the initial aeronautical knowledge test that is proposed under part 107.

The FAA is also considering whether to require, as part of the micro UAS approach, that the micro UAS be made out of frangible material. A UAS that is made out of frangible material presents a significantly lower risk to persons on the ground, as that UAS is more likely to shatter if it should impact a person rather than injuring that person. Without the risk mitigation provided by frangible-material construction, the FAA would be unable to allow micro UAS to operate directly over a person not involved in the operation. The FAA notes that, currently, a majority of fixed-wing small UAS are made out of frangible materials that would satisfy the proposed requirement. The FAA invites comments on whether it should eliminate frangibility from the micro UAS framework.

The FAA also invites commenters to submit data and any other supporting documentation on whether the micro UAS classification should be included in the final rule, and what provisions the FAA should adopt for such a classification. The FAA invites further comments, with supporting documentation, estimating the costs and benefits of implementing a micro UAS approach in the final rule. Finally, the FAA invites comments to assess the risk to other airspace users posed by the lesser restricted integration of micro UAS into the NAS. The FAA notes, however, that due to statutory constraints, the FAA would be unable to eliminate the requirement to hold an airman certificate and register the unmanned aircraft even if it were to adopt a micro UAS approach in the final rule.

During the course of this rulemaking, the FAA also received a petition for rulemaking from UAS America Fund LLC. This petition presented the FAA with an alternative approach to regulating micro UAS, complete with a set of regulatory provisions that would be specific to micro UAS operations. Because the FAA was already in the process of rulemaking at the time this petition was filed, pursuant to 14 CFR 11.73(c), the FAA will not treat this petition as a separate action, but rather, will consider it as a comment on this rulemaking. Accordingly, the FAA has placed a copy of UAS America Fund's rulemaking petition in the docket for this rulemaking and invites comments on the suggestions presented in this petition. Any comments received in response to the proposals in the petition will be considered in this rulemaking.

2. Operator and Visual Observer

As briefly mentioned earlier, this proposed rule would create two new crewmember positions: An operator and a visual observer. The FAA proposes these positions for small UAS operations instead of the traditional manned-aircraft positions of pilot, flight engineer, and flight navigator. This is being proposed because, by their very nature, small UAS operations are different from manned aircraft operations, and this necessitates a different set of qualifications for crewmembers.

i. Operator

The FAA proposes to define an operator as a person who manipulates the flight controls of a small UAS. Flight controls include any system or component that affects the flight path of the aircraft. The position of operator would be somewhat analogous to the position of a pilot who controls the flight of a manned aircraft. However, the FAA proposes to create the position of an operator rather than expand the existing definition of pilot to emphasize that, even though the operator directly controls the flight of the unmanned aircraft, the operator is not actually present on the aircraft.

The FAA notes that even though a small UAS operator is not a pilot, the operator would still be considered an airman and statutorily required to obtain an airman certificate. The statutory flexibility provided in section 333 of Public Law 112–95 is limited to airworthiness certification and does not extend to airman certification. Thus, as mentioned previously, the FAA's statute prohibits a person without an airman certificate from serving in any capacity as an airman with respect to a civil aircraft used or intended to be used in air commerce.[45] The statute defines an ''airman,'' in part, as an individual who, as a member of the crew, navigates the aircraft when under way.[46] Because under this proposed rule the operator would be a member of the crew and would navigate the small unmanned aircraft when that aircraft is under way, an operator would be an airman as defined in the FAA's statute. Accordingly, the operator would statutorily be required to obtain an airman certificate in order to fly the small unmanned aircraft.

The FAA proposes to codify this statutory requirement in § 107.13(a), which would require a person who wishes to serve as an operator to obtain an unmanned aircraft airman certificate with a small UAS rating. An unmanned aircraft airman certificate would be a new type of airman certificate that would be created by this proposed rule specifically for UAS operators to satisfy the statutory requirement for an airman certificate. The certificate necessary to operate small UAS would have a small UAS rating. The FAA anticipates that certificates used to operate UAS not subject to this proposed rule would have different certification requirements. The specific details of this certificate are discussed further in section III.E of this preamble.

The FAA also proposes to give each operator the power and responsibility typically associated with a pilot-in-command (PIC) under the existing regulations. Under the existing regulations, the PIC ''is directly responsible for, and is the final authority as to the operation of [the] aircraft.'' [47] The PIC position provides additional accountability for the safety of an operation by: (1) Ensuring that a single person on board the aircraft is accountable for that operation; and (2) providing that person with the authority to address issues affecting operational safety.

An accountability system, such as the existing PIC concept, would provide similar benefits for small UAS operations. Accordingly, the FAA proposes, in § 107.19(a), to make each operator: (1) Directly responsible for the

[45] 49 U.S.C. 44711(a)(2)(A).

[46] 49 U.S.C. 40102(a)(8)(A).

[47] 14 CFR 91.3(a).

small UAS operation, and (2) the final authority as to the small UAS operation. To provide further clarity as to the operator's authority over the small UAS operation, proposed § 107.49(b) would require that each person involved in the small UAS operation perform the duties assigned by the operator.

The FAA also considered providing the operator with the emergency powers available to the PIC under 14 CFR 91.3(b). Under § 91.3(b), a PIC can deviate from FAA regulations to respond to an in-flight emergency. However, the FAA does not believe that this power is necessary for the operator because a small unmanned aircraft is highly maneuverable and much easier to land than a manned aircraft. Thus, in an emergency, an operator should be able to promptly land the small unmanned aircraft in compliance with FAA regulations. Accordingly, the FAA proposes not to provide an operator with the emergency powers available to the PIC under § 91.3(b). The FAA invites comments on this issue.

The FAA also does not believe that it is necessary to create a separate ''operator-in-command'' position for small UAS operations. The existing regulations create a separate PIC position because many manned aircraft are operated by multiple pilots. Thus, it is necessary to designate one of those pilots as the accountable authority for the operation. By contrast, only one operator is needed for a small UAS flight operation even though additional non-operator persons could be involved in the operation. Thus, at this time, it is not necessary to create an operator-in-command position. The FAA invites comments on whether a separate operator-in-command position should be created for small UAS operations.

The FAA finally notes that the term ''operate'' is currently a defined term in 14 CFR 1.1 that is used in manned-aircraft operations. While, for purposes of proposed part 107, the proposed definition of ''operator'' would supersede any conflicting definitions in § 1.1, the FAA invites comments as to whether defining a new crewmember position as an ''operator'' would cause confusion with the existing terminology. If so, the FAA invites suggestions as to an alternative title for this crewmember position.

ii. Visual Observer

To assist the operator with the proposed see-and-avoid and visual-line-of-sight requirements discussed in the next section of this preamble, the FAA proposes to create the position of a visual observer. Under this proposed rule, a visual observer would be defined as a person who assists the small unmanned aircraft operator in seeing and avoiding other air traffic or objects aloft or on the ground. The visual observer would do this by augmenting the operator as the person who must satisfy the see-and-avoid and visual-line-of-sight requirements of this proposed rule. As discussed in more detail below, an operator must always be capable of seeing the small unmanned aircraft. However, if the operation is augmented by at least one visual observer, the operator is not required to exercise this capability, as long as the visual observer maintains a constant visual-line-of-sight of the small unmanned aircraft.

The FAA emphasizes that, as proposed, a visual observer is not a required crewmember, as the operator could always satisfy the pertinent requirements him- or herself. Under this proposed rule, an operator could, at his or her discretion, use a visual observer to increase the flexibility of the operation. The FAA notes, however, that as discussed in III.D.3.i of this preamble, even if a visual observer is used to augment the operation, a small unmanned aircraft would still be required by § 107.33(c) to always remain close enough to the control station for the operator to be capable of seeing that aircraft.

To ensure that the visual observer can carry out his or her duties, the FAA proposes, in § 107.33(b), that the operator be required to ensure that the visual observer is positioned in a location where he or she is able to see the small unmanned aircraft in the manner required by the proposed visual-line-of-sight and see-and-avoid provisions of §§ 107.31 and 107.37. The operator can do this by specifying the location of the visual observer. The FAA also proposes to require, in § 107.33(d), that the operator and visual observer coordinate to: (1) Scan the airspace where the small unmanned aircraft is operating for any potential collision hazard; and (2) maintain awareness of the position of the small unmanned aircraft through direct visual observation. This would be accomplished by the visual observer maintaining visual contact with the small unmanned aircraft and the surrounding airspace and then communicating to the operator the flight status of the small unmanned aircraft and any hazards which may enter the area of operation so that the operator can take appropriate action.

To make this communication possible, this proposed rule would require, in § 107.33(a), that the operator and visual observer maintain effective communication with each other at all times. This means that the operator and visual observer must work out a method of communication prior to the operation that allows them to understand each other, and utilize that method in the operation. The FAA notes that this proposed communication requirement would permit the use of communication-assisting devices, such as radios, to facilitate communication between the operator and visual observer from a distance. The FAA considered requiring the visual observer to be stationed next to the operator to allow for unassisted oral communication, but decided that this requirement would be unduly burdensome, as it is possible to have effective oral communication through a communication-assisting device. The FAA invites comments on whether the visual observer should be required to stand close enough to the operator to allow for unassisted verbal communication.

Under this proposed rule, the visual observer would not be permitted to manipulate any controls of the small UAS, share in operational control, or exercise operation-related judgment independent of the operator. Because the visual observer's role in the small UAS operation would be limited to simply communicating what he or she is seeing to the operator, the visual observer would not be an ''airman'' as defined in the FAA's statute.[48] Consequently, as proposed, the visual observer would not statutorily be required to obtain an airman certificate.[49]

While an airman certificate for a visual observer is not statutorily mandated, the FAA considered requiring that the visual observer obtain an airman certificate.[50] However, due to the fact that this proposed rule would not permit the visual observer to

[48] 49 U.S.C. 40102(a)(8). This statute defines an ''airman'' as an individual: ''(A) in command, or as pilot, mechanic, or member of the crew, who navigates aircraft when under way; (B) except to the extent the Administrator of the Federal Aviation Administration may provide otherwise for individuals employed outside the United States, who is directly in charge of inspecting, maintaining, overhauling, or repairing aircraft, aircraft engines, propellers, or appliances; or (C) who serves as an aircraft dispatcher or air traffic control-tower operator.'' The visual observer's limited role in the operation of a small UAS would not meet any of these criteria.

[49] *See* 49 U.S.C. 44711(a)(2)(A) (prohibiting a person without an airman certificate from serving in any capacity as an airman with respect to a civil aircraft used or intended to be used in air commerce).

[50] This requirement would be imposed pursuant to 49 U.S.C. 44701(a)(5), which gives FAA the power to prescribe regulations that it finds necessary for safety in air commerce.

manipulate the small UAS controls or exercise any independent judgment or operational control, the FAA believes that certification of visual observers would not result in significant safety benefits. Accordingly, the FAA is not proposing to require airman certification for visual observers. The FAA invites comments on whether an airman certificate should be required to serve as a visual observer. If so, what requirements should an applicant meet in order to obtain a visual observer airman certificate? The FAA also invites comments regarding the costs and benefits of requiring airman certification for visual observers.

3. See-and-Avoid and Visibility Requirements

Turning to the see-and-avoid and visibility requirements mentioned in the previous section, one of the issues with small UAS operations is that the small UAS operator cannot see and avoid other aircraft in the same manner as a pilot who is inside a manned aircraft. Because at this time there is no technology that can provide an acceptable see-and-avoid replacement for human vision for small UAS operations, this proposed rule would limit small UAS operations to within the visual line of sight of the operator and a visual observer. This proposed rule would also impose requirements to ensure maximum visibility for the operation of the small UAS and ensure that small unmanned aircraft always yield the right-of-way to other users of the NAS.

i. See-and-Avoid

Currently, 14 CFR 91.113(b) imposes a requirement on all aircraft operations that, during flight, ''vigilance shall be maintained by each person operating an aircraft so as to see and avoid other aircraft.'' This see-and-avoid requirement is at the heart of the FAA's regulatory structure mitigating the risk of aircraft colliding in midair. As such, in crafting this proposed rule, the FAA sought a standard under which the small UAS operator would have the ability to see and avoid other aircraft similar to that of a manned-aircraft pilot.

The FAA considered proposing that a UAS operator be permitted to exercise his or her see-and-avoid responsibilities through technological means, such as onboard cameras. We recognize that technology is developing that could provide an acceptable substitute for direct human vision in UAS operations. FAA does not, however, believe this technology has matured to the extent that would allow it to be used safely in small UAS operations in lieu of visual line of sight. The FAA has not identified an acceptable technological substitute for the safety protections provided by direct human vision in small UAS operations at this time. For these reasons and consistent with the statutory direction provided for in section 333, the FAA proposes to require, in §§ 107.31 and 107.37(a)(1), that the operator (and visual observer, if used) must be capable of maintaining a visual line of sight of the small unmanned aircraft throughout that aircraft's entire flight with human vision that is unaided by any device other than spectacles or contact lenses.

If a visual observer is not used, the operator must exercise this capability and maintain watch over the small unmanned aircraft during flight. However, if an operation is augmented by at least one visual observer, then the visual observer can be used to satisfy the visual-line-of-sight requirements, as long as the operator always remains situated such that he or she can exercise visual-line-of-sight capability.

The FAA notes that this proposed requirement does not require the person maintaining visual line of sight to constantly watch the unmanned aircraft for every single second of that aircraft's flight. The FAA understands and accepts that this person may lose sight of the unmanned aircraft for brief moments of the operation. This may be necessary either because the small UAS momentarily travels behind an obstruction or to allow the person maintaining visual line of sight to perform actions such as scanning the airspace or briefly looking down at the small UAS control station. The visual-line-of-sight requirement of this proposed rule would allow the person maintaining visual line of sight brief moments in which he or she cannot directly see the small unmanned aircraft provided that the person is able to see the surrounding operational area sufficiently well to carry out his or her visual-line-of-sight-related responsibilities. Anything more than brief moments during which the person maintaining visual line of sight is unable to see the small unmanned aircraft would be prohibited under this proposed rule.

To ensure that the operator's vision (and that of a visual observer, if used) of the small unmanned aircraft is sufficient to see and avoid other aircraft in the NAS, the proposed rule would require that the operator's or visual observer's vision of the small unmanned aircraft must be sufficient to allow him or her to: (1) Know the small unmanned aircraft's location; (2) determine the small unmanned aircraft's attitude, altitude, and direction; (3) observe the airspace for other air traffic or hazards; and (4) determine that the small unmanned aircraft does not endanger the life or property of another. Because maintaining this type of awareness in real-time is a concentration-intensive activity, proposed § 107.35 would limit an operator or visual observer to operating no more than one small UAS at the same time.[51]

Binoculars, onboard cameras, and other vision-enhancing devices (aside from spectacles or contact lenses) cannot be used to satisfy this proposed requirement because those devices restrict the user's peripheral field of vision. Since a pilot often uses peripheral vision to identify other aircraft in the NAS,[52] a device that restricts peripheral vision hinders the user's ability to see other aircraft. However, the FAA recognizes that there are advantages to using vision-enhancing devices, such as those used when utilizing camera video transmitted to a screen at the operator's station (also known as first person view) when conducting inspections of bridges or towers. This proposed rule is not intended to prohibit the use of those devices. Rather, the proposed visual-line-of-sight requirement requires simply that at least one person involved in the operation, either the operator or a visual observer, must maintain an unenhanced visual line of sight of the small unmanned aircraft. Anyone else involved in the operation may use a vision-enhancing device (including first-person view) so long as that device is not used to meet the proposed requirements of §§ 107.31 and 107.37. The FAA invites comments on this proposed visual-line-of-sight requirement. The FAA also invites suggestions, with supporting documentation, for other ways in which a first-person-view device could be used by the operator without compromising the risk mitigation provided by the proposed visual-line-of-sight requirement. The FAA also invites comments on whether it should permit operations beyond visual line of sight in its final rule, for example through deviation authority, once the pertinent technology matures to the extent that it

[51] The use of a visual observer would not be sufficient to allow an operator to operate more than one small UAS because the operator would still need to maintain sufficient concentration to react to the information provided to him or her by the visual observer.

[52] Pilot Safety brochure: ''Pilot Vision.'' *http://www.faa.gov/pilots/safety/pilotsafetybrochures/media/pilot_vision.pdf.* A copy of this document is also available in the docket for this rulemaking.

can be used to safely operate beyond visual line of sight. If so, what level of validation should the technology be subject to in order to demonstrate reliability? For example, should the FAA use its existing certification or validation methodologies to evaluate UAS technology?

ii. Additional Visibility Requirements

To further ensure that a small UAS operator/visual observer can see and avoid other aircraft, the FAA proposes (1) to limit the operation of small UAS to daylight-only operations, and (2) to impose weather-minimum visibility requirements

First, the FAA proposes, in § 107.29, to prohibit the operation of a small UAS outside the hours of official sunrise and sunset. The Federal Air Almanac provides tables which are used to determine sunrise and sunset at various latitudes. The FAA considered proposing to allow small UAS operations outside the hours of official sunrise and sunset, recognizing that this would integrate a greater quantity of small UAS operations into the NAS. However, the FAA has decided to propose limiting small UAS use to daylight-only operations due to the relatively small size of the small unmanned aircraft and the difficulty in being able to see it in darker environments to avoid other airspace users. The FAA also notes that most small unmanned aircraft flights under this proposed rule would take place at low altitudes, and flying at night would limit the small UAS operator's ability to see people on the ground and take precautions to ensure that the small unmanned aircraft does not pose a hazard to those people. Moreover, allowing small UAS operations outside of daylight hours would require equipage specifications (such as a lighting system emitting a certain minimum amount of light) and airworthiness certification requirements that are contrary to the FAA's goal of a minimally burdensome rule for small unmanned aircraft. The FAA also notes that, for manned aircraft operations, the regulations provide for very specific lighting systems necessary to safely operate in the NAS. Those regulations require, among other things: (1) Lighting system angles; (2) lighting system intensity; (3) lighting system color and position; (4) lighting system installation; and (5) lighting system configuration.[53] This level of regulation and airworthiness certification would be beyond the level of a minimally burdensome rule encompassing low-risk operation that is contemplated by section 333 of Public Law 112–95.

The FAA realizes the proposed daylight-only operations requirement may affect the ability to use small unmanned aircraft in more northern latitudes (specifically Alaska), and is willing to consider any reasonable mitigation which would ensure that an equivalent level of safety is maintained while operating in low-light areas. The FAA welcomes public comments with suggestions on how to effectively mitigate the risk of operations of small unmanned aircraft during low-light or nighttime operations.

In addition, to ensure that small UAS operators and visual observers have the ability to see and avoid other aircraft, the FAA is proposing to require, in § 107.51(c), a minimum flight visibility of 3 statute miles (5 kilometers) from the control station for small UAS operations. A visibility of 3 statute miles currently is required for aircraft operations in controlled airspace.[54] The FAA also requires a 3-mile visibility in the context of other unmanned aircraft operations (moored balloons and kites).[55] The reason for the increased visibility requirement is to provide the small UAS operator with additional time after seeing a manned aircraft to maneuver and avoid an accident or incident with the manned aircraft.

In addition, the FAA is proposing to require, in § 107.51(d), that the small unmanned aircraft must be no less than: (1) 500 feet (150 meters) below clouds; and (2) 2,000 feet (600 meters) horizontal from clouds. This is similar to the requirements imposed by 14 CFR 91.155 on aircraft operating in controlled airspace under visual flight rules. The FAA proposes to impose these cloud-clearance requirements on small UAS operations because, as mentioned previously, small UAS operators do not have the same see-and-avoid capability as manned-aircraft pilots.

iii. Yielding Right of Way

Now that we have discussed how a small UAS operator sees other users of the NAS, we turn to how that operator avoids those users. In aviation, this is accomplished through right-of-way rules, which pilots are required to follow when encountering other aircraft. These rules specify how pilots should respond to other NAS users based on the types of aircraft or the operational scenario.

The operation of small UAS presents challenges to the application of the traditional right-of-way rules. The smaller visual profile of the small unmanned aircraft makes it difficult for manned pilots to see and, therefore, avoid the unmanned aircraft. This risk is further compounded by the difference in speed between manned aircraft and the often slower small unmanned aircraft. Because of these challenges, the FAA proposes to require, in § 107.37(a)(2), that the small UAS operator must always be the one to initiate an avoidance maneuver to avoid collision with any other user of the NAS. Optimally, the small UAS operator should give right-of-way to all manned aircraft in such a manner that the manned aircraft is never presented with a see-and-avoid decision or the impression that it must maneuver to avoid the small UAS.

When a small UAS operator encounters another unmanned aircraft, each operator must exercise his or her discretion to avoid a collision between the aircraft. In extreme situations where collision is imminent, the small UAS operator must always consider the safety of people, first and foremost, over the value of any equipment, even if it means the loss of the unmanned aircraft. To further mitigate the risk of a mid-air collision, the FAA also proposes to codify, in § 107.37(b), the existing requirement in 14 CFR 91.111(a), which prohibits a person from operating an aircraft so close to another aircraft as to create a collision hazard.

4. Containment and Loss of Positive Control

As discussed above, one of the issues unique to UAS operations is the possibility that during flight, the UAS operator may become unable to directly control the unmanned aircraft due to a failure of the control link between the aircraft and the operator's control station. This failure is known as a loss of positive control. Because the UAS operator's direct connection to the aircraft is funneled through the control link, a failure of the control link could have significant adverse results.

To address this issue, the FAA proposes a performance-based operator-responsibility standard built around the concept of a confined area of operation. Confining the flight of a small unmanned aircraft to a limited area would allow the operator to become familiar with the area of operation and to create contingency plans for using the environment in that area to mitigate the risk associated with possible loss of positive control. For example, the operator could mitigate loss-of-control risk to people on the ground by setting up a perimeter and excluding people

[53] *See* 14 CFRs 23.1381 through 23.1401.

[54] *See* 14 CFR 91.115.

[55] 14 CFR 101.13(a)(3).

not involved with the operation from the operational area. The operator could also mitigate risk to other aircraft by notifying the local air traffic control of the small UAS operation and the location of the confined area in which that operation will take place. As a result of risk-mitigation options that are available to the operator in a confined area of operation, the FAA proposes to mitigate the risk associated with loss of aircraft control by confining small unmanned aircraft to a limited area of operation.

As an alternative method of addressing this issue, the FAA considered technological approaches such as requiring a flight termination system that would automatically terminate the flight of the small unmanned aircraft if the operator lost positive control of that aircraft. However, as previously discussed, due to the size and weight of a small UAS, operations subject to this proposed rule would not pose the same level of risk as other operations regulated by the FAA. Since small UAS operations subject to this rule pose a lower level of risk, there are operational alternatives available to mitigate their risk to an acceptable level without imposing an FAA requirement for technological equipage and airworthiness certification requirements. Therefore, this proposed rule would not mandate the use of a flight termination system nor would this proposed rule mandate the equipage of any other navigational aid technology. Instead, the FAA invites comments on whether a flight termination system or other technological equipage should be required and how it would be integrated into the aircraft for small UAS that would be subject to this proposed rule. The FAA also invites comments, with supporting documentation, as to the costs and benefits of requiring a flight termination system or other technological equipage.

i. Confined Area of Operation Boundaries

The FAA notes that the proposed visual-line-of-sight requirement in § 107.31 would create a natural horizontal boundary on the area of operation. Due to the distance limitations of human vision, the operator or visual observer would be unable to maintain visual line of sight of the small unmanned aircraft sufficient to satisfy proposed § 107.31 if the aircraft travels too far away from them. Accordingly, the proposed visual-line-of-sight requirement in proposed § 107.31 would effectively confine the horizontal area of operation to a circle around the person maintaining visual contact with the aircraft with the radius of that circle being limited to the farthest distance at which the person can see the aircraft sufficiently to maintain compliance with proposed § 107.31.

The FAA notes that there are two issues with defining the horizontal boundary of the area of operation in this manner. First, a small UAS operation could use multiple visual observers to expand the outer bounds of the horizontal circle created by the visual-line-of-sight requirement. To address this issue, the FAA proposes to require, in § 107.33(c), that if an operation uses a visual observer, the small unmanned aircraft must remain close enough to the operator at all times during flight for the operator to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses. This approach would prevent the use of visual observers to expand the horizontal outer bounds of the confined area of operation. This approach would also create a safety-beneficial redundancy in that, while the operator is not required to look at the small unmanned aircraft in an operation that uses a visual observer, should something go wrong, the operator would be able to look up and see for him- or herself what is happening with the aircraft.

As an alternative method of addressing this issue, the FAA considered imposing a numerical limit on how far away a small unmanned aircraft can be from the operator. The FAA ultimately decided not to propose this approach, as it currently lacks sufficient data to designate a specific numerical limit. However, the FAA invites comments on whether the horizontal boundary of the contained area of operation should be defined through a numerical limit. If the boundary is defined through a numerical limit, what should that limit be?

The second way that the horizontal boundary of the confined operational area could be expanded is by stationing the operator on a moving vehicle or aircraft. If the operator is stationed on a moving vehicle, then the horizontal area-of-operation boundary tied to the operator's line of sight would move with the operator, thus increasing the size of the small unmanned aircraft's area of operation. To prevent this scenario, the FAA proposes, in § 107.25, consistent with the ARC recommendations,[56] to prohibit the operation of a small UAS from a moving aircraft or land-borne vehicle. However, proposed § 107.25 would make an exception for water-borne vehicles. This is because there are far less people and property located over water than on land. Consequently, a loss of positive control that occurs over water would have a significantly smaller chance of injuring a person or damaging property than a loss of positive control that occurs over land. Allowing use of a small UAS from a water-borne vehicle would also increase the societal benefits of this proposed rule without sacrificing safety by incorporating small UAS operations such as bridge inspections and wildlife nesting area evaluations into the NAS.

The FAA is considering alternatives for regulation of the operation of small UAS from moving land vehicles, while protecting safety. It invites comments, with supporting documentation, on whether small UAS operations should be permitted from moving land-based vehicles, and invites comment on a regulatory framework for such operations. The FAA specifically invites comments as to whether distinctions could be drawn between different types of land-based vehicles or operating environments such that certain operations from moving land-based vehicles could be conducted safely. The FAA also invites comments on whether deviation authority should be included in the final rule to accommodate these types of operations.

Next, we turn to the vertical boundary of the confined area of operation. With regard to the vertical boundary, the FAA proposes, in § 107.51(b), to set an altitude ceiling of 500 feet above ground level (AGL) for small UAS operations that would be subject to this proposed rule. The FAA chose to propose 500 feet as the vertical area-of-operation boundary because most manned aircraft operations take place above 500 feet. Specifically, most manned aircraft operations conducted over uncongested areas must be flown at an altitude above 500 feet AGL, while most manned aircraft operations conducted over congested areas must be flown at an even higher altitude.[57] Thus, a 500-foot altitude ceiling for small UAS operations would create a buffer between a small unmanned aircraft and most manned aircraft flying in the NAS.

The FAA notes that while most manned aircraft operations fly above the 500-foot ceiling proposed in this rule, there are some manned-aircraft operations that could fly below this altitude. For example, aerial applicators, helicopter air ambulance services, and military operations conducted on military training routes often fly at an

[56] ARC report and recommendations, Sec. 6.11

[57] *See* 14 CFR 91.119(b) and (c).

altitude below 500 feet. However, even though some manned aircraft operations take place at an altitude below 500 feet, there is significantly less air traffic at or below 500 feet than there is above 500 feet altitude. As a result of this difference in air-traffic density, the FAA has determined that small UAS operations would not pose a significant risk to manned aircraft operations taking place below 500 feet altitude if proper precautions are taken by the small UAS operator.

The FAA also considered whether the vertical boundary should be set at a higher level. However, because most manned-aircraft operations transit the airspace above the 500-foot level, UAS operations at that altitude would likely require greater levels of operator training, aircraft equipage, and some type of aircraft certification in order to avoid endangering other users of the NAS. Since these provisions would be contrary to the goal of this rulemaking, which is to regulate the lowest-risk small UAS operations while imposing a minimal regulatory burden on those operations, this proposed rule would not allow small UAS to travel higher than 500 feet AGL. The FAA invites comments, with supporting documentation, on whether this proposed 500-foot ceiling should be raised or lowered.

ii. Mitigating Loss-of-Positive-Control Risk

Now that we have defined the confined area of operation, we turn to the question of how loss-of-positive-control risk can be mitigated within that area of operation. The FAA notes that there is significant diversity in both the types of small UAS that are available and the types of operations that those small UAS can be used in. Accordingly, small UAS operators need significant flexibility to mitigate hazards posed by their individual small UAS operation, as a mitigation method that works well for one type of small UAS used in one type of operation may not work as well in another operation that uses another type of small UAS. For example, in a loss-of-positive-control situation, a rotorcraft that loses operator inputs or power to its control systems would tend to descend straight down or at a slight angle while a fixed wing aircraft would glide for a greater distance before landing. Since the loss-of-positive-control risk posed by different types of small unmanned aircraft in various operations is different, the FAA proposes to create a performance-based standard under which, subject to certain broadly-applicable constraints, small UAS operators would have the flexibility to create operational and aircraft-specific loss-of-control mitigation measures.

The broadly applicable constraints that the FAA proposes to impose on a small UAS operator's risk-mitigation decisions are as follows. First, the FAA proposes to require, in § 107.49(a)(3), that prior to flight, the operator must ensure that all links between the control station and the small unmanned aircraft are working properly. The operator can do this by verifying control inputs from the control station to the servo actuators [58] in the small unmanned aircraft. If the operator finds, during this preflight check, that a control link is not functioning properly, the operator would not commence flight until the problem with the control link is resolved. This proposed constraint would significantly mitigate the risk of a loss-of-positive-control scenario by reducing the possibility that small unmanned aircraft flight commences with a malfunctioning control link.

Second, the FAA proposes to impose a speed limit of 87 knots (100 miles per hour) on small unmanned aircraft calibrated airspeed at full power in level flight. This is because, if there is a loss of positive control, an aircraft traveling at a high speed poses a higher risk to persons, property, and other aircraft than an aircraft traveling at a lower speed. A speed limit would also have safety benefits outside of a loss-of-positive-control scenario because a small unmanned aircraft traveling at a lower speed is generally easier to control than a higher-speed aircraft.

In determining the specific speed limit, the FAA decided to propose 87 knots (100 mph) as the limit. This proposed speed limit is based on the ARC recommendation of a 100 mph speed limit for small UAS operations. The ARC determined that ''aircraft flying faster than 100 mph are considered a high performance aircraft'' that ''are perceived as having greater risks.'' [59] Accordingly, the FAA proposes to limit the speed of small unmanned aircraft to 87 knots (100 mph). The FAA invites comments on whether this speed limit should be raised or lowered or whether a speed limit is necessary.

Third, the FAA proposes, in § 107.39, to prohibit the operation of a small unmanned aircraft over a person who is not directly participating in the operation of that small unmanned aircraft. One of the possible consequences of loss-of-positive-control is that the aircraft will immediately crash into the ground upon loss of control inputs from the operator. Because a loss of positive control can happen at any moment, the FAA's proposed prohibition on operating small unmanned aircraft over most persons will minimize the risk that a person is standing under a small unmanned aircraft if that aircraft terminates flight and returns to the surface. This prohibition would not apply to persons inside or underneath a covered structure that would protect the person from a falling small unmanned aircraft.

The FAA's proposed prohibition on operating over people would provide an exception for persons directly participating in the operation of the small unmanned aircraft. The FAA considered prohibiting the operation of a small unmanned aircraft over any person, but rejected this approach as unduly burdensome because the operator or visual observer may, at some points of the operation, need to stand under the small unmanned aircraft in order to maintain visual line of sight and/or comply with other provisions of this proposed rule. As an alternative to prohibiting these persons from standing under the small unmanned aircraft, the FAA proposes, in § 107.49(a)(2), that prior to flight, the operator must ensure that all persons directly involved in the small unmanned aircraft operation receive a briefing that includes operating conditions, emergency procedures, contingency procedures, roles and responsibilities, and potential hazards. A person is directly involved in the operation when his or her involvement is necessary for the safe operation of the small unmanned aircraft. By receiving a pre-flight briefing on the details of the operation and the hazards involved, the persons involved in the operation would be made aware of the small unmanned aircraft's location at all times and would be able to avoid the flight path of the small unmanned aircraft if the operator were to lose control or the aircraft were to experience a mechanical failure.

Within these constraints, the FAA proposes the following performance-based standards for mitigating loss-of-positive-control risk. First, the FAA proposes, in § 107.49(a)(1), that, prior to flight, the operator must become familiar with the confined area of operation by assessing the operating environment and assessing risks to persons and property in the immediate vicinity both on the surface and in the air. As part of this preflight assessment, the operator would need to consider conditions that could pose a hazard to

[58] A ''servo actuator'' is generally defined as a device used to provide a wide range of remote movement based on signals from the system on which it is used.

[59] ARC Report, p. 20, section 6.12.

the operation of the small UAS as well as conditions in which the operation of the small UAS could pose a hazard to other aircraft or persons or property on the ground. Accordingly, the FAA proposes to require that the preflight assessment include the consideration of: (1) Local weather conditions; (2) local airspace and any flight restrictions; (3) the location of persons and property on the ground; and (4) any other ground hazards.

Second, the FAA proposes that, after becoming familiar with the confined area of operation and conducting a preflight assessment, the operator be required, by § 107.19(b), to ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft for any reason. This proposed requirement would provide the operator with significant flexibility to choose how to mitigate the hazards associated with loss of aircraft control. For example, in addition to the examples mentioned previously, if the operation takes place in a residential area, the operator could ask everyone in the area of operation to remain inside their homes while the operation is conducted.[60] If the operation takes place in an area where other air traffic could pose a hazard, the operator would advise local air traffic control as to the location of his or her area of operation and add extra visual observers to the operation so that they can notify the operator if other aircraft are approaching the area of operation.

The above are just some examples of mitigation strategies that could be employed by the operator to ensure that the small unmanned aircraft will pose no hazard to other aircraft, people or property in the event of lost positive control. These examples are not intended to provide an exhaustive list, as there are different ways to mitigate loss of positive control. The proposed requirement in § 107.19(b) would provide the operator with the flexibility to choose which mitigation method is appropriate for his/her specific operation to ensure any hazards posed by loss of positive aircraft control are sufficiently mitigated. The FAA also anticipates creating guidance that provides additional examples of how operators can mitigate loss of positive control in small UAS operations. However, the FAA emphasizes that no matter what mitigation option(s) the operator employs under this proposed rule, the operator must strive to always maintain positive control of the small unmanned aircraft. The operator would be in violation of proposed § 107.19(b) if he or she intentionally operates the small unmanned aircraft in a location where he or she will not have positive control over that aircraft.

5. Limitations on Operations in Certain Airspace

This proposed rule would place limitations small UAS operations in three areas related to airspace: (1) Controlled airspace (airspace other than Class G); (2) prohibited or restricted airspace; and (3) airspace where aviation activity is limited by a Notice to Airmen (NOTAM). The FAA is proposing these requirements to reduce the threat to other users of the NAS in busy airspace or where most or all aviation activities would otherwise be limited.

i. Controlled Airspace

The FAA is seeking to limit the exposure of the small unmanned aircraft to other users of the NAS to minimize the risk of collision, which can occur both during controlled flight of the UAS or if the operator loses positive control of the small unmanned aircraft. This proposed rule would prohibit small unmanned aircraft operations in Class A airspace. Class A airspace starts at 18,000 feet mean sea level and extends up to 60,000 feet (Flight Level 600). As discussed above, this rule would prohibit small UAS operations above 500 feet AGL and outside of visual line of sight. Operations in Class A airspace would be inconsistent with that requirement, and therefore this proposed rule would prohibit operations in Class A airspace.

Small UAS operations would also be prohibited in Class B, Class C, Class D, and within the lateral boundaries of the surface area of Class E airspace designated for an airport without prior authorization from the ATC facility having jurisdiction over the airspace. The FAA factors information such as traffic density, the nature of operations, and the level of safety required when determining whether to designate controlled airspace.[61] Pilots must have an ATC clearance to enter certain controlled airspace. In other words, the FAA requires ATC to have knowledge of aviation operations in the airspace due to the greater amount of activity in that area compared to uncontrolled airspace.

The FAA believes that restricting use of controlled airspace to approved operations would reduce the risk of interference with other aircraft activities. Interference could occur for many reasons, including the location of the proposed small UAS operation in the airspace, or how the small unmanned aircraft would behave if there is a loss of positive control. These limitations would also be consistent with the general requirement for aircraft operating in controlled airspace to have ATC approval prior to entering the airspace. Therefore, the FAA proposes that small UAS receive approval from the ATC facility with jurisdiction over the airspace in which the operator would like to conduct operations. That ATC facility would have the best understanding of local airspace, its usage, and traffic patterns and would be in the best position to ascertain whether the proposed small UAS operation would pose a hazard to other users or the efficiency of the airspace, and procedures to implement to mitigate hazards. This proposed rule would not establish equipment requirements for small UAS operating in controlled airspace as the FAA does for other users of controlled airspace. Rather, the FAA believes that local ATC approval would provide a safer and more efficient operating environment at less cost to the operator.

The FAA notes that normal aircraft operations inside controlled airspace in the vicinity of an airport require prior authorization from ATC. Per part 91, ATC currently requires two-way radio communication for departures, through flights, arrivals, and operations inside the airspace. The FAA understands that not all small UAS will be able to comply with the provisions of part 91, and that is why this proposed rule would not require strict compliance with part 91. However, because the air-traffic provisions of part 91 are intended to ensure safe operation in the NAS, a small UAS operator that intends to operate in controlled airspace must ensure that the proposed operations are planned and conducted in the safest manner possible. The small UAS operator can do this by working closely with the ATC facility that controls the airspace.

The ATC facility has the authority to approve or deny aircraft operations based on traffic density, controller workload, communication issues, or any other type of operations that could potentially impact the safe and expeditious flow of air traffic in that airspace. The more that a small UAS is able to show that it would satisfy the provisions of part 91 and comply with

[60] The FAA notes that this proposed requirement would not require people not involved with the operation to comply with the operator's warnings. The operator would simply be unable to commence the operation until the pertinent area has been made safe for operation.

[61] *See* FAA Aeronautical Information Manual, Para. 3–1–1.

the local operating procedures, the easier the access to the airspace would be. These items should be outlined in a prior agreement with the ATC facility to identify shortfalls and establish operating procedures for small UAS to integrate into the existing air traffic operation. This agreement would ensure all parties involved are aware of limitations and special interest items and would enable the safe flow of aircraft operations in that airspace. The FAA seeks comments related to part 91 compliance issues small UAS operators may encounter.

ii. Prohibited or Restricted Areas

The proposed rule would prohibit small UAS operations in prohibited and restricted areas without permission from the using or controlling agency as applicable. Prohibited and restricted areas are designated in 14 CFR part 73. Prohibited areas are established when necessary to prohibit flight over an area on the surface in the interest of national security or welfare. No person may operate an aircraft without permission of the using agency in a prohibited area.[62] Restricted areas are areas established when determined necessary to confine or segregate activities considered hazardous to non-participating aircraft. Although aircraft flight is not wholly prohibited in these areas, it is subject to restriction.[63] The proposed provision concerning prohibited and restricted areas would be similar to the part 91 restriction on operations in these areas.[64]

iii. Areas Designated by Notice to Airmen

This proposed rule would also prohibit operation of small UAS in airspace restricted by NOTAMs unless authorized by ATC or a certificate of waiver or authorization. This would include NOTAMs issued to designate a temporary flight restriction (TFR). NOTAMs contain time-critical aeronautical information that is either temporary in nature, or not sufficiently known in advance to permit publication on aeronautical charts or other publications.[65] For example, NOTAMs may be used to limit or restrict aircraft operations during emergency situations or presidential or VIP movements. They may also be used to limit aircraft operations in the vicinity of aerial demonstrations or sporting events. NOTAMs are available to the public on the FAA's Web site.[66]

Like other users of the airspace, small UAS operators would be required to review and comply with NOTAMs. As with other airspace restrictions in this rule, an operator could seek authorization from ATC or through a certificate of waiver or authorization to conduct operations in otherwise restricted airspace. The FAA believes that this process would permit an assessment of the operation in relation to the airspace restriction to determine whether the operation can be safely conducted.

6. Airworthiness, Inspection, Maintenance, and Airworthiness Directives

i. Inspections and Maintenance

As discussed in section III.J.3 of this preamble, pursuant to section 333(b)(2) of Public Law 112–95, we have determined that a small UAS should not be required to obtain airworthiness certification if satisfying the provisions of this proposal. However, without an airworthiness certification process, the FAA still needs to ensure that a small UAS is in a condition for safe operation. In considering how to address this issue, the FAA notes that the current regulations applicable to manned civil aircraft generally require an annual aircraft inspection every 12 months.[67] The inspection and any maintenance that might be necessary as a result of the inspection currently are governed by the provisions of 14 CFR part 43. Part 43 requires that the inspection examine every component of the aircraft in detail to determine whether any hazardous characteristics are present that would render the aircraft unairworthy.[68] If the inspection reveals any hazardous characteristics that would render the aircraft unairworthy, then maintenance, conducted pursuant to the regulations of part 43, must be performed in order to return the aircraft to an airworthy condition.

In addressing the issue of airworthiness for small UAS, the FAA considered several approaches, including requiring small UAS operators to comply with the existing inspection and maintenance requirements of this chapter. The FAA also considered requiring a separate permit to operate (PTO) in addition to aircraft registration and airman certification. A PTO would have included airworthiness certification requirements that would have required an applicant to:

- Describe the entire small UAS, including airframe, control station, and communications link;
- Comply with a set of unvalidated consensus standards;
- Test the design features required by the unvalidated consensus standards and determine that the UAS satisfies those standards;
- Inspect the aircraft for compliance with the manufacturer's requirements;
- Determine whether the aircraft has been manufactured in compliance with unvalidated production acceptance and quality assurance consensus standards acceptable to the FAA;
- Complete ground and flight testing of required UAS components and determine whether they demonstrated acceptable performance and safe operation.
- Create a process for addressing unsafe conditions in the aircraft; and
- Create a monitoring program to identify and correct safety-of-flight issues.

After further consideration, the FAA decided that neither of these approaches is proportionate to the risk posed by small UAS. FAA noted that, as mentioned previously, due to their light weight, small unmanned aircraft generally pose a significantly lower risk to people and property on the ground than manned aircraft. This relatively low risk is mitigated even further by the see-and-avoid and loss-of-positive-control provisions of this proposed rule, which are discussed above. Accordingly, based on existing information, the FAA believes that requiring small UAS operators to conduct inspection and maintenance of the small UAS pursuant to the existing regulations of part 43, or to obtain a PTO, would not result in significant safety benefits. As a result, this proposed rule would not require small UAS compliance with part 43 or the application for, or issuance of, a PTO.

Instead, this proposed rule would require, in § 107.21(b), that prior to each flight, the operator must inspect the small UAS to ensure that it is in a condition for safe operation. The operator could do this by, for example, performing a manufacturer-

[62] *See* 14 CFR 1.1.

[63] *See id.*

[64] *See* 14 CFR 91.133.

[65] *See* FAA Aeronautical Information Manual, para. 5–1–3.

[66] See, *e.g., https://www.notams.faa.gov/dinsQueryWeb/* and *http://www.faa.gov/pilots/flt_plan/notams/.*

[67] *See* 14 CFR 91.609. Different components of the aircraft are also currently subject to additional component-specific inspection schedules. For example, in addition to the above general inspection requirements, altimeter instruments on airplanes and helicopters operating in controlled airspace under instrument flight rules must be inspected every 24 months. *See* 14 CFR 91.411(a)(1).

[68] *See* 14 CFR part 43, Appendix D (listing aircraft components that must be inspected and the hazardous characteristics that the inspection should look for).

recommended preflight inspection or performing an on-the-ground test of the small UAS to determine whether safety-critical systems and components are working properly.

If, as a result of the inspection, the operator determines that the small UAS is no longer in a condition for safe operation, then proposed §§ 107.21(a) and 107.15(a) would prohibit the operation of the small UAS until the necessary maintenance has been made and the small UAS is once again in a condition for safe operation. First, proposed § 107.21(a) would require that the operator must maintain the small UAS in a condition for safe operation. An example of how the operator could satisfy this proposed requirement would be performing the manufacturer's recommended maintenance at manufacturer-recommended regular intervals. Second, § 107.15(a) would prohibit a person from operating a small UAS unless that UAS is in a condition for safe operation. Thus, if an operator notices during inspection, maintenance, or preflight action, that the small UAS is not in a condition for safe operation, then the operator would be in violation of § 107.15(a) if he or she flies the small unmanned aircraft while the UAS is not in a condition safe for operation.

The FAA also notes that a small UAS that appears to be in a condition for safe operation prior to flight may become unsafe for operation during flight. For example, the small unmanned aircraft could sustain damage during flight rendering that aircraft unsafe for continuing the flight. As such, this proposed rule would require, in § 107.15(b), that the operator must discontinue the flight of the small unmanned aircraft when he or she knows or has reason to know that continuing the flight would pose a hazard to other aircraft, people, or property. This proposed requirement is similar to a requirement that currently exists in § 91.7(b), which requires the PIC to ''discontinue the flight [of an aircraft] when unairworthy mechanical, electrical, or structural conditions occur.''

The FAA invites comments on the issues discussed in this section. The FAA also invites comments as to the costs and benefits of requiring small UAS operators to perform maintenance and inspections pursuant to existing regulations.

ii. Airworthiness Directives

The FAA typically issues airworthiness directives to correct an existing unsafe condition in a product when the condition is likely to exist or develop in other products of the same type design. Airworthiness directives currently are issued for engines, propellers, and other products that are either: (1) Approved under a type certificate or a supplemental type certificate; or (2) that are manufactured under a production certificate, a parts manufacturer approval (PMA), or technical standard order (TSO) authorization.

As discussed in section III.J of this preamble, the FAA does not propose to require a type certificate, a production certificate, a PMA or TSO authorization for small UAS or any part installed on the small UAS. However, to provide manufacturers with flexibility, manufacturers would not be prohibited from installing parts that are FAA-certificated, have received PMA, or are TSO-authorized for manned-aircraft use on the small UAS, provided the small unmanned aircraft remains under 55 pounds after the installation of the part. The FAA anticipates that some manufacturers may choose to use these parts on the small UAS in order to obtain a higher level of reliability associated with a certificate, approval, or authorization.

However, because parts that are FAA-certificated, have received PMA, or are TSO-authorized may have airworthiness directives that are applicable to those parts, the FAA proposes to require, in § 107.13(d), that the owner or operator of the small UAS must comply with all applicable airworthiness directives. The FAA notes that it used a similar approach in its 2004 light-sport aircraft rulemaking. In that rulemaking, the FAA did not require a type or production certificate for light-sport aircraft but allowed the installation on the aircraft of parts that are FAA-certificated, have received PMA, or are TSO-authorized as long as the owner or operator complied with all applicable airworthiness directives.[69]

7. Miscellaneous Operating Provisions

i. Careless or Reckless Operation

The existing FAA regulations prohibit a person from operating an aircraft in a careless or reckless manner so as to endanger the life or property of another.[70] These regulations also prohibit the PIC from allowing any object to be dropped from an aircraft in flight if doing so would create a hazard to persons or property.[71] The FAA proposes to apply similar regulations to small UAS operations, in § 107.23 to ensure that a small UAS is not operated in a hazardous manner.

ii. Drug and Alcohol Prohibition

Proposed § 107.27 would require small UAS operators and visual observers to comply with the alcohol and drug use prohibitions that are currently in place in part 91 of the FAA's regulations. Small UAS operators and visual observers would also be subject to the existing regulations of § 91.19, which prohibit knowingly carrying narcotic drugs, marijuana, and depressant or stimulant drugs or substances.

The purpose of these regulations is to ensure that the safety of small UAS operations are not impeded by alcohol or drug use and to prohibit the use of aircraft for drug trafficking. Section 91.17 specifically prohibits use of alcohol or drugs during or for a time period prior to an operation. Moreover, operators and visual observers would need to submit to testing to determine alcohol concentration in the blood due to a suspected violation of law or § 91.17. Operators or visual observers would be required to submit these tests to the FAA if the FAA has a reasonable basis to believe that the person has violated § 91.17.

This section would also subject persons operating small UAS who knowingly carry illegal substances to FAA enforcement action, which could include certificate revocation. An exception exists for substances authorized by or under any Federal or State statute or by any Federal or State Agency.

iii. Medical Conditions

As discussed in section III.E of this preamble, this proposed rule would not require a small UAS operator or visual observer to hold an airman medical certificate. However, the FAA recognizes the possibility that a person acting as an operator or visual observer may have a medical condition that could interfere with the safe operation of the small UAS. Accordingly, the FAA proposes, in § 107.17, to prohibit a person from acting as an operator or visual observer if he or she knows or has reason to know of any physical or mental condition that would interfere with the safe operation of a small UAS. This proposed provision is similar to the regulatory provision of 14 CFR 61.53(b), which currently applies to operations that do not require a medical certificate.

iv. Sufficient Power for the Small UAS

Proposed § 107.49(a)(4) would require a small UAS operator to ensure that, if

[69] *Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft Final Rule,* 69 FR 44772, 44855 (July 27, 2004).

[70] 14 CFR 91.13(a).

[71] 14 CFR 91.15.

powered, the small UAS has enough power to operate for its intended operational time and an additional five minutes. The 5-minute buffer would ensure that the small UAS has sufficient power to return to the operator, or another location, and be able to make a controlled landing. Additionally, control inputs to a small UAS may degrade as batteries lose charge because power to the flight control system(s) may be lost. Accordingly this proposed rule would help to ensure that the small UAS remains controllable throughout its intended operational time. The FAA notes that a small UAS travelling at 10 miles per hour would be able to cover nearly one mile in 5 minutes.

v. Registration and Marking

As mentioned earlier, the FAA's statute prohibits a person from operating a civil aircraft that is not registered.[72] The FAA proposes to codify this statutory requirement in § 107.13(b). In addition, all aircraft currently are required to display their registration number on the aircraft.[73] The FAA proposes to impose a similar requirement, in § 107.13(c), on small unmanned aircraft subject to this proposed rule. The specific manner in which the small unmanned aircraft would register and display its registration number is discussed in section III.G of this preamble.

E. Operator Certificate

As discussed earlier in this preamble, the FAA proposes to satisfy the statutory requirement for an airman to possess an airman certificate [74] by requiring small UAS operators to obtain and hold an unmanned aircraft operator certificate with a small UAS rating in order to operate a small UAS. An unmanned aircraft operator certificate would be a new type of airman certificate created by this proposed rule, and this section explains the FAA's proposal concerning this certificate.

1. Applicability

The FAA is proposing to require that individuals obtain an unmanned aircraft operator certificate with a small UAS rating as a prerequisite to operating a small UAS. As with airman certificates that the FAA requires for operating other aircraft, an operator certificate would ensure that the operator is able to safely operate the small UAS. The FAA notes that airman certificates are currently issued to pilots who engage in commercial and non-commercial activities. The FAA is proposing to issue a new type of certificate for UAS operators, rather than require a private or commercial pilot certificate with UAS type rating, because many of the requirements for private and commercial pilots are not necessary for the types of operations that would be permitted under this rule.

Moreover, the FAA wants to maintain a distinction between an unmanned aircraft operator certificate and the airman certificates issued under parts 61, 63 and 65.[75] As such, proposed § 61.8 would prohibit activities under this rule from being used to meet part 61 requirements. Activities would include any training, certification, or flights associated with small UAS under proposed part 107. This proposal is consistent with the FAA's statement in the 2013 Pilot Certification and Qualification Requirements for Air Carrier Operations Final Rule that ''regulations do not currently permit the time acquired while operating [a UAS] to be logged to meet aeronautical experience requirements for FAA [manned-aircraft] certification.'' [76] Additionally, that rule did not extend an exception from a flight time standard to graduates of training programs designed to qualify a military pilot solely for operation of UAS to qualify for a reduced flight time.[77]

The FAA considered proposing to require an individual to obtain a commercial pilot certificate with a UAS type endorsement before operating a small UAS. Issuance of such a certificate would require that the applicant obtain a Class II airman medical certificate, pass an aeronautical knowledge test, and demonstrate flight proficiency and aeronautical experience with a certificated flight instructor. However, given the lower level of public risk posed by small UAS operations, the FAA decided that imposing such requirements would be unduly burdensome to small UAS operators. Moreover, as explained in further detail in preamble section III.E.2.iii.a below, the FAA believes that the training, testing, proficiency and experience requirements for obtaining a commercial pilot license have limited relevance to the nature of small UAS operations. The FAA invites public comment on its proposal to create a new category of airman certificate for small UAS operators.

2. Unmanned Aircraft Operator Certificate—Eligibility & Issuance

This rule would establish the eligibility requirements to apply for an unmanned aircraft operator certificate with a small UAS rating and specify when a certificate would be issued. Military and former military pilots would be able to apply based on experience operating unmanned aircraft in the United States Armed Forces.

i. Minimum Age

Proposed § 107.61 would establish the eligibility requirements for an unmanned aircraft operator certificate with a small UAS rating. First, an applicant would need to be at least 17 years of age. This minimum age is consistent with existing FAA minimum age requirements for the Sport Pilot, Recreational Pilot, and Private Pilot airman certificates—the base-level certificates authorizing pilots to operate aircraft while not under the supervision of an instructor. Because this rule would permit commercial small UAS operations, the FAA considered setting the minimum age at 18 years, consistent with the Commercial Pilot Certificate requirements which permit carrying persons or property for compensation or hire. However, the FAA determined that the higher age limit was not necessary because the proposed operational limitations will create an environment that minimizes risk to persons and property.

The FAA notes that the minimum age necessary to apply for an airman certificate to operate a glider or a balloon category aircraft is 16 years old. The FAA invites comments on whether the minimum age necessary to apply for an unmanned aircraft operator certificate should similarly be reduced to 16 years old in the final rule. The FAA also invites comments as to whether reducing the minimum applicant age to 16 years old would further enable academic use of small UAS.

ii. English Language Proficiency

A person would need to be able to read, speak, write and understand the English language to be eligible for an unmanned aircraft operator certificate with a small UAS rating. This requirement is consistent with all other airman certificates issued by the FAA.[78] The English language has generally been

[72] 49 U.S.C. 44101(a).

[73] *See* 14 CFR part 45.

[74] 49 U.S.C. 44711(a)(2)(A).

[75] Parts 61, 63, and 65 currently apply to all airman certificates, which include small UAS airmen. However, under this proposed rule, these parts would no longer apply to small UAS airmen. Thus, the distinction discussed in this paragraph would segregate experience acquired while operating a small UAS from experience acquired while operating a manned aircraft.

[76] 78 FR 42324 (July 15, 2013).

[77] *Id.*

[78] *See, e.g.,* 14 CFR 61.83(c).

accepted as the international standard for aircraft operations by ICAO.

However, this proposed rule would create an exception for people who are unable to meet one of the English language requirements due to medical reasons, as is the case for other airman certificates. Such a person would still be eligible for a certificate; however, the FAA would be able to specify limitations on that person's small UAS operator certificate to account for the medical condition. For example, if an applicant is unable to communicate using speech then the FAA may impose a limitation that the operator may not conduct a small UAS operation requiring more than one person.

iii. Pilot Qualification

The third proposed requirement to obtain an unmanned aircraft operator certificate with a small UAS rating would be to pass an initial aeronautical knowledge test. To ensure that a pilot is qualified to control an aircraft, the FAA generally requires that the applicant for a pilot certificate demonstrate the following three things: (1) Aeronautical knowledge; (2) flight proficiency (*i.e.* that the applicant has the requisite piloting skills); and (3) aeronautical experience.[79] For the reasons stated below, the FAA has determined that a flight proficiency demonstration and aeronautical experience should not be required for issuance of an unmanned aircraft operator certificate with a small UAS rating. Instead, the FAA proposes to require that applicants for this certificate simply demonstrate their aeronautical knowledge by passing an initial knowledge test and then passing a recurrent knowledge test every 24 months thereafter.

a. Flight Proficiency and Aeronautical Experience

As mentioned in the previous paragraph, the FAA currently requires applicants for a pilot certificate to demonstrate that they have the requisite flight proficiency and aeronautical experience to properly control the flight of an aircraft. These existing regulations are intended to ensure that an aircraft can take off safely and arrive back on the ground: (1) With everyone on board the aircraft unharmed; (2) without harming people on the ground; and (3) without interfering with other users of the NAS.

The first consideration for requiring a flight-proficiency demonstration and aeronautical experience (to prevent possible harm to people on board the aircraft) does not apply to small UAS operations because if a small unmanned aircraft was to crash, there would be no one on board the aircraft to be harmed by that crash. The second consideration for these requirements (to prevent harm to people on the ground) is addressed by the operating requirements of this rule, which limit the operation of the small unmanned aircraft to a confined area and require the operator to ensure that the aircraft will pose no hazard to people on the ground if there is a loss of positive control. An operator does not necessarily need special operating skills or aeronautical experience to ensure that the aircraft will not pose a hazard to people on the ground. For example, if an operator plans to fly the small unmanned aircraft in a residential area, the operator could approach the people who live in that area prior to the operation, inform them of the details of the operation, and ask them to either stay out of the area or stay indoors during the operation. Doing this would ensure the safety of people on the ground but would not require the use of special operating skills or aeronautical experience.

The third consideration for requiring a flight-proficiency demonstration and aeronautical experience (to avoid interference with other users of the NAS) is mitigated by the fact that a small unmanned aircraft is generally: (1) Relatively easy to control; (2) highly maneuverable; and (3) much easier to terminate flight than a manned aircraft. Specifically, the control station for a small UAS is typically less complex than the interface used to control the flight of a manned aircraft. Many small UAS control stations currently consist of a basic two-joystick interface where one joystick controls the aircraft's altitude and the other joystick controls the aircraft's speed and direction. Other control stations utilize basic programs, such as smart-phone or tablet applications, to control the small unmanned aircraft. These programs are generally easy to learn and utilize. By contrast, the flight deck interface used to control a manned aircraft requires coordinated use of flight control inputs, interpretation of aircraft instrumentation, and onboard equipment operation. Some of this equipment includes communication and sophisticated navigation equipment. A manned-aircraft pilot must learn to properly use all of these flight-deck-interface components in order to control the flight of the manned aircraft.

In addition, because a small unmanned aircraft is highly maneuverable and easy to land, an operator who finds the small unmanned aircraft to be difficult to control would still be able to easily land the aircraft. For instance, in the two-joystick control station example provided above, the operator could land a small unmanned rotorcraft simply by pressing the altitude joystick down until the rotorcraft descends to the ground. By contrast, a manned aircraft pilot would need to go through a significantly more complex process that includes adjusting aircraft attitude with flight controls, reducing engine power, and scanning for other traffic, in order to land the aircraft on the ground after takeoff.

There are two additional considerations for not requiring a flight proficiency demonstration or aeronautical experience for small UAS operators. First, unlike the pilot of a manned aircraft, the small UAS operator has the option to sacrifice the small unmanned aircraft in response to an emergency. Second, as discussed previously, proposed §§ 107.19(b) and 107.39 would require the operator to control the confined area of operation in order to ensure that the small unmanned aircraft will not pose a hazard to people on the ground in an emergency situation. Other operating rules proposed in this NPRM, such as the prohibition on operating within restricted areas without permission, the requirement to give way to manned aircraft, and the 500 feet AGL height limitation, would also mitigate the risk that a small unmanned aircraft interferes with other users of the NAS or poses a hazard to people on the ground.

Because the considerations underlying the current flight proficiency demonstration and aeronautical experience requirements have, at best, a limited applicability to small UAS operations that would be subject to this proposed rule, the FAA proposes not to require that applicants for an unmanned aircraft operator certificate with a small UAS rating demonstrate flight proficiency or aeronautical experience. The FAA invites comments on whether these applicants should be required to demonstrate flight proficiency and/or aeronautical experience. If so, what flight proficiency and/or aeronautical experience requirements should the FAA impose? The FAA also invites comments as to the costs and benefits of imposing these requirements.

b. Initial Aeronautical Knowledge Test

Turning to the remaining component of airman certification (aeronautical knowledge), the FAA proposes to require that applicants for an unmanned aircraft operator certificate with a small UAS rating pass an initial knowledge test to demonstrate that they have

[79] *See, e.g.,* 14 CFR 61.105–61.109.

sufficient aeronautical knowledge to safely operate a small UAS. The FAA proposes a knowledge test rather than a required training course in order to provide applicants with flexibility as to the method that they use to acquire aeronautical knowledge. For example, some individuals who wish to become small UAS operators may also hold a pilot certificate, and those individuals would already have acquired extensive aeronautical knowledge in order to obtain a pilot certificate. Other individuals may be able to acquire the necessary knowledge through self-study. Still other individuals may choose to use a commercial training course designed to provide them with the knowledge necessary to pass the initial knowledge test. In any case, passage of a knowledge test would ensure that the applicant has demonstrated the aeronautical knowledge necessary to safely operate a small UAS regardless of how the applicant happened to acquire that knowledge. The FAA invites comments as to whether other requirements, such as passage of an FAA-approved training course, should be imposed either instead of or in addition to the proposed knowledge test.

c. Areas of Knowledge Tested on the Initial Knowledge Test

This proposed initial knowledge test would test the following areas of knowledge. First, the knowledge test would test whether the applicant knows the regulations applicable to small UAS operations. By testing the applicant's knowledge of the applicable regulations, the proposed initial knowledge test would ensure that the applicant understands what those regulations require and does not violate them through ignorance.

Second, the initial knowledge test would test whether the applicant understands how to determine the classification of specific airspace and what the requirements are for operating in that airspace. To comply with the proposed airspace operating requirements, a small UAS operator would need to know how to determine the classification of the airspace in which he or she would like to operate.

Third, the initial knowledge test would test whether the applicant understands flight restrictions affecting small unmanned aircraft operations. The proposed initial knowledge test would test whether the applicant knows how to determine which areas are prohibited, restricted, or subject to a TFR in order to comply with the proposed flight restrictions in §§ 107.45 and 107.47.

Fourth, the initial knowledge test would test whether the applicant understands how to clear an obstacle during flight. As discussed previously, proposed § 107.37(b) prohibits a person from creating a collision hazard with, among other things, a ground structure. The proposed initial knowledge test would test whether the applicant understands what types of small unmanned aircraft maneuvers would create a collision hazard with a ground structure.

Fifth, the initial knowledge test would test whether the applicant understands the effects of weather and micrometeorology (weather on a localized and small scale) on small unmanned aircraft operation. Knowledge of weather is necessary for safe operation of a small unmanned aircraft because, due to the light weight of the small unmanned aircraft, weather could have a significant impact on the flight of that aircraft. For example, space around buildings, smokestacks and trees, which is safe during clear weather, could easily become hazardous in a windy situation. Accordingly, the proposed initial knowledge test would test whether an applicant understands the effect that different types of weather have on small unmanned aircraft performance and how to react to that weather. The proposed knowledge test would also test whether an applicant has knowledge of official sources that he or she can use to obtain weather information and predictions in order to plan the operation of the small UAS.

Sixth, the proposed knowledge test would test whether an applicant understands how to calculate the weight and balance of the small unmanned aircraft to determine impacts on performance. In order to operate safely, operators need knowledge and understanding of some fundamental aircraft performance issues, which include load balancing and weight distribution as well as available power for the operation.

Seventh, the operator of a small UAS may be presented with an emergency situation during an operation. Accordingly, the proposed initial knowledge test would test whether the applicant understands how to properly respond to an emergency.

Eighth, the proposed initial knowledge test would test the applicant's understanding of aeronautical decision-making/judgment and crew resource management. Even though this proposed rule would limit the flight of a small unmanned aircraft to operations at or below 500 feet AGL, some manned aircraft will still operate in the same airspace as the small unmanned aircraft. Accordingly, the small UAS operator would need to understand the aeronautical decision-making and judgment that manned-aircraft pilots engage in so that he or she can anticipate how the manned aircraft will react to the small unmanned aircraft. The small UAS operator would also need to understand how to function in a team environment (this is known as crew resource management) because this proposed rule would permit the use of visual observers to assist the small UAS operator and would place the operator in charge of those observers.

Ninth, the proposed initial knowledge test would test the applicant's understanding of airport operations and radio communication procedures, which would include standard terminology. While this proposed rule would limit small UAS operations in the vicinity of an airport, there are some instances where these operations would be permitted. For example, this proposed rule would allow a small unmanned aircraft to operate in Class B, C, or D airspace if the operator obtains prior ATC authorization. In order to operate safely near an airport, the operator would need to have knowledge of airport operations so that the small unmanned aircraft does not interfere with those operations. The operator would also need to have knowledge of radio communication procedures so that the operator can communicate with ATC.

Lastly, the proposed initial knowledge test would test whether the applicant understands the physiological effects of drugs and alcohol. Many prescription and over-the-counter medications can significantly reduce an individual's cognitive ability to process and determine what is happening around him or her. Accordingly, an operator needs to understand how drugs and alcohol can impact his or her ability to safely operate the small UAS.

The FAA invites comments on the proposed areas of knowledge to be tested on the initial knowledge test. The FAA also invites comments as to whether the initial knowledge test should test any other areas of knowledge. If so, what additional areas of knowledge should be tested? What would be the costs and benefits of testing these other areas of knowledge?

d. Administration of the Initial Knowledge Test

Knowledge tests currently administered to prospective pilots under 14 CFR part 61 are created by the FAA and administered by FAA-approved knowledge testing centers. A knowledge testing center is a private

entity that has received FAA approval to administer airman knowledge tests. These centers are all certificated and regularly evaluated to ensure that the testing center meets FAA certification requirements. There are currently about 650 knowledge testing center spread throughout the country. The FAA proposes to apply its existing knowledge development and administration framework to knowledge tests that would be administered to prospective small UAS operators. Under this framework, the initial knowledge test would be created by the FAA and administered by an FAA-approved knowledge testing center. Just as it does now, the FAA will specify the minimum grade necessary to pass the knowledge test,[80] and applicants who take the test will be issued an airman knowledge test report showing the results of the knowledge test.

To ensure that the knowledge test is properly administered, this proposed rule would also impose the following requirements. First, proposed § 107.69 would prohibit an applicant from cheating or engaging in unauthorized conduct during a knowledge test. This would include: (1) Copying or intentionally removing a knowledge test; (2) giving a copy of a knowledge test to another applicant or receiving a copy of the knowledge test from another applicant; (3) giving or receiving unauthorized assistance while the knowledge test is being administered; (4) taking any part of a knowledge test on behalf of another person; (5) being represented by or representing another person for a knowledge test; and (6) using any material not specifically authorized by the FAA while taking a knowledge test. Cheating or engaging in unauthorized conduct during a knowledge test in violation of proposed § 107.69 would be grounds for suspending or revoking the certificate or denying an application for a certificate. In addition, a person who engages in unauthorized conduct would be prohibited from applying for a certificate or taking a knowledge test for a period of one year after the date of the unauthorized conduct.

Second, to ensure that the person taking the knowledge test is correctly identified, proposed § 107.67 would require an applicant for a knowledge test to have proper identification at the time of the application. To ensure correct identification, the applicant for an unmanned aircraft operator certificate would have to have his or her identification verified in person just like any other applicant for an FAA-issued airman certificate. The proposed requirements for proper identification would be the same as the identification requirements currently imposed on applicants who wish to take a knowledge test.[81] Specifically, an applicant's identification would need to include the applicant's: (1) Photograph; (2) signature; (3) date of birth, which shows the applicant meets or will meet the proposed age requirements for an operator certificate; and (4) the applicant's current residential address if the permanent mailing address is a post office box number.

Finally, proposed § 107.71 would address circumstances in which an applicant wishes to retake a knowledge test after failure. To ensure that an applicant receives additional training after failing a knowledge test, the FAA currently requires an applicant who fails a knowledge test to receive additional training from a flight instructor and an endorsement from that instructor indicating that the instructor has determined that the applicant is now proficient to pass the test.[82] However, as discussed previously, this proposed rule would not require any specific form of training or studying in order to pass a knowledge test. Accordingly, the FAA proposes to require that a person who fails a knowledge test wait 14 calendar days before retaking the knowledge test. This 14-day waiting period would provide sufficient time for an applicant who fails a knowledge test to obtain additional training of his or her choice.

The FAA also considered whether to offer an option for the knowledge test to be administered online. However, in examining this approach the FAA ultimately determined that there would be significant risk in the integrity of a knowledge test becoming compromised if that test was to be administered outside of a controlled environment. This could be accomplished through someone copying and circulating the test questions, using unauthorized materials to take the test, or even taking the test for another person. Using the identity of another person to take the knowledge test may also allow an applicant to manipulate the security vetting procedures that take place once the applicant's identity is verified.

In addition, the FAA determined that it would be more difficult to safeguard the personally identifiable information (PII) of a test-taker that would be collected online rather than in-person at a knowledge testing center. Accordingly, the FAA has decided against proceeding with an online test-taking option. The FAA invites comments on whether the small UAS aeronautical knowledge test should have an option for online test-taking and, if so, what safeguards should be implemented to protect the integrity of the small UAS knowledge test, assure the FAA of the identity of the test taker, and protect the test-taker's PII that would be provided online. The FAA also invites comment on different UAS testing location options that might provide the lowest cost option for individuals, while protecting the integrity of the test and the information provided as part of the test-taking process.

e. Recurrent Aeronautical Knowledge Test

i. General Requirement and Administration of the Recurrent Knowledge Test

The FAA also proposes to require small UAS operators to pass a recurrent aeronautical knowledge test after they receive their operator certificate. The FAA proposes this requirement because this proposed rule would not require small UAS operators to regularly conduct small UAS operations, and consequently, some operators may conduct small UAS operations infrequently and may not fully retain some of the knowledge that they acquired in order to pass the initial knowledge test. The FAA also notes that even operators who regularly conduct small UAS operations may not fully retain pieces of knowledge that they do not use during their regular operations. For example, a small UAS operator who conducts operations only in Class G airspace may not retain the knowledge that he or she needs ATC authorization in order to conduct operations in Class B, C, or D airspace. Some aeronautical knowledge that the small UAS operator learned for the initial knowledge test may also become outdated over time.

Accordingly, the FAA proposes to require that the operator pass a recurrent knowledge test every 24 months. The FAA proposes 24 months as the appropriate recurrent testing frequency because that is the frequency of the recurrent flight review that pilots currently complete under 14 CFR 61.56. This requirement has been in place for approximately 40 years. Based on the FAA's experience with the existing 24-month flight review cycle, a recurrent knowledge test that is given every 24 months would ensure that the small UAS operator properly maintains the pertinent aeronautical knowledge. The

[80] *See* 14 CFR 61.35(b).

[81] The current knowledge-test identification requirements can be found at 14 CFR 61.35(a)(2).

[82] 14 CFR 61.49(a).

FAA invites comments on this proposed requirement.

The FAA also proposes that the recurrent aeronautical knowledge test be administered using the same framework as the initial aeronautical knowledge test. Specifically, under this proposed rule, the recurrent knowledge test would be created by the FAA and administered by FAA-approved knowledge testing centers. An applicant would be required to have proper identification in order to take the test, and he or she would be required to wait 14 days after failure before retaking the knowledge test. A certificate holder or applicant [83] would also be prohibited from cheating or engaging in unauthorized conduct during the recurrent knowledge test.

Just as with the initial knowledge test, the FAA invites comments on whether the small UAS recurrent aeronautical knowledge test should have an option for online test-taking and, if so, what safeguards should be implemented to protect the integrity of the small UAS knowledge test, assure the FAA of the identity of the test taker, and protect the test-taker's PII that would be provided online.

ii. Recurrent Test Areas of Knowledge

Under this proposed rule, the recurrent knowledge test would test the following areas of knowledge. First, the knowledge test would test the operator's knowledge of the regulations that govern small UAS operation to ensure that his or her knowledge is up to date regarding all aspects of small UAS operations permitted under the certificate, as the operator may not encounter all of these aspects in his or her regular operation. In the example provided earlier, an operator who regularly conducts small UAS operations in Class G airspace may not retain the knowledge concerning regulations governing operation in other classes of airspace.

Second, the recurrent knowledge test would test the operator's knowledge of airspace classification and operating requirements, obstacle clearance requirements, and flight restrictions. This is because: (1) Airspace that the operator is familiar with could become reclassified over time; (2) the location of existing flight restrictions could change over time; (3) new ground-based obstacles could be created as a result of new construction; and (4) some operators may not regularly encounter these issues in their regular operations.

Third, the recurrent knowledge test would ensure that the operator has the latest knowledge concerning sources of weather and airport operations. This is because the official sources of weather could change over time. Market turnover could also affect a change in airport operations as new airports are built and old airports are demolished or repurposed. The FAA notes that airports can also change their operations in response to changes in operating environment by, for example, changing the approaches that manned aircraft use to line up for a landing. The recurrent knowledge test would ensure that the small UAS operator is familiar with the latest sources of weather and the latest information concerning airport operations.

Fourth, the recurrent knowledge test would test the operator's knowledge of emergency procedures, crew resource management, and aeronautical decision-making/judgment. A small UAS operator may not encounter any of these situations over a 24-month operating period because: (1) An emergency situation may not present itself; (2) the operator may be involved in operations that do not use visual observers; and (3) the operator may be involved in operations that do not take place in the vicinity of any manned aircraft. Accordingly, including these areas of knowledge on the recurrent knowledge test would ensure that the operator retains knowledge on these areas even if he or she does not regularly encounter them in his or her small UAS operations.

iv. Issuance of an Unmanned Aircraft Operator Certificate with Small UAS Rating

Proposed § 107.63 specifies that the FAA will issue the certificate to an airman eligible under § 107.61 if the airman submits an application including an airman knowledge test report showing that he or she passed the initial aeronautical knowledge test required for the certificate. The certificate will not have an expiration date, and once issued, it will remain valid until surrendered, suspended, or revoked. The FAA invites comments as to whether this certificate should expire after a certain period of time. If so, when should the certificate expire?

The method of submission of the application is discussed further in section III.E.5.i of this preamble. The FAA notes that, as discussed in that section, all applicants for an airman certificate will be vetted by the Transportation Security Administration (TSA) pursuant to 49 U.S.C. 46111 to determine whether they pose a security threat. An applicant will not be issued an unmanned aircraft operator certificate until the TSA determines that the applicant will not pose a security threat.

v. Not Requiring an Airman Medical Certificate

The FAA also considered whether to require an applicant seeking an unmanned aircraft operator certificate with a small UAS rating to obtain an airman medical certificate as part of the application process. With certain exceptions, under 14 CFR part 61, the FAA currently requires an airman medical certificate for a student pilot certificate, a recreational pilot certificate, a private pilot certificate, a commercial pilot certificate, and an airline transport pilot certificate.[84] Flight instructors are also required to have a valid medical certificate when required to act as pilot in command.

The primary reason for medical certification is to determine if the airman has a medical condition that is likely to manifest as subtle or sudden incapacitation that could cause a pilot to lose positive control of the aircraft, or impair the pilots ability to ''see and avoid.''

The FAA has determined that traditional FAA medical certification may not be warranted for small UAS operators subject to this proposed rule mainly because small UAS operators and visual observers are operating within a ''confined area of operation,'' and subject to other operational limitations, discussed previously in this preamble. This is because the proposed visual-line-of-sight requirement for the operator and/or visual observer to be able to see the aircraft's direction and attitude of flight in the proposed rule is preferable to a vision standard. Even with normal vision it is foreseeable that a small unmanned aircraft may be so small that the operational space must be reduced to meet the operational requirements proposed in this rule. As such, prescriptive medical standards may not be as critical as they are for individuals exercising pilot privileges and therefore are not proposed under this action.

Rather, the FAA is proposing that operators self-certify, at the time of their airman application, that they do not have a medical condition that could interfere with the safe operation of a small UAS. As proposed in § 107.61(d), an applicant for an unmanned aircraft operator certificate with a small UAS

[83] As discussed in more detail further in the preamble, proposed § 107.75 would allow military or former military UAS operator applicants to take the recurrent test instead of the initial test in order to obtain an FAA-issued unmanned aircraft operator certificate.

[84] 14 CFR 61.23(a).

rating would be ineligible for the certificate if he or she knows or has reason to know of any physical or mental condition that would interfere with the safe operation of a small UAS. The FAA also proposes, in § 107.63(a), that the applicant be required to make a certification to that effect. Both of these proposed requirements are similar to the regulatory provision of § 61.53(b), which prohibits operations during medical deficiency for individuals conducting operations that do not require a medical certificate. FAA also considered proposing to require a medical certificate for a visual observer, but decided not to propose this requirement for the same reason a medical certificate for an operator is not being proposed. The FAA, however, does invite public comment as to whether an FAA medical certificate should be required. The FAA also invites comments as to the costs and benefits of requiring an airman medical certificate for an operator or visual observer.

4. Military Equivalency

This proposed rule would allow pilots with military experience operating unmanned aircraft to take the recurrent knowledge test in lieu of the initial knowledge test in order to be eligible for an unmanned aircraft operator certificate with a small UAS rating. The U.S. Armed Forces use many types and sizes of UAS in combat and non-combat operations, both in the United States and abroad, and have done so for many years. During that time, many servicemen and women have been trained to operate UAS. The FAA has established special rules for current or former military pilots allowing them to be issued FAA pilot certificates based on their military flight experience and passing a military knowledge check.[85]

Accordingly, the FAA is proposing to allow current or former military operators of unmanned aircraft to take a more limited recurrent aeronautical knowledge test rather than the initial aeronautical knowledge test to obtain an unmanned aircraft operator certificate with a small UAS rating. They may not rely on that experience if they were subject to certain disciplinary action described in § 107.75(a).

The FAA also considered whether to allow individuals who have been conducting UAS operations under a COA as a non-military UAS operator to take a recurrent test instead of an initial test in order to obtain an unmanned aircraft operator certificate with a small UAS rating. However, the FAA decided not to include this provision in the proposed rule because: (1) There is no formally recognized recordation system for non-military COA pilots as there is for military pilots; and (2) non-military COA pilots are currently subject to different requirements than military COA pilots for operations above 400 feet AGL. The FAA invites comments on whether non-military COA pilots should be permitted to take the recurrent knowledge test instead of the initial knowledge test in order to obtain an unmanned aircraft operator certificate.

5. Unmanned Aircraft Operator Certificate: Denial, Revocation, Suspension, Amendment, and Surrender

This rule would establish specific instances for when an unmanned aircraft operator certificate with a small UAS rating can be denied, revoked, suspended, amended, or surrendered. This rule would allow the FAA to deny, suspend, or revoke the certificate for reasons including security risk posed by the applicant, drug or alcohol offenses, refusal to submit to an alcohol test or furnish the results. Certificate holders would also be able to voluntarily surrender certificates.

i. Transportation Security Administration Vetting and Positive Identification

The FAA will deny an application for a certificate or take certificate action if the TSA determines that a person poses a security threat. Specifically, under 49 U.S.C. 46111, once an unmanned aircraft operator certificate application is received, the FAA will verify compliance and the accuracy of the application and provide the applicant's information to TSA for security vetting prior to certificate issuance. Under this proposed rule, the FAA would transmit a student pilot's biographic information for security vetting to TSA and issue an unmanned aircraft operator certificate only after receiving a successful response from TSA. However, if the TSA determines that an airman certificate applicant poses a security risk, section 46111 requires the FAA to deny the application for a certificate or amend, modify, suspend, or revoke (as appropriate) any part of an airman certificate based on the TSA's security findings.

The FAA may issue certificates to individuals who have first successfully completed a security threat assessment (STA) conducted by the TSA.[86] TSA would conduct STAs of applicants for a UAS certificate and notify the applicant and/or the FAA when the STA is complete. The STA would consist of a check of intelligence-related databases, including Interpol and international databases, terrorist watch lists, and other sources relevant to determining whether an individual poses or may pose a threat to transportation security, and that confirm the individual's identity. A successful STA is generally valid for five years, but may be revoked during that time if TSA's recurrent vetting reveals that the individual poses or may pose a security threat.

Congress requires TSA to recover the costs of vetting and credentialing services through user fees.[87] The fees for vetting UAS certificate applicants would cover TSA's costs for enrolling, processing, and replying to the application, as well as the costs of conducting the intelligence-related checks themselves. TSA is developing a process, through rulemaking, by which TSA's vetting fees can be collected from applicants during the application process, as TSA currently does in other vetting and credentialing programs, and used to cover the cost of the security screening. Thus, while this rulemaking projects that these costs are currently governmental costs, these costs would be passed on to individuals in the future.

As a result of the processes that go into the issuance of an airman certificate, the FAA estimates that it could take about 6 to 8 weeks after receipt of an application for the FAA to issue an applicant an unmanned aircraft operator certificate with a small UAS rating. The FAA invites comments with suggestions for how this period could be reduced. The FAA also notes that the TSA will continue to examine certificate holders after FAA issuance of a certificate.

In addition, in order for the TSA to be able to make the security assessments specified in 49 U.S.C. 46111, the agency must be sure of the identity of the person that it is assessing. Otherwise, a person who poses a security threat could evade TSA scrutiny simply by using someone else's identity. To address this issue, the FAA currently requires all applicants for a pilot certificate to apply in person and present positive identification at the time of application.[88] The identification must include an official photograph of the applicant, the applicant's signature, and the applicant's residential address,

[85] *See* 14 CFR 61.73.

[86] See 49 U.S.C. 44903(j)(2)(D).

[87] See 6 U.S.C. 469.

[88] FAA Order 8900.1, vol. 5, ch. 1, sec. 3, para. 5–54; FAA Order 8900.2, ch. 7, sec. 2, para. 25, pg. 7–36.

if different from the mailing address.[89] Acceptable methods of identification currently include, but are not limited to, U.S. driver's licenses, government identification cards, and passports.[90]

Because positive identification of the applicant is necessary for TSA to be able to determine whether the applicant poses a security threat, this proposed rule would require an applicant for a small unmanned aircraft operator certificate with a small UAS rating to submit the application to a Flight Standards District Office (FSDO), a designated pilot examiner (DPE), an airman certification representative (ACR) for a pilot school, a certificated flight instructor (CFI), or other persons authorized by the Administrator. The person accepting the application submission would be required to verify that the identity of the applicant matches the identity that is provided on the application.

This proposed rule would allow a DPE, an ACR for a pilot school, or a CFI to accept an application and verify the identity of the applicant because to do otherwise would severely limit the number of locations where an applicant for a certificate could submit his or her application. This is because of the limited number of FSDOs and qualified personnel in each FSDO needed to accept the anticipated number of application submissions each year. There are only 81 FDSOs in the United States, which are only open 5 days per week (excluding Federal holidays). However, there are an approximate combined total of 100,000 DPEs, ACRs, and CFIs potentially available to accept an application 7 days per week. Though there is no fee required to submit an application to a FSDO, there may be a nominal processing fee charged by the authorized FAA representative, none of which goes to the FAA. The FAA believes that this nominal fee (estimated average of $50), if charged by the FAA representative, would offset the average cost of travelling to a FSDO as well as the delay in submitting the application (measured possibly in weeks) due to having to make an appointment with the FSDO during the work week.

DPEs represent the FAA, and are already required to positively identify an applicant for certification when the applicant takes the practical test for the certificate. ACRs are also currently required to positively identify the student/applicant for airman certification as part of the responsibility of the part 141 flight school with which the ACR is affiliated.

CFIs are currently required to verify a pilot-certificate applicant's identity pursuant to TSA regulations codified at 49 CFR 1552.3(h)(1). That section requires a flight school[91] to endorse a pilot logbook verifying that a student is a U.S. citizen and presented identification prior to flight training, which likely would be at the same time that a person would apply for a student pilot certificate.

Because DPEs, ACRs, and CFIs already have experience verifying an applicant's identity, this proposed rule would allow these persons to accept an application for an unmanned aircraft operator certificate with a small UAS rating and verify the identity of the applicant. Sections 61.193, 61.413, and 183.23 would be revised accordingly.

The FAA has also considered allowing knowledge testing centers to verify an applicant's identity and accept an application for an unmanned aircraft operator certificate. However, the FAA is proposing to limit positive identification and acceptance of an application to those persons who are either: (1) Already authorized to accept and sign airman applications (FAA personnel, DPEs, and ACRs); or (2) are already required to verify identity under the TSA's regulations (CFIs). Knowledge testing centers do not fit into either of these categories, and thus, this proposed rule would not allow them to accept airman applications. The FAA invites comments on whether knowledge testing centers should be allowed to accept airman applications.

ii. Drugs and Alcohol Violations

Proposed § 107.57 would authorize the FAA to deny a certificate application or take other certificate action for violations of Federal or State drug laws. Certificates could also be denied, suspended or revoked for committing an act prohibited by § 91.17 or § 91.19—which are discussed in section III.D.6 of this document. Specifically, proposed § 107.59 specifies that certificate action could be taken for: (1) Failure to submit for a blood alcohol test or to release test results to the FAA as required by § 91.17; or (2) carriage of illegal drugs in violation of § 91.19. This proposal mirrors current regulations that apply to all airman certificates.[92]

iii. Change of Name

The FAA recognizes that individuals who hold airman certificates may change their names. Accordingly, the regulations governing pilot certificates currently issued under part 61 allow the holder of a pilot certificate to change the name on a certificate by submitting appropriate paperwork to the FAA.[93] This proposed rule would provide operators with the same opportunity in § 107.77(a). Specifically, proposed § 107.77(a) would allow a person holding an unmanned aircraft operator certificate with a small UAS rating to change the name on the certificate by submitting a name-change application to the FAA accompanied by the applicant's: (1) Operator certificate; and (2) a copy of the marriage license, court order, or other document verifying the name change. After reviewing these documents, the FAA would return them to the applicant.

iv. Change of Address

To ensure that the FAA has an airman certificate holder's proper contact information, part 61 currently requires the holder of a pilot, flight instructor, or ground instructor airman certificate who has made a change in permanent mailing address to notify the FAA within 30 days of making the address change.[94] Failure to do so prohibits the certificate holder from exercising the privileges of the airman certificate until he or she has notified the FAA of the changed address.[95] Because this regulatory provision helps ensure that the FAA is able to contact airman certificate holders, proposed § 107.77(c) would extend the existing change-of-mailing-address requirement to holders of an unmanned aircraft operator certificate with a small UAS rating.

v. Voluntary Surrender of Certificate

The FAA also recognizes that some individuals who obtain an unmanned aircraft operator certificate with a small UAS rating may decide to stop serving as a small UAS operator. Accordingly, proposed § 107.79 would allow a holder of an unmanned aircraft operator certificate to voluntarily surrender it to the FAA for cancellation. However, the FAA emphasizes that cancelling the operator certificate pursuant to § 107.79 would mean that the certificate no longer exists, and the individual who surrendered the certificate would need to again go through the entire certification process (including passing the initial aeronautical knowledge test) if he/she subsequently changes his/her mind. Accordingly, proposed § 107.79(b) would require the individual surrendering the certificate to include

[89] *Id.*

[90] *Id.*

[91] TSA defines a flight school as any pilot school, flight training center, air carrier training facility, or flight instructor certificated under 14 CFR parts 61, 121, 135, 141, or 142.49 CFR 1552.1(b).

[92] *See* 14 CFR 61.15(a) and (b), 63.12, and 65.12.

[93] 14 CFR 61.25.

[94] 14 CFR 61.60.

[95] *Id.*

the following signed statement (or an equivalent) in his or her cancellation request:

> I voluntarily surrender my unmanned aircraft operator certificate with a small UAS rating for cancellation. This request is made for my own reasons with full knowledge that my certificate will not be reissued to me unless I again complete the requirements specified in §§ 107.61 and 107.63.

F. Registration

As mentioned earlier, the FAA's statute prohibits a person from operating a civil aircraft that is not registered,[96] and this proposed rule would codify this statutory requirement. The registration of aircraft and the assignment of an identifying registration number to be displayed on the aircraft are primary foundation blocks in the regulatory structures that provide for safe and orderly aircraft activity within the NAS. The registration number provides a quick call-sign for communications between air traffic control and aircraft in flight. It also provides a link to information about the aircraft and the owner responsible for its operations. This information may assist the FAA and law enforcement agencies to respond to inappropriate behavior, to share safety information, respond to emergency situations, and populate data fields for studies that track trends and help shape future management decisions.

Part 47 of 14 CFR currently governs the registration process applicable to aircraft that are not registered under the laws of a foreign country and that meet one of the following ownership criteria:

- The aircraft is owned by a citizen of the United States;
- The aircraft is owned by a permanent resident of the United States;
- The aircraft is owned by a corporation that is not a citizen of the United States, but that is organized and doing business under U.S. Federal or State law and the aircraft is based and primarily used in the United States; or
- The aircraft is owned by the United States government or a state or local governmental entity.[97]

This proposed rule would not apply to UAS operations that have certain international ownership components. This would exclude any aircraft whose ownership fails to meet the criteria for registration under part 47. Because this proposed rule would apply only to aircraft that are eligible for registration under part 47, the FAA proposes to satisfy the statutory aircraft-registration requirement by requiring all small unmanned aircraft subject to this proposed rule to be registered pursuant to the existing registration process of part 47.

The FAA also proposes to make a single change to part 47 to accommodate small unmanned aircraft registration. Specifically, small unmanned aircraft, which can easily be obtained for as low as several hundred dollars, are significantly smaller assets than manned aircraft, which can cost hundreds of thousands or millions of dollars. Because small unmanned aircraft are small assets, the FAA proposes to exempt small unmanned aircraft which have not previously been registered anywhere from the regulatory requirements of § 47.15, which were designed to apply to large-asset manned aircraft.

Thus, under this proposed rule, a small unmanned aircraft would generally be registered as follows. The aircraft's owner would send the following items to the FAA: (1) An Aircraft Registration Application providing information about the aircraft and contact information for the aircraft owner; (2) evidence of ownership (such as a bill of sale); and (3) the $5.00 registration fee. If the application and supporting materials satisfy the criteria of part 47, the FAA would then assign a registration number (''N'' number) to the aircraft and issue a Certificate of Aircraft Registration to the applicant. If the aircraft was last previously registered in the U.S., once the new application has been sent to the Registry, its second copy (pink copy) may be used to operate the aircraft for a reasonable time while the application is being processed and the new certificate issued.

The FAA also notes that a Certificate of Aircraft Registration issued under part 47 currently expires every three years.[98] This is because ownership of the aircraft may change hands or the aircraft owner could move after registering. A requirement to periodically reregister the aircraft increases the likelihood that the FAA's registration database contains the latest information concerning each registered aircraft. The aircraft owner can easily reregister the aircraft by submitting to the FAA: (1) An application for registration renewal containing updated information about the aircraft and its owner; and (2) a $5.00 reregistration fee.[99] Because the current three-year registration expiration provision in part 47 would increase the likelihood that the FAA's registration database contains the latest information on small unmanned aircraft and their owners, the FAA proposes to retain this requirement for small unmanned aircraft registration.

In addition, the FAA notes that because most manned aircraft are type-certificated, the FAA currently possesses a significant amount of information about each aircraft type (as a result of the type-certification process) that it can use to supplement information in an individual registration application. This results in the current registration requirements of part 47 asking for a minimal amount of information for most manned aircraft.

However, small unmanned aircraft, which would not be type-certificated under this proposed rule, come in a variety of forms, many of which are not currently standardized. This situation is likely to continue as the small UAS market will continue broad innovation until designs emerge that are well balanced against the tasks found to be best served by this segment of aviation. To enable the FAA to both identify particular aircraft against a stated description as well as to identify and share safety related information as it develops, the FAA invites comments as to whether small unmanned aircraft owners should be required to provide additional information during the registration process. The FAA anticipates that the additional information requirement imposed on small unmanned aircraft could be similar to the requirements imposed on amateur-built aircraft under 14 CFR 47.33(c), as amateur aircraft pose the same lack-of-standardization issues as a small UAS.

G. Marking

1. Display of Registration Number

Subpart C of 14 CFR part 45 currently requires an aircraft to display its registration number on the aircraft. This requirement is intended to allow aircraft identification for oversight purposes. The number must generally be: (1) Painted on the aircraft or affixed to the aircraft by some other permanent means; (2) have no ornamentation; (3) contrast in color with the background; and (4) be legible.[100]

To increase the likelihood of aircraft identification during flight, part 45, Subpart C specifies highly visible surfaces on the aircraft where the aircraft registration number must be displayed. Those surfaces differ based on the type of aircraft that is used. For

[96] 49 U.S.C. 44101(a).

[97] 14 CFR 47.3. This limitation on the applicability of part 47 stems from a statute (49 U.S.C. 44103), which allows the FAA to only register aircraft that meet the above criteria.

[98] *See* 14 CFR 47.40.

[99] *Id.*

[100] 14 CFR 45.21(c).

example, a rotorcraft is required to display its registration number horizontally on the fuselage, boom or tail.[101] Conversely, a fixed wing unmanned aircraft is generally required to display its registration number on either the vertical tail surfaces or the sides of its fuselage.[102]

To ensure maximum visibility, Subpart C also specifies a minimum size for the registration number display.[103] For fixed-wing aircraft and rotorcraft, the registration number display must generally be at least 12 inches high.[104] Characters in the display must also be: (1) Generally two thirds as wide as they are high; (2) formed by solid lines that are one-sixth as thick as the character is high; and (3) spaced out so that the space between the characters is at least one-fourth of the character width.[105] Because some aircraft subject to part 45 may be small, § 45.29(f) allows aircraft that are too small to comply with the size requirements to display the registration number on the aircraft in as large a manner as practicable.[106]

This proposed rule would require a small unmanned aircraft to display its registration number in the manner specified in Subpart C of part 45. For unmanned aircraft that are not too small to comply with the display-size requirements discussed above, this proposed rule would require compliance with all of those requirements. This is because small unmanned aircraft present the same identification and oversight concerns as manned aircraft. For example, if a bystander was to observe a small unmanned aircraft being flown in a dangerous manner, the FAA would be able to determine the aircraft's owner if the bystander is able to see the aircraft's registration number. Because the current requirements in Subpart C of part 45 are intended to provide for the maximum visibility of an aircraft's registration number, compliance with those requirements would greatly increase the probability of a small unmanned aircraft being identified during a small UAS operation.

The FAA acknowledges that some small unmanned aircraft may be too small to comply with the minimum-display-size requirements of part 45. However, as mentioned previously, part 45 already contains a provision, § 45.29(f), that would address this issue by allowing the too-small aircraft to simply display its registration number in as large a manner as practicable. Accordingly, the size of the small unmanned aircraft would not be a barrier to compliance with the provisions of Subpart C of part 45.

The FAA also notes that, as discussed above, the registration-display-location requirements of part 45, Subpart C are specific to different types of aircraft.[107] Under this proposed rule, the FAA would expect small unmanned aircraft to comply with the display-location provisions that apply to the specific type of small unmanned aircraft being used. For example, rotorcraft small unmanned aircraft would be expected to comply with the display-location provisions that are applicable to rotorcraft. Conversely, fixed-wing small unmanned aircraft would be expected to comply with the provisions that are applicable to fixed-wing aircraft.

The FAA invites comments on whether a small unmanned aircraft should be required to display its registration number in accordance with Subpart C of part 45. If compliance with Subpart C should not be required, what standard should the FAA impose for how a small unmanned aircraft displays its registration number in order to fulfill its safety oversight obligation regarding small unmanned aircraft operations? The FAA invites comments with supporting documentation on this issue.

2. Marking of Products and Articles

The FAA also considered requiring small unmanned aircraft to comply with the marking of products and articles requirement of Subpart B of part 45. This subpart requires the manufacturer of an aircraft or aircraft component to attach a fireproof identification plate to the aircraft and/or component containing the manufacturer's name, model designation, serial number, and, if applicable, the type certificate. The purpose of these requirements is to allow the FAA to trace the pertinent aircraft and/or aircraft parts back to the manufacturer if an issue arises with the aircraft and/or aircraft parts.

The FAA does not believe that requiring small unmanned aircraft manufacturers to comply with the requirements of Subpart B of part 45 would be cost-justified. Under Executive Orders 12866 and 13563, the FAA may ''propose or adopt a regulation only upon a reasoned determination that [the regulation's] benefits justify its costs.''[108] As discussed elsewhere in this preamble, the FAA's primary safety concerns with regard to small UAS operations are: (1) The ability to ''see and avoid'' other aircraft with no pilot on board; and (2) the operator losing positive control of the small unmanned aircraft. Here, both of these safety concerns would be mitigated by the other provisions of this proposed rule. Accordingly, the FAA does not believe that the safety benefits of requiring small UAS manufacturers to install fireproof plating with their identification information would be sufficient to justify the costs of doing so.

The FAA invites comments, with supporting documentation, as to the costs and benefits of mandating compliance with Subpart B of part 45. The FAA also invites comments, with supporting documentation, on whether alternative methods of small-UAS manufacturer marking should be required.

H. Fraud and False Statements

Currently, the U.S. criminal code prohibits fraud and falsification in matters within the jurisdiction of the executive branch.[109] The FAA too may impose civil sanctions in instances of fraud and falsification in matters within its jurisdiction.[110]

Similarly, in § 107.5(a), this proposed rule would prohibit a person from making a fraudulent or intentionally false record or report that is required for compliance with the provisions of this proposed rule. Proposed § 107.5(a) would also prohibit a person from making any reproduction or alteration, for a fraudulent purpose, of any certificate, rating, authorization, record, or report that is made pursuant to proposed part 107. Finally, proposed § 107.5(b) would specify that the commission of a fraudulent or intentionally false act in violation of § 107.5(a) could result in the suspension or revocation of a certificate or waiver issued by the FAA pursuant to this proposed rule. This proposed civil sanction would be similar to the sanctions that the FAA currently imposes on fraudulent and false statements pursuant to §§ 61.59(b), 67.403(c), and 121.9(b).

[101] 14 CFR 45.27(a). Section 45.27(a) also allows the number to be displayed on both surfaces of the cabin, but an unmanned aircraft will not have a cabin.

[102] 14 CFR 45.25(a).

[103] 14 CFR 45.29(f).

[104] 14 CFR 45.29(b)(1) and (3).

[105] 14 CFR 45.29(c)–(e).

[106] *See* 14 CFR 45.29(f).

[107] *See, e.g.,* 14 CFR 45.25(a) and 45.27(a).

[108] Executive Order 13563, section 1(b) (summarizing and reaffirming Executive Order 12866).

[109] 18 U.S.C. 1001

[110] The FAA has exercised this power in 14 CFR 61.59, 67.403, 121.9, and 139.115, which currently impose civil prohibitions on fraud and false statements made in matters within the FAA's jurisdiction.

I. Oversight

1. Inspection, Testing, and Demonstration of Compliance

The FAA's oversight statutes, codified at 49 U.S.C. 44709 and 46104, provide the FAA with broad investigatory and inspection authority for matters within the FAA's jurisdiction. Under section 46104, the FAA may subpoena witnesses and records, administer oaths, examine witnesses, and receive evidence at a place in the United States that the FAA designates. Under section 44709, the FAA may ''reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, design organization, production certificate holder, air navigation facility, or agency, or reexamine an airman holding a certificate issued [by the FAA].''

This rule would codify the FAA's oversight authority in proposed § 107.7. Proposed § 107.7(b) would require the operator, visual observer, or owner of a small UAS to, upon FAA request, allow the FAA to make any test or inspection of the small unmanned aircraft system, the operator, and, if applicable, the visual observer to determine compliance with the provisions of proposed part 107.

Section 107.7(a) would require an operator or owner of a small UAS to, upon FAA request, make available to the FAA any document, record, or report required to be kept by the provisions of proposed part 107. This would include the operator's unmanned aircraft operator certificate with a small UAS rating and the certificate of aircraft registration for the small UAS being operated.

2. Accident Reporting

The FAA notes that UAS is a relatively new industry and that operators of small UAS may not have prior experience with aviation regulations or FAA oversight. In addition, because of the newness of the small UAS industry, the FAA currently does not have the oversight experience with small UAS that it has with manned aircraft operations. Accordingly, to ensure proper oversight of small UAS operations, this proposed rule, in § 107.9, would require a small UAS operator to report to the FAA any small UAS operation that results in: (1) Any injury to a person; or (2) damage to property other than the small unmanned aircraft. The report would have to be made within 10 days of the operation that resulted in injury or damage to property.[111] After receiving this report, the FAA may conduct further investigation to determine whether any FAA regulations were violated.

The FAA emphasizes that this proposed reporting requirement would be triggered only during operations that result in injury to a person or property damage. The FAA invites comments as to whether this type of accident-reporting should be required. The FAA also invites suggestions for alternative methods of ensuring compliance with the regulations governing small UAS operations. The FAA specifically invites comments as to whether small UAS accidents that result in minimal amounts of property damage should be exempted from the reporting requirement. If so, what is the threshold of property damage that should trigger the accident reporting requirement?

J. Section 333 Statutory Findings

As mentioned previously, in order to determine whether certain UAS may operate safely in the NAS pursuant to section 333 of Public Law 112–95, the Secretary must find that the operation of the UAS would not: (1) Create a hazard to users of the NAS or the public; or (2) pose a threat to national security. The Secretary must also determine whether small UAS operations subject to this proposed rule pose a safety risk sufficient to require airworthiness certification.

1. Hazard to Users of the NAS or the Public

Section 333 of Public Law 112–95 requires the Secretary to determine whether the operation of the UAS subject to this proposed rule would create a hazard to users of the NAS or the public. As discussed in the Background section of this preamble, due to their extremely light weight, small UAS could pose a significantly smaller public risk than do manned aircraft.

Two primary safety concerns associated with small UAS operations are: (1) The ability to ''see and avoid'' other aircraft with no pilot on board; and (2) the operator losing positive control of the small unmanned aircraft. Here, both of these safety concerns would be mitigated by the other provisions of this proposed rule. Specifically by requiring operations to be conducted within visual line of sight; limiting maximum gross weight of the small unmanned aircraft to be below 55 pounds; limiting the operating altitude to below 500 feet AGL; requiring operators to be certificated; defining the area of operation; and prohibiting operations over any person not directly participating in the operation, the risk associated with this group of aircraft would be significantly reduced when compared with other categories of aircraft that weigh more, fly higher, and faster.

Accordingly, the Secretary proposes to find that small UAS operations subject to this proposed rule would not create a hazard to users of the NAS or the public. We invite comments on this proposed finding.

2. National Security

Section 333 of Public Law 112–95 also requires the Secretary to determine whether the operation of UAS subject to this proposed rule would pose a threat to national security. Proposed part 107 would expand small UAS operations in the NAS to include commercial operations. Under proposed part 107, these operations would be subject to specific requirements, such as being able to operate only during daylight and only within visual line of sight of the operator and, if applicable, a visual observer. The small unmanned aircraft would also have to be registered with the FAA and display its FAA-issued registration marking prominently on the aircraft.

In addition, the operator of the small unmanned aircraft would be required to obtain an FAA-issued unmanned aircraft operator certificate with a small UAS rating. The process for obtaining this certificate would include the same TSA-review procedures that are currently used under 49 U.S.C. 46111 in order to screen out airman-certificate applicants who pose a security risk.

Because the above provisions would limit the security risk that could be posed by small UAS operations subject to this proposed rule, the Secretary proposes to find that these small UAS operations would not pose a threat to national security. We invite comments on this proposed finding.

3. Airworthiness Certification

Finally, section 333(b)(2) of Public Law 112–95 requires the Secretary to determine whether small UAS operations subject to this proposed rule pose a safety risk sufficient to require airworthiness certification. The Secretary has determined that airworthiness certification should not be required for small UAS subject to this proposed rule due to their low-risk operational characteristics. Specifically, as mentioned previously, because of the other provisions in this proposed rule, the risk associated with small UAS

[111] The proposed 10-day timeframe to submit a report is similar to the 10-day timeframe that is currently required by the NTSB for accident reporting. *See* 49 CFR 830.15(a).

subject to this proposed rule is significantly reduced.

The FAA emphasizes that, under this proposed rule, the operator would not need to determine design conformity or reliability probabilities when evaluating the airworthiness of small UAS. Instead, the operator would need to make a determination of whether the small UAS is in a safe condition during flight operations and ground operations conducted for the purpose of flight. During preflight and post flight inspections, a small UAS operator should look for simple inspection items such as dents, corrosion, mis-alignment, loose wires, binding controls, loose fasteners, and excessive wear. This simple but not all-inclusive list will identify most problems that could impact the airworthiness and reliability of the aircraft.

Another inspection method unique to small UAS that would be governed by this proposed rule would be a check of the control link. This check can be accomplished by using the control station to verify proper flight control deflection prior to flight. The check can also be used to ensure the flight controls deflect freely, without binding. Like the aforementioned inspection items, this too is a simple visual inspection that should not require any specialized training.

Because the proposed airworthiness provisions discussed above would sufficiently ensure that the small UAS is in a condition for safe operation and because the other provisions of this rule would ensure that the risk posed by small unmanned aircraft is significantly smaller than public risk posed by other groups of aircraft, the Secretary finds, pursuant to section 333(b)(2) of Public Law 112–95, that airworthiness certification would be unnecessary for small UAS subject to this proposed rule. We invite comments on this finding.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. Readers seeking greater detail can read the full regulatory evaluation, a copy of which has been placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would have a significant positive economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

1. Total Benefits and Costs of This Rule

This proposed rule reflects the fact that technological advances in small unmanned aircraft systems (small UAS) have led to a developing commercial market for their uses by providing a safe operating environment for them and for other aircraft in the NAS. In time, the FAA anticipates that the proposed rule would provide an opportunity to substitute small UAS operations for some risky manned flights, such as photographing houses, towers, bridges, or parks, thereby averting potential fatalities and injuries. It would also lead to more efficient methods of performing certain commercial tasks that are currently performed by other methods.

For any commercial operation occurring because this rule is enacted, the operator/owner of that small UAS will have determined the expected revenue stream of the flights exceeds the cost of the flights' operation. In each such case this rule helps enable new markets to develop. The FAA identified how the proposed rule would improve the safety of the NAS when small UAS are operated in place of a hazardous manned operation or a laborer working at heights.

The estimated out-of-pocket cost for a small UAS operator to be FAA-certified is less than $300. As this proposal enables new businesses to be established, the private sector benefits would exceed private sector costs when new entrepreneurs earn a profit. As more profitable opportunities increase, so will the social benefits. Therefore, each new small UAS operator will have determined that their expected benefits exceed their costs. In addition, if the use of a small UAS replaces a dangerous non-UAS operation and saves one human life, that alone would result in benefits outweighing the costs of this proposed rule. The costs are shown in the table in the ''Cost Summary'' section below.

2. Who is potentially affected by this rule?

Manufacturers and operators of small unmanned aircraft systems.

3. Assumptions

- Because the commercial small UAS industry is not yet established and may evolve differently from current expectations, the FAA determined that a five-year time frame of analysis would be appropriate.
- The base year is 2014.
- The FAA uses a seven percent discount rate for the benefits as prescribed by OMB in Circular A–4.[112]
- Since the year that the proposed rule is published is unknown, the FAA uses Year 1 as the current year so that the first discounting occurs in Year 2.
- In the small UAS future fleet forecast, the FAA assumes that 20 percent of the fleet would retire or leave the fleet every year.[113]
- Because only one operator is required to operate a small UAS, the FAA assumes that there would be one qualified FAA-approved operator per

[112] *http://www.whitehouse.gov/omb/circulars_a004_a-4*

[113] A copy of the forecast can be found in the rulemaking docket. The FAA notes that a small UAS could incur a cost for registration and then retire or leave the fleet during the analysis interval. The FAA also notes that our small UAS forecast may be understated if operators choose to own more than one FAA-registered aircraft (for example, as a backup in case one aircraft is disabled). To account for this possibility, as a sensitivity analysis, if there were an additional 20 percent increase in our small UAS forecast, then the costs in Table 7 and Table 10, found in the regulatory evaluation accompanying this NPRM, would increase by 20 percent. The FAA requests comments, with supporting documentation, on this sensitivity analysis.

registered and operating small UAS. Even though 20 percent of the small UAS equipment leaves the fleet each year, the FAA expects that small UAS operators, once tested and certificated, would remain employable and some would take jobs as small UAS operators in the following years of the analysis interval. Also, operators would incur a cost for recurrent knowledge testing every 24 months. This will be explained in detail in the ''Costs'' section below.

• The FAA assumes that the failure rate of applicants [114] taking the small UAS initial and recurrent knowledge based test would be 10 percent.[115] However, applicants and operators who fail are assumed to pass the knowledge test on the second attempt.

• Since this proposed rule allows knowledge test centers (KTC) to administer small UAS operator initial or recurrent knowledge tests, the FAA assumes that the KTC would collocate themselves with a Designated Pilot Examiner (DPE), Certificated Flight Instructor (CFI) or Other Designated Authority to validate an applicant's identity, accept the knowledge test results and the small UAS operator application for review and submission to the FAA AFS–760 Airman Certification Branch for processing.

• The cost to administer an FAA approved small UAS knowledge test, including compliance fees, to a small UAS applicant or operator is $150.[116]

• The FAA estimates that a small UAS operator applicant would need to travel 19 miles one way to reach their closest KTC location.[117]

• The 2014 published IRS variable cost mileage rate of $0.235 per mile is used to estimate the cost of Vehicle usage.[118]

• The FAA assigns the hourly value for personal time to equal $25.09 for Year 1.[119]

• The FAA assigns the hourly value for travel time to equal $24.68 for Year 1.[120]

• The FAA assigns the hourly value of FAA or KTC clerical time to $20.06 by calculating the mean for a Level 2 (FG 5/6) Clerical Support person from the Core Compensation Plan Pay Bands, effective January 12, 2014 working in the Washington DC locality.[121] The FAA then divides the mean of the annual salaries by 2,080 for an hourly rate.

• The FAA assigns the value of $28.00 as the estimate for the FAA's cost to register an aircraft. This estimate is based on an internal cost model developed in September 2014 by the FAA civil aviation registry to use for managerial estimates.

• The FAA uses a $50 fee to validate the identity of an applicant.

The FAA requests comments, with supporting documentation, on each of these assumptions and data values.

4. Benefit Summary

The potential benefits from this proposed rule would arise from improved safety and from opening up new commercial aviation activities. The FAA currently does not permit commercial activity involving small UAS due to the potential hazards they could pose to other aircraft and to the civilian population. This proposed rule would allow certain types of unmanned aerial observational operations to replace manned aerial observational operations that are currently being conducted under potentially hazardous conditions. The proposed rule would also allow small UAS to replace laborers inspecting high towers or in certain other hazardous locations. This proposed rule would allow the creation and development of new industries able to operate with minimal potential risks to operators and the public.

Specifically, with respect to the potential safety benefits from substituting small unmanned aircraft for aerial photography, the FAA reviewed 17 aerial aviation photography accidents and incidents that occurred between 2005 and 2009. Of these accidents, the FAA determined that a small UAS could have substituted for the manned operation in two cases. If the use of a small UAS replaces a dangerous non-UAS operation and saves one human life, that alone would result in benefits outweighing the costs of this proposed rule.

The potential benefits would be driven by the market and small UAS airspace availability. In the Regulatory Evaluation, the FAA explores only four of the many potential small UAS markets this proposal could enable. The four potential small UAS markets are:

1. Aerial photography,
2. Precision agriculture,
3. Search and rescue/law enforcement, and
4. Bridge inspection.

The FAA estimates that the proposed rule could not only enable numerous new industries, but also provide safety benefits and create a safe operating environment. The FAA has not quantified the specific benefits due to a lack of data. The FAA invites commenters to provide data that could be used to quantify benefits of this proposed rule.

5. Cost Summary

Several provisions in the proposed rule would impose compliance costs on potential commercial small UAS operators. However, the FAA assumes that commercial small UAS operators would incur these costs only if they anticipated revenues that would more than offset these costs. The business decision to enter a previously non-existent market is borne by each operator who knowingly chooses to operate a small UAS within the regulated environment of this proposal. In the Regulatory Evaluation, the FAA estimates these costs by provision. As summarized in the following table, the FAA estimates the total cost of the proposed rule for the 5 year period of analysis.

[114] The FAA notes that a person first must apply to become a small UAS operator. During the application process, this analysis will refer to a person applying to become a small UAS operator as an applicant. After the applicant has successfully passed the application process, this analysis will refer to the person as a small UAS operator.

[115] The FAA has not yet created or administered the knowledge test proposed in the NPRM. However, the weighted average failure rate for all categories of airman taking knowledge tests in 2013 was 10%. See Appendix 3 of the regulatory evaluation accompanying this NPRM for details.

[116] *http://www.catstest.com/airman-testing-exams/recreational-private-pilot.php*

[117] See ''Travel Expense'' section for methodology and source information.

[118] *http://www.irs.gov/2014-Standard-Mileage-Rates-for-Business,-Medical-and-Moving-Announced*

[119] Source: Revised Departmental Guidance on The Valuation of Travel time in Economic Analysis (published June 9, 2014). Per this guidance, median Household income divided by 2,080 hours is used to establish a wage rate (see Table 3). This wage rate, as noted in this guidance, serves as an approximate value for leisure time. Consistent with this guidance wage rates are augmented by 1.2 percent per year to reflect projected annual growth of real median household income. Year 1 (2012$) wage rates estimates are calculated as $24.50 * 1.012^2 = $25.09; Year 2 as $24.50 * 1.012^3 = $25.39; Year 3 as $24.50 * 1.012^4 = $25.70; Year 4 as $24.50 * 1.012^5 = $26.01; and Year 5 as $24.50 * 1.012^6 = $26.32.

[120] Source: Revised Departmental Guidance on The Valuation of Travel time in Economic Analysis (published June 9, 2014)-Local Travel (Business). Per this guidance future Travel Time Saving estimates are also augmented by 1.2 percent per year to reflect projected annual growth of real median household income. Year 1 (2012$) travel time savings estimates are calculated as $24.10 * 1.012^2 = $24.68; Year 2 as $24.10 * 1.012^3 = $24.98; Year 3 as $24.10 * 1.012^4 =$25.28; Year 4 as $24.10 * 1.012^5 = $25.58; and Year 5 as $24.10 * 1.012^6 = $25.89. See table 4.

[121] *https://my.faa.gov/content/dam/myfaa/org/staffoffices/ahr/program_policies/policy_guidance/hr_policies/hrpm/comp/comp_ref/media/core_salary_with_conversion.xls.*

TOTAL AND PRESENT VALUE COST SUMMARY BY PROVISION

[Thousands of current year dollars]

Type of cost	Total costs (000)	7% P.V. (000)
Applicant/small UAS operator:		
Travel Expense	$151.7	$125.9
Knowledge Test Fees	$2,548.6	2,114.2
Positive Identification of the Applicant Fee	$434.3	383.7
Owner:		
Small UAS Registration Fee	$85.7	70.0
Time Resource Opportunity Costs:		
Applicants Travel Time	$296.1	245.3
Knowledge Test Application	$108.9	90.2
Physical Capability Certification	$20.0	17.7
Knowledge Test Time	$1,307.1	1,082.9
Small UAS Registration Form	$220.5	179.7
Change of Name or Address Form	$14.9	12.3
Knowledge Test Report	$154.9	128.5
Pre-flight Inspection	Not quantified	
Accident Reporting	Minimal cost	
Government Costs:		
TSA Security Vetting	$1,026.5	906.9
FAA—sUAS Operating Certificate	$39.6	35.0
FAA—Registration	$394.3	321.8
Total Costs	$6,803.1	5,714.0

* Details may not add to row or column totals due to rounding.

B. Initial Regulatory Flexibility Determination (IRFA)

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The FAA believes that this proposed rule would have a significant impact on a substantial number of entities. Therefore, under section 603(b) of the RFA, the initial analysis must address:

- Description of reasons the agency is considering the action.
- Statement of the legal basis and objectives for the proposed rule.
- Description of the record keeping and other compliance requirements of the proposed rule.
- All federal rules that may duplicate, overlap, or conflict with the proposed rule.
- Description and an estimated number of small entities to which the proposed rule will apply.
- Describe alternatives considered.

1. Description of Reasons the Agency Is Considering the Action

The FAA is proposing to amend its regulations to adopt specific rules to allow the operation of small unmanned aircraft system (small UAS) operations in the National Airspace System (NAS). These changes would address the operation of small UAS, certification of their operators, registration, and display of registration markings. The proposed requirements would allow small UAS to operate in the NAS while minimizing the risk they may pose to manned aviation operations and the general public.

If the proposed rule were adopted, operators would be permitted to participate in certain commercial activities from which they are currently prohibited. The proposed requirements are intended to enable the opportunity for the private sector to develop commercial small UAS businesses and facilitate legal and safe operations. Currently commercial activity using a small UAS is prohibited by federal regulation unless the civil aircraft has an airworthiness certificate in effect and operations are approved by the FAA on a case by case basis via an exemption from the pertinent regulations.

2. Statement of the Legal Basis and Objectives for the Proposed Rule

This rulemaking is promulgated under the authority described in the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). Section 333 of Public Law 112–95 directs the Secretary of Transportation to determine whether ''certain unmanned aircraft systems may operate safely in the national airspace system.'' If the FAA determines, pursuant to section 333, that certain unmanned aircraft systems may operate safely in the NAS, then the FAA must ''establish requirements for the safe operation of such aircraft systems in the national airspace system.'' [122]

This rulemaking is also promulgated pursuant to 49 U.S.C. 40103(b)(1) and (2), which charge the FAA with issuing regulations: (1) To ensure the safety of aircraft and the efficient use of airspace; and (2) to govern the flight of aircraft for purposes of navigating, protecting and identifying aircraft, and protecting individuals and property on the ground. In addition, 49 U.S.C. 44701(a)(5)

[122] Public Law 112–95, section 333(c). In addition, Public Law 112–95, section 332(b)(1) requires the FAA to issue ''a final rule on small unmanned aircraft systems that will allow for civil operation of such systems in the national airspace system, to the extent the systems do not meet the requirements for expedited operational authorization under section 333 of [Pub. L. 112–95].''

charges the FAA with prescribing regulations that the FAA finds necessary for safety in air commerce and national security.

Finally, the model-aircraft component of this rulemaking is promulgated pursuant to Public Law 112–95, section 336(b), which clarifies that the FAA's existing authority, under 49 U.S.C. 40103(b) and 44701(a)(5), provides the FAA with the power to pursue enforcement ''against persons operating model aircraft who endanger the safety of the national airspace system.''

3. Description of the Record Keeping and Other Compliance Requirements of the Proposed Rule

The FAA's statute [123] prohibits a person from serving as an airman without an airman certificate. This proposed rule would create a new airman certificate for small UAS operators to satisfy the statutory requirement. The airman certificate would be called an unmanned aircraft operator certificate with a small UAS rating, and in order to obtain it, a person would have to: (1) Take and pass an aeronautical knowledge test; and (2) submit an application for the certificate.

To take and pass an aeronautical knowledge test, a person would have to: (1) Apply to take the test at an FAA-approved Knowledge Testing Center; (2) spend time taking the test; and (3) obtain an airman knowledge test report showing that he or she passed the test. After passing a knowledge test, the person would then apply for the certificate by: (1) Filling out and submitting an application for the certificate, which would include a certification stating that the applicant is physically capable of safely operating a small UAS; and (2) attaching a copy of the airman knowledge test report to the application. This proposed rule would also require a small UAS operator to report to the FAA any accident that results in: (1) Any injury to a person; or (2) damage to property other than the small unmanned aircraft.

The FAA's statute also prohibits the operation of an aircraft that is not registered.[124] Consequently this proposed rule would require owners of a small unmanned aircraft to register that aircraft with the FAA. The owner of a small unmanned aircraft can do this simply by sending the following items to the FAA: (1) An Aircraft Registration Application providing information about the aircraft and contact information for the aircraft owner; (2) evidence of ownership (such as a bill of sale); and (3) the $5.00 registration fee.

4. All Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The FAA is unaware that the proposed rule will overlap, duplicate or conflict with existing federal rules.

5. Description and an Estimated Number of Small Entities To Which the Proposed Rule Will Apply

The FAA believes that the proposed rule would enable numerous new industries, while maintaining a safe operating environment in the NAS.

Because the commercial small UAS industry is not yet established and legal operation of commercial small UAS in the NAS constitutes a new market, available data for these operations is sparse. Accordingly, the FAA has not quantified number of small entities to which the proposed rule would apply because the FAA cannot reasonably predict how the market will develop for individual commercial uses of small UAS.

With respect to the potential operator costs, the FAA assumes that each operator would be a new entrant into the commercial market and that each operator would have one small UAS. The following table shows the proposed rule's estimated out-of-pocket startup and recurrent direct compliance costs for a new small UAS operator or owner.

SMALL UAS OPERATOR STARTUP AND RECURRENT COSTS

[Current dollars]

Type of cost	Cost	
	Initial	Recurrent
Applicant/small UAS operator:	.....	.....
Travel Expense	$9	$9
Knowledge Test Fees	150	150
Positive Identification of the Applicant Fee	50	.....
Total applicant/small UAS operator	209	159
Owner:	.....	.....
Small UAS Registration Fee	5	5
Total Owner	5	5
Total	214	164

* Details may not add to row or column totals due to rounding.

The FAA does not believe that $214 per operator would be a significant negative economic impact to small entity operators because $214 is relatively inexpensive to be licensed for operation of a commercial vehicle.

The FAA expects this proposed rule would be a significant positive economic impact because it enables new businesses to operate small UAS for hire and would stimulate a manufacturing support industry. The FAA believes that most, if not all, of these new commercial activities would be conducted by operators of small UAS who are small business entities. Therefore, the FAA believes that this proposed rule would have a positive significant impact on a substantial number of entities.

6. Alternatives Considered

The FAA considered both more costly and less costly alternatives as part of its NPRM. The FAA rejected the more costly alternatives due to policy considerations and undue burden that would be imposed on small UAS operators. The less costly alternatives and the FAA's reasons for rejecting

[123] 49 U.S.C. 44711(a)(2)(A).

[124] 49 U.S.C. 44101.

those alternatives in the NPRM are discussed below.

• Allowing knowledge testing centers to verify ID and accept airman applications. The FAA decided, as part of its proposal, to limit positive identification and acceptance of an application to those persons who are either: (1) Already authorized to accept and sign airman applications (FAA personnel, DPEs, and ACRs); or (2) are already required to verify identity under the TSA's regulations (CFIs). Knowledge testing centers do not fit into either of these categories, and thus, after considering the alternative of allowing them to accept airman applications, the FAA decided not to include this alternative in the NPRM.

• Allowing individuals who have been conducting UAS operations under a COA as a non-military UAS operator to take a recurrent test instead of an initial test in order to obtain an unmanned aircraft operator certificate with a small UAS rating. However, the FAA decided not to include this provision in the proposed rule because: (1) There is no formally recognized recordation system for non-military COA pilots as there is for military pilots; and (2) non-military COA pilots are currently subject to different requirements than military COA pilots for operations above 400 feet AGL.

Therefore this proposed rule would have a significant positive economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA invites comments on the inclusion of foreign-registered small unmanned aircraft in this new framework. In particular, FAA invites comments on foreign experiences with differing levels of stringency in their UAS regulation. The FAA recognizes that several other countries have adopted different standards with regard to the commercial operation of UAS in their respective airspaces. Data from their experiences regarding safety outcomes and economic activity could form the basis for studying the effect of these different regulatory approaches.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $151.0 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following proposed information collection requirements:

• Submission of an application for an unmanned aircraft operator certificate with a small UAS rating;

• submission of an application to register a small unmanned aircraft; and

• reporting any accident that results in injury to a person or damage to property other than the small unmanned aircraft.

Below, we discuss each of these information-collection requirements in more detail. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

1. Obtaining an Unmanned Aircraft Operator Certificate With a Small UAS Rating

Summary: The FAA's statute [125] prohibits a person from serving as an airman without an airman certificate. This proposed rule would create a new airman certificate for small UAS operators to satisfy the statutory requirement. The airman certificate would be called an unmanned aircraft operator certificate with a small UAS rating, and in order to obtain it, a person would have to: (1) Take and pass an aeronautical knowledge test; and (2) submit an application for the certificate.

To take and pass an aeronautical knowledge test, a person would have to: (1) Apply to take the test at an FAA-approved Knowledge Testing Center; (2) spend time taking the test; and (3) obtain an airman knowledge test report showing that he or she passed the test. After passing a knowledge test, the person would then apply for the certificate by: (1) Filling out and submitting an application for the certificate, which would include a certification stating that the applicant is physically capable of safely operating a small UAS; and (2) attaching a copy of the airman knowledge test report to the application.

The above requirements would not result in a new collection of information, but would instead expand an existing OMB-approved collection of information that is approved under OMB control number 2120–0021. This collection of information governs information that the FAA collects to certificate pilots and flight instructors. The above requirements would increase the burden of this already-existing collection of information.

Use: The above requirements would be used by the FAA to issue airman certificates to UAS operators in order to satisfy the statutory requirement that an airman must possess an airman certificate.

Estimate of Increase in Annualized Burden (there are 7,896 unique applicants):

[125] 49 U.S.C. 44711(a)(2)(A).

			Total			Annual		
Final Rule Requirement	Pages Per Application	Applicant Time (Hours)	Total Time (Hours)	Total Number of Pages	Total Cost	Annual Time (Hours)	Annual Number of Pages	Annual Cost
Application for an Operator Certificate	1	0.25	3,862	7,896	$39,598	772	1579	$7,920
Knowledge Test Application	3	0.25	4,248	46,338	$108,928	850	9268	$21,786
Physical Capability Certification	1	0.10	1,545	7,896	$20,016	309	1579	$4,003
Knowledge Test Time	70	3.00	50,972	1,081,220	$1,307,131	10194	216244	$261,426
Airman Knowledge Test Report	1	0.50	3,948	15,446	$154,923	790	3089	$30,985

* Details may not add to row or column totals due to rounding.

2. Registering a Small Unmanned Aircraft

Summary: The FAA's statute [126] prohibits the operation of an aircraft unless the aircraft is registered. Pursuant to this statutory prohibition, this proposed rule would require small unmanned aircraft to be registered with the FAA using the current registration process found in 14 CFR part 47. In order to register a small unmanned aircraft with the FAA, the aircraft's owner would have to submit to the FAA an Aircraft Registration Application providing information about the aircraft and contact information for the aircraft owner. This registration would need to be renewed every three years.

The above requirements would not result in a new collection of information, but would instead expand an existing OMB-approved collection of information that is approved under OMB control number 2120–0042. This collection of information governs information that the FAA collects in order to register an aircraft. The above requirements would increase the burden of this already-existing collection of information.

Use: The above requirements would be used by the FAA to register small unmanned aircraft in order to satisfy the statutory requirement that an aircraft must be registered in order to operate.

Estimate of Increase in Annualized Burden:

			Total			Annual		
Final Rule Requirement	Pages Per Application	Applicant Time (Hours)	Total Time (Hours)	Total Number of Pages	Total Cost	Annual Time (Hours)	Annual Number of Pages	Annual Cost
Aircraft Registration Application	1	0.5	8,571	17,142	$220,464	1,714	3,428	$44,093

* Details may not add to row or column totals due to rounding.

3. Accident Reporting

Summary: To ensure proper oversight of small UAS operations, this proposed rule would require a small UAS operator to report to the FAA any small UAS operation that results in: (1) Any injury to a person; or (2) damage to property other than the small unmanned aircraft. After receiving this report, the FAA may conduct further investigation to determine whether any FAA regulations were violated. This proposed requirement would constitute a new collection of information. However, the FAA emphasizes that this proposed reporting requirement would be triggered only during operations that result in injury to a person or property damage.

Use: The above requirements would be used by the FAA to ensure proper oversight of small UAS operations. A report of an accident that resulted in an injury to a person or property damage may serve to initiate an FAA investigation into whether FAA regulations were violated.

Annualized Burden Estimate:

There is one page of paperwork associated with reporting an accident. The FAA calculated the probability of an accident by dividing the accident rate for general aviation pilots by the total number of hours and estimated that an accident would occur .001% of the time. Applying .001% to the small UAS in the analysis interval shows that the probability of an accident where property damage, injury, or death occurs is negligible; therefore the FAA estimates that there are no costs for this provision.

4. Total Annualized Burden Estimate

The total annualized burden estimate of the information-collection requirements associated with this proposed rule is as follows:

[126] 49 U.S.C. 44101.

Final Rule Requirement	Total Number of Pages	Total Cost	Annual Cost
Operator Certificate	1,158,796	$1,630,596	$326,119
Aircraft Registration	17,142	$220,464	$44,093
Accident Reporting	Negligible	Negligible	Negligible

* Details may not add to row or column totals due to rounding.

The agency is soliciting comments to—

- Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by April 24, 2015. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20053.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Additionally, Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

H. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying 14 CFR regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would limit small unmanned aircraft operations to daylight hours only, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Recording and recordkeeping requirements.

14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 45

Aircraft, Signs and symbols.

14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 101

Aircraft, Aviation Safety.

14 CFR Part 107

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Security measures, Signs and symbols, Small unmanned aircraft, Unmanned aircraft.

14 CFR Part 183

Airmen, Authority delegations (Government agencies).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

■ 1. The authority citation for part 21 is revised to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40101 note, 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303; Sec. 333 of Pub. L. 112–95.

■ 2. Amend § 21.1 by revising paragraph (a) introductory text to read as follows:

§ 21.1 Applicability and definitions.

(a) Except for aircraft subject to the provisions of part 107 of this chapter, this part prescribes—

* * * * *

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

■ 3. The authority citation for part 43 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

■ 4. Amend § 43.1 by revising paragraph (b) to read as follows:

§ 43.1 Applicability.

* * * * *

(b) This part does not apply to—

(1) Any aircraft for which the FAA has issued an experimental certificate, unless the FAA has previously issued a different kind of airworthiness certificate for that aircraft;

(2) Any aircraft for which the FAA has issued an experimental certificate under the provisions of § 21.191(i)(3) of this chapter, and the aircraft was previously issued a special airworthiness certificate in the light-sport category under the provisions of § 21.190 of this chapter; or

(3) Any aircraft subject to the provisions of part 107 of this chapter.

* * * * *

PART 45—IDENTIFICATION AND REGISTRATION MARKING

■ 5. The authority citation for part 45 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113–40114, 44101–44105, 44107–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

■ 6. Add § 45.9 to subpart B to read as follows:

§ 45.9 Small unmanned aircraft systems.

Notwithstanding any other provision of this part, this subpart does not apply to aircraft subject to part 107 of this chapter.

PART 47—AIRCRAFT REGISTRATION

■ 7. The authority citation for part 47 is revised to read as follows:

Authority: 4 U.S.T. 1830; Pub. L. 108–297, 118 Stat. 1095 (49 U.S.C. 40101 note, 49 U.S.C. 44101 note); 49 U.S.C. 106(f), 106(g), 40113–40114, 44101–44108, 44110–44113, 44703–44704, 44713, 45302, 46104, 46301.

■ 8. Amend § 47.15 by revising paragraph (a) introductory text to read as follows:

§ 47.15 Registration number.

(a) *Number required.* An applicant for aircraft registration must place a U.S. registration number (registration mark) on the Aircraft Registration Application, AC Form 8050–1, and on any evidence submitted with the application. There is no charge for the assignment of numbers provided in this paragraph. This paragraph does not apply to an aircraft manufacturer who applies for a group of U.S. registration numbers under paragraph (c) of this section; a person who applies for a special registration number under paragraphs (d) through (f) of this section; a holder of a Dealer's Aircraft Registration Certificate, AC Form 8050–6, who applies for a temporary registration number under § 47.16; or an owner of a small unmanned aircraft weighing less than 55 pounds that has not previously been registered anywhere.

* * * * *

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 9. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 10. Amend § 61.1 by revising paragraph (a) introductory text to read as follows:

§ 61.1 Applicability and definitions.

(a) Except as provided in part 107 of this chapter, this part prescribes:

* * * * *

■ 11. Add § 61.8 to read as follows:

§ 61.8 Inapplicability of unmanned aircraft operations.

Any action conducted pursuant to part 107 of this chapter or Subpart E of part 101 of this chapter cannot be used to meet the requirements of this part.

■ 12. Revise § 61.193 to read as follows:

§ 61.193 Flight instructor privileges.

(a) A person who holds a flight instructor certificate is authorized within the limitations of that person's flight instructor certificate and ratings to train and issue endorsements that are required for:

(1) A student pilot certificate;
(2) A pilot certificate;
(3) A flight instructor certificate;
(4) A ground instructor certificate;
(5) An aircraft rating;
(6) An instrument rating;
(7) A flight review, operating privilege, or recency of experience requirement of this part;
(8) A practical test; and
(9) A knowledge test.

(b) A person who holds a flight instructor certificate is authorized to accept an application for an unmanned aircraft operator certificate with a small UAS rating and verify the identity of the applicant in a form and manner acceptable to the Administrator.

■ 13. Revise § 61.413 to read as follows:

§ 61.413 What are the privileges of my flight instructor certificate with a sport pilot rating?

(a) If you hold a flight instructor certificate with a sport pilot rating, you are authorized, within the limits of your certificate and rating, to provide training and endorsements that are required for, and relate to—

(1) A student pilot seeking a sport pilot certificate;
(2) A sport pilot certificate;
(3) A flight instructor certificate with a sport pilot rating;
(4) A powered parachute or weight-shift-control aircraft rating;
(5) Sport pilot privileges;
(6) A flight review or operating privilege for a sport pilot;
(7) A practical test for a sport pilot certificate, a private pilot certificate with a powered parachute or weight-shift-control aircraft rating or a flight instructor certificate with a sport pilot rating;
(8) A knowledge test for a sport pilot certificate, a private pilot certificate with a powered parachute or weight-shift-control aircraft rating or a flight instructor certificate with a sport pilot rating; and
(9) A proficiency check for an additional category or class privilege for a sport pilot certificate or a flight instructor certificate with a sport pilot rating.

(b) A person who holds a flight instructor certificate with a sport pilot rating is authorized to accept an application for an unmanned aircraft operator certificate with a small UAS rating and verify the identity of the applicant in a form and manner acceptable to the Administrator.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 14. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 15. Amend § 91.1 by revising paragraph (a) introductory text and adding paragraph (e) to read as follows:

§ 91.1 Applicability.

(a) Except as provided in paragraphs (b), (c), and (e) of this section and §§ 91.701 and 91.703, this part prescribes rules governing the operation of aircraft within the United States, including the waters within 3 nautical miles of the U.S. coast.

* * * * *

(e) Except as provided in §§ 107.27, 107.47, 107.57, and 107.59 of this chapter, this part does not apply to any aircraft or vehicle governed by part 103 of this chapter, part 107 of this chapter, or subparts B, C, or D of part 101 of this chapter.

PART 101—MOORED BALLOONS, KITES, AMATEUR ROCKETS AND UNMANNED FREE BALLOONS

■ 16. The authority citation for part 101 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101 note, 40103, 40113–40114, 45302, 44502, 44514, 44701–44702, 44721, 46308, Sec. 336(b), Pub. L. 112–95.

■ 17. Amend § 101.1 by adding paragraph (a)(5) to read as follows:

§ 101.1 Applicability.

(a) * * *

(5) Any model aircraft that meets the conditions specified in § 101.41. For purposes of this part, a model aircraft is an unmanned aircraft that is:

(i) Capable of sustained flight in the atmosphere;

(ii) Flown within visual line of sight of the person operating the aircraft; and

(iii) Flown for hobby or recreational purposes.

* * * * *

■ 18. Add subpart E, consisting of §§ 101.41 and 101.43, to read as follows:

Subpart E—Special Rule for Model Aircraft

§ 101.41 Applicability.

This subpart prescribes the rules governing the operation of a model aircraft that meets all of the following conditions as set forth in section 336 of Public Law 112–95:

(a) The aircraft is flown strictly for hobby or recreational use;

(b) The aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;

(c) The aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;

(d) The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and

(e) When flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation.

§ 101.43 Endangering the safety of the National Airspace System.

No person may operate model aircraft so as to endanger the safety of the national airspace system.

■ 19. Add part 107 to read as follows:

PART 107—SMALL UNMANNED AIRCRAFT SYSTEMS

Subpart A—General

Sec.
107.1 Applicability.
107.3 Definitions.
107.5 Falsification, reproduction or alteration.
107.7 Inspection, testing, and demonstration of compliance.
107.9 Accident reporting.

Subpart B—Operating Rules

107.11 Applicability.
107.13 Registration, certification, and airworthiness directives.
107.15 Civil small unmanned aircraft system airworthiness.
107.17 Medical condition.
107.19 Responsibility of the operator.
107.21 Maintenance and inspection.
107.23 Hazardous operation.
107.25 Operation from a moving vehicle or aircraft.
107.27 Alcohol or drugs.
107.29 Daylight operation.
107.31 Visual line of sight aircraft operation.
107.33 Visual observer.
107.35 Operation of multiple small unmanned aircraft systems.

107.37 Operation near aircraft; right-of-way rules.
107.39 Operation over people.
107.41 Operation in certain airspace.
107.45 Operation in prohibited or restricted areas.
107.47 Flight restrictions in the proximity of certain areas designated by notice to airmen.
107.49 Preflight familiarization, inspection, and actions for aircraft operation.
107.51 Operating limitations for small unmanned aircraft.

Subpart C—Operator Certification

107.53 Applicability.
107.57 Offenses involving alcohol or drugs.
107.59 Refusal to submit to an alcohol test or to furnish test results.
107.61 Eligibility.
107.63 Issuance of an unmanned aircraft operator certificate with a small UAS rating.
107.65 Aeronautical knowledge recency.
107.67 Knowledge tests: General procedures and passing grades.
107.69 Knowledge tests: Cheating or other unauthorized conduct.
107.71 Retesting after failure.
107.73 Initial and recurrent knowledge tests.
107.75 Military pilots or former military pilots.
107.77 Change of name or address.
107.79 Voluntary surrender of certificate.

Subpart D—Small Unmanned Aircraft Registration and Identification.

107.87 Applicability.
107.89 Registration and identification.

Authority: 49 U.S.C. 106(f), 40101 note, 40103(b), 44701(a)(5); Sec. 333 of Pub. L. 112–95.

Subpart A—General

§ 107.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to the registration, airman certification, and operation of civil small unmanned aircraft systems within the United States.

(b) This part does not apply to the following:

(1) Air carrier operations;

(2) Any aircraft subject to the provisions of part 101 of this chapter;

(3) Any aircraft conducting an external load operation;

(4) Any aircraft towing another aircraft or object; or

(5) Any aircraft that does not meet the criteria specified in § 47.3 of this chapter.

§ 107.3 Definitions.

The following definitions apply to this part. If there is a conflict between the definitions of this part and definitions specified in § 1.1 of this chapter, the definitions in this part control for purposes of this part:

Control station means an interface used by the operator to control the flight path of the small unmanned aircraft.

Corrective lenses means spectacles or contact lenses.

Operator means a person who manipulates the flight controls of a small unmanned aircraft system.

Small unmanned aircraft means an unmanned aircraft weighing less than 55 pounds including everything that is on board the aircraft.

Small unmanned aircraft system (small UAS) means a small unmanned aircraft and its associated elements (including communication links and the components that control the small unmanned aircraft) that are required for the safe and efficient operation of the small unmanned aircraft in the national airspace system.

Unmanned aircraft means an aircraft operated without the possibility of direct human intervention from within or on the aircraft.

Visual observer means a person who assists the small unmanned aircraft operator to see and avoid other air traffic or objects aloft or on the ground.

§ 107.5 Falsification, reproduction or alteration.

(a) No person may make or cause to be made—

(1) Any fraudulent or intentionally false record or report that is required to be made, kept, or used to show compliance with any requirement under this part.

(2) Any reproduction or alteration, for fraudulent purpose, of any certificate, rating, authorization, record or report under this part.

(b) The commission by any person of an act prohibited under paragraph (a) of this section is a basis for denying an application for certificate, or suspending or revoking the applicable certificate or waiver issued by the Administrator under this part and held by that person.

§ 107.7 Inspection, testing, and demonstration of compliance.

(a) An operator or owner of a small unmanned aircraft system must, upon request, make available to the Administrator:

(1) The operator's unmanned aircraft operator certificate with a small UAS rating;

(2) The certificate of aircraft registration for the small unmanned aircraft system being operated; and

(3) Any other document, record, or report required to be kept by an operator or owner of a small unmanned aircraft system under the regulations of this chapter.

(b) The operator, visual observer, or owner of a small unmanned aircraft system must, upon request, allow the Administrator to make any test or inspection of the small unmanned aircraft system, the operator, and, if applicable, the visual observer to determine compliance with this part.

§ 107.9 Accident reporting.

No later than 10 days after an operation that meets the criteria of either paragraph (a) or (b) of this section, an operator must report to the nearest Federal Aviation Administration Flight Standards District Office any operation of the small unmanned aircraft that involves the following:

(a) Any injury to any person; or

(b) Damage to any property, other than the small unmanned aircraft.

Subpart B—Operating Rules

§ 107.11 Applicability.

This subpart applies to the operation of all civil small unmanned aircraft systems to which this part applies.

§ 107.13 Registration, certification, and airworthiness directives.

No person may operate a civil small unmanned aircraft system for purposes of flight unless:

(a) That person has an unmanned aircraft operator certificate with a small UAS rating issued pursuant to subpart C of this part and satisfies the requirements of § 107.65;

(b) The small unmanned aircraft being operated has been registered with the FAA pursuant to subpart D of this part;

(c) The small unmanned aircraft being operated displays its registration number in the manner specified in subpart D of this part; and

(d) The owner or operator of the small unmanned aircraft system complies with all applicable airworthiness directives.

§ 107.15 Civil small unmanned aircraft system airworthiness.

(a) No person may operate a civil small unmanned aircraft system unless it is in a condition for safe operation. This condition must be determined during the preflight check required under § 107.49 of this part.

(b) The operator must discontinue the flight when he or she knows or has reason to know that continuing the flight would pose a hazard to other aircraft, people, or property.

§ 107.17 Medical condition.

No person may act as an operator or visual observer if he or she knows or has reason to know that he or she has a physical or mental condition that would interfere with the safe operation of a small unmanned aircraft system.

§ 107.19 Responsibility of the operator.

(a) The operator is directly responsible for, and is the final authority as to the operation of the small unmanned aircraft system.

(b) The operator must ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft for any reason.

§ 107.21 Maintenance and inspection.

An operator must:

(a) Maintain the system in a condition for safe operation; and

(b) Inspect the small unmanned aircraft system prior to flight to determine that the system it is in a condition for safe operation.

§ 107.23 Hazardous operation.

No person may:

(a) Operate a small unmanned aircraft system in a careless or reckless manner so as to endanger the life or property of another; or

(b) Allow an object to be dropped from a small unmanned aircraft if such action endangers the life or property of another.

§ 107.25 Operation from a moving vehicle or aircraft.

No person may operate a small unmanned aircraft system—

(a) From a moving aircraft; or

(b) From a moving vehicle unless that vehicle is moving on water.

§ 107.27 Alcohol or drugs.

A person acting as an operator or as a visual observer must comply with the provisions of §§ 91.17 and 91.19 of this chapter.

§ 107.29 Daylight operation.

No person may operate a small unmanned aircraft system except between the hours of official sunrise and sunset.

§ 107.31 Visual line of sight aircraft operation.

With vision that is unaided by any device other than corrective lenses, the operator or visual observer must be able to see the unmanned aircraft throughout the entire flight in order to:

(a) Know the unmanned aircraft's location;

(b) Determine the unmanned aircraft's attitude, altitude, and direction;

(c) Observe the airspace for other air traffic or hazards; and

(d) Determine that the unmanned aircraft does not endanger the life or property of another.

§ 107.33 Visual observer.

If a visual observer is used during the aircraft operation, all of the following requirements must be met:

(a) The operator and the visual observer must maintain effective communication with each other at all times.

(b) The operator must ensure that the visual observer is able to see the unmanned aircraft in the manner specified in §§ 107.31 and 107.37.

(c) At all times during flight, the small unmanned aircraft must remain close enough to the operator for the operator to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses.

(d) The operator and the visual observer must coordinate to do the following:

(1) Scan the airspace where the small unmanned aircraft is operating for any potential collision hazard; and

(2) Maintain awareness of the position of the small unmanned aircraft through direct visual observation.

§ 107.35 Operation of multiple small unmanned aircraft systems.

A person may not act as an operator or visual observer in the operation of more than one unmanned aircraft system at the same time.

§ 107.37 Operation near aircraft; right-of-way rules.

(a) Each operator must maintain awareness so as to see and avoid other aircraft and vehicles and must yield the right-of-way to all aircraft, airborne vehicles, and launch and reentry vehicles.

(1) In order to maintain awareness so as to see other aircraft and vehicles, either the operator or a visual observer must, at each point of the small unmanned aircraft's flight, satisfy the criteria specified in § 107.31.

(2) Yielding the right-of-way means that the small unmanned aircraft must give way to the aircraft or vehicle and may not pass over, under, or ahead of it unless well clear.

(b) No person may operate a small unmanned aircraft so close to another aircraft as to create a collision hazard.

§ 107.39 Operation over people.

No person may operate a small unmanned aircraft over a human being who is:

(a) Not directly participating in the operation of the small unmanned aircraft; or

(b) Not located under a covered structure that can provide reasonable protection from a falling small unmanned aircraft.

§ 107.41 Operation in certain airspace.

(a) A small unmanned aircraft may not operate in Class A airspace.

(b) A small unmanned aircraft may not operate in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless the operator has prior authorization from the Air Traffic Control (ATC) facility having jurisdiction over that airspace.

§ 107.45 Operation in prohibited or restricted areas.

No person may operate a small unmanned aircraft in prohibited or restricted areas unless that person has permission from the using or controlling agency, as appropriate.

§ 107.47 Flight restrictions in the proximity of certain areas designated by notice to airmen.

No person may operate a small unmanned aircraft in areas designated in a Notice to Airmen under §§ 91.137 through 91.145, or § 99.7 of this chapter, unless authorized by:

(a) Air Traffic Control (ATC); or

(b) A Certificate of Waiver or Authorization issued by the FAA.

§ 107.49 Preflight familiarization, inspection, and actions for aircraft operation.

(a) Prior to flight, the operator must:

(1) Assess the operating environment, considering risks to persons and property in the immediate vicinity both on the surface and in the air. This assessment must include:

(i) Local weather conditions;

(ii) Local airspace and any flight restrictions;

(iii) The location of persons and property on the surface; and

(iv) Other ground hazards.

(2) Ensure that all persons involved in the small unmanned aircraft operation receive a briefing that includes operating conditions, emergency procedures, contingency procedures, roles and responsibilities, and potential hazards;

(3) Ensure that all links between ground station and the small unmanned aircraft are working properly; and

(4) If the small unmanned aircraft is powered, ensure that there is enough available power for the small unmanned aircraft system to operate for the intended operational time and to operate after that for at least five minutes.

(b) Each person involved in the operation must perform the duties assigned by the operator.

§ 107.51 Operating limitations for small unmanned aircraft.

An operator must comply with all of the following operating limitations when operating a small unmanned aircraft system:

(a) The airspeed of the small unmanned aircraft may not exceed 87 knots (100 miles per hour) calibrated airspeed at full power in level flight;

(b) The altitude of the small unmanned aircraft cannot be higher than 500 feet (150 meters) above ground level;

(c) The minimum flight visibility, as observed from the location of the ground control station must be no less than 3 statute miles (5 kilometers); and

(d) The minimum distance of the small unmanned aircraft from clouds must be no less than:

(1) 500 feet (150 meters) below the cloud; and

(2) 2,000 feet (600 meters) horizontally away from the cloud.

Subpart C—Operator Certification

§ 107.53 Applicability.

This subpart prescribes the requirements for issuing an unmanned aircraft operator certificate with a small UAS rating.

§ 107.57 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for:

(1) Denial of an application for an unmanned aircraft operator certificate with a small UAS rating for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of an unmanned aircraft operator certificate with a small UAS rating.

(b) Committing an act prohibited by § 91.17(a) or § 91.19(a) of this chapter is grounds for:

(1) Denial of an application for an unmanned aircraft operator certificate with a small UAS rating for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of an unmanned aircraft operator certificate with a small UAS rating.

§ 107.59 Refusal to submit to an alcohol test or to furnish test results.

A refusal to submit to a test to indicate the percentage by weight of alcohol in the blood, when requested by a law enforcement officer in accordance with § 91.17(c) of this chapter, or a refusal to furnish or authorize the release of the test results requested by the Administrator in accordance with § 91.17(c) or (d) of this chapter, is grounds for:

(a) Denial of an application for an unmanned aircraft operator certificate with a small UAS rating for a period of up to 1 year after the date of that refusal; or

(b) Suspension or revocation of an unmanned aircraft operator certificate with a small UAS rating.

§ 107.61 Eligibility.

Subject to the provisions of §§ 107.57 and 107.59, in order to be eligible for an unmanned aircraft operator certificate with a small UAS rating under this subpart, a person must:

(a) Be at least 17 years of age;

(b) Be able to read, speak, write, and understand the English language. If the applicant is unable to meet one of these requirements due to medical reasons, the FAA may place such operating limitations on that applicant's certificate as are necessary for the safe operation of the small unmanned aircraft;

(c) Pass an initial aeronautical knowledge test covering the areas of knowledge specified in § 107.73(a); and

(d) Not know or have reason to know that he or she has a physical or mental condition that would interfere with the safe operation of a small unmanned aircraft system.

§ 107.63 Issuance of an unmanned aircraft operator certificate with a small UAS rating.

An applicant for an unmanned aircraft operator certificate with a small UAS rating under this subpart must make the application in a form and manner acceptable to the Administrator.

(a) The application must include:

(1) An airman knowledge test report showing that the applicant passed an initial aeronautical knowledge test, or recurrent aeronautical knowledge test for those individuals that satisfy the requirements of § 107.75; and

(2) A certification signed by the applicant stating that the applicant does not know or have reason to know that he or she has a physical or mental condition that would interfere with the safe operation of a small unmanned aircraft system.

(b) The application must be submitted to a Flight Standards District Office, a designated pilot examiner, an airman certification representative for a pilot school, a certified flight instructor, or other person authorized by the Administrator. The person accepting the application submission must verify the identity of the applicant in a manner acceptable to the Administrator.

§ 107.65 Aeronautical knowledge recency.

A person may not operate a small unmanned aircraft system unless that person has completed one of the following, within the previous 24 calendar months:

(a) Passed an initial aeronautical knowledge test covering the areas of knowledge specified in § 107.73(a); or

(b) Passed a recurrent aeronautical knowledge test covering the areas of knowledge specified in § 107.73(b).

§ 107.67 Knowledge tests: General procedures and passing grades.

(a) Knowledge tests prescribed by or under this part are given at times and places, and by persons designated by the Administrator.

(b) An applicant for a knowledge test must have proper identification at the time of application that contains the applicant's:

(1) Photograph;

(2) Signature;

(3) Date of birth, which shows the applicant meets or will meet the age requirements of this part for the certificate sought before the expiration date of the airman knowledge test report; and

(4) If the permanent mailing address is a post office box number, then the applicant must provide a current residential address.

(c) The minimum passing grade for the knowledge test will be specified by the Administrator.

§ 107.69 Knowledge tests: Cheating or other unauthorized conduct.

(a) An applicant for a knowledge test may not:

(1) Copy or intentionally remove any knowledge test;

(2) Give to another applicant or receive from another applicant any part or copy of a knowledge test;

(3) Give assistance on, or receive assistance on, a knowledge test during the period that test is being given;

(4) Take any part of a knowledge test on behalf of another person;

(5) Be represented by, or represent, another person for a knowledge test;

(6) Use any material or aid during the period that the test is being given, unless specifically authorized to do so by the Administrator; and

(7) Intentionally cause, assist, or participate in any act prohibited by this paragraph.

(b) An applicant who the Administrator finds has committed an act prohibited by paragraph (a) of this section is prohibited, for 1 year after the date of committing that act, from:

(1) Applying for any certificate, rating, or authorization issued under this chapter; and

(2) Applying for and taking any test under this chapter.

(c) Any certificate or rating held by an applicant may be suspended or revoked if the Administrator finds that person has committed an act prohibited by paragraph (a) of this section.

§ 107.71 Retesting after failure.

An applicant for a knowledge test who fails that test may not reapply for the test for 14 calendar days after failing the test.

§ 107.73 Initial and recurrent knowledge tests.

(a) An initial aeronautical knowledge test covers the following areas of knowledge:

(1) Applicable regulations relating to small unmanned aircraft system rating privileges, limitations, and flight operation;

(2) Airspace classification and operating requirements, obstacle clearance requirements, and flight restrictions affecting small unmanned aircraft operation;

(3) Official sources of weather and effects of weather on small unmanned aircraft performance;

(4) Small unmanned aircraft system loading and performance;

(5) Emergency procedures;

(6) Crew resource management;

(7) Radio communication procedures;

(8) Determining the performance of small unmanned aircraft;

(9) Physiological effects of drugs and alcohol;

(10) Aeronautical decision-making and judgment; and

(11) Airport operations.

(b) A recurrent aeronautical knowledge test covers the following areas of knowledge:

(1) Applicable regulations relating to small unmanned aircraft system rating privileges, limitations, and flight operation;

(2) Airspace classification and operating requirements, obstacle clearance requirements, and flight restrictions affecting small unmanned aircraft operation;

(3) Official sources of weather;

(4) Emergency procedures;

(5) Crew resource management;

(6) Aeronautical decision-making and judgment; and

(7) Airport operations.

§ 107.75 Military pilots or former military pilots.

(a) *General.* Except for a person who has been removed from unmanned aircraft flying status for lack of proficiency or because of a disciplinary action involving any aircraft operation, a U.S. military unmanned aircraft pilot or operator or former U.S. military unmanned aircraft pilot or operator who meets the requirements of this section may apply, on the basis of his or her U.S. military unmanned aircraft pilot or operator qualifications, for an unmanned aircraft operator certificate with small UAS rating issued under this part.

(b) *Military unmanned aircraft pilots or operators and former military unmanned aircraft pilots or operators in the U.S. Armed Forces.* A person who qualifies as a U.S. military unmanned aircraft pilot or operator or former U.S. military unmanned aircraft pilot or operator may apply for an unmanned aircraft operator certificate with a small UAS rating if that person—

(1) Passes a recurrent aeronautical knowledge test covering the areas of knowledge specified in § 107.73(b); and

(2) Presents evidentiary documents that show:

(i) The person's status in the U.S. Armed Forces;

(ii) That the person is or was a U.S. military unmanned aircraft pilot or operator.

§ 107.77 Change of name or address.

(a) *Change of Name.* An application to change the name on a certificate issued under this subpart must be accompanied by the applicant's:

(1) Operator certificate; and

(2) A copy of the marriage license, court order, or other document verifying the name change.

(b) The documents in paragraph (a) of this section will be returned to the applicant after inspection.

(c) *Change of address.* The holder of an unmanned aircraft operator certificate issued under this subpart who has made a change in permanent mailing address may not, after 30 days from that date, exercise the privileges of the certificate unless the holder has notified the FAA of the change in address using one of the following methods:

(1) By letter to the FAA Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125 providing the new permanent mailing address, or if the permanent mailing address includes a post office box number, then the holder's current residential address; or

(2) By using the FAA Web site portal at *www.faa.gov* providing the new permanent mailing address, or if the permanent mailing address includes a post office box number, then the holder's current residential address.

§ 107.79 Voluntary surrender of certificate.

(a) The holder of a certificate issued under this subpart may voluntarily surrender it for cancellation.

(b) Any request made under paragraph (a) of this section must include the following signed statement or its equivalent: ''I voluntarily surrender my unmanned aircraft operator certificate with a small UAS rating for cancellation. This request is made for my own reasons, with full knowledge that my certificate will not be reissued to me unless I again complete the requirements specified in §§ 107.61 and 107.63.''

Subpart D—Small Unmanned Aircraft Registration and Identification

§ 107.87 Applicability.

This subpart prescribes the rules governing the registration and identification of all civil small unmanned aircraft to which this part applies.

§ 107.89 Registration and identification.

(a) All small unmanned aircraft must be registered in accordance with part 47 of this chapter.

(b) All small unmanned aircraft must display their nationality and registration marks in accordance with the requirements of subpart C of part 45 of this chapter.

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

■ 20. The authority citation for part 183 is revised to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(f), 106(g), 40113, 44702, 45303.

■ 21. Amend § 183.23 by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 183.23 Pilot examiners.

* * * * *

(b) Under the general supervision of the appropriate local Flight Standards Inspector, conduct those tests;

(c) In the discretion of the appropriate local Flight Standards Inspector, issue temporary pilot certificates and ratings to qualified applicants; and

(d) Accept an application for an unmanned aircraft operator certificate with a small UAS rating and verify the identity of the applicant in a form and manner acceptable to the Administrator.

Issued under the authority provided by 49 U.S.C. 106(f), 40101 note; and Sec. 333 of

Public Law 112–95, in Washington, DC, on February 15, 2015.

Anthony R. Foxx,

Secretary of Transportation.

Michael P. Huerta,

Administrator.

[FR Doc. 2015–03544 Filed 2–18–15; 11:15 am]

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H.R. 203/P.L. 114–2
Clay Hunt Suicide Prevention for American Veterans Act
(Feb. 12, 2015; 129 Stat. 30)
Last List January 15, 2015

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