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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 915 and 944

[Doc. No. AMS–FV–14–0051; FV14–915–1 FIR]

Avocados Grown in South Florida and Imported Avocados; Change in Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that changed the maturity requirements prescribed under the Florida avocado marketing order (order) and avocado import regulation. The interim rule changed the maturity shipping schedule to allow certain sizes and weights of the Choquette avocado variety to be shipped to the fresh market earlier. With this change, the maturity schedule better reflects the current maturity rate for the Choquette variety, facilitating the shipment of this variety as it matures.

DATES: Effective April 27, 2015.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including avocados, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

The handling of avocados grown in South Florida is regulated by 7 CFR part 915. Prior to this change, the B date for the Choquette variety listed on the maturity schedule was October 17, the C date was October 31, and the D date was November 14. Three years of testing by Avocado Administrative Committee (Committee) staff indicated that some weights and sizes were maturing earlier, prompting the Committee to recommend moving the B, C, and D dates each up one week, respectively. Therefore, this rule continues in effect the rule that changed the B date for Choquettes listed on the maturity schedule from October 17 to October 10, the C date from October 31 to October 24, and the D date from November 14 to November 7. The corresponding sizes and weights associated with these dates remain unchanged. The dates on the maturity schedule are the basis for calculating the actual shipping dates (A, B, C, D dates) for each individual season. The actual shipping dates for an individual year are established as the Monday nearest to the date specified in the maturity schedule as specified in § 915.332.

Imported avocados are subject to regulations specified in 7 CFR part 944. Under those regulations, imported avocados must meet the same minimum size requirements as specified for domestic avocados under the order. Therefore, the B date for Choquette variety listed on the maturity schedule was also changed from October 17 to October 10, the C date changed from October 31 to October 24, and the D date changed from November 14 to November 7.

In an interim rule published in the **Federal Register** on September 16, 2014, and effective on September 19, 2014, (79 FR 55351, Doc. No. AMS–FV–14–0051, FV14–915–1 IR), §§ 915.332 and 944.31 were amended by changing the B date for the Choquette variety listed on the maturity schedule from October 17 to October 10, the C date from October 31 to October 24, and the D date from November 14 to November 7.

Final Regulatory Flexibility Analysis

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

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

There are approximately 30 handlers of Florida avocados subject to regulation under the order and approximately 300 producers of avocados in the production area. There are approximately 70 importers of West Indian- and Guatemalan-type avocado varieties like those grown in Florida. Small agricultural service firms, which include avocado handlers and importers, are defined by the Small Business Administration (SBA) as those whose annual receipts are less than $7,000,000, and small agricultural producers are defined as those having

annual receipts less than $750,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service, the average price for Florida avocados during the 2011–12 season was approximately $20.79 per 55-pound bushel container and total shipments were slightly higher than 1.2 million 55-pound bushels. Using the average price and shipment information, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than $750,000. Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported West Indian- and Guatemalan-type avocados was $15.5 million in 2013. Using these values, most importers would have annual receipts of less than $7,000,000 for avocados. Consequently, the majority of avocado handlers, producers, and importers may be classified as small entities.

The Dominican Republic, Peru, and Costa Rica, are the major production areas exporting avocado varieties other than Hass to the United States. In 2013, shipments of these type of avocados imported into the United States totaled around 14,500 metric tons. Of that amount, 14,400 metric tons were imported from the Dominican Republic, 63 metric tons were imported from Peru, and 21 metric tons were imported from Costa Rica. Mexico, Chile, and Peru are the major countries producing and exporting Hass-type avocados to the United States. In 2013, shipments of Hass-type avocados imported into the United States totaled around 548,000 metric tons. Mexico accounted for 500,000 metric tons, with 23,400 metric tons from Chile, and 21,500 metric tons from Peru.

This rule continues in effect the action that changed the maturity requirements prescribed under the order's rules and regulations. This rule changed the maturity shipping schedule to allow certain sizes and weights of the Choquette avocado variety to be shipped to the fresh market earlier and made a corresponding change to the avocado import regulation. With this change, the maturity schedule better reflects the current maturity rate for the Choquette variety, facilitating the shipment of this variety as it matures. Authority for this change is provided in §§ 915.51 and 915.52. This rule amends the provisions in §§ 915.332 and 944.31. The change in the import regulation is required under section 8e of the Act.

This action is not expected to increase the costs associated with the order's requirements or the avocado import regulation. Rather, it is anticipated that this action will have a beneficial impact. Based on several seasons of maturity testing, the Committee recommended moving the B, C, and D dates on the maturity schedule forward one week, respectively, for the Choquette variety, allowing the associated sizes and weights to be shipped to the fresh market earlier. The revised dates better reflect the current maturity rate for Choquettes, and will facilitate the shipment of this variety as it matures, while continuing to ensure that only mature fruit is shipped to the fresh market. The benefits of this rule are expected to be equally available to all fresh avocado growers, handlers, and importers, regardless of this size.

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

This rule will not impose any additional reporting or recordkeeping requirements on either small or large avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 9, 2014, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before November 17, 2014. Two comments were received.

One comment expressed support for the change. The second commenter asked if there were health risks to the consumer if these avocados are consumed too early. The avocado maturity schedule is designed to ensure only mature avocados that will ripen properly are shipped to consumers. Immaturity can negatively affect the taste and quality of the fruit. Accordingly, no changes will be made to the rule based on the comments received, and we are adopting the interim rule as a final rule, without change for the reasons given in the interim rule.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-14-0051-0001*

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

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (79 FR 55351, September 16, 2014) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

PARTS 915 and 944—[AMENDED]

■ Accordingly, the interim rule that amended 7 CFR parts 915 and 944 and that was published at 79 FR 55351 on September 16, 2014, is adopted as a final rule, without change.

Dated: April 16, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–09287 Filed 4–21–15; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 948 and 980

[Doc. No. AMS–FV–13–0073; FV13–948–3 FR]

Irish Potatoes Grown in Colorado and Imported Irish Potatoes; Relaxation of the Handling Regulation for Area No. 2 and Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the minimum quantity exception for potatoes handled under the Colorado potato marketing order, Area No. 2 (order). The order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). This action increases the quantity of potatoes that may be handled under the order without regard to the order's handling regulation requirements from 1,000 to 2,000 pounds. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This action allows for the importation which, in the aggregate, does not exceed 2,000 pounds for all other round type potatoes, except red skinned, round type or long type potatoes that continue to remain at a 500 pound limit, to be imported without regard to the import regulations. This action is expected to benefit producers, handlers, and importers.

DATES: *Effective date:* April 27, 2015.

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

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

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

This final rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This final rule revises the minimum quantity exception currently prescribed in the handling regulation for potatoes handled under Marketing Order No. 948. This rule increases the quantity of potatoes that may be handled without regard to the order's handling regulation from 1,000 to 2,000 pounds. Relaxing the minimum quantity exception is expected to benefit producers, handlers, and importers. The rule was unanimously recommended by the Committee at a meeting on July 18, 2013.

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

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

Section 948.386 of the order's administrative rules prescribes grade, size, maturity, and inspection requirements for Colorado Area No. 2 potatoes. Paragraph (f) of that section prescribes the minimum quantity of potatoes that are exempt from regulation. Currently, each person may handle up to 1,000 pounds of potatoes without regard to the order's grade, size, maturity, and inspection requirements.

At its meeting on July 18, 2013, the Committee unanimously recommended increasing the order's minimum quantity exception from 1,000 to 2,000 pounds. The recommendation was made at the request of producers and handlers who wanted greater flexibility in distributing smaller quantities of potatoes. In its deliberations, the Committee commented that 2,000 pounds is consistent with the current weight of a pallet of potatoes. One pallet is typically the smallest lot of potatoes distributed, since most delivery vehicles are now capable of transporting at least 2,000 pounds.

Handlers also feel that the value of one pallet of potatoes does not warrant the cost of complying with the order's regulations. Based on an estimated average f.o.b. price of $12.60, the value of one pallet of potatoes is approximately $252.00. Increasing the minimum quantity exception from 1,000 to 2,000 pounds of potatoes allows a handler to ship one pallet of potatoes without regard to the order's grade, size, maturity, and inspection requirements. Relaxing the minimum quantity is

expected to benefit producers, handlers, and importers.

Section 8e of the Act provides that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, the importation into the United States of any such commodity shall be prohibited unless it complies with the grade, size, quality and maturity provisions of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition (7 U.S.C. 608e–1(a)). Section 980.1(a)(2)(ii) of the Vegetable Import Regulations specifies that imported round-type potatoes, except red-skinned, round type potatoes, are in most direct competition with potatoes of the same type produced in the area covered by Marketing Order 948. Since this action increases the minimum quantity exemption under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade, size, quality, and maturity requirements for Irish potatoes imported into the United States are currently in effect under § 980.1 (7 CFR 980.1). The minimum quantity exemption is specified in § 980.1(c). The exemption for red skinned, round type or long type potatoes will remain at a 500 pound limit as provided in Marketing Orders 946 and 945, respectively. This rule increases the quantity for all other round type potatoes that may be imported without regard to the import regulation requirements from 1,000 to 2,000 pounds. The metric equivalent for 1,000 pounds is 453.592 kilograms and 2,000 pounds is 907.185 kilograms. The increase in the minimum quantity exemption for imports of potatoes will have a beneficial impact on importers. This rule will provide flexibility in the importation and distribution of smaller quantities of potatoes.

Final Regulatory Flexibility Analysis

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

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

There are approximately 80 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. There are approximately 240 importers of potatoes. Small agricultural service firms (handlers and importers) are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

During the 2011–2012 fiscal period, the most recent for which statistics are available, 15,072,963 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $12.60 per hundredweight, the Committee estimates that 66 Area No. 2 handlers, or about 83 percent, had annual receipts of less than $7,000,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for the 2011 Colorado fall potato crop was $10.70 per hundredweight. Multiplying $10.70 by the shipment quantity of 15,072,963 hundredweight yields an annual crop revenue estimate of $161,280,704. The average annual fresh potato revenue for each of the 180 Colorado Area No. 2 potato producers is therefore calculated to be approximately $896,000 ($161,280,704 divided by 180), which is greater than the SBA threshold of $750,000. Consequently, on average, many of the Colorado Area No. 2 potato producers may not be classified as small entities.

Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imports of the type of potatoes affected by this rule ranged from approximately $55.8 million in 2009 to $ 56.5 million in 2013. Using these values, the majority of importers of the type of potatoes affected by this rule would have annual receipts of less than $7,000,000 and may be classified as small entities.

Canada is the major potato-producing country exporting potatoes to the United States. In 2013, affected shipments of potatoes imported into the United States totaled around 3,479,468 hundredweight. Of that amount, 3,479,383 hundredweight were imported from Canada, 59 hundredweight were imported from Ecuador, and 26 hundredweight were imported from Peru.

This final rule revises the quantity of potatoes that may be handled without regard to the requirements of § 948.386(a), (b), and (c) of the order from 1,000 to 2,000 pounds and makes a corresponding change to the potato import regulation. At the July 18, 2013 meeting, the Committee unanimously recommended increasing the minimum quantity exception to be consistent with the approximate weight of one pallet of potatoes. Authority for the establishment and modification of a minimum quantity exception is provided in § 948.22(b)(2) of the order. This final rule amends the provisions in §§ 948.386(f) and 980.1(c). The change in the import regulation is required under section 8e of the Act.

This action is not expected to increase the costs associated with the order's requirements or the potato import regulation. Rather, it is anticipated that this change will have a beneficial impact. The Committee believes it will provide greater flexibility in the distribution of small quantities of potatoes. Currently, the distribution of potatoes between 1,000 and 2,000 pounds requires an inspection and certification that the product conforms to the grade, size, and maturity requirements of the order. This translates into a cost for handlers and importers of both time and inspection fees, which is high in relation to the small value (approximately $252.00 per pallet) of these transactions. This action will allow shipments up to 2,000 pounds of potatoes without regard to the order's grade, size, maturity, and inspection requirements and the related costs. The benefits for this final rule are expected to be equally available to all fresh potato producers, handlers, and importers, regardless of their size.

As an alternative to the proposal, the Committee discussed leaving the handling regulation unchanged. The Committee rejected this idea because a pallet of potatoes weighs approximately 2,000 pounds and the 1,000 pound minimum quantity exception did not accommodate this size shipment. No other alternatives were discussed.

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

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

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

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

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 2 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 18, 2013, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on October 6, 2014 (79 FR 60117). Copies of the rule were made available to all interested Colorado potato producers and handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending December 5, 2014, was provided to allow interested persons to respond to the proposal. No comments were received.

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

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping potatoes from the 2014–2015 crop and handlers want to take advantage of the relaxation as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects

7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth above, 7 CFR parts 948 and 980 are amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

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

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 948.386(f) to read as follows:

§ 948.386 Handling regulation.

* * * * *

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

* * * * *

PART 980—VEGETABLES; IMPORT REGULATIONS

■ 3. The authority citation for 7 CFR part 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 4. In § 980.1, paragraph (c) is revised to read as follows:

§ 980.1 Import regulations; Irish potatoes.

* * * * *

(c) *Minimum quantities.* Any importation which, in the aggregate, does not exceed 500 pounds of red skinned, round type or long type potatoes, or 2,000 pounds for all other round type potatoes, may be imported without regard to the provisions of this section.

* * * * *

Dated: April 16, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–09289 Filed 4–21–15; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1212

[Document Number AMS–FV–14–0045]

Honey Packers and Importers Research, Promotion, Consumer Education and Information Order; Assessment Rate Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Honey Packers and Importers Research, Promotion, Consumer Education and Information Order (Order) to increase the assessment rate from $0.01 per pound to $0.015 per pound on honey and honey products, over a two-year period. The Order limits an increase in the assessment rate to no more than one-quarter cent per pound per year. Thus, the rate will increase to $0.0125 per pound for the period January 1 through December 31, 2015, and to $0.015 per pound on and after January 1, 2016. This increase was unanimously recommended by the Honey Packers and Importers Board (Board) which administers the Order with oversight by the U.S. Department of Agriculture (USDA). Under the program, assessments are collected from first handlers (packers) and importers and used for research and promotion projects designed to maintain and expand the market for honey and honey products in the United States and abroad. Additional funds will allow the Board to expand its production research activities and promotional efforts. The

Board's production research focuses on maintaining the health of honey bee colonies. Increasing demand for honey and honey products will benefit the honey industry as a whole. This action also makes three additional changes to: Clarify that the assessment rate applies not only to the Harmonized Tariff Schedule numbers but to any other numbers used to identify honey; change the length of time that books and records are to be held; and change the exemption requirements.

DATES: *Effective:* May 22, 2015.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915; facsimile: (202) 205–2800; or electronic mail: *Patricia.Petrella@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Order (7 CFR part 1212). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Order 12866 and Executive 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action has been designated as a ''non-significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has waived the review process.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under the Order now in effect, honey first handlers and importers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate of $0.0125 per pound will be applicable for all assessable honey for the period from January 1 through December 31, 2015, and that the rate of $0.015 per pound will be applicable to all assessable honey beginning on January 1, 2016, and continue until amended, suspended, or terminated.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This rule amends the Order to increase the assessment rate from $0.01 to $0.015 per pound on honey and honey products over a two-year period. The Order limits an increase in the assessment rate to no more than one-quarter cent per pound per year. Thus, the rate will increase to $0.0125 per pound for the period January 1 through December 31, 2015, and to $0.015 per pound on and after January 1, 2016. The Order is administered by the Board with oversight by USDA. Under the program, assessments are collected from first handlers and importers and used for research and promotion projects designed to maintain and expand the market for honey and honey products in the United States and abroad. Additional funds will enable the Board to expand its production research activities and promotional efforts. The Board's production research focuses on maintaining the health of honey bee colonies. Promotional efforts focus on the innovative ways to market, promote, and utilize honey and honey products. Increasing demand for honey and honey products will benefit the honey industry as a whole. This action was unanimously recommended by the Board.

The Order specifies that the funds to cover the Board's expenses shall be paid from assessments on first handlers and importers, donations from persons not subject to assessments, and from other funds available to the Board. First handlers are required to file reports and maintain records on the total quantity of honey and honey products acquired during the reporting period, the quantity of honey processed for sale from the handler's own production, and the quantity of honey purchased from a handler or importer responsible for paying the assessment due. Importers are required to report the total quantity of honey and honey products imported during each reporting period, and keep a record of each lot of honey and honey products imported during such period, including the quantity, date, country of origin, and port of entry. Importers are responsible for paying assessments to the Board on honey and honey products imported into the United States through the U.S. Customs and Border Protection (Customs). The Order also provides for two exemptions. First handlers who handle less than 250,000 pounds and importers who import less than 250,000 pounds of honey and honey products annually, and first handlers and importers of 100 percent organic honey and honey products are exempt from the payment of assessments.

Section 1212.52 of the Order specifies that assessments shall be levied at a rate of $0.01 per pound on all honey and honey products. The Board may recommend to the Secretary an increase or decrease in the assessment as it deems appropriate by at least a two-thirds vote of members present at a meeting of the Board. The Board may not recommend an increase in the assessment of more than $0.02 per pound of honey or honey products and may not increase the assessment by more than $0.0025 in any single fiscal year.

The $0.01 per pound assessment rate has been in effect since the Order's inception in 2008. The Board's fiscal year runs from January 1 through December 31. Board expenditures have ranged from $4,157,250 for its first full year in 2009 to $4,556,490 in 2013. Expenditures for research have ranged

from $465,579 in 2009 (11 percent of total expenses) to $231,234 in 2013 (5 percent of total expenses). Board expenditures for health messaging and promotion activities have ranged from $2,311,370 in 2009 (56 percent of total expenses) to $2,859,743 in 2013 (63 percent of total expenses). Pursuant to section 1212.50(h) of the Order, administrative expenditures have been less than 15 percent of the assessments and other income received by the Board annually.

Board assessment income has ranged from $3,345,543 in 2009 ($2,085,204 in domestic assessments and $1,260,339 in import assessments) to $4,443,798 in 2013 ($1,122,390 in domestic assessments and $3,321,408 in import assessments). Additionally, pursuant to section 1212.54 of the Order, the Board maintains a monetary reserve with funds that do not exceed one fiscal period's budget.

Board 2014 Recommendation

The Board held a teleconference on January 23, 2014, and unanimously recommended increasing its assessment rate from $0.01 to $0.015 per pound on honey and honey products over a two-year period. The Order limits an increase in the assessment rate to no more than one-quarter cent per pound per year. Thus, the rate will increase to $0.0125 per pound for the period January 1 through December 31, 2015, and to $0.015 per pound on and after January 1, 2016. Additional funds will enable the Board to expand its production research activities and promotional efforts. Since the program's inception, the Board has funded several production research projects focused on maintaining the health of honey bee colonies. The honey industry continues to experience considerable production challenges associated with the Colony Collapse Disorder. The honey industry has attempted to halt the long term decline in the numbers of honeybees (over 30 percent in the past twenty years) through treatment, colony development, maintenance, and replacement. The funds generated by an assessment increase will be spent on conducting research activities designed to address these critical issues. Per section 1212.50(a) of the Order, five percent (5 percent) of the Board's anticipated revenue from assessments each fiscal period is to be allocated towards production research and research related to the production of honey. A possible one to two million dollar increase in assessment revenue would generate an additional $50,000 to $100,000 for production research.

Furthermore, the Board also conducts research relating to various health and beauty issues, including alternative uses for honey. However, most of these preliminary findings have been done under laboratory conditions. Additional funds will allow the Board to incorporate specific areas of research into expanded clinical (human) trials. Clinical trials are important for the industry to be able to make health claims consistent with Federal Trade Commission and Food and Drug Administration requirements.

The Board uses health information in its promotion messaging to help build demand for honey and honey products. Worldwide honey production has grown from 357 million pounds in 2009 to 487 million pounds in 2013. Increasing demand will help move the growing supply of honey, which in turn will assist the Board in reaching its goal to continually increase consumption among existing honey and honey product consumers and to attract new honey and honey product users.

At the increased assessment rate on honey and honey products, with assessable pounds averaging 450 million per year, assessment income could reach $5.6 million in 2015 and $6.8 million in 2016. This increase could be used for research and promotion projects designed to maintain and expand the market for honey and honey products in the United States and abroad. As an example, if 5 percent of the budget was allocated to production research and 60 percent was allocated to promotion, funds available for production research could average approximately $340,000 annually, up from $231,234 in 2013, and funds available for health messaging and promotion could average $4.0 million annually, up from $2.8 million in 2013.

In light of the need to allocate more funds towards production and health research activities and build demand for honey, the Board recommended increasing the assessment rate under the Order from $0.01 to $0.015 per pound on honey and honey products over a two-year period. The Order limits an increase in the assessment rate to no more than one-quarter cent per year. Thus, the rate will increase to $0.0125 per pound for the period January 1 through December 31, 2015, and to $0.015 per pound on and after January 1, 2016. Section 1212.52 of the Order is amended accordingly.

Paragraph (e) of section 1212.52 is also revised to clarify that the assessment rate applies not only to the listed Harmonized Tariff Schedule of the United States (HTSUS) numbers, but also any other numbers that may be used to identify honey or honey products in the event the HTSUS numbers change; this change has no impact on the assessment rate.

Section 1212.71 of the Order is also revised to change the length of time that books and records are to be held from two years to three years. This change conforms with the Board's compliance procedures, which provide that the Board conduct audit reviews every three years. Section 1212.53 of the Order is revised to state that exemptions from assessments for a calendar year are effective on the date approved by the Board. This change is being made to clarify exemption requirements. These changes pose no additional information collection burden on honey first handlers and importers.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of this rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than $7.0 million.

There are 661 importers and 42 first handlers of honey and honey products covered under the program. Seventeen out of the 42 first handlers (40 percent) and 21 out of the 661 importers (3 percent) accounted for 90 percent of the assessments in their respective categories. Total assessments for 2013 were $4.44 million, of which $1.12 million (25 percent) came from first handlers and $3.32 million (75 percent) was paid by importers. This data can be used to compute an estimate of average annual revenue from honey sales from each of these categories, which in turn helps to estimate the number of large and small first handlers and importers. As mentioned above, 17 first handlers account for 90 percent of the domestic assessments. Multiplying first handler assessments in 2013 of $1,122,390 by 0.9 and then dividing by 17 yields an average annual assessment of $59,421 for the first handlers in this category. Dividing the assessment rate of one cent per pound yields an average quantity

per first handler of 5.942 million pounds. Multiplying 5.942 million pounds by the average 2013 U.S. domestic price [1] of $2.12 per pound yields an average, annual honey revenue per packer of $12.60 million, which is well above the SBA threshold of $7.0 million. It should be noted that this revenue estimate is based on the average price at the producer level, and the $12.6 million is an estimate of the total value at which the average size packer acquired the honey from producers. Therefore most of the 17 first handlers that pay 90 percent of the domestic assessments are likely to be large firms according to the SBA definition.

An equivalent computation can be made for the 21 importers who paid 90 percent of the $3,321,408 in assessments in 2013. Of the 21 importers, the average assessment per importer was $142,346. Dividing the average assessment per importer by the assessment rate of $0.01 per pound yield an average quantity per importer estimate of 14.235 million pounds.

For honey imports, the equivalent of the season average price for domestic honey is referred to as a ''unit value.'' The unit value of $1.42 per pound is computed by dividing annual imported honey value of $480.25 million by average quantity of 337.05 million pounds (import data from the U.S. Census Bureau). Multiplying the $1.42 unit value by the average quantity of 14.235 million pounds yields average annual honey revenue per importer figure of $20.21 million, nearly three times the SBA threshold figure of $7.0 million for a large firm. Therefore the majority of the 21 importers that pay 90 percent of the assessments are large firms, according to the SBA definition.

Comparable computations can be made to determine the average 2013 honey revenue for the 25 first handlers and 640 importers that paid 10 percent of the assessments in the first handler and importer categories. The first handler and importer average annual honey revenue figures are approximately $950,000 and $75,000, respectively, indicating that the vast majority are small businesses (in terms of honey sales), under the SBA large business threshold of $7.0 million in annual sales.

Based on the foregoing, the majority of first handlers and importers may be classified as small entities.

This final rule amends section 1212.52 of the Order to increase the assessment rate from $0.01 to $0.015 per pound (an increase of $0.0025 per pound per year over a two-year period). The Order is administered by the Board with oversight by USDA. Under the program, assessments are collected from first handlers and importers and used for research and promotion projects designed to maintain and expand the market for honey and honey products in the United States and abroad. Additional funds will enable the Board to expand its production research activities and promotional efforts. The Board uses its health information in its promotion messaging to help build demand. Increasing demand will help move the growing supply of honey and honey products, which will benefit producers, importers, first handlers, and consumers. Authority for this action is provided in section 1212.52(f) of the Order and section 517 of the 1996 Act.

Two additional sections of the Order are also revised. Section 1212.71 of the Order is revised to change the length of time that books and records are to be held from two years to three years. This change conforms to the Board's compliance procedures, which instructs the Board to conduct audit reviews every three years. Section 1212.53 of the Order is revised to state that exemptions from assessments for a calendar year are effective on the date approved by the Board. This change is being made to clarify exemption requirements. These changes pose no additional information collection burden on honey first handlers and importers.

Regarding the economic impact of the final rule on affected entities, this action increases the assessment obligation on first handlers and importers. While assessments impose additional costs on first handlers and importers, the costs are minimal and uniform on all. The costs will also be offset by the benefits derived from the operation of the program. It is estimated that 42 first handlers and 661 importers pay assessments under the program.

There has been one economic study conducted since the Order's inception that evaluated the effectiveness of the Board's promotion program. The study was conducted by Dr. Ronald M. Ward at the University of Florida in 2014 and titled ''Honey Demand and the Impact of the National Honey Board's Generic Promotion Program.'' This study may be obtained from *http://www.ams.usda.gov/.* The 2014 study included data from 1987 through 2012, and evaluated the effectiveness of the former Honey Research, Promotion, and Consumer Information Order, and the current honey marketing program. The earlier honey program operated from 1986 through 2008, as a producer program. The earlier program was replaced in 2008 with the current packer and importer program; producers are no longer directly subject to the mandatory assessment. Otherwise, the two programs are similar, including the administrative and operational oversight.

The purpose of the economic study was twofold: (1) To determine the market implications of the Board's promotion program and (2) to determine a return-on-investment (rate of return) for the promotion activities conducted by the Board.

To evaluate the effectiveness of the Board's domestic promotion activities, econometric models were developed for each of two distinct honey market segments: manufacturing (honey used as an ingredient) and non-manufacturing (table honey). The models measured the impact of the Board's annual promotion expenditures while taking into account the impact of other factors that influence demand.

For the non-manufacturing model, the other factors were domestic supplies of honey, personal income, and the historical support price for honey. For the manufacturing model, the other factors were the quantity of sugar used in food manufacturing (as a proxy measure of the overall demand for sweeteners, including honey), and a variable which captured the structural change in the honey market that began in 2007, when the market share of honey imports began to increase significantly. The manufacturing model using Board expenditure lagged one year because Board promotion expenditure in the prior year was found to have the most significant impact on honey manufacturing demand in the current year.

Due to differences in data availability, the manufacturing model covered the time period of 1965 through 2012 and the non-manufacturing model spanned 1987 through 2012.

The econometric models used statistical methods to analyze annual data over these time periods and measure how strongly the various honey demand factors affect (a) the quantity of honey as an ingredient (manufacturing model) and (b) the price for table honey (non-manufacturing model). In both models, Board program expenditures were found to have a positive and statistically significant impact on demand. The models had reasonably strong explanatory power, with 80 percent of the variation in quantity demanded explained by the independent variables in the manufacturing model, and 89 percent of the variation in price explained by the non-manufacturing model variables.

[1] Honey, March 2014, USDA, National Agricultural Statistics Service, p. 3

The return on investment (ROI) for honey promotion was obtained by dividing the increased value of honey sales (for the two market segments combined) by Board program expenditures. The ROI for Board programs for the period 1987 to 2012 was 14.12, meaning $14.12 in returns (increased honey value) for every $1 spent on promotion. The results were similar for 2008 through 2012, the period covered by the new program funded by honey first handlers and importers.

An additional step in assessing promotional program effectiveness was to analyze the potential impact of alternative honey promotion spending levels. The two demand models were used to simulate gains for various percentages of actual 2012 promotional expenditures. The results show a range of increased honey demand impacts from increased spending, depending on alternative assumptions about the level of honey price and honey quantity. The simulation results suggest that a 50 percent increase in Board promotional expenditure would yield an additional $29 million in honey sales, if quantity demanded increased, but prices stayed the same. Alternatively, crop value would increase $44 million if prices went up, but quantity stayed the same. Returns on investment were 14 to 1 or higher over this range of alternative assumptions about market conditions. These results were similar to the ROI cited earlier. Focusing on 2012 illustrates the effectiveness of the program under the funding mechanism that began in 2008.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This final rule does not change the information collection and recordkeeping requirements previously approved and imposes no additional reporting and recordkeeping burden on honey first handlers and importers.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

The Board has been considering an increase in the assessment rate since 2011. The Board explored the need and justification for an increase as well as obtained feedback from the Board's stakeholders. Additionally, beginning in 2011, the Board has done extensive outreach to include presentations, handouts, and industry meeting attendance. As an alternative to an assessment rate increase, the Board considered cutting programs. The Board reduced honey research in order to maintain marketing programs and considered cutting additional marketing programs. However, after further analysis, it was determined that additional cuts would hurt the program. In late 2013, the Board presented the proposed assessment increase to the various honey associations. Ultimately, at its January 2014 meeting, the Board unanimously recommended increasing the assessment rate to $0.0125 per pound for the first year (January 1 through December 31, 2015) and to $0.015 per pound for the second year and beyond (on and after January 1, 2016).

A proposed rule concerning this action was published in the **Federal Register** on November 18, 2014 (79 FR 68636). The Board included notifications about the proposed rule in its newsletters and also mailed related information to honey packers and importers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending December 18, 2014, was provided to allow interested persons to submit comments.

Analysis of Comments

Three comments were received in response to the proposed rule; two supported the increase, and one opposed the action. The two comments which supported increasing the assessment rate stated that the additional funds would allow the Board to expand its programs to promote the benefits of honey and honey products and develop new products that contain honey as a key ingredient. A commenter further stated that honey and honey bees are important to agriculture and the environment.

The commenter in opposition to the proposal did not see the need to increase the assessment rate by 50 percent. The commenter stated that honey assessments have increased over the years because honey consumption has increased. The commenter opined that any increase in the honey budget should come from increased honey sales rather than increasing the assessment rate. USDA concurs that an increase in honey sales and consumption will increase Board income. However, maintaining the current $0.01 per pound assessment rate will not generate the amount of funds necessary to fund additional production research, human clinical trials, and conduct promotion activities needed to continue to build demand to move the growing supply of honey and honey products. Thus, no changes have been made to the rule based on this comment.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

List of Subjects in 7 CFR Part 1212

Administrative practice and procedure, Advertising, Consumer information, Honey Packer and importer promotion, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 1212, Chapter XI of Title 7 is amended as follows:

PART 1212—HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1212 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. In § 1212.52, paragraphs (a), (b), (c), (d), and (e) are revised to read as follows:

§ 1212.52 Assessments.

(a) The Board will cover its expenses by levying in a manner prescribed by the Secretary an assessment on first handlers and importers. For the period January 1 through December 31, 2015, the assessment rate shall be $0.0125 per pound of assessable honey and honey products. On and after January 1, 2016, the assessment rate shall be $0.015 per pound of assessable honey and honey products.

(b) Each first handler shall pay the assessment to the Board on all domestically produced honey or honey products the first handler handles. A producer shall pay the Board the assessment on all honey or honey products for which the producer is the first handler.

(c) Each first handler responsible for remitting assessments shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the honey or honey products were marketed.

(d) Each importer shall pay an assessment to the Board on all honey or honey products the importer imports into the United States. An importer shall pay the assessment to the Board through the United States Customs and Border Protection (Customs) when the honey or honey products being assessed enters the United States. If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment to the Board.

(e) The import assessment recommended by the Board and approved by the Secretary shall be uniformly applied to imported honey or honey products that are identified as HTS heading numbers 0409.00.00 and 2106.90.9988 by the Harmonized Tariff Schedule of the United States or any other numbers used to identify honey or honey products.

* * * * *

■ 3. In § 1212.53, paragraph (d) is revised to read as follows:

§ 1212.53 Exemption from assessment.

* * * * *

(d) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board will then issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. The exemption is effective when approved by the Board. It is the responsibility of these persons to retain a copy of the certificate of exemption.

* * * * *

■ 4. Section 1212.71 is revised to read as follows:

§ 1212.71 Book and records.

Each first handler and importer, including those who are exempt under this subpart, must maintain any books and records necessary to carry out the provisions of this part, and any regulations issued under this part, including the books and records necessary to verify any required reports. Books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. A first handler or importer must maintain the books and records for three years beyond the fiscal period to which they apply.

Dated: April 16, 2015.

Rex A. Barnes,

Associate Administrator.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. PL15–1–000]

Cost Recovery Mechanisms for Modernization of Natural Gas Facilities

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Policy statement.

SUMMARY: In this Policy Statement, the Commission provides greater certainty regarding the ability of interstate natural gas pipelines to recover the costs of modernizing their facilities and infrastructure to enhance the efficient and safe operation of their systems. The Policy Statement explains the standards the Commission will require interstate natural gas pipelines to satisfy in order to establish simplified mechanisms, such as trackers or surcharges, to recover certain costs associated with replacing old and inefficient compressors and leak-prone pipes and performing other infrastructure improvements and upgrades to enhance the efficient and safe operation of their pipelines.

DATES: This Policy Statement will become effective October 1, 2015.

FOR FURTHER INFORMATION CONTACT:

Monique Watson (Technical information), Office of Energy Markets Regulation, Federal Energy Regulatory Commission, 888 First Street NE., 20426, Telephone: (202) 502–8384, *Monique.Watson@ferc.gov*.

David E. Maranville (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., 20426, Telephone: (202) 502–6351, *David.Maranville@ferc.gov*.

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1. On November 20, 2014, the Commission issued a Proposed Policy Statement and sought comments regarding potential mechanisms for interstate natural gas pipelines to use to recover the costs of modernizing their

facilities and infrastructure to enhance the efficient and safe operation of their systems.[1] The Commission proposed standards that interstate natural gas pipelines would be required to satisfy to establish simplified mechanisms, such as trackers or surcharges, to recover such costs. Historically, the Commission has required interstate natural gas pipelines to design their transportation rates based on projected units of service. Recently, however, governmental safety and environmental initiatives have raised the probability that interstate natural gas pipelines will soon face increased costs to enhance the safety and reliability of their systems. The Commission issued the Proposed Policy Statement in an effort to address these potential costs and to ensure that existing Commission ratemaking policies do not unnecessarily inhibit interstate natural gas pipelines' ability to expedite needed or required upgrades and improvements, such as replacing old and inefficient compressors and leak-prone pipelines.

2. After review of the comments on the Proposed Policy Statement, the Commission has determined to establish a policy allowing interstate natural gas pipelines to seek to recover certain capital expenditures made to modernize system infrastructure through a surcharge mechanism, subject to conditions intended to ensure that the resulting rates are just and reasonable and protect natural gas consumers from excessive costs. The Commission recognizes, as many commenters note, that permitting pipelines to recover these expenditures through a surcharge or tracker departs from the requirement that interstate natural gas pipelines design their transportation rates based on projected units of service. We find on balance, however, that consideration of such mechanisms is justified if they are properly designed to limit a pipeline's recovery of such costs to those shown to modernize the pipeline's system infrastructure in a manner that enhances system safety, reliability and regulatory compliance, and are subject to conditions that ensure that the resulting rates are just and reasonable and protect natural gas consumers from excessive costs. Accordingly, we are adopting this Policy Statement to provide guidance and a framework as to how the Commission will evaluate pipeline proposals for recovery of infrastructure modernization costs. The Policy Statement adopts the five guiding principles from the Proposed Policy Statement as the standards a pipeline would have to satisfy for the Commission to approve a proposed modernization cost tracker or surcharge. Those criteria are (1) Review of Existing Base Rates; (2) Defined Eligible Costs; (3) Avoidance of Cost Shifting; (4) Periodic Review of the Surcharge and Base Rates; and (5) Shipper Support.

3. Below we review the background that led to the development of the Proposed Policy Statement and this Policy Statement, summarize the comments on the Proposed Policy Statement, and discuss the applicability of the Policy Statement in general, and of the five conditions under the new Policy Statement, in light of those comments. As discussed below, the Commission intends that the standards a pipeline must satisfy to implement a cost modernization tracker or surcharge to be sufficiently flexible so as not to require any specific form of compliance but to allow pipelines and their customers to reach reasonable accommodations based on the specific circumstances of their systems. The Commission will thus evaluate any proposal for a modernization cost surcharge against those five standards on a case-by-case basis.

I. Background

A. Safety and Environmental Initiatives

4. As we noted in the Proposed Policy Statement, there have been several recent legislative actions, and resulting regulatory initiatives, to address natural gas pipeline infrastructure safety and reliability. In 2012, Congress passed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011.[2] That act includes requirements for the United States Department of Transportation (DOT) to take various actions to reduce the risk of future pipeline failures. Among other things, the Pipeline Safety Act requires the DOT to (1) consider expansion and strengthening of its integrity management regulations, (2) consider requiring automatic shut-off valves on new pipeline construction, (3) require pipelines to reconfirm their Maximum Allowable Operating Pressures, and (4) conduct surveys to measure progress in plans for safe management and replacement of cast iron pipelines.

5. The Pipeline and Hazardous Materials Safety Administration (PHMSA) is in the process of implementing a multi-year Pipeline Safety Reform Initiative to comply with the Pipeline Safety Act's mandate to enhance the agency's ability to reduce the risk of future pipeline failures.[3] Prior to the Pipeline Safety Act's enactment, on August 25, 2011, PHMSA published an Advance Notice of Proposed Rulemaking (ANOPR) titled ''Pipeline Safety: Safety of Gas Transmission Pipelines,'' which asked all stakeholders whether PHMSA should modify its existing integrity management and other pipeline safety regulations for interstate natural gas pipelines.[4] The ANOPR requested public comment on a range of topics related to current industry practices, the effects of enhanced regulations on safety and cost, and the best method to implement proposed regulations. For example, PHMSA sought comments on shut-off valves and remote controlled shut-off valves. In addition, PHMSA held a public leak detection and valve workshop on March 28, 2012.

6. Also as part of the ANOPR process, PHSMA is considering expanding the definition of a High Consequence Area (HCA) so that more miles of pipeline may become subject to integrity management requirements.[5] PHMSA is also considering potential new rules related to repair criteria, including applying the integrity management repair criteria to non-HCAs; reassessing the repair criteria in areas where the population has grown since the pipeline was constructed; requiring methods to validate in-line inspection tool performance and qualifications of personnel; and implementing risk tiering such that repairs in an HCA have priority over repairs in a non-HCA. PHMSA held a Class Location Methodology workshop on April 16, 2014. Based on the comments from the ANOPR and the workshop, PHMSA ''has started drafting a report to Congress on this issue.''[6]

7. PHMSA is also considering changes to its requirements that pipelines perform baseline and periodic assessments of pipeline segments in an HCA through one or a combination of in-line inspection, pressure testing,

[1] *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities,* Proposed Policy Statement, 104 FERC ¶ 61,147 (2014) (Proposed Policy Statement).

[2] Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, 49 U.S.C.S. 60101 (2012) (Pipeline Safety Act).

[3] Written Statement of Cynthia Quarterman, Administrator, PHSMA, before the U.S. House of Representatives, Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines, and Hazardous Materials (May 20, 2014), *available at http://transportation.house.gov/uploadedfiles/2014-05-20-quarterman.pdf* (Quarterman Testimony) at 3.

[4] *Pipeline Safety: Safety of Gas Transmission Pipelines,* (RIN: 2137–AE72), 76 FR 53,086 (August 25, 2011).

[5] An HCA is a location which is defined in the pipeline safety regulations as an area where pipeline releases have greater consequences to the safety, health and environment. Basically, these are areas with greater population density.

[6] Quarterman Testimony at 10.

direct assessment of external and internal corrosion, or other technology demonstrated to accurately assess the condition of a pipe. In June 2013, as updated in September 2013, PHMSA issued a flow chart reflecting its draft Integrity Verification Process for natural gas pipelines.[7] To this end, PHMSA seeks information as to what anomalies have been detected using the various assessment methods, and proposes to include criteria in the regulations that would require more rigorous corrosion control.

8. As we further noted in the Proposed Policy Statement, in addition to pipeline safety issues, there have been growing concerns about the emissions of greenhouse gases (GHG) in the production and transportation of natural gas. On April 15, 2014, the United States Environmental Protection Agency (EPA) issued a series of technical white papers, for which it has requested input from peer reviewers and the public, to determine how to best pursue reductions of emissions from, inter alia, natural gas compressors.[8] The EPA Compressor White Paper discusses the most prevalent types of compressors (reciprocating and centrifugal) and compressor emission data. As relevant to this Policy Statement, the EPA lays out several ''mitigation options for reciprocating compressors involve[ing] techniques that limit the leaking of natural gas past the piston rod packing, including replacement of the compressor rod packing, replacement of the piston rod, and the refitting or realignment of the piston rod.'' [9] The EPA also describes several mitigation options for centrifugal compressors to limit the leaking of natural gas ''across the rotating shaft using a mechanical dry seal, or capture the gas and route it to a useful process or to a combustion device.'' [10] If the EPA's white papers result in the agency imposing mitigation requirements on natural gas pipelines, the cost of such controls could be significant.[11]

9. In 2009, the EPA published a rule for mandatory reporting of GHG from sources that, in general, emit 25,000 metric tons or more of carbon dioxide equivalent per year in the United States.[12] This initiative, commonly referred to as the Greenhouse Gas Reporting Program (GHGRP), collects greenhouse gas data from facilities that conduct Petroleum and Natural Gas Systems activities, including production, processing, transportation and distribution of natural gas. Moreover, on November 14, 2014, the EPA issued a prepublication version of a final rule revising the Petroleum and Natural Gas Systems source category (Subpart W) and the General Provisions (Subpart A) of the GHGRP.[13] The final rule, which was effective January 1, 2015, imposes new requirements for the natural gas industry to monitor methane emissions and report them annually. On that same day, the EPA issued a prepublication version of a proposed rule to add calculation methods and reporting requirements for greenhouse gas emissions, as relevant here, from blow downs of natural gas transmission pipelines between compressor stations. The EPA also proposed confidentiality determinations for new data elements contained in the proposed amendments.[14]

10. As we recognized in the Proposed Policy Statement, one likely result of the Pipeline Safety Act and PHMSA's rulemaking proceedings is that interstate natural gas pipelines will soon face new safety standards requiring significant capital costs to enhance the safety and reliability of their systems. Moreover, pursuant to EPA's initiatives, pipelines may in the future face increased environmental monitoring and compliance costs, as well as potentially having to replace or repair existing natural gas compressors or other facilities.[15]

B. Existing Policy

11. The Commission's regulations generally require that interstate natural gas pipelines design their open access natural gas transportation rates to recover their costs based on projected units of service.[16] This requirement means that the pipeline is at risk for under-recovery of its costs between rate cases but may retain any over-recovery. As the Commission explained in Order No. 436, this requirement gives the pipeline an incentive both to (1) ''minimize costs in order to provide services at the lowest reasonable costs consistent with reliable long-term service'' [17] and (2) ''provide the maximum amount of service to the public.'' [18]

12. Before the Pipeline Safety Act, the Commission held that capital costs incurred to comply with the requirements of pipeline safety legislation or with environmental regulations should not be included in surcharges,[19] except in the context of an uncontested settlement.[20] Noting that pipelines commonly incur capital costs in response to regulatory requirements intended to benefit the public interest, the Commission stated that recovering those costs in a tracking mechanism was contrary to the requirement to design rates based on estimated units of service because the use of cost-trackers undercuts the referenced incentives by guaranteeing the pipeline a set revenue recovery.

13. As we stated in the Proposed Policy Statement, however, the Commission recently approved, as part of a contested settlement, a tracker mechanism to recover substantial pipeline modernization costs that Columbia Gas Transmission, LLC (Columbia Gas) demonstrated were necessary to ensure the safety and

[7] 78 FR 56,268 (Sept. 12, 2013).

[8] See EPA, *Oil and Natural Gas Air Pollution Standards, White Papers on Methane and VOC Emission* (Apr. 15, 2014), *available* at *http://www.epa.gov/airquality/oilandgas/whitepapers.html.*

[9] EPA Compressor White Paper at 29.

[10] *Id.* at 29–42.

[11] For example, the Interstate Natural Gas Association of America (INGAA) comments that one of its member companies ''reported capital costs of $865,000 for replacement of a wet seal'' on a centrifugal compressor. *See* INGAA Comments on EPA Compressor White Paper at 13 (filed June 16, 2014). INGAA also commented on the EPA's Leaks White Paper and noted that many factors could affect leak repair costs and that ''the cost of the repair may far exceed the benefit of eliminating a small leak.'' *See* INGAA Comments on EPA Leaks White Paper at 12–13 (filed June 16, 2014).

[12] Mandatory Reporting of Greenhouse Gases Rule, 74 FR 56,260 (Oct. 30, 2009). *See also* 40 CFR Pt. 98 (2014).

[13] Greenhouse Gas Reporting Rule: 2014 Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems, Docket Nos. EPA–HQ–OAR–2011–0512 and FR 9918–95–OAR (Nov. 14, 2014).

[14] *See* Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determination for Petroleum and Natural Gas Systems, Docket ID No. EPA–HQ–OAR–2014–0831 (issued Nov. 14. 2014).

[15] On July 29, 2014, the Department of Energy (DOE) announced steps to help modernize natural gas infrastructure. Moreover, on July 31, 2014, Secretary of Energy Ernest Moniz sent a letter to the Chairman of the Commission recommending the Commission explore efforts to provide greater certainty for cost recovery for new investments in modernization of natural gas transmission infrastructure as part of the FERC's work to ensure just and reasonable natural gas pipeline transportation rates.

[16] 18 CFR 284.10(c)(2) (2014).

[17] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 436, FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,665, at 31,534 (1985).

[18] *Id.* at 31,537.

[19] *See Granite State Gas Transmission, Inc.,* 132 FERC ¶ 61,089, at P 11 (2010) (*Granite State*); *Florida Gas Transmission Co.,* 105 FERC ¶ 61,171, at PP 47–48 (2003) (*Florida Gas*).

[20] *See e.g., Granite State Gas Transmission, Inc.,* 136 FERC ¶ 61,153 (2011); *Florida Gas Transmission Co.,* 109 FERC ¶ 61,320 (2004). In 2012, the Commission again rejected a protested proposal that would allow a pipeline to recover regulatory safety costs through a tracker, but noted that PHSMA was in the early stages of developing regulations to implement the Pipeline Safety Act, and that the Commission would consider the need for further action as PHMSA's implementation process moved forward. *CenterPoint Energy—Mississippi River Transmission, LLC,* 140 FERC ¶ 61,253, at P 65 (2012) (*MRT*).

reliability of its pipeline system.[21] The Columbia Gas settlement outlined significant operational and safety issues resulting from the age and condition of Columbia Gas' system and the corresponding inability to monitor and maintain the system using efficient modern techniques.[22] The Commission found that approving the settlement would facilitate Columbia Gas' ability to make substantial capital investments necessary to correct significant infrastructure problems, and thus provide more reliable service while minimizing public safety concerns.

14. The Commission's determination in *Columbia Gas* thus established general parameters for pipelines to consider when seeking recovery of pipeline investments for modernization costs related to improving system safety and reliability. The tracker approved in that case was designed to recover pipeline modernization capital costs of up to $300 million annually over a five-year period. The Commission found that Columbia Gas' settlement included numerous positive characteristics that distinguished its cost tracking mechanism from those the Commission had previously rejected and that work to maintain the pipeline's incentives for innovation and efficiency. The key aspects of the settlement upon which the Commission relied to approve the tracker included the following.

15. First, Columbia Gas worked collaboratively with its customers to ensure that its existing base rates, to which the tracker would be added, were updated to be just and reasonable. This included a reduction in Columbia Gas' base rates and a refund to its customers.

16. Second, the settlement specifically delineated and limited the amount of capital costs that may go into the cost recovery mechanism. Moreover, the eligible facilities for which costs would be recovered through that mechanism were specified by pipeline segment and compressor station. Further, the pipeline agreed to spend $100 million in annual capital costs as part of its ordinary system maintenance during the initial term of the tracker, which would not be recovered through the tracker. The Commission found that these provisions should assure that the projects whose costs are recovered through the tracker go beyond the regular capital maintenance expenditures the pipeline would make in the ordinary course of business and are critical to assuring the safe and reliable operation of Columbia Gas' system.

17. Third, the Commission found that a critically important factor to its approval of the settlement was the pipeline's agreement to a billing determinant floor for calculating the cost recovery mechanism, together with an agreement to impute the revenue it would achieve by charging the maximum rate for service at the level of the billing determinant floor before it trues up any cost underrcoveries. The Commission found these provisions should alleviate its historic concern that surcharges, which guarantee cost recovery, diminish a pipeline's incentive to be efficient and to maximize the service provided to the public. The Commission also found that these provisions protect the pipeline's shippers from significant cost shifts if the pipeline loses shippers or must provide increased discounts to retain business.

18. Fourth, the surcharge was temporary and would terminate automatically on a date certain unless the parties agreed to extend it and the Commission approved the extension. Finally, the tracker was broadly supported by the pipeline's customers.

C. Proposed Policy Statement

19. In the Proposed Policy Statement, the Commission found that the ultimate implementation of the recent initiatives described above, to improve natural gas infrastructure safety and reliability and to address environmental issues related to the operation of natural gas pipelines, is likely to lead to the need for interstate natural gas pipelines to make significant capital investments to modernize their systems. The Commission stated that in light of these developments, the Commission has a duty to ensure that interstate natural gas pipelines are able to recover the costs of these system upgrades in a just and reasonable manner that does not undercut their incentives to provide service in an efficient manner and protects ratepayers from unreasonable cost shifts.

20. Accordingly, the Commission proposed to establish a policy outlining the analytical framework for evaluating pipeline proposals for special rate mechanisms to recover infrastructure modernization costs necessary for the efficient and safe operation of the pipeline's system and compliance with new regulations. The Commission proposed to base the policy on the guiding principles established in *Columbia Gas*. Pursuant to the Proposed Policy Statement, a pipeline proposal for a cost recovery tracker to recover pipeline modernization costs would need to satisfy five standards:

(1) Review of Existing Rates—the pipeline's base rates must have been recently reviewed, either by means of an NGA general section 4 rate proceeding or through a collaborative effort between the pipeline and its customers; (2) Eligible Costs—the eligible costs must be limited to one-time capital costs incurred to modify the pipeline's existing system to comply with safety or environmental regulations issued by PHMSA, EPA, or other federal or state government agencies, and other capital costs shown to be necessary for the safe or efficient operation of the pipeline, and the pipeline must specifically identify each capital investment to be recovered by the surcharge; (3) Avoidance of Cost Shifting—the pipeline must design the proposed surcharge in a manner that will protect the pipeline's captive customers from cost shifts if the pipeline loses shippers or must offer increased discounts to retain business; (4) Periodic Review of the Surcharge and Base Rates—the pipeline must include some method to allow a periodic review of whether the surcharge and the pipeline's base rates remain just and reasonable; and (5) Shipper Support—the pipeline must work collaboratively with shippers to seek shipper support for any surcharge proposal.

21. The Commission sought comments on the Proposed Policy Statement in general and on the five standards noted above. We also sought comments on several related issues, including whether if the Commission were to implement the instant modernization cost recovery policy, it should revise its policy on reservation charge crediting.[23]

[21] *Columbia Gas Transmission, LLC,* 142 FERC ¶61,062 (2013) (*Columbia Gas*).

[22] Columbia Gas stated in that proceeding that over fifty percent of its regulated pipeline system was over 50 years old, that a significant portion of its system contained dangerous bare steel pipeline, that many of its compressors were also outdated, that many of its control systems were running on obsolete platforms, and that it was only able to inspect a small percentage of its system using modern in-line inspection tools.

[23] Other questions included whether the costs of modifications to compressors for the purpose of waste heat recovery should be eligible for recovery under a modernization surcharge, whether there are any capital costs associated with the expansion of the pipeline's existing capacity or its extension to serve new markets that may reasonably be included in the surcharge as necessary one-time capital expenditures to comply with safety and environmental regulations, whether capital costs incurred to minimize pipeline facility emissions be considered for inclusion in the surcharge, even if those costs are not expressly required to comply with environmental regulations, whether non-capital maintenance costs associated with environmentally sound operation of a compressor be considered for inclusion in the surcharge, and under what circumstances should the Commission permit a pipeline to include in the tracking mechanism the costs of additional projects not

Continued

D. Comments

22. The Commission received a variety of comments in response to the Proposed Policy Statement.[24] Generally, interstate pipelines and other natural gas facility owners and operators favor the proposed policy, commenting that the criteria for collecting modernization costs through a surcharge should be more flexible than contemplated in the Proposed Policy Statement. Shippers varied in supporting or opposing the proposal, with LDCs conditionally supporting it provided that surcharges are tailored to the individual circumstances of the pipeline, and are designed so as not to impose unreasonable cost burdens or risks on natural gas customers. Some marketers also favored a program allowing the implementation of surcharges for modernization costs. Other shippers, however, including industrials, municipals and supply end entities, oppose the proposed policy statement. Producers are especially opposed to the recovery of any modernization costs through a surcharge mechanism, claiming that to allow such recovery is contrary to the NGA and longstanding Commission policy. The individuals filing comments also oppose the Proposed Policy Statement for varying reasons.

23. Numerous entities from a wide spectrum of industry interests filed in favor of the Proposed Policy Statement, supporting properly limited tracker or surcharge mechanisms to recover modernization costs.[25] Some advocate granting pipelines added flexibility to comply with the five standards necessary to establish such trackers.[26] Others filing in favor of the Commission's proposed policy state that pipeline cost recovery mechanisms must be tailored to the individual circumstances of the pipeline, and be designed so as not to impose unreasonable cost burdens or risks on natural gas customers.[27] Various pipeline customers generally support the development of simplified mechanisms for the recovery of costs of modernizing pipeline assets to enhance safety and reliability subject to conditions, commenting that the costs to be recovered should be limited to capital improvements for safety purposes and for compliance with environmental regulations.[28] Others state that modernization cost recovery trackers should include safeguards to ensure that pipelines are not permitted to pass through costs while evading shipper protections traditionally afforded by NGA section 4 rate review.[29] Others support the Proposed Policy Statement as a method for enhancing certainty and the ability of interstate pipelines to recover costs for augmenting the efficient and safe operation of their respective systems.[30]

24. In contrast to the pipelines' and other comments in support of the proposed policy, other commenters, particularly those representing producers, marketers, municipal gas companies, and industrial users of natural gas, expressed strong opposition to the recovery of modernization costs through a tracker.[31] Opponents' claims that additional cost-recovery guarantees to incentivize compliance with mandatory environmental and safety laws is misplaced, and that cost trackers are inconsistent with section 284.10(c)(2) of the Commission's regulations, which requires that transportation rates be based on estimated units of service so that the pipeline is at risk for cost under-recovery.[32] Opponents also claim that a cost modernization surcharge would be contrary to longstanding Commission policy and precedent, noting that the Commission has consistently rejected maintenance, compliance, and safety cost trackers, because they guarantee cost recovery without taking into account the benefits of cost reductions in other areas and/or increases in throughput affecting base rate revenues.[33] Those opposing the Proposed Policy Statement further claim that the five standards do not provide the consumer protections afforded under section 4 of the Natural Gas Act (NGA), and that the record lacks a showing that pipelines cannot recover such costs though NGA section 4 rate cases.[34] Opponents also claim that the Proposed Policy Statement is premature, because PHMSA and the EPA have not yet issued new regulations.[35]

II. Discussion

A. Adoption of Policy Statement

25. After reviewing the comments filed on the Proposed Policy Statement, the Commission has determined to establish a policy allowing interstate natural gas pipelines to seek to recover certain capital expenditures made to modernize system infrastructure in a manner that enhances system reliability, safety and regulatory compliance through a surcharge mechanism, subject to conditions intended to ensure that the resulting rates are just and reasonable and protect natural gas consumers from excessive costs. While we recognize that allowing pipelines to recover these expenditures through a surcharge or tracker departs from the requirement that interstate natural gas pipelines design their transportation rates based on projected units of service, we find on balance that consideration of such mechanisms is justified in order to provide an enhanced opportunity to recover the substantial capital costs some pipelines are likely to incur to replace aging, unsafe and leak-prone facilities. The Policy Statement provides a framework for how the Commission will evaluate pipeline proposals for recovery of infrastructure modernization costs, and guidance as to how it will

identified in the pipeline's original filing to establish the tracking mechanism?

[24] See Appendix for a list of those entities and persons that filed comments and/or reply comments to the Proposed Policy Statement.

[25] Those commenting in favor include the DOE; PHMSA; the Interstate Natural Gas Association of America (INGAA); Kinder Morgan Interstate Pipelines (Kinder Morgan); Southern Star Central Gas Pipeline, Inc. (Southern Star); Boardwalk Pipeline Partners, LP (Boardwalk); American Midstream (AlaTenn), LLC (American Midstream); the American Gas Association (AGA); the North Carolina Public Utility Commission (NCUC); the Kansas Corporation Commission (KCC); the Michigan Public Service Commission (Michigan PSC); the Tennessee Valley Authority (TVA); and the Environmental Defense Fund, the Conservation Law Foundation, and Sustainable FERC Project (collectively Environmental Commenters).

[26] *See, e.g.,* INGAA Comments at 2, Boardwalk Comments at 4, Kinder Morgan Comments at 5.

[27] *See, e.g.,* AGA Comments at 1 Laclede Comments at 1.

[28] Xcel Energy Services (XES) Comments at 2; Wisconsin Electric and Wisconsin Gas Comments at 4.

[29] Calpine Corporation (Calpine) Comments at 1.

[30] Environmental Commenters Comments at 3–5.

[31] Those filing comments opposing the Proposed Policy Statement include the Natural Gas Supply Association (NGSA), Industrial Energy Consumers of America (IECA), the American Forest and Paper Association (AF&PA), Process Gas Consumers (PGC), the American Public Gas Association (APGA), the Independent Petroleum Association of America (IPAA), Indicated Shippers (Anadarko Energy Services Company, Apache Corporation, BP Energy Company, Chevron U.S.A. Inc., ConocoPhillips Company, Cross Timbers Energy Services, Inc., Direct Energy Business, LLC, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, Fieldwood Energy LLC, Hess Corporation, Marathon Oil Company, Noble Energy, Inc., Occidental Energy Marketing, Inc., Shell Energy North America (US), L.P., SWEPI LP, and WPX Energy Marketing, LLC), the El Paso Municipal Customer Group (EPMCG), Western Tennessee Municipal Group, the Jackson Energy Authority, City of Jackson, Tennessee, and Kentucky Cities (together, Cities), Independent Oil & Gas Association of West Virginia, Inc. (IOGA), the Municipal Defense Group (MDG), Deep Gulf Energy LP (Deep Gulf), Energy XXI (Bermuda) Ltd. (Energy XXI), EPL Oil & Gas, Inc. (EPL), and M21K, LLC (M21K) (collectively Energy XXI), and Helis Oil & Gas, LLC (Helis) and Walter Oil & Gas Corporation (Walter).

[32] *See, e.g.,* NGSA Comments at 3.

[33] NGSA Comments at 10–11, APGA Comments at 2–4, Indicated Shippers Comments at 5–18 .

[34] APGA Comments at 2–4, NGSA Comments at 7–8.

[35] NGSA Comments at 8–9.

evaluate such proposals in accordance with the five adopted standards.

26. As the comments in support of the Commission's Proposed Policy Statement indicate, establishment of a policy to permit enhanced recovery of modernization costs is in the public interest and necessary to address concerns regarding the safety of the Nation's natural gas infrastructure and the safe operation of natural gas pipelines, as well as environmental issues related to emissions. With regard to safety and reliability, as OPS comments, recent pipeline accidents, including the September 2010 pipeline rupture in San Bruno, California, demonstrate the potential consequence of aging pipeline facilities that are not properly repaired, rehabilitated or replaced. OPS states that 59 percent of existing natural gas pipelines were built before 1970 and 69 percent of existing natural gas pipelines were built before 1980. DOE notes that more than half of the country's natural gas transmission and gathering infrastructure is over 40 years old. As OPS points out, while aging pipelines are not inherently risky, older facilities have been exposed to more threats and were likely constructed without the benefit of today's safety standards or quality materials.

27. To address these concerns, Congress passed the Pipeline Safety Act mandating that DOT take various actions to improve the safety of interstate natural gas pipelines, including requiring testing to verify natural gas pipelines' maximum allowable operating pressure, considering expansion and strengthening of its integrity management regulations, and considering requiring automatic shut-off valves on new pipeline construction. The need to address pipeline safety is also supported by OPS' comments that multiple recommendations from the National Transportation Safety Board and the General Accounting Office reinforce the need to ensure that the Nation's pipeline infrastructure is sound and reliable. The DOE states in its comments that the Commission's proposal is ''aligned with goals of DOE's Initiative to Help Modernize Natural Gas Transmission and Distribution Infrastructure as well as government-wide efforts to improve pipeline safety and enhance the resilience of our nation's critical infrastructure.[36] DOE asserts that offering streamlined cost recovery options will provide an overdue incentive for pipelines to invest in new equipment and upgrades that will improve safety, boost energy efficiency and reduce emissions.

28. In addition to pipeline safety issues, there have been growing concerns about the emissions of GHG in the production and transportation of natural gas. As we noted in the Proposed Policy Statement, in 2014, the EPA issued a series of technical white papers to determine how to best pursue reductions of emissions from, inter alia, natural gas compressors. The EPA Compressor White Paper lays out several ''mitigation options for reciprocating compressors and centrifugal compressors to limit the leaking of natural gas. . . .'' [37] Further, in 2009, the EPA published its rule for mandatory reporting of greenhouse gas emissions. The resulting GHGRP collects greenhouse gas data from facilities that conduct Petroleum and Natural Gas Systems activities, including production, processing, transportation and distribution of natural gas. Moreover, the EPA issued a final rule effective January 1, 2015, imposing new requirements for the natural gas industry to monitor methane emissions and report them annually.

29. Further, the use of natural gas as a fuel for compressors adds to the amount of carbon dioxide emissions.[38] DOE also estimates that over 110 Bcf of natural gas is lost annually through routing venting and equipment leaks. DOE states that a streamlined cost recovery mechanism such as that proposed here for voluntary emissions reductions can benefit pipelines and their customers. According to DOE, infrastructure improvements that will increase compressor efficiency and reduce venting and leaking of methane emissions will also result in product conservation and thus cost savings.[39]

30. The safety and reliability of the nation's natural gas infrastructure, and the operation of those facilities in an efficient manner that minimizes environmental impact, are issues of public interest, and the development of mechanisms to encourage investments in infrastructure improvements and upgrades to enhance the efficient and safe operation of natural gas pipeline furthers that interest. As we recognized in the Proposed Policy Statement, one likely result of the recent regulatory safety and environmental initiatives is that interstate natural gas pipelines will face increased costs related to those rules and programs. Notably, while the opponents of the policy assert its implementation is premature because the amount of those costs is still unknown, they do not dispute that pipelines are likely to incur substantial costs to address these issues. In light of the referenced regulatory developments, the Commission has a duty to ensure that interstate natural gas pipelines are able to recover the costs of these required system upgrades in a just and reasonable manner that does not undercut their incentives to provide service in an efficient manner and also protects ratepayers from unreasonable cost shifts.

31. In an effort to ensure that consumers are protected against potential effects of any modernization cost trackers or surcharges, the Final Policy adopts the five guiding principles proposed in the Proposed Policy Statement as the standards a pipeline would have to satisfy for the Commission to approve a proposed modernization cost tracker or surcharge. Those standards are (1) a requirement for a review of the pipeline's existing base rates by means of an NGA general section 4 rate proceeding, a cost and revenue study, or through a collaborative effort between the pipeline and its customers; (2) a requirement that the costs eligible for recovery through the tracker or surcharge must generally be limited to one-time capital costs incurred to modify the pipeline's existing system to comply with safety or environmental regulations or other federal or state government agencies, or other capital costs shown to be necessary for the safe, reliable, and/or efficient operation of the pipeline, and the pipeline must specifically identify each projects' costs or capital investment to be recovered by the surcharge;[40] (3) a prohibition against cost shifting, requiring that the pipeline design any proposed surcharge in a manner that will protect the pipeline's captive customers from cost shifts if the pipeline loses shippers or must offer increased discounts to retain business; (4) a requirement that the pipeline must include some method to allow a periodic review of whether the surcharge and the pipeline's base rates remain just and reasonable; and (5) a requirement that the pipeline work collaboratively with shippers to seek

[36] DOE Comments at 1.

[37] EPA *Oil and Natural Gas Sector Compressors (Apr. 2014) at* 29, available at *http://www.epa.gov/airquality/oilandgas/2014papers/20140415compressors.pdf* at 29.

[38] See DOE Comments at 4, stating that EIA estimates that 728 billion cubic feet (Bcf) of natural gas was used as fuel by compressor stations operating at natural gas transmission and storage facilities in the United States in 2012, resulting in 39 million metric tons of CO_2 emissions.

[39] DOE Comments at 5.

[40] As discussed below, the Commission may consider pipeline proposals to include certain limited non-capital maintenance costs in a modernization cost tracker.

shipper support for any surcharge proposal. These standards will act as protections against pipelines unilaterally recovering costs through a tracker that do qualify as the type intended to meet the goals of the policy. They will also require any pipeline seeking a modernization cost tracker to demonstrate to the Commission and its customers that its current base rates are just and reasonable, and provide flexibility for the parties to pursue options to reach agreement on processes to ensure that those rates and the surcharge rate remain just and reasonable. They will also prevent shifting of additional costs to captive customers.

32. Opponents of the proposed policy argue that adopting the Proposed Policy Statement would be contrary to the NGA, longstanding Commission policy and rate regulation principles, and that the Commission has neither justified this departure from current policy nor demonstrated why it is necessary. NGSA, Indicated Shippers, the IPAA and others argue that the NGA requires that pipelines be afforded an ''opportunity'' to recover their reasonable costs but that trackers guarantee cost recovery in violation of that principle.[41] They assert this guaranteed cost recovery, absent any accounting of cost savings, is the reason Commission has for years disfavored cost recovery trackers, because it eliminates the pipeline's risk and correspondingly any incentive for the pipeline to be efficient and to provide effective service. They note that the Commission's rejections of such mechanisms include proposals addressing circumstances very similar to those that would be covered under the new policy, and that the Commission itself has stated that it has only approved the use of trackers that were agreed to in settlements.[42] They further claim that there has been no change in the law or the rationale underlying the Commission's longstanding position that would warrant the policy modification proposed.

33. As we stated above, the Commission acknowledges that the policy adopted in this Policy Statement departs from the general rate policy in our regulations that interstate natural gas pipelines design their transportation rates based on projected units of service. We disagree, however, that there have been no changes that may result in tracker mechanisms being just and reasonable in certain circumstances and subject to appropriate controls.[43] As discussed above, the increased concerns with pipeline safety reflected in the Pipeline Safety Act, together with the recent DOE, PHMSA, and EPA initiatives to improve natural gas infrastructure safety and reliability and to address environmental issues will result in certain increased capital and compliance costs for pipelines. In light of these developments the Commission has a duty to ensure that interstate natural gas pipelines are able to recover the reasonable cost of these system upgrades in a just and reasonable manner that does not undercut their incentives to provide service in an efficient manner and protects ratepayers from unreasonable cost shifts.

34. We also disagree with commenters' contentions that allowing modernization cost trackers will eliminate the pipeline's risk of cost under-recovery and thereby reduce pipelines' incentives to be efficient and to provide effective service, contrary to goals of our general policy of requiring that rates be based on projected units of service. As discussed in more detail below, the costs included in a modernization cost tracker will generally be limited to one-time capital costs to improve the safe, reliable, and/or efficient operation of the pipeline. Thus, pipelines will continue to recover all other costs in their base rates pursuant to the Commission's ordinary ratemaking policies. Therefore, pipelines will continue to be at risk between rate cases for recovery of their operating and maintenance (O&M) costs, the overall return on non-modernization capital costs, the depreciation allowance related to those costs, and all other costs included in their base rates.[44] This will give pipelines an incentive to operate their systems as efficiently as possible, consistent with Commission policy. Moreover, the pipelines will have the burden of showing that all costs included in a modernization cost tracker are prudent and consistent with the Commission's eligibility standards for including costs in such a tracker. This will give the Commission and all interested parties an opportunity to review whether the subject capital investments are prudent and required for the safe and efficient operation of the pipeline.

35. Several commenters, including Indicated Shippers, contend that the Proposed Policy Statement is contrary to Commission precedent prohibiting tracker mechanisms for regulatory obligations, and discuss a number of cases where we had rejected pipeline proposals for regulatory compliance cost trackers.[45] As noted above, the Commission does not disagree that we have previously rejected proposed tariff provisions that would establish trackers to recover costs not wholly dissimilar to those contemplated by the Policy Statement. None of those proposals, however, included conditions and safeguards to protect shippers and consumers of the sort that the *Columbia* settlement did, and which we adopt here as conditions for a modernization cost tracker.

36. As we noted in our order approving Columbia Gas' surcharge, Columbia Gas' proposal contained numerous benefits and protections agreed to with its shippers that distinguished it from our orders rejecting tracker proposals.[46] Notably the development of Columbia Gas' tracker for costs to make necessary improvements and upgrades to its system began with Columbia Gas and its shippers engaging in a collaborative effort to review Columbia Gas' current base rates, leading to Columbia Gas' agreement to make significant reductions to its base rates and to provide refunds to its shippers.[47] Further the settlement identified by pipeline segment and compressor station, the specific Eligible Facilities for which costs may be recovered, and limited the amount of capital costs and expenses for each such project.[48] It also established a billing determinant floor for calculating the surcharge imputing the revenue it would achieve by charging the maximum rate for service at the level of billing determinant floor before it trues up any cost under-recoveries.[49] Further, Columbia Gas'

[41] *See, e.g.,* NGSA Comments at 10, Indicated Shippers' Comments at 3.

[42] *See, e.g.,* Indicated Shippers' Comments at 5–11, and cases cited therein.

[43] Proposed Policy Statement, PP 18–20.

[44] This fact distinguishes surcharges that may be approved under the Policy Statement from *ANR Pipeline Co.,* 70 FERC ¶ 61,143 (1995), where we rejected ANR's proposed base rate cost-of-service tracker, which sought to recover all of the pipeline's cost of service, as contrary to our regulations.

[45] *See, e.g.,* Indicated Shippers' Comments at 5–11.

[46] *Columbia Gas,* 142 FERC ¶ 61,062 at PP 22–27.

[47] *Id.* P 22.

[48] We noted that this distinguished *Columbia Gas* from the surcharge mechanisms we rejected in *Florida Gas,* 105 FERC ¶ 61,171 at PP 47–48 and *MRT,* 140 FERC ¶ 61,253, which contained only general definitions of what type of costs would be eligible for recovery, leaving the pipeline considerable discretion as to what projects it would subsequently propose to include in the surcharge and creating the potential for significant disputes concerning the eligibility of particular projects.

[49] As we also noted, the surcharge mechanisms proposed in *Florida Gas, MRT,* and *Granite State Gas Transmission, Inc.,* 132 FERC ¶ 61,089 (2011),

tracker is temporary, and terminates by its terms subject to extension requiring the consent of all parties, and thus will not become a permanent part of Columbia Gas' rates. Finally, the tracker settlement was supported or not opposed by virtually all of Columbia Gas' shippers.

37. The Commission's approval of any modernization cost tracker or surcharge will require a showing by the pipeline of the same types or benefits that distinguished Columbia Gas' tracker from those we had rejected, and thus comments that the Policy Statement would represent a complete reversal of Commission policy are exaggerated. This Policy Statement does not provide pipelines with any ability to establish a modernization surcharge other than in the manner and with the same protections Commission has already approved in *Columbia Gas.* The analysis to be performed under this Policy Statement will be substantially similar to that undertaken to find that Columbia Gas' modernization cost recovery mechanism was just and reasonable and benefitted all interested parties. It will be incumbent on a pipeline requesting a modernization cost tracker to demonstrate that its proposal includes the types of benefits that the Commission found maintained the pipeline's incentives for innovation and efficiency, and distinguished Columbia Gas' modernization cost tracking mechanism from those the Commission had previously rejected.

38. Further, the requirements that a pipeline proposing a tracker mechanism must establish that its base rates are just and reasonable and that there be provision for a periodic review of surcharge and base rates should alleviate concerns that the Final Policy will result in pipelines not filing NGA section 4 rate proceedings and thus being insulated from rate review. APGA points to examples of interstate pipelines having not filed NGA section 4 rate cases in over a decade and asserts that pipelines generally file rate cases very infrequently, thus depriving customers of an opportunity to review all the pipeline's rates for lengthy periods. However, the fact that a pipeline desiring a modernization cost surcharge must establish that its existing base rates are just and reasonable should increase customer opportunities to obtain review of all the pipeline's rates. As discussed in more detail below, if a pipeline's shippers protest a filing to establish a modernization cost tracker on the ground that the pipeline has not shown that its base rates are just and reasonable, the Commission will establish appropriate procedures to enable it to make a finding, based on substantial evidence, whether the base rates are just and reasonable. Moreover, while offsetting decreases in cost items will not be reflected in rates during the time between the effective date of the surcharge and the first periodic review, that periodic review will provide an opportunity for any offsetting cost reductions to be reflected in rates in order to assure that the base rates and any continued surcharge are just and reasonable.

39. Accordingly, given the heightened sensitivity to pipeline safety and environmental related concerns, and based on the benefits realized from the *Columbia Gas* settlement, which enabled the pipeline to efficiently make necessary upgrades and repairs to maintain the safety and reliability of its system while ensuring that its shippers were protected against cost shifts and other potential pitfalls commonly associated with trackers, the Commission has determined to modify its policy to permit the use of a tracker mechanism in the limited circumstances provided for under the Policy Statement, which will inure to the public interest.

40. As noted, several commenters advocate that the Commission's modernization cost recovery policy contain narrowly drawn conditions and require strict adherence to those conditions to obtain approval for such a mechanism. As many others comment, however, the Policy Statement will be most effective and efficient if designed according to flexible parameters that will allow for accommodation of the particular circumstances of each pipeline's circumstances. Maintaining a transparent policy with flexible standards will best allow pipelines and their customers to negotiate just and reasonable, and potentially mutually agreeable, cost recovery mechanisms to address the individual safety, reliability, regulatory compliance and other infrastructure issues facing that pipeline. For example, while we will require that any pipeline seeking a modernization cost tracker demonstrate that its existing base rates are just and reasonable, as some commenters point out, there may not be a need in all circumstances for a pipeline to file and litigate an NGA section 4 rate proceeding to make such a showing. There may be less costly and less time consuming alternatives. As we stated in the Proposed Policy Statement, the Commission proposed the new policy to ''ensure that existing Commission ratemaking policies do not unnecessarily inhibit interstate natural gas pipelines' ability to expedite needed or required upgrades and improvements.'' [50] Thus, while we are imposing specific conditions on the approval of any proposed modernization cost tracker, leaving the parameters of those conditions reasonably flexible will be more productive in addressing needed and required system upgrades in a timely manner. Further, consistent with this approach, the Commission will be able to evaluate any proposals in the context of the specific facts relevant to the particular pipeline system at issue.

41. Accordingly, the Commission finds that modification of our previous policy is warranted to allow for consideration of pipeline proposals for modernization cost tracking mechanisms as a way for pipelines to recover those costs in a timely manner while maintaining the safe and efficient operation of pipeline systems. As we discuss more fully below, however, the Commission's approval of any such mechanism will be subject to the Commission's scrutiny of the proposal and its evaluation of the stated conditions, which will work to protect the pipeline's customers and ratepayers against potential adverse effects of any tracker. That analysis will be on a case-by-case basis, and thus will take into account the specific circumstances of the individual pipeline and its customers. Any shippers opposing the pipeline's proposal will have a full opportunity to express their position on specific aspects of the proposed mechanism at that time, and the pipeline will need to engage in a collaborative effort to garner significant shipper support before the Commission will approve a tracker proposal.

42. Opponent commenters also claim that there is no need for the Proposed Policy Statement because there are sufficient longstanding procedural

did not include a comparable mechanism to protect captive customers from significant cost shifts. The surcharges proposed in the other cases cited by Indicated Shippers as examples of the Commission's policy against surcharges and trackers, including *ANR Pipeline Company,* 70 FERC ¶ 61,143, and *El Paso Natural Gas Co.,* 112 FERC ¶ 61,150 (2005), also did not contain the safeguards or customer protections included in the Columbia Gas settlement and implemented for the Final Policy. Similarly, the greenhouse gas cost recovery mechanism we rejected as premature in *Southern Natural Gas Co.,* 127 FERC ¶ 61,003 (2009), did not provide safeguards of the type required by this Policy Statement. Likewise, our rejection in *Tennessee Gas Pipeline Co., LLC* and *Kinetica Energy Express, LLC,* 143 FERC ¶ 61,196 (2013) of a proposed hurricane surcharge that we found to be overly broad because it sought to recover costs outside those caused by hurricanes, storms or other natural disasters, did not include any of the referenced protections. *Id.* P 225.

[50] Proposed Policy Statement at P 9.

options and mechanisms in place to achieve the Commission's cost recovery goals in this initiative, including NGA rate cases and the Commission's settlement process. Again, the Commission does not dispute that there are existing procedures that provide pipelines an opportunity to recover their just and reasonable costs. The instant Policy Statement, however, is meant to address imminent and foreseeable developments related to the safety and reliability of the natural gas interstate pipeline system. Thus, we find it warranted in the limited circumstances under which the Commission would approve a modernization cost surcharge, to allow recovery through a tracker of those costs expended to replace old and inefficient compressors and leak-prone pipes and performing other infrastructure upgrades and improvements to enhance efficient and safe operation of their pipeline systems.

43. We disagree with comments that the Policy Statement is premature because the regulatory initiatives prompting the new policy are not yet finalized, and thus the projected increased costs are unknown and speculative. Although the commenters are correct that the regulatory initiatives that are the impetus for the Final Policy are not final, there is little debate that some form of them will be in place eventually, and that they will result in increased costs to pipelines. It will take pipelines a significant amount of time to review and analyze their systems to determine if there are portions that need immediate attention, and whether the projects they identify in their review are of the sort that would be eligible for a cost modernization tracker. It is reasonable for the Commission to establish this policy in advance of the final initiatives to provide guidance to the industry as to how the Commission will analyze pipeline's proposals to address these questions. Further, this Policy Statement will be beneficial to those pipelines that decide to take a proactive approach to ensuring system safety and reliability by conducting system and rate reviews prior to governmental mandates requiring them to do so.[51]

B. Standards for Modernization Cost Trackers or Surcharges

44. As discussed, this Policy Statement permits pipelines to seek Commission approval of modernization cost trackers or surcharges to recover costs associated with performing infrastructure upgrades and replacements in a manner that will enhance the efficient and safe operation of their pipelines. The Commission's evaluation and approval of any proposed modernization cost tracker will require the proposing pipeline to satisfy the five standards from the Proposed Policy Statement. We discuss the application of those standards under the Policy Statement below.

1. Review of Existing Rates

45. Under the first standard proposed by Commission, a pipeline proposing a tracker mechanism must establish that the base rates to which any surcharges would be added are just and reasonable and reflect the pipeline's current costs and revenues as of the date of the initial approval of the tracker mechanism. The Commission proposed that the pipeline could do this in various ways, including (1) making a new NGA general section 4 rate filing, (2) filing a cost and revenue study in the form specified in section 154.313 of the Commission's regulations showing that its existing rates are just and reasonable, or (3) through a collaborative effort between the pipeline and its customers. The Commission sought input on these or other acceptable approaches for pipelines to demonstrate that existing base rates are just and reasonable.

a. Comments

46. Some commenters suggested that the Commission require pipelines to file an NGA section 4 rate case as part of any proposed capital cost tracker. IPAA and the NGSA argue that adoption of a capital cost tracker must require a comprehensive review of the pipeline's base rates and cost of service through an NGA general section 4 rate filing with hearing procedures that include discovery and the Commission's Office of Administrative Litigation staff. TVA states that it feels strongly that any such review would be best accomplished through the thorough and objective analysis of a section 4 rate filing. PEG argues that pipelines should be required to restate all of their rates under NGA section 4 within three years prior to a surcharge. Laclede also argues that a cost and revenue study is not a reasonable substitute for an NGA section 4 filing.

47. The NYPSC, the NCUC and the KCC agree that a pipeline's base rates must be reviewed through a full NGA general section 4 rate proceeding or through a collaborative effort between the pipeline and its customers, and oppose allowing pipelines to only file a cost and revenue study. Cities and Municipals commented that the collaborative effort standard should be abandoned in favor of a clear standard based on a section 4 general rate case where all the pipeline's costs can be reviewed. Others comment that the pipeline's rates should have been reviewed and approved within a certain time-frame (3 or 4 years) prior to the implementation of a surcharge, and that the Commission should require pipelines with such surcharges to file rate cases on a regular basis (every 3 years).

48. Others comment, however, that a full NGA section 4 rate case review would be too cumbersome for the purpose of efficiently implementing appropriate cost modernization surcharges. INGAA argues that the Commission should remain open to alternative approaches to justifying existing base rates. Recognizing that rate cases, cost and revenue studies and recent rate settlements are all appropriate methods for determining that existing base rates are just and reasonable, INGAA asserts that these are not the only circumstances in which relevant rates may be reviewed and approved by the Commission, and that the Commission should remain open to other possibilities. For example, INGAA argues that the Commission should allow a pipeline to introduce a cost recovery mechanism when such a proposal is broadly supported by shippers, regardless of whether the settlement addresses other rate issues, or when the pipeline has an upcoming obligation to file a general NGA section 4 rate filing, a cost and revenue study, or restatement or re-justification of its rates as the result of a settlement provision. INGAA further states that a recent review of a pipeline's base rates may be irrelevant to the analysis of a cost tracker when all, or the vast majority, of a pipeline's shippers have entered into long-term negotiated rate agreements accepted by the Commission. INGAA asserts that a cost recovery mechanism also may be appropriate when the Commission recently has reviewed and approved a pipeline's base rates in an NGA section 7 proceeding to ensure that new pipelines are not placed at a disadvantage.

49. Calpine recommends the review of a pipeline's base rates occur through an informal collaborative process and not a general section 4 rate case. APGA argues that permitting the rate review to occur through a new NGA general section 4 rate filing or a cost and revenue study, as opposed to requiring a pre-negotiated base rate settlement, would eliminate

[51] For the same reasons, we decline to adopt NGSA's suggestion in its reply comments that we defer issuing this Policy Statement until after PHMSA and EPA issue final regulations.

the benefit of the *Columbia Gas* case, namely negotiations among the pipeline and its customers regarding substantial rate reductions and refunds, which led to agreement on a just and reasonable rate level. XES suggests having pipelines file a cost and revenue study because it would allow pipeline to file an 'unadjusted' report so that current costs and revenues may be determined. The Environmental Commenters express concern that requiring a general section 4 rate filing as a prerequisite could be inapposite to the regulatory efficiency purposes of a cost tracker.

50. American Midstream requests that the Commission clarify that to be eligible for the special cost recovery mechanism through a limited section 4 filing, pipelines or at least small pipelines like American Midstream need only demonstrate that they are not recovering their reasonable costs under their existing recourse rates, and will not be required to file testimony specifically supporting and explaining each of the schedules required by section 154.313 of the Commission's regulations.

b. Determination

51. Under this Policy Statement, any pipeline seeking a modernization cost recovery tracker must demonstrate that its current base rates to which the surcharge would be added are just and reasonable. This is necessary to ensure that the overall rate produced by the addition of the surcharge to the base rate is just and reasonable, and does not reflect any cost over-recoveries that may have been occurring under the preexisting base rates.

52. In the Proposed Policy Statement, we stated that the pipeline could demonstrate its base rates are just and reasonable by filing a NGA section 4 general rate proceeding, a cost and revenue study in the form specified in section 154.313 of the Commission's regulations, or through some other collaborative effort between the pipeline and its customers. In applying the Final Policy we decline to require that such rate review be conducted only through an NGA section 4 rate proceeding. The type of rate review necessary to determine whether a pipeline's existing rates are just and reasonable is likely to vary from pipeline to pipeline. For example, it may be possible for some pipelines to demonstrate that their existing base rates are under-recovering their full cost of service and that a section 4 rate filing would likely lead to an increase in their base rates through a showing short of filing an NGA section 4 rate proceeding. Therefore, we remain open to considering alternative approaches for a pipeline to justify its existing rates.

53. We note, however, that any pipeline seeking a modernization cost surcharge will need to satisfy the Commission that its current base rates are no higher than a just and reasonable level. To that end, we encourage any pipeline seeking approval of a modernization cost tracker to engage in a full exchange of information with its customers to facilitate that process. If a voluntary exchange of information fails to satisfy interested parties that a pipeline's base rates are just and reasonable, the Commission will establish appropriate procedures to enable resolution of any issues of material fact raised with respect to the justness and reasonableness of the pipeline's base rates based upon substantial evidence on the record. In this regard, the Commission notes that, if the pipeline files a contested settlement concerning its base rates, the Commission would consider whether to approve the settlement pursuant to the approaches discussed in *Trailblazer Pipeline Co.*[52]

2. Defined Eligible Costs

54. In the Proposed Policy Statement, we stated that to qualify as ''eligible costs'' for recovery under a cost modernization tracker, costs must be limited to one-time capital costs incurred to modify the pipeline's existing system or to comply with safety or environmental regulations issued by PHMSA, EPA, or other federal or state government agencies, and other capital costs shown to be necessary for the safe or efficient operation of the pipeline. The Commission also recognized that interstate natural gas pipelines routinely make capital investments related to system maintenance in the ordinary course of business, and the Commission stated that such routine capital costs could not be included in a cost modernization tracker.

55. The Commission also proposed to require that each pipeline specifically identify each capital investment to be recovered by the surcharge, the facilities to be upgraded or installed by those projects, and an upper limit on the capital costs related to each project to be included in the surcharge. The Commission stated that this would allow an upfront determination that the costs are eligible for recovery through the tracker and avoid later disputes about which costs or facilities qualify for such recovery.

56. The Commission also asked several questions concerning what costs should be eligible for recovery in a tracker.

a. Comments

57. The majority of commenters agree that proponents of a modernization cost recovery tracking mechanism should specify the costs and identity of projects to be recovered pursuant to any such mechanism and limit the recovery of those costs. AGA argues that pipelines should be required to clearly specify the investments which will be recovered through the tracking mechanism, and that shippers should have the ability to challenge the inclusion of projects or costs as part of the collaborative process. Several commenters, including NGSA, IOGA, XES, and Environmental Commenters note that facilities eligible for cost recovery under a capital cost tracker should be limited to modification of the pipeline's existing system for reliability, safety, or environmental compliance, and that there be a strict distinction between such facilities and maintaining the pipeline system in the ordinary course of business. NGSA argues that eligible tracked costs for recovery in a surcharge should be strictly limited to one-time capital costs related solely to compliance with the incremental requirements of future PHMSA and EPA regulations, as opposed to the inclusion of ordinary capital maintenance costs. EPMCG states the Proposed Policy fails to explain how the Commission could distinguish between such normal expenditures and those ''necessary to address, safety, efficiency or similar concerns.'' Southern Companies suggests using an Eligible Facilities Plan, comparable to that used in the *Columbia Gas* settlement.

58. Wisconsin Electric and Wisconsin Gas suggest that pipelines be required to specify the regulation that resulted in the requirement to construct each project and to either file for approval of each project under the NGA section 7(c) certificate application process or in the event that a section 7(c) certificate application is not required, then provide all information about the project in a manner similar to a section 7(c) application. Wisconsin Electric and Wisconsin Gas also suggest the Commission establish clear criteria for an ''eligible modernization project'' and create a clear distinction between routine maintenance projects versus modernization projects undertaken to comply with safety and/or environmental regulations.

[52] 87 FERC ¶ 61,110, at 61,438–41 (1999). *See e.g., Texas Gas Transmission, LLC,* 126 FERC ¶ 61,235 (2009); *Devon Power LLC,* 117 FERC ¶ 61,133 (2006).

59. Those opposed to the Policy Statement in general advocate strict limits on the ''eligibility'' of modernization costs that can be recovered through a surcharge. The AF&PA for example, opposes recovery of modernization costs through a surcharge and states that the costs the pipeline seeks to recover through the tracker/surcharge must be one time capital costs incurred to comply with safety or environment regulation issued by a governmental entity and such costs are necessary for the safe or efficient operations of the pipeline. AF&PA states to the extent that the Commission allows trackers, the Commission should only permit trackers related to costs that are specifically tied to laws that have already been enacted or regulations that are currently effective. AF&PA comments that the pipeline should be required to demonstrate that the costs are incremental to the costs imposed under existing laws and regulations. Laclede, who also opposes the Proposed Policy Statement, echoes the notion that modernization costs should only be recoverable through rate trackers if the costs are tied to new safety or health requirements. Additionally, the Industrial Energy Consumers of America (IECA) opposes surcharges and trackers as a way for pipeline companies to recover regulatory safety and environmental costs, arguing that it should be a requirement for pipeline companies to file a new tariff that includes regulatory costs. IECA recommends strict guidelines as to what costs pertain to eligible facilities for special cost recovery.

60. Several commenters stated that the Commission needs to ensure that pipelines do not recover costs related to the safe and efficient operation of their systems that they should have already been spending. NCUC states that pipelines should not be provided incentives to make the investments it already should have made. Calpine also states pipelines should already be complying with safety and reliability requirements imposed by existing regulations and should not be incented to recover such costs through a modernization cost mechanism. PEG opposes the Commission's involvement in the mandates of other agencies such as EPA and PHMSA. According to PEG, ''it is presumptuous of the Commission to describe such expenditures as being in 'advancement of the public interest' when first, the public interest is yet to be defined by regulatory action and second, such actions are outside of the Commission's purview.'' [53] PEG fails to see any reason to provide an incentive for pipelines to take actions that they must take under penalty of law.

61. Other commenters found the Commission's proposal with regard to eligible facilities too restrictive, and stated that costs should not be limited to ''one-time, capital costs.'' INGAA argues that limiting the tracker mechanism only to capital costs is an unnecessary limitation on the type of costs that should be eligible for inclusion into the tracker mechanism, and urge expansion of the scope of the definition of eligible facilities. WBI Energy likewise comments that a one-time capital cost limitation may preclude a pipeline from recovering non-routine non-capital expenses which were prudently incurred to address system safety or efficiency. WBI Energy thus argues the final policy should be flexible enough to address each pipeline's situation.

62. Boardwalk states that the policy should be flexible so that if as a result of the modification process a pipeline discovers other actions that need to be taken in order for a pipeline to be in compliance with the new PHMSA rules, the costs of those activities may be included in the tracker. Boardwalk states the Commission should provide clear and rational guidance as to categories of costs eligible for inclusion in the tracker. Columbia Gas argues that the Commission should allow pipelines and shippers to include the cost of projects intended to increase the reliability or safety of existing facilities, including those facilities not necessarily impacted by regulations, provided that pipelines make a clear showing of net benefits to its stakeholders. Columbia Gas suggests such potential benefits may include improved safety, reduced emissions, increased efficiency or reliability, reduced costs, improved fuel, or reduced lost-and-unaccounted-for quantities.

b. Determination

63. Consistent with the Proposed Policy Statement, costs proposed to be recovered through a modernization cost surcharge (Eligible Costs) should generally be limited to (1) one-time capital costs incurred to modify or replace existing facilities on the pipeline's system to comply with safety or environmental regulations issued by PHMSA, EPA, or other federal or state government agencies, or (2) other one-time capital costs shown to be necessary for the safe or efficient operation of the pipeline.[54] The Commission does not intend that capital costs the pipeline incurs as part of its ordinary, recurring system maintenance requirements should be eligible for inclusion in a modernization cost tracker. The Commission is modifying its rate policies to permit modernization cost trackers primarily for the purpose of allowing pipelines to recover capital costs incurred to upgrade the older parts of their systems (1) to comply with new, more stringent regulatory requirements and/or (2) take advantage of new technologies that reasonably increase safety and/or efficiency, such as reductions in methane leaks, system modifications to allow the use of advanced in-line inspection tools in lieu of hydrostatic testing, or replacement of old compressors with newer more energy efficient ones.[55]

64. By contrast, the Commission believes that pipelines should continue to recover in their base rates ordinary capital costs of the type they routinely incur as part of their regular system maintenance. The Commission recognizes the potential difficulty in distinguishing between ordinary capital costs for system maintenance, which should be excluded from a modernization cost tracker, and capital costs for system upgrades, which are reasonably included in such a tracker. In order to address this concern, the parties may, as INGAA and others suggest,[56] consider including in a modernization cost tracker a mechanism for ensuring that a representative level of ordinary system maintenance capital costs are excluded from the tracker. For example, the Columbia Gas settlement includes a provision that Columbia Gas will continue to make capital expenditures of $100 million annually for system maintenance and those expenditures will not be included in its modernization cost tracker. If Columbia Gas spends less than that amount in any year, the difference must be used to reduce the plant investment included in the modernization cost tracker.[57] In developing such a mechanism, the parties could use the pipeline's recent history of capital expenditures incurred for routine maintenance as a basis for determining a representative level of

[53] PEG Comments at 7.

[54] In the Proposed Policy Statement, at P 23, the Commission proposed to define eligible costs as ''one-time capital costs to *modify* the pipeline's existing system . . .'' (emphasis supplied). Some commenters have interpreted our use of the word ''modify'' to exclude the costs of facility replacement projects from eligibility. We clarify that capital costs to replace existing facilities, such as old compressors that do not comply with new EPA emission requirements, are eligible for inclusion in a modernization cost tracker.

[55] *See, e.g.,* INGAA Comments at 13.

[56] INGAA reply comments at 18–19. Environmental Commenters at 12–13.

[57] Section 7.3 of the Columbia Gas settlement.

ordinary system maintenance capital costs to be excluded from the modernization cost tracker.

65. Some commenters have suggested that the Commission should permit certain non-capital expenses to be included in a modernization cost tracker, if they are non-routine and required by regulation or a voluntary program adopted by a pipeline as a best practice.[58] Commenters cite as examples the costs of in-line inspections by running smart tools through various pipeline segments or programs to detect and repair leaks on parts of the system most prone to leaks. To the extent such testing uncovers the need to incur one-time capital costs that satisfy the eligibility standards described above, such capital costs could be included in the modernization cost tracker. However, the Commission is reluctant to permit non-capital testing costs of the type described by the commenters to be recovered through a modernization cost tracker. The cost of service reflected in a pipeline's existing base rates presumably includes a projection of the pipeline's recurring costs of routine testing as part of the pipeline's O&M costs. The testing described by the commenters would appear to be a best practice for pipeline maintenance that the Commission would expect pipelines to conduct on an ongoing basis. As such it would appear difficult to distinguish any particular type of testing from the testing whose costs are already included in the O&M costs reflected in the pipeline's base rates. Therefore, while the Commission will not impose a blanket prohibition on the inclusion of such non-capital costs in a modernization cost tracker, particularly where supported by the pipeline's shippers, any proposal to include such non-capital costs in the tracker would need to demonstrate that such non-capital costs are special non-recurring costs not reflected in the O&M costs included in the pipeline's base rates and are directly related to the modernization projects whose costs are included in the modernization cost tracker. Furthermore, when determining whether a cost is a capital or non-capital cost, a pipeline's determination must be consistent with the Commission's accounting regulations and precedent.[59]

66. Some commenters also suggest that the Commission should allow eligible costs to include a portion of the capital costs incurred in a pipeline expansion project, if the project not only expands the pipeline's system but also modifies or replaces existing facilities to comply with safety or environmental regulations or make other improvements necessary for the safe and efficient operation of the pipeline.[60] The Commission recognizes that some expansion projects may include modifications to a pipeline's existing system that would be eligible for recovery in a modernization cost tracker if not done in conjunction with an expansion. In such circumstances, the Commission will consider reasonable proposals for a method of cost allocation between the expansion project and the modifications eligible for inclusion in such a tracker.[61]

67. Some commenters state that the costs of modifications to compressors for the purpose of waste heat recovery should be eligible for recovery under a modernization surcharge subject to conditions,[62] while others oppose the inclusion of such costs because they assert that investments in modifications of compressors for purpose of waste heat recovery are discretionary and within control of the pipeline and should thus be subject to the normal rate review process.[63] According to the DOE, expanded use of waste heat recovery by natural gas compressors could be beneficial to overall system efficiency, and while there is a general lack of good information on the scale of heat losses from many sectors of the economy, research published in 2008 and 2009 found substantial opportunities for additional waste heat recovery investment at natural gas compressor stations. Accordingly, the Commission will consider proposals for recovery of such costs in a modernization cost tracker proposal, subject to the standards of this Policy Statement.

68. The Commission rejects the proposals of some commenters that eligible costs be limited to those costs which the pipeline demonstrates are specifically tied to laws that have already been enacted or regulations that are currently effective. The Commission sees no reason for pipelines to wait to make needed improvements to their systems until a regulation is adopted requiring them to do so. In fact, the Department of Transportation has encouraged pipeline operators to undertake voluntary initiatives to improve pipeline safety.[64] Permitting pipelines to recover in a modernization cost tracker the costs of voluntary initiatives to improve safety, as well as minimize methane emissions, will help encourage such initiatives and thereby benefit the public. Accordingly, the Commission finds that all prudent one-time capital costs that satisfy the eligibility requirements may be included in a cost modernization tracker, regardless of whether PHMSA, EPA or some other government agency has adopted a regulation requiring the incurrence of the cost.

69. In the Proposed Policy Statement, the Commission proposed to require a pipeline proposing a modernization cost tracker to identify each capital investment to be recovered by the surcharge, the facilities to be upgraded or installed by those projects, and an upper limit on the capital costs related to each project to be included in the surcharge. INGAA requests that the Commission permit pipelines either to propose a list of eligible projects or a list of categories of future projects that would be considered eligible for recovery. Other commenters also contend that, even if the pipeline includes an upfront list of specific projects to be included in the modernization cost tracker, the Commission should permit subsequent modifications, additions, or subtractions to the listed projects. They state that this is necessary so that the tracking mechanism can adapt to changing circumstances including newly adopted regulations.

70. The Commission expects that, before the pipeline makes a tariff filing with the Commission proposing a modernization cost tracking mechanism, it will conduct a comprehensive review of its existing system to determine what capital investments it believes are needed to ensure the safe and efficient operation of its system, based on the information available to it at the time of the review. Such a review should be comparable to the comprehensive review conducted by Columbia Gas before it submitted its Settlement. The Commission continues to find that the pipeline must include in its filing a

[58] *See, e.g.,* INGAA Comments at 5–7, AGA Comments at 7.

[59] *See, e.g.,* 18 CFR part 201 (2014); *see also, Jurisdictional Public Utilities and Licensees Natural Gas Companies, and Oil Pipeline Companies, order on accounting for pipeline assessment costs,* 111 FERC ¶ 61,501 (2005).

[60] *See, e.g.,* INGAA Comments at 11–12, Columbia Gas Comments at 14–16, Berkshire Hathaway Comments at 11, Wisconsin Electric and Wisconsin Gas Comments at 9,

[61] The *Columbia Gas* settlement includes such a provision at section 7.5 of that settlement.

[62] *See, e.g.,* DOE Comments at 3, Wisconsin Electric and Wisconsin Gas Comments at 8, Michigan PSC Comments at 15.

[63] *See, e.g.,* PGC Comments at 17–18, NGSA Comments at 18–19, KCC Comments at 12.

[64] United States Department of Transportation Call to Action to Improve the Safety of the Nation's Energy Pipeline System (Apr. 2011), *available at http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/110404%20Action%20Plan%20Executive%20Version%20_2.pdf.*

description of the facilities which its review of its system has identified as needing upgrading and/or replacement, together an upper limit on the capital costs projected to be spent and a schedule for completing the projects. This detailed information will allow for a more transparent and upfront determination of the project costs that are eligible for recovery through the tracker so as to avoid later disputes on which facilities qualify, than any description of general categories of eligible costs could. This requirement will also help ensure that normal capital or other expenditures to maintain the pipeline's system in the ordinary course of business are not eligible for recovery through a surcharge mechanism. Consistent with this requirement, the filing should also include the accounting controls and procedures that the pipeline will use to ensure that only identified eligible costs are included in the tracker.

71. At the same time, however, the Commission recognizes the need for flexibility to make changes in the projects whose costs will be included in the tracker, after the modernization cost tracking mechanism is adopted. For example, the pipeline may discover unanticipated problems with certain facilities during the course of its modernization activities or may discover more effective solutions to existing problems. Also, changes in its shippers' utilization of its system may cause certain projects to become more critical to the safe and efficient operation of the pipeline than originally anticipated. Therefore, the Commission will be open to considering proposals to include in a modernization cost tracker a mechanism pursuant to which the parties could later modify the list of eligible projects, or the schedule for those projects, or the cost limits, based on changing priorities and other reasons.[65] The Commission also recognizes that pipelines may wish to begin modernizing their systems before PHMSA, EPA, and other Federal or state agencies complete their various ongoing regulatory initiatives. Therefore, the Commission will be open to considering proposals to add new projects to a tracking mechanism which may be required by new regulations adopted after the initial approval of the tracking mechanism or for other reasons.

3. Avoidance of Cost Shifting

72. The Proposed Policy Statement contemplated that a pipeline must design any proposed surcharge in a manner that will protect the pipeline's captive customers from costs shifts if the pipeline loses shippers or must offer increased discounts to retain business. The Commission suggested that one method of accomplishing this would be to establish a billing determinant floor requiring the pipeline to design the surcharge based on the greater of its actual billing determinants or the floor.

a. Comments

73. Virtually all commenters favored the avoidance of cost shifts to the pipeline's captive customers that may result from the implementation of a cost modernization surcharge. AGA, for example, supports the need to ensure that existing shippers are protected from substantial cost shifts, and comments that pipelines should be required, in consultation with their shippers, to develop appropriate measures to protect customers from cost shifts.

74. Those opposed to the Proposed Policy Statement, however, claim that the very implementation of cost modernization tracker necessarily shifts costs. MDG, for example, states that trackers shift costs to captive customers due to discounting and lost business without taking into account offsetting cost reductions, and thus even the best implementation of the Proposed Policy Statement would raise rates to captive customers unfairly. MDG claims that a billing floor will not alleviate the inherent cost shift in a policy that allows the recovery of one set of costs absent a review of all the pipeline's costs and revenues. MDG suggests that to the extent substantial pipeline capital costs are recovered through a tracker there should be a reduction in that pipeline's return on equity to reflect the pipeline's reduced risk. The NYPSC similarly claims that while requiring a billing determinant floor for a surcharge does allow some risk to remain with the pipeline, a tracker mechanism still reduces a pipeline's risk and transfers it to shippers.

75. While NGSA, APGA, and IPAA oppose the modernization surcharge tracker, if surcharges are allowed they all support the requirement that pipelines must design the surcharge in a manner that will protect the pipeline's shippers from significant cost shifts. IPAA, NGSA, and KCC contend that at a minimum, any modernization surcharge tracker must provide for a minimum level of billing determinants to design the surcharge as in *Columbia Gas.* NGSA adds that any surcharge should apply to all throughput in the facilities and under the rate schedules impacted by the surcharge-related costs, so that an agreed upon floor on the billing determinants should be greater than the firm billing determinants (so as to include interruptible throughput, for example). AF&PA agrees that interruptible shippers should share the costs incurred through trackers to the extent that they are related to safety and environmental compliance, as these costs are not related only to firm service. IECA states costs recovered through a tracker should be limited to no more than 5 percent of the costs recovered through the pipeline's tariff.

76. AF&PA submits that if the Commission implements the Proposed Policy Statement, the policy should spread the costs as widely as possible because environmental and safety costs are incurred for all shippers. AF&PA cautions, however, that a shipper that has released certain capacity should not bear any new costs related to that capacity and recovered through the tracker.

77. NGSA argues that if shippers are already paying for eligible costs in negotiated contracts, or existing negotiated contracts prohibit recovery of these costs, they should not be subject to the modernization surcharge.

b. Determination

78. The third standard for approval of a cost modernization tracker adopted by the Policy Statement is that the pipeline must design any proposed surcharge in a manner that will protect the pipeline's captive customers from cost shifts if the pipeline loses shippers or must offer increased discounts to retain business beyond those reflected in their base rates.

79. As we stated in the Proposed Policy Statement, our regulations require that a pipeline's rates recover its costs based on projected units of service,[66] thereby putting the pipeline at risk for any cost under-recovery between rate cases, incentivizing the pipeline to minimize costs and maximize service. Recovery of costs approved for inclusion in a tracker, however, would be guaranteed, thereby reducing the pipeline's incentives. Moreover, a tracker mechanism can shift costs to the pipeline's captive customers. If a pipeline recovering costs through a tracker or surcharge loses shippers or must offer increased discounts to retain business, a tracker mechanism may shift the amounts previously paid by those shippers directly and automatically to the pipeline's remaining shippers. This direct cost shifting is one of the reasons the Commission has generally disfavored trackers, namely that the cost

[65] *See* section 7.2 of the Columbia Gas Settlement setting forth such a mechanism.

[66] 18 CFR 284.10(c)(2) (2014).

shifting described would occur without consideration of any offsetting items that would generally be considered in a section 4 rate proceeding, and which the pipeline would normally need to justify to recover.[67]

80. Thus, as a prerequisite to the Commission allowing such a tracker, the Commission will require that the pipeline design the surcharge in a manner that will protect its shippers from cost shifts and impose on the pipeline some risk of under-recovery. As we noted in the Proposed Policy Statement, one method to accomplish this would be that adopted by Columbia Gas, namely that the pipeline agree to a billing determinant floor such that the pipeline must design the surcharge on the greater of its actual billing determinants or the established floor, and impute the revenue it would achieve by charging the maximum rate for those determinants. While the Commission found this to be a just and reasonable approach to preventing cost shifts in *Columbia Gas,* we remain open under the Final Policy to considering alternative methods of protecting the pipeline's existing customers from cost shifts if the pipeline loses customers or has to offer increased discounts of its rates to retain business during the period the modernization cost tracker is in effect.

81. The Commission believes that issues concerning how a modernization cost surcharge should be allocated among a pipeline's services and what billing determinants should be used to design the surcharge are best addressed on a case-by-case basis when each pipeline files to establish a modernization cost tracking mechanism. However, as a general matter, the Commission believes that it would be reasonable for the billing determinants used to design the surcharge to reflect a discount adjustment comparable to any discount adjustment reflected in the pipeline's base rates. Otherwise, a pipeline's modernization cost tracking mechanism would be designed in a manner that would likely lead to the pipeline under-recovering its prudently incurred modernization costs. That would be contrary to the Commission's goal of encouraging pipelines to expedite needed safety and environmental upgrades. The Commission's concern about protecting the pipeline's existing customers from cost shifts relates to cost shifts that would occur if a pipeline were permitted to true up any modernization cost under-recoveries resulting from the loss of customers after its modernization cost tracker goes into effect or a need to offer increased rate discounts to retain business after that date.[68]

82. Finally, with respect to the issue of the pipeline's ability to impose a modernization cost surcharge on discounted or negotiated rate shippers, that is a contractual issue between the pipeline and its discounted or negotiated rate shippers. If a particular shipper's discount or negotiated rate agreement with the pipeline permits the pipeline to add the surcharge to the agreed-upon discounted or negotiated rate, the pipeline will be permitted to do so.[69] Otherwise, the pipeline may not impose the surcharge on a discounted or negotiated rate shipper.

4. Periodic Review of the Surcharge

83. In the Proposed Policy Statement, the Commission proposed that pipelines be required to include in a modernization cost recovery mechanism some method to allow a periodic review of whether the surcharge and the pipeline's base rates remain just and reasonable. As an example of such a method, the Commission cited the *Columbia Gas* settlement, in which the pipeline agreed to make the surcharge a temporary part of its rates (the surcharge expires automatically after five years), and included a requirement that the pipeline make a new NGA section 4 filing if it wants to continue the surcharge. However, the Commission stated it was open to other methods.

a. Comments

84. Virtually all commenters, including AGA, INGAA, NGSA, APGA, PGC, IPAA, Southern, KCC, and TVA support the proposed standard requiring a pipeline proposing a modernization cost tracker to include a method to allow a periodic rate review of the surcharge. While participants generally agreed such a condition was necessary, the recommended method and frequency of review differed.

85. Numerous commenters advocate requiring a pipeline with a cost modernization tracker to periodically file a full NGA section 4 rate case. NGSA for example, commented that a pipeline should have to file a rate case with its application for a tracker and every five years thereafter. IECA and Cities agree that a minimum 5-year rate case filing obligation is warranted. KCC and PGC espouse refresher requirements of 3 to 5 years, with a condition the pipeline not file to change rates for at least 3 years after implementation of a tracker. IPAA also supports the requirement for a full rate case refresher, and MDG suggests a rate case filing as a condition of extending any tracker beyond its initial term. Calpine commented that any surcharge have a minimum 3-year initial term that is subject to extension and renegotiation. Several commenters also advocated annual filings for pipelines to justify the projects for which costs were collected and to true-up such costs.

86. Opponents of the Proposed Policy Statement commented that a periodic review methodology was critical, though still not sufficient to justify the use of trackers. They strongly advocate a requirement that the review methodology involve a full blown NGA section 4 rate case. APGA would add the requirement that, if during the period that a surcharge mechanism is in effect, an NGA section 5 complaint is initiated against the pipeline, then the pipeline must agree to make refunds retroactive to the date of the complaint to the extent its rates are determined to be unjust and unreasonable. The NYPSC and TVA comment that the periodic review should ensure that the surcharge does not produce earnings above authorized rates of return.

b. Determination

87. In this Policy Statement, the Commission adopts a policy of requiring the pipeline to include some method for a periodic review of whether the surcharge and the pipeline's base rates remain just and reasonable. Potential methods for satisfying this standard may include making the surcharge temporary and/or requiring the pipeline to file an NGA section 4 rate case to the extent it wants to extend the surcharge beyond the initial temporary term. Because we intend the Policy Statement to be flexible enough to meet the particular circumstances of each pipeline's system, we will not require that a pipeline seeking approval of a cost modernization tracker propose to file a

[67] For example, in order to recover costs associated with discounted rates the pipeline may have offered to certain shippers, the pipeline must demonstrate that the discount was required to meet competition. *Policy for Selective Discounting by Natural Gas Pipelines,* 113 FERC ¶ 61,173 (2005). In the case of a tracker, no such showing is required by the pipeline to recover the covered costs from its remaining customers.

[68] The Commission notes that section 154.109(c) of the Commission's regulations (18 CFR 154.109 (2014)), requires that the pipeline's tariff contain a statement of the order in which the pipeline discounts its rates and charges. Therefore, pipelines with modernization cost surcharges will have to revise their statements of the order in which they discount rates to include the modernization cost surcharge. Treating that surcharge as the last rate component discounted would minimize the need for truing up any under-recoveries due to discounting. *See Natural Gas Pipeline Co. of America,* 70 FERC ¶ 61,317 (1995).

[69] *See, e.g., Sea Robin Pipeline Co., LLC,* Opinion No. 516–A, 143 FERC ¶ 61,129, at PP 85–213 (2013).

full NGA section 4 rate case with some specified regularity and remain open to other reasonable means of accomplishing this goal.

88. Similar to the review of the pipeline's existing base rates at the beginning of the tracker proposal analysis, during the periodic review the pipeline will have to provide sufficient information to satisfy the Commission that both its base rates and the surcharge amount remain just and reasonable if the surcharge is to continue. If shippers raise any issues of material fact with respect to the continued justness and reasonableness of the pipeline's base rates or the surcharge, the Commission will establish appropriate procedures to enable resolution of those issues based upon substantial evidence on the record.

89. If a modernization cost tracking mechanism is terminated before the pipeline has fully recovered the costs included in that mechanism, the pipeline may reasonably propose in a subsequent general section 4 rate case to include the unrecovered costs in its base rates. For example, if eligible costs have been treated as rate base items in the modernization cost tracker, the undepreciated portion of those costs as of the time of the NGA section 4 rate filing could be included in the rate base used to calculate the pipeline's proposed base rates in the same manner as any other investment made between rate cases, unless the pipeline's modernization cost tracker mechanism includes some other provision concerning the treatment of unrecovered costs upon termination of the mechanism.

5. Shipper Support

90. The fifth condition proposed for a cost recovery surcharge was that the pipeline must work collaboratively with shippers to seek shipper support for any such proposal.

a. Comments

91. The vast majority of commenters support this condition but differ on the degree of shipper support the pipeline must have. On one end, INGAA suggests that the Commission could approve a proposed surcharge mechanism that it deems just and reasonable even if it lacks shipper support at the outset. NGSA and APGA, on the other hand, comment that pipeline should have the support of shippers representing 90 percent of the firm billing determinants. AGA comments that while unanimity should not be required, any approved modernization cost recovery tracking mechanism should be established through a robust, ongoing, collaborative process between the pipeline and its shippers that has widespread shipper support.

92. IECA is more pessimistic and contends that it is completely unrealistic for any pipeline to collaborate and work with its shippers. The KCC supports collaboration among the pipeline and its shippers but comments that the condition should be expanded to include support of ''interested parties,'' including state public utility commissions.

b. Determination

93. The fifth standard for an acceptable cost modernization surcharge adopted in this Policy Statement is that the pipeline must work collaboratively with shippers and other interested parties to seek support for any such proposal. As part of this collaborative process, pipelines should meet with their customers and other interested parties to seek resolution of as many issues as possible before submitting a modernization cost recovery proposal to the Commission. At such meetings, pipelines should share with their customers the results of their review of their systems concerning what system upgrades and improvements are necessary for the safe and efficient operations of their systems. Pipelines should also be responsive to customer requests for specific cost and revenue information necessary to determine whether their existing base rates are just and reasonable. Additionally, pipelines should provide customers and interested parties an opportunity to comment on draft tariff language setting forth their proposed modernization cost recovery mechanism.

94. As we noted in the Proposed Policy Statement, however, while we strongly encourage the pipeline to attempt to garner support for its proposal from all interested parties, we do not intend to require unanimity of shipper support before approving a cost modernization surcharge. Nor will we establish any minimum level of shipper support required before a pipeline's proposal can be accepted. This Policy Statement will provide pipelines and their customers wide latitude to reach agreements incorporating remedies for a variety of system safety, reliability and/or efficiency issues. Despite comments that mutual collaboration is futile or impractical, the *Columbia Gas* settlement is evidence that a system-wide collaboration between a pipeline and its customers can work to produce a reasonable modernization cost recovery mechanism that benefits all sides. The Commission continues to favor settlements, and notes that the negotiation of a modernization cost tracker to address critical infrastructure issues is exactly the type of issue that lends itself to pipeline customer negotiation and agreement because it will benefit all involved. However, if a pipeline satisfies its burden under NGA section 4 to show that its proposed modernization cost recovery mechanism is just and reasonable, including showing that its proposal is consistent with the guidance herein, the Commission may accept that proposal, even if some parties oppose it.

C. Additional Questions on Which the Commission Sought Comments

95. The Commission also sought comments on several additional issues, including: Accelerated amortization, reservation charge crediting, and any other factors or issues commenters believed should be included in the Policy Statement as a prerequisite for approving a modernization cost recovery mechanism.

1. Accelerated Amortization

96. In the Proposed Policy Statement, the Commission pointed out that the capital costs included in the modernization cost tracking mechanism approved in *Columbia Gas* are treated as rate base items, and thus Columbia Gas is allowed to recover a return on equity on the portion of those costs financed by equity. Consistent with the rate base treatment of those costs, they are depreciated over the life of Columbia Gas' system.[70] The Commission requested comments on whether pipelines should also be allowed to use accelerated amortization methodologies, akin to that approved by the Commission for hurricane repair cost trackers,[71] to recover the costs of any facilities installed pursuant to a modernization cost recovery mechanism. The Commission stated that under such a methodology the costs would not be included in the pipeline's rate base, and the pipeline would not recover any return on equity with respect to the costs financed by equity. Instead, the pipeline would only be allowed to recover the interest necessary to compensate it for the time value of money.

a. Comments

97. The Commission received a range of comments on this issue. Wisconsin Electric and Wisconsin Gas support using an accelerated amortization of

[70] *Columbia Gas,* 142 FERC ¶ 61,062 at P 9.

[71] *See, e.g., Sea Robin Pipeline Co., LLC,* Opinion No. 516, 137 FERC ¶ 61,201, at PP 16–65 (2011), *reh'g den,* Opinion No. 516–A, 143 FERC ¶ 61,129 at PP 17–80.

costs of facilities installed pursuant to eligible modernization projects.[72] IECA also supports accelerated amortization for safety and environmental compliance costs but argues for the amortization to be set at a rate that would require the pipeline to come back for a rate case in five years.[73] NGSA argues that accelerated amortization, with carrying costs, over a specified term, is the most appropriate rate design structure for recovering all approved costs under a tracker, with the length of any amortization period determined on a case-by-case basis, dependent upon the level of costs.[74] NGSA argues that it is not appropriate for the pipeline to earn a rate of return and taxes on these types of tracked expenditures because these would be incremental costs, with guaranteed cost recovery (*i.e.,* no risk on the pipeline) under the tracker.[75]

98. NCUC opposes the proposal on the grounds that the accelerated amortization allowed for storm damage repair costs would be inappropriate for modernization costs, because accelerated amortization would raise intergenerational cross—subsidization issues and could magnify rate shock. Similarly, Laclede opposes recovery of capital costs through accelerated amortization methodologies, and argues that any costs not recovered through tracker rates should be rolled into rate base.[76]

99. CAPP recommends that the consultative process by which individual pipelines formulate their respective proposals include the opportunity for stakeholders to evaluate the preferred accelerated amortization methodology.[77] Calpine also does not object to allowing pipelines and their shippers to consider accelerated amortization methodologies as part of their modernization surcharge negotiations.[78] Columbia Gas states the Commission should consider permitting pipelines to use accelerated amortization methodologies but allow pipelines and their customers the discretion to negotiate the appropriate method of amortization, which should include the possibility of earning a reasonable return.[79] INGAA requests that the Commission provide each pipeline that proposes a modernization cost tracker the ability to propose either accelerated amortization methodologies or depreciation over the life of the facilities, because each pipeline faces different competitive circumstances.[80]

b. Determination

100. The Commission agrees with the commenters who suggested that pipelines should be allowed to negotiate with their customers concerning whether modernization costs should be treated as (1) a rate base item to be depreciated over the life of the pipeline with the pipeline recovering a return on equity on the portion of those costs financed by equity together with associated income taxes or (2) a non-rate base item to be amortized over a shorter period with the pipeline recovering the interest necessary to compensate it for the time value of money but no return on equity or associated income taxes. These two cost recovery options have varying advantages and disadvantages. For example, rate base treatment is likely to lead to a lower per unit daily or monthly surcharge, because it spreads the pipeline's recovery of the costs over a substantially longer period. Such lower per unit rates should help mitigate any rate shock. However, over the long run, rate base treatment is likely to be more expensive for shippers, because the surcharge will be in effect for a longer period and the return on the equity portion of the rate base will be greater than the interest rate on the costs being amortized.[81] In light of these varying advantages and disadvantages, the Commission will permit pipelines and their shippers to negotiate which recovery method is appropriate for each pipeline, based upon the circumstances of its system.

2. Reservation Charge Crediting

101. The Commission requires pipelines to provide full reservation charge credits for outages of primary firm service caused by non-*force majeure* events, where the outage occurred due to circumstances within the pipeline's control, including planned or scheduled maintenance.[82] The Commission also requires the pipeline to provide partial reservation charge credits during *force majeure* outages, so as to share the risk of an event for which neither party is responsible.[83] Partial credits may be provided pursuant to: (1) The No-Profit method under which the pipeline gives credits equal to its return on equity and income taxes starting on Day 1; or (2) the Safe Harbor method under which the pipeline provides full credits after a short grace period when no credit is due (*i.e.,* 10 days or less).[84] The Commission permits pipelines to reflect the recurring cost of providing reservation charge credits during non-*force majeure* events in their rates.[85]

102. In the Proposed Policy Statement, the Commission stated that the pipelines' performance of facility upgrades and replacements required by recent legislative and other actions to address pipeline efficiency, safety, and environmental concerns may result in disruption of primary firm service. The Commission also cited recent Commission orders clarifying that one-time outages of primary firm service, if necessary to comply with government orders, may be treated as *force majeure* outages, for which only partial reservation charge credits are required.[86] The Commission requested comments on whether it should make any adjustments to its current reservation charge crediting policy in light of the Proposed Policy Statement.[87]

[72] Wisconsin Electric and Wisconsin Gas Comments at 14.

[73] IECA Comments at 21.

[74] NGSA Comments at 12–13, 24.

[75] NGSA Comments at 24.

[76] Laclede Comments at 20. See also PGC Comments at 19–20 (PGC opposes accelerated amortization for modernization upgrades, contending that it will only give pipelines additional latitude to increase their profits.).

[77] CAPP Comments at 9. *See also* KCC Comments at 24, 27 (KCC does not oppose extension of the use of accelerated amortization methodologies for recovering approved costs under a modernization cost tracker if the costs subject to accelerated amortization are not included in rate base, and a pipeline is not able to recover any return on equity for costs financed by equity).

[78] Calpine Comments at 30.

[79] Columbia Gas Comments at 34. *See also* APGA comments at 22 (to the extent the Commission permits pipelines to implement the modernization cost tracker, customers of the requesting pipeline should make the decision as to whether rate base treatment or some sort of reasonable amortization period works best for them under the circumstances).

[80] INGAA Comments at 19–20.

[81] *See* Opinion No. 516–A, 143 FERC ¶ 61,129 at PP 35–56.

[82] *See, e.g., Tennessee Gas Pipeline Co.,* Opinion No. 406, 76 FERC ¶ 61,022 (1996), *order on reh'g,* Opinion No. 406–A, 80 FERC ¶ 61,070 (1997), *as clarified by, Rockies Express Pipeline LLC,* 116 FERC ¶ 61,272, at P 63 (2006) (*Rockies Express I*), and *North Baja Pipeline, LLC,* 109 FERC ¶ 61,159 (2004), *reh'g denied,* 111 FERC ¶ 61,101 (2005), *aff'd, North Baja Pipeline, LLC* v. *FERC,* 483 F.3d 819 (D.C. Cir. 2007) (*North Baja* v. *FERC*).

[83] The Commission has defined *force majeure* outages as events that are both unexpected and uncontrollable. Opinion No. 406, 76 FERC at 61,088. *North Baja* v. *FERC,* 483 F.3d at 823.

[84] The Commission has also stated that pipelines may use some other method that achieves equitable sharing reasonably equivalent to the two specified methods.

[85] *See, e.g., Northern Natural Gas Co.,* 137 FERC ¶ 61,202, at P 36 (2011), *order on reh'g and compliance,* 141 FERC ¶ 61,221, at PP 45–50 (2012) (*Northern*). The Commission has stated this could be accomplished by a reduction in the billing determinants used to design a pipeline's rates or by including the cost of the full reservation charge credits as an item in the pipeline's cost of service. *Gulf South Pipeline Co., LP,* 144 FERC ¶ 61,215, at P 34 (2013) (*Gulf South*).

[86] *See, e.g., TransColorado Gas Transmission Co. LLC,* 144 FERC ¶ 61,175 (2013) (*TransColorado*); *Gulf South,* 144 FERC ¶ 61,215.

[87] Proposed Policy Statement at P 34.

a. Comments

103. The pipeline industry generally advocated that the Commission modify its policy requiring pipelines to pay reservation charge credits starting on Day One for disruption of primary firm service required by either voluntary or mandatory system improvements eligible for surcharge cost recovery. They contend that the pipeline modernization programs under consideration are not representative of pipeline mismanagement and are significantly different than conducting routine maintenance,[88] and thus the Commission should not impose any reservation charge crediting requirement or at least treat any resulting outages as *force majeure* events requiring only partial reservation charge credits. INGAA also argued that the Commission should explicitly provide that costs to comply with other statutory and regulatory requirements, such as hydrostatic testing to confirm maximum pressure levels, are not subject to reservation charge credits.[89] INGAA also argues, however, that to the extent that a pipeline must pay reservation charge credits for a service outage required by a system improvement eligible for surcharge cost recovery, it should be permitted to recover such crediting costs through the modernization cost recovery tracker.[90] Columbia Gas urges the Commission to extend its policy of granting partial reservation charge credits to outages due to construction of eligible modernization projects.[91]

104. Shippers and various state commissions encourage the Commission to require pipelines with modernization cost trackers to provide full reservation charge credits during periods that the pipeline must interrupt primary firm service to replace or install eligible facilities under the provisions of the modernization tracker.[92] NCUC states that full reservation charge credits will provide pipelines a stronger incentive to schedule any necessary construction or modification of facilities required to comply with any new regulations in an efficient manner.[93] Likewise, while PGC, APGA, IPAA, and NGSA oppose the implementation of modernization cost trackers, they request that to the extent the Commission chooses to allow their implementation, it modify its reservation charge crediting policy to require pipelines with modernization cost trackers to provide full reservation charge credits to firm customers during any period that the pipeline must interrupt primary firm service to replace or install eligible facilities.[94]

b. Determination

105. The Commission's current reservation charge crediting policies require pipelines to provide some level of reservation charge credits whenever the pipeline is unable to schedule reserved primary firm service because of a government action. The level of credits to be provided turns on whether the government action is considered a *force majeure* event.[95]

106. The Commission has defined *force majeure* outages as events that are both ''unexpected and uncontrollable.'' In *TransColorado*[96] and *Gulf South*,[97] the Commission clarified the basic distinction as to whether outages resulting from governmental actions are *force majeure* or non-*force majeure* events. The Commission found that outages necessitated by compliance with government standards concerning the regular, periodic maintenance activities a pipeline must perform in the ordinary course of business to ensure the safe operation of the pipeline, including PHMSA's integrity management regulations, are non-*force majeure* events requiring full reservation credits. Outages resulting from one-time, non-recurring government requirements, including special, one-time testing requirements after a pipeline failure, are *force majeure* events requiring only partial crediting.

107. In *Gulf South,* the Commission explained that this distinction is reasonable for two reasons. First, the pipeline is likely to have greater discretion as to when it performs regular, periodic maintenance on particular pipeline segments than when the government orders special one-time testing, for example after a pipeline failure. Thus, regular, periodic maintenance required by government regulation may be considered reasonably within the control of the pipeline and expected, in contrast to one-time, non-recurring government requirements, which the pipeline may have to implement within a short timeframe. Second, the recurring costs of regular, periodic maintenance performed in the ordinary course of business may be included in a pipeline's rates in a general NGA section 4 rate case, whereas one-time, non-recurring costs are generally not eligible for inclusion in a pipeline's rates in a section 4 rate case. The Commission explained that because the full crediting policy is premised on the ability of the pipeline to recover the costs associated with that policy through its rates, it follows that eligibility for such cost recovery is an important factor in distinguishing between the types of government testing and maintenance requirements that trigger the full crediting requirement and those that only trigger a partial crediting requirement.[98] Thus, under *TransColorado* and *Gulf South,* outages resulting from one-time non-recurring government requirements that (1) are not part of the pipeline's routine, periodic maintenance programs and (2) provide the pipeline little discretion as to when the outage occurs, qualify as *force majeure* events.

108. Against this background, we recognize that facility upgrade and replacement projects whose costs would be eligible for recovery under a modernization tracker do not lend themselves easily to the governmental action *force majeure*/non-*force majeure* distinction described above. On the one hand, such projects do not constitute routine periodic maintenance of the type for which the Commission requires full reservation charge credits; in fact, the Commission has held that such routine maintenance costs are not eligible for inclusion in a modernization cost tracker. Moreover, because each project constitutes a one-time, non-recurring event, any reservation charge credits provided by the pipeline would not be a recurring cost eligible for recovery in a pipeline's NGA section 4 general rate case. On the other hand, pipelines will likely have considerable discretion as to the timing of when they perform each project, with projects likely to be scheduled and performed

[88] INGAA Comments at 15–18.

[89] INGAA Comments at 18.

[90] INGAA Comments at 18–19. KM Comments at 8 (agreeing with INGAA that reservation charge crediting not apply for interruptions of firm service when pipelines are performing either voluntary or mandatory maintenance to improve safe and efficient operations.).

[91] Columbia Gas Comments at 36. Boardwalk suggests the Commission should modify its current reservation charge crediting policy to allow for a more equitable balancing of the risks between pipelines and their customers for service disruptions caused by testing, repair or replacement activities taken to comply with the new PHMSA rules. (Boardwalk Comments at 24.).

[92] Michigan PSC Comments at 20. IECA and American Midstream do not support changes to the existing reservation charge credits. IECA Comments at 21; American Midstream Comments at 8.

[93] NCUC Comments at 34.

[94] PGC Comments at 20, APGA Comments at 22, IPAA Comments at 3, 26–27, NGSA Comments at 13, 25.

[95] *Tennessee Gas Pipeline Co., L.L.C.,* 139 FERC ¶ 61,050, at PP 80–82 (2012). *Texas Eastern Transmission, LP,* 149 FERC ¶ 61,143, at PP 121–123 (2014).

[96] *TransColorado,* 144 FERC ¶ 61,175 at PP 35–43.

[97] *Gulf South,* 144 FERC ¶ 61,215 at PP 31–34.

[98] *Texas Eastern,* 149 FERC ¶ 61,143 at P 123.

over a multi-year period. Therefore, the projects are not unexpected in the sense ordinarily required for treatment as a *force majeure* event.

109. In these circumstances, the Commission believes the issue of reservation charge credits for projects included in a modernization cost tracker is best addressed, at least initially, on a case-by-case basis in each proceeding in which a pipeline proposes such a tracker. In its filing to establish a tracker, the pipeline should state the extent to which it anticipates that any particular project will disrupt primary firm service, explain why it expects it will not be able to continue to provide firm service, and describe what arrangements the pipeline intends to make to mitigate the disruption or provide alternative methods of providing service. To the extent a pipeline incurs costs to make temporary alternative arrangements to provide service while a project is under construction, such as through temporary line bypasses or natural gas tankers, such costs may be considered for inclusion in the tracker. However, if a modernization project unavoidably causes an outage of primary firm service, the Commission believes that pipelines should provide some relief from the payment of reservation charge to shippers directly affected by that outage. To the extent the pipeline provides such shippers full reservation charge credits, the Commission would consider proposals for the pipeline to recover such costs through the tracker, consistent with the Commission's policy that pipelines may recover the costs of full reservation charge credits in rates. Alternatively, the Commission would consider partial reservation charge crediting methods tailored to the circumstances of the projects included in the tracker.

3. Other Issues

110. The Commission sought comments on any other issues or factors interested parties though the Commission should consider for inclusion in the Policy Statement as a prerequisite for approving a modernization cost recovery mechanism.[99] The Commission received comments on a variety of proposals on additional items to include in the Policy Statement, including return on equity, and formula rates.

a. Return on Equity

111. EPMCG, MDG, APGA and the NYPSC argue that if the portion of capital investment subject to a tracker is significant to the pipeline's rate base, then the Commission should adjust downward the pipeline's allowed rate of return on equity to reflect the decreased risk that the pipeline has to recover its cost of investment given the existence of a tracker.[100] IPAA and NGSA also argue that the plant facilities to be constructed pursuant to the proposed modernization surcharge should not be eligible to earn a rate of return and taxes, because these facilities are not included in a pipeline's rate base through an NGA general section 4 rate filing.[101]

112. The Commission will not mandate an automatic ROE reduction for pipelines that have a modernization surcharge or tracker. We do agree, however, that a modernization tracker or surcharge could be a factor that is considered as to the appropriate level of a pipeline's ROE. We agree that considerations of return on equity reduction may be considered during shipper and pipeline negotiations.

b. Formula Rates

113. APGA argues that, if the Commission wants a tracker mechanism that ensures just and reasonable rates, it must apply to the pipeline's entire cost of service, similar to the transmission formula rates that the Commission has approved for electric utilities under the Federal Power Act.[102] APGA states that the advantage of such formula rates, most of which allow projected capital additions to be included in a given year's formula rate and are trued up for actuals, are that the electric utilities are assured timely recovery of capital outlays and customers are assured that rates are premised on full and updated cost-of-service data, including throughput, so that the over-recovery problem associated with tracker mechanisms applicable to only a portion of the pipeline's cost of service is obviated.

114. The Commission will not adopt APGA's proposal. In the instant proceeding the Commission is adopting a policy permitting pipelines to recover a limited category of one-time costs through a tracker mechanism, namely the costs of making needed upgrades for the safe and efficient operation of the pipeline. For the reasons discussed above, the Commission can permit this limited exception to our general policy of requiring pipelines to design their rates based on projected units of service, without undercutting the benefits of that policy of providing pipeline an incentive to minimize costs and maximize the service they provide. APGA's proposal to require pipelines to track all changes in their cost of service, on the other hand, would eliminate both those incentives.

c. Transparency

115. Wisconsin Electric and Wisconsin Gas propose that the Commission include additional transparency measures to require pipelines to identify and track all costs associated with each project or project phase and file a quarterly summary report detailing the progress and completion of the projects included in the tracker. In addition, Wisconsin Electric and Wisconsin Gas state existing service customers should have the right to validate the premise and the projected results of a pipeline's modernization and to audit costs. Finally, Wisconsin Electric and Wisconsin Gas submit that the pipeline should be required to quantify current costs that are reduced or avoided as a result of the and net those costs out of the total eligible cost.[103]

116. The Commission will not adopt a policy requiring pipelines to submit reports on its projects based on any particular schedule, or specify the content of those reports in this Policy Statement. These are issues that should be addressed in the individual proceedings where each pipeline proposes a modernization cost tracker. Likewise, the validation and quantification of costs and projects may be negotiated. Nevertheless, a pipeline's compliance with its tariff to implement a modernization cost tracker may be subject to scrutiny through a Commission audit.

d. Proposed Certificate Policy Modifications

117. Columbia Gas proposes that the Commission undertake a review and implement a ''fast track'' processing for NGA 7(c) projects that involve replacement of older vintage pipelines, like bare steel replacement, or involve an important public safety aspect.[104] Columbia Gas also comments that not all pipeline facilities are appropriate for

[99] Because the Policy Statement would address issues pertaining to the Commission's review of natural gas rate filings, the statement is categorically excluded from the requirements of the National Environmental Policy Act (NEPA), thus neither an environmental assessment nor an environmental impact statement is required. *See* 18 CFR 380.4(a)(25) (2014).

[100] EPMCG Comments at 43, APGA Comments at 22–23, and MDG Comments at P 2, NYPSC Comments at P 1–3.

[101] IPAA Comments at 3, 26, NGSA Comments at 13.

[102] APGA Comments at 11–12.

[103] Wisconsin Electric and Wisconsin Gas Comments at 15.

[104] Columbia Gas Comments at 37.

replacement or upgrade because some facilities may have reached or are close to the end of their useful life. Therefore, Columbia states a full replacement of certain facilities may be cost prohibitive, even with a tracker, because shippers on the facilities are unwilling or unable to support the costs of the replacement.[105] Similarly, Boardwalk states abandonment of facilities that will no longer be economic to operate because of substantial costs necessary to modify the facilities in order to achieve compliance with new requirements may be the best option and in the public interest.[106]

118. Columbia Gas' and Boardwalk's proposals are beyond the scope of this Policy Statement, and thus we will not address them here.

III. Information Collection Statement

119. The collection of information discussed in the Policy Statement is being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 [107] and OMB's implementing regulations.[108] OMB must approve information collection requirements imposed by agency rules.

120. The Commission solicits comments from the public on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, recommendations to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates are for implementing the information collection requirements of this Policy Statement. The Commission asks that any revised burden estimates submitted by commenters include the details and assumptions used to generate the estimates.

121. The collection of information related to this Policy Statement falls under FERC–545A (Gas Pipeline Rates: Rate Change (Non-Formal), Modernization Tracker).[109] The following estimate of reporting burden is related only to this Policy Statement.

122. *Public Reporting Burden:* The estimated annual burden and cost follow.

FERC–545A, AS IMPLEMENTED IN POLICY STATEMENT IN PL15–1–000

	Number of respondents [110] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)	Total annual cost ($) [111] (rounded)
Provide information to shippers for any surcharge proposal, and prepare modernization cost tracker filing [112]	3	1	750	2,250	$147, 578
Perform periodic review and provide information to show that both base rates and the surcharge amount remain just and reasonable	3	[113] 0.60	350	630	42,235

123. *Title:* FERC–545A (Gas Pipeline Rates: Rate Change (Non-Formal), Modernization Tracker).

124. *Action:* Proposed information collection.

125. *OMB Control No.:* To be determined.

126. *Respondents:* Business or other for profit enterprise (Natural Gas Pipelines).

127. *Frequency of Responses:* Ongoing.

128. *Necessity of Information:* The Commission is establishing a policy to allow interstate natural gas pipelines to seek to recover certain capital expenditures made to modernize system infrastructure through a surcharge mechanism, subject to certain conditions. The information that the pipeline should share with its shippers and submit to the Commission is intended to ensure that the resulting

[105] Columbia Gas Comments at 21.

[106] Boardwalk Comments at 18–19.

[107] 44 U.S.C. 3507(d) (2012).

[108] 5 CFR part 1320.

[109] The information collection requirements in this Policy Statement would normally be included in FERC–545 (OMB Control No. 1902–0154) which covers rate change filings made by natural gas pipelines, including tariff changes. However, another item is pending OMB review under FERC–545, and only one item per OMB Control Number can be pending review at OMB at a time. Therefor in order to submit this timely to OMB, we are using a temporary collection number (FERC–545A) to cover the requirements implemented in PL15–1–000.

[110] An estimated 165 natural gas pipelines (Part 284 program) may be affected by this Policy Statement. Of the 165 pipelines, Commission staff estimates that 3 pipelines may choose to submit an application for a modernization cost tracker per year.

[111] The most recent hourly wage figures are published by the Bureau of Labor Statistics, U.S. Department of Labor, *National Occupational Employment and Wage Estimates, United States,* Occupation Profiles, May 2014 (available 4/1/2015) at *http://www.bls.gov/oes/home.htm,* and the benefits are calculated using BLS information, at *http://www.bls.gov/news.release/ecec.nr0.htm.*

The average hourly cost (salary plus benefits) to prepare the modernization cost tracker filing is $65.59. It is the average of the following hourly costs (salary plus benefits): Manager ($77.93, NAICS 11–0000), Computer and mathematical ($58.17, NAICS 15–0000), Legal ($129.68, NAICS 23–0000), Office and administrative support ($39.12, NAICS 43–0000), Accountant and auditor ($51.04, NAICS 13–2011), Information and record clerk ($37.45, NAICS 43–4199), Engineer ($66.74, NAICS 17–2199), Transportation, Storage, and Distribution Manager ($64.55, NAICS 11–3071).

The average hourly cost (salary plus benefits) to perform the periodic review is $67.04. It is the average of the following hourly costs (salary plus benefits): Manager ($77.93, NAICS 11–0000), Legal ($129.68, NAICS 23–0000), Office and administrative support ($39.12, NAICS 43–0000), Accountant and auditor ($51.04, NAICS 13–2011), Information and record clerk ($37.45, NAICS 43–4199).

[112] The pipeline's modernization cost tracker filing is expected to include information to:

- Demonstrate that its current rates are just and reasonable and that proposal includes the types of benefits that the Commission found maintained the pipeline's incentives for innovation and efficiency;
- identify each capital investment to be recovered by the surcharge, the facilities to be upgraded or installed by those projects, and an upper limit on the capital costs related to each project to be included in the surcharge, and schedule for completing the projects;
- establish accounting controls and procedures that it will utilize to ensure that only identified eligible costs are included in the tracker;
- include method for periodic review of whether the surcharge and the pipeline's base rates remain just and reasonable; and
- state the extent to which any particular project will disrupt primary firm service, explain why it expects it will not be able to continue to provide firm service, and describe what arrangements the pipeline intends to make to mitigate the disruption or provide alternative methods of providing service.

[113] Based on the Columbia case, we estimate that a review may be required every 5 years, triggering the first pipeline reviews to be done in Year 6 (for the pipelines which applied and received approval in Year 1).

rates are just and reasonable and protect natural gas consumers from excessive costs

129. *Internal Review:* The Commission has reviewed the guidance in the Policy Statement and has determined that the information is necessary. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

130. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

131. Comments concerning the collection of information and the associated burden estimate should be sent the Commission by June 22, 2015.

IV. Document Availability

132. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

133. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

134. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

V. Effective Date and Congressional Notification

135. This Policy Statement will become effective October 1, 2015.

The Commission orders:

The Commission adopts the Policy Statement and supporting analysis contained in the body of this order.

By the Commission.

Issued: April 16, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: The following appendix will not appear in the *Code of Federal Regulations.*

Appendix—List of Commenters

American Forest & Paper Association
American Gas Association
American Midstream, LLC
American Public Gas Association
Beatrice Gahman
Berkshire Hathaway Energy Company
Boardwalk Pipeline Partners, LP
Calpine Corporation
Canadian Association of Petroleum Producers
CenterPoint Energy Resources Corp.
Clean Air Task Force
Columbia Gas Transmission, LLC
Deep Gulf Energy LP
El Paso Municipal Customer Group
Elizabeth Balogh
Energy XXI Ltd.
Environmental Defense Fund, Conservation Law Foundation and the Sustainable FERC Project
Ernest J. Moniz, Secretary. United States Department of Energy
Fairfax Hutter
Helis Oil and Gas Company, L.L.C.
Independent Oil & Gas Association of West Virginia, Inc.
Independent Petroleum Association of America
Indicated Shippers
Industrial Energy Consumers of America
Interstate Natural Gas Association of America
Kansas Corporation Commission
Karen Feridum
Kinder Morgan Interstate Pipelines
Laura Pritchard
Michigan Public Service Commission
Missouri Public Service Commission
Municipal Defense Group
Natural Gas Supply Association
New York Public Service Commission
Norman W. Torkelson
North Carolina Utilities Commission
Patriots Energy Group
Pipeline Safety Coalition
Process Gas Consumers Group and the American Forest & Paper Association
Secretary of Energy
Southern Company Services
Southern Star Central Gas Pipeline, Inc.
Tenneesse Valley Authority
Teresa Ecker
The Laclede Group, Inc.
U.S. Department of Energy
U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration
WBI Energy Transmission, Inc.
Western Tennessee Municipal Group
Wisconsin Electric Power Company and Wisconsin Gas LLC
Xcel Energy Companies

[FR Doc. 2015–09226 Filed 4–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM14–13–000; Order No. 808]

Communications Reliability Standards

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Power Act, the Commission approves two revised Reliability Standards, COM–001–2 (Communications) and COM–002–4 (Operating Personnel Communications Protocols), developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization responsible for developing and enforcing mandatory Reliability Standards. The two revised Reliability Standards will enhance reliability by, among other things, requiring adoption of predefined communication protocols, annual assessment of those protocols and operating personnel's adherence thereto, training on the protocols, and use of three-part communications. In addition, the Commission directs NERC to develop a modification to Reliability Standard COM–001–2 that addresses internal communications capabilities that could involve the issuance or receipt of Operating Instructions or other communications that could have an impact on reliability.

DATES: This rule will become effective June 22, 2015.

FOR FURTHER INFORMATION CONTACT:

Vincent Le (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6204, *Vincent.le@ferc.gov.*

Michael Gandolfo (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6817, *Michael.gandolfo@ferc.gov.*

Julie Greenisen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6362, *julie.greenisen@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Order No. 808 Final Rule

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission approves two Reliability Standards, COM–001–2 (Communications) and COM–002–4 (Operating Personnel Communications Protocols), developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization responsible for developing and enforcing mandatory Reliability Standards. The Commission also approves three new defined terms for addition to the NERC Glossary of Terms Used in Reliability Standards (NERC Glossary), violation risk factors, violation severity levels, and NERC's proposed implementation plan for both revised standards. Further, pursuant to section 215(d)(5) of the FPA, the Commission directs that NERC develop one modification to Reliability Standard COM–001–2 that addresses internal communications capabilities to the extent that such communications could involve the issuance or receipt of Operating Instructions or other communications that could have an impact on reliability.

2. Reliability Standard COM–001–2 is intended to establish a clear set of requirements for the communications capabilities that applicable functional entities must have in place and maintain. Reliability Standard COM–002–4 requires applicable entities to develop communication protocols with certain minimum requirements, including use of three-part communication when issuing Operating Instructions.[2] Reliability Standard COM–002–4 also sets out certain communications training requirements for all issuers and recipients of Operating Instructions, and establishes a flexible enforcement approach for failure to use three-part communication during non-emergencies and a ''zero-tolerance,'' *i.e.,* without exception, enforcement approach for failure to use three-part communication during an emergency.[3]

3. We find that Reliability Standards COM–001–2 and COM–002–4 will enhance reliability over the currently-effective versions of these Communications (COM) standards in several respects. For example, the Reliability Standards as modified expand applicability to include generator operators and distribution providers, eliminate certain ambiguities in the currently-effective standards, and clarify that the use of three-part communication is required for issuance and receipt of all Operating Instructions, with a zero-tolerance approach to enforcement of that requirement during an emergency. However, we are not persuaded that COM–001–2 adequately covers all situations in which Operating Instructions are issued or received and, therefore, direct NERC to develop a modification to that standard that addresses our concern, as further discussed below.

I. Background

A. Regulatory Background

4. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[4] Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or by the Commission independently.[5] In 2006, the Commission certified NERC as the ERO pursuant to FPA section 215.[6]

5. The Commission approved Reliability Standard COM–001–1 in Order No. 693.[7] In addition, the Commission directed NERC to develop modifications to COM–001–1 to: (1) expand the applicability of the standard to include generator operators and distribution providers, (2) identify specific requirements for telecommunications facilities for use in normal and emergency conditions that reflect the roles of the applicable entities, and (3) include adequate flexibility for compliance to allow for the adoption of new technologies and cost-effective solutions.[8] Similarly, the Commission approved Reliability Standard COM–002–2 in Order No. 693. In addition, the Commission directed NERC to develop modifications to (1) include distribution providers as applicable entities, and (2) establish tightened communications protocols, especially for communications during alerts and emergencies.[9]

6. NERC initiated Project 2006–06 to address the Order No. 693 directives related to Reliability Standards COM–001 and COM–002, resulting in two proposed Reliability Standards, COM–001–2 and COM–002–3. NERC also initiated Project 2007–02 to develop a new Reliability Standard (COM–003) that would require real-time system operators to use standardized communication protocols during normal and emergency operations, in order to improve situational awareness and shorten response time. The two projects ultimately merged when drafts of Reliability Standard COM–002–3 and COM–003–1 were combined into a single proposed Reliability Standard, COM–002–4.

B. NERC Petition

7. On May 14, 2014, NERC filed a petition seeking approval of two revised communication standards, COM–001–2 (Communications) and COM–002–4 (Operating Personnel Communications Protocols).[10] Proposed Reliability Standard COM–001–2 establishes a set of requirements for the communications capabilities that various functional entities must maintain to enable communications with other identified functional entities. Proposed Reliability Standard COM–002–4 requires applicable entities to develop documented communications protocols. NERC stated in its petition that the proposed standards are intended to address all relevant Commission directives from Order No. 693. In addition, NERC stated that the revisions reflected in proposed COM–002–4 are intended to address Recommendation No. 26 from the final report on the August 2003 blackout issued by the U.S.-Canada Power System Outage Task Force (Blackout Report) concerning the need to ''[t]ighten communications protocols, especially for communications during alerts and emergencies.''[11]

[1] 16 U.S.C. 824o (2012).

[2] NERC proposes to define Operating Instruction as ''[a] command by operating personnel responsible for the Real-time operation of the interconnected Bulk Electric System to change or preserve the state, status, output, or input of an Element of the Bulk Electric System or Facility of the Bulk Electric System. (A discussion of general information and of potential options or alternatives . . . is not considered an Operating Instruction.).''

[3] *See* NERC Petition at 3 (''during Emergencies, operating personnel must use the documented communication protocols for three-part communications without exception.'').

[4] 16 U.S.C. at 824o(c) and (d).

[5] *See id.* at 824o(e).

[6] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[7] *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 508, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007); *see also North American Electric Reliability Corp.,* Docket No. RD09–2–000 (2009) (delegated letter order accepting Reliability Standard COM–001–1.1).

[8] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 508.

[9] *Id.* PP 531–535, 540.

[10] The COM Reliability Standards are not attached to the Final Rule. The complete text of the two Reliability Standards is available on the Commission's eLibrary document retrieval system in Docket No. RM14–13 and is posted on the ERO's Web site, *available at: http://www.nerc.com.*

[11] NERC Petition at 3 (quoting *U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations* at 3 (April 2004) (Blackout Report), *available at http://*

Reliability Standard COM–001–2

8. NERC stated in its petition that Reliability Standard COM–001–2 establishes requirements for Interpersonal Communication capabilities necessary to maintain reliability. NERC explained that proposed Reliability Standard COM–001–2 applies to reliability coordinators, balancing authorities, transmission operators, generator operators, and distribution providers. The proposed Reliability Standard includes eleven requirements and two new defined terms, ''Interpersonal Communication'' and ''Alternative Interpersonal Communication,'' that, according to NERC, collectively provide a comprehensive approach to establishing communications capabilities necessary to maintain reliability.[12] NERC stated that the definitions provide clarity that an entity's communication capability must be redundant and that each of the capabilities must not utilize the same medium. According to NERC, the definitions improve the language used in the current Reliability Standard by eliminating the use of the more ambiguous phrases ''adequate and reliable'' and ''redundant and diversely routed'' that relate to ''telecommunications facilities for the exchange of Interconnection and operating information.'' [13]

9. The first six requirements of COM–001–2 address the Interpersonal Communication capability and Alternative Interpersonal Communication capability of the reliability coordinator, transmission operator, and balancing authority functions. Requirement R1 requires each reliability coordinator to have Interpersonal Communication capability with all transmission operators and balancing authorities within its reliability coordinator area, and with each adjacent reliability coordinator within the same interconnection. Requirement R2 requires each reliability coordinator to designate Alternative Interpersonal Communication capability with those same identified entities. Requirements R3 and R4 set out the communications capability requirements for a transmission operator. Under Requirement R3, Interpersonal Communication capability is required between the transmission operator's reliability coordinator, each balancing authority within its transmission operator area, each distribution provider and generator operator within its transmission operator area, and each adjacent transmission operator whether synchronously or asynchronously connected. Under Requirement R4, Alternative Interpersonal Communication capability must be designated between the transmission operator's reliability coordinator, each balancing authority within its transmission operator area, and each adjacent transmission operator. Requirements R5 and R6 set out similar requirements for each balancing authority, again identifying the specific functional entities for which the balancing authority must maintain Interpersonal Communication capability and for which it must designate Alternative Interpersonal Communication capability.

10. Requirements R7 and R8 address the communications capability that distribution providers and generator operators must maintain, with each required to have Interpersonal Communications capability with its balancing authority and its transmission operator.

11. Requirement R9 requires each reliability coordinator, transmission operator, and balancing authority to test its Alternative Interpersonal Communication capability at least once each calendar month, and to initiate action to repair or designate a replacement if the test is unsuccessful. Requirement R10 requires the same entities to notify applicable entities (as identified in R1, R3 and R5) of the detection of an Interpersonal Communication capability failure that lasts 30 minutes or longer. Finally, Requirement R11 requires distribution providers and generator operators to consult with affected balancing authorities and transmission operators when a failure is detected in their Interpersonal Communication capability, and to determine a mutually agreeable action for the restoration of that capability.

12. NERC stated in its petition that proposed Reliability Standard COM–001–2 improves the currently-effective Reliability Standard by: (1) Eliminating terms that do not adequately specify the desired actions that applicable entities are expected to take in relation to their telecommunication facilities; (2) clearly identifying the need for applicable entities to be capable of Interpersonal Communication and Alternative Interpersonal Communication; (3) not requiring specific technology or systems to be utilized; and (4) including the distribution provider and generator operator as applicable entities.[14] NERC added that COM–001–2 also addresses relevant directives from Order No. 693 by (1) adding generator operators and distribution providers as applicable entities; (2) identifying specific requirements for telecommunications capabilities for use in all operating conditions that reflect the roles of the applicable entities and their impact on reliability; and (3) including adequate flexibility to permit the adoption of new technologies.

13. NERC proposed to retire currently-effective COM–001–1.1 when proposed Reliability Standard COM–001–2 becomes effective, with the exception of Requirement R4, which addresses communications protocols. NERC requested that Requirement R4 be retired when proposed Reliability Standard COM–002–4 becomes effective.[15]

Reliability Standard COM–002–4

14. NERC stated in its petition that Reliability Standard COM–002–4 improves communications surrounding the issuance of Operating Instructions by requiring the use of predefined communications protocols to reduce the possibility of miscommunication that could lead to action or inaction harmful to reliability.[16] NERC noted that the proposed standard requires use of the same protocols regardless of operating condition (*i.e.,* Emergency or non-emergency), but requires operating personnel to use the documented communication protocols for three-part communications ''without exception'' during an Emergency.[17] As NERC explained:

[T]he proposed Reliability Standard employs the phrase ''Operating Instruction during an Emergency'' in certain

energy.gov/sites/prod/files/oeprod/DocumentsandMedia/BlackoutFinal-Web.pdf).

[12] *Id.* at 15. NERC defines Interpersonal Communication as ''[a]ny medium that allows two or more individuals to interact, consult, or exchange information'' and Alternative Interpersonal Communication as ''[a]ny Interpersonal Communication that is able to serve as a substitute for, and does not utilize the same infrastructure (medium) as, Interpersonal Communication used for day-to-day operation.'' *Id.*

[13] *Id.* at 15–16.

[14] NERC Petition at 18.

[15] *Id.* at 22.

[16] *Id.* at 23. NERC stated that COM–002–3 (which was adopted by the NERC Board but not submitted to the Commission for approval) is proposed for retirement in the Implementation Plan because the proposed Reliability Standard has been combined with proposed COM–003–1 to create proposed Reliability Standard COM–002–4. NERC stated that Reliability Standard COM–002–3 has not been submitted to the Commission for approval, therefore, the currently effective version of COM–002 is COM–002–2. *Id.* at 23 n.43. Reliability Standard COM–002–4 combines proposed Reliability Standard COM–002–3 and the former draft COM–003–1 into a single standard that addresses communications protocols for operating personnel in Emergency and non-emergency conditions. *Id.* at 23–24.

[17] *Id.* at 3.

requirements (R5, R6, R7) to provide a demarcation for what is subject to a zero-tolerance compliance approach and what is not.[18]

NERC explained that, for Operating Instructions issued during non-emergency operations, ''an entity will be assessed under a compliance approach that focuses on whether an entity meets the initial training Requirement (either R2 or R3) and whether an entity performed the assessment and took corrective actions according to Requirement R4.'' [19]

15. Finally, NERC stated that the proposed Reliability Standard includes distribution providers and generator operators as applicable entities, in accordance with the Commission's directive in Order No. 693, and in recognition of the fact that these types of entities can be recipients of Operating Instructions.

16. Proposed Reliability Standard COM–002–4 includes seven requirements. Requirement R1 requires entities that can both issue and receive Operating Instructions (balancing authorities, reliability coordinators and transmission operators) to have documented communications protocols that include a minimum set of elements, including use of the English language unless otherwise specified, and required use of three-part communications for issuance and receipt of Operating Instructions.[20] Requirement R2 requires these same entities to conduct initial training on the communications protocols for each of their operating personnel responsible for the real-time operation of the bulk electric system. Requirement R3 requires distribution providers and generator operators (who generally only receive but do not issue Operating Instructions) to conduct initial training on three-part communication for each of their operating personnel who can receive an oral two-party, person-to-person Operating Instruction, prior to that individual operator receiving an oral two-party, person-to-person Operating Instruction.

17. Requirement R4 requires each balancing authority, reliability coordinator and transmission operator to assess, at least once every twelve months, its operating personnel's adherence to the documented communication protocols required in Requirement R1, and to provide feedback to its operating personnel on their performance.

18. Requirement R5 requires balancing authorities, reliability coordinators and transmission operators that issue an oral two-party, person-to-person ''Operating Instruction during an Emergency'' to use three-part communication, and to take an alternative action if a confirmation is not received. Requirement R6 requires all applicable entities (balancing authorities, distribution providers, generator operators, and transmission operators) that receive an oral two-party, person-to-person ''Operating Instruction during an Emergency'' to use three-part communication, *i.e.,* to repeat the Operating Instruction and receive confirmation from the issuer that the response was correct, or request that the issuer reissue the Operating Instruction. Both Requirement R5 and R6 include the clarification that the requirement does not apply to single-party to multiple-party ''burst'' Operating Instructions. As noted above, NERC explains that Requirements R5 and R6 require use of three-part communication during an Emergency without exception, because ''use of three-part communication is critically important if an Emergency condition already exists, as further action or inaction could increase the harmful effects to the Bulk Electric System.'' [21] NERC further explains, however, that applicable entities are expected to use three-part communications at all times when issuing and receiving Operating Instructions.[22]

19. Finally, Requirement R7 requires that when a balancing authority, reliability coordinator, or transmission operator issues a written or oral single-party to multiple-party ''burst'' Operating Instruction during an Emergency, they must confirm or verify that at least one receiver received the Operating Instruction.

20. NERC requested that proposed Reliability Standard COM–002–4 become effective on the first day of the first calendar quarter that is twelve months after the date that the standard is approved.

C. Notice of Proposed Rulemaking

21. On September 19, 2014, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve Reliability Standards COM–001–2 and COM–002–4 pursuant to FPA section 215(d)(2), along with the three new definitions referenced in the proposed standards (Operating Instruction, Interpersonal Communication, and Alternative Interpersonal Communication), the assigned violation risk factors and violation severity levels, and the proposed implementation plan for each standard.[23]

22. In the NOPR, the Commission explained that the two revised standards addressed outstanding directives from Order No. 693, in that COM–001–2 has been expanded to include distribution providers and generator operators, and COM–002–4 has been expanded to include distribution providers.[24] The Commission also stated that Reliability Standard COM–002–4 would enhance reliability by providing for improved communications through the required development of communication protocols.

23. In the NOPR, the Commission also discussed the following specific matters and asked for further comment: (1) Responsibility for use of three-part communication by transmission owners and generator owners that receive Operator Instructions; (2) whether COM–001–2 should be modified to address internal communication capability requirements, or to address testing requirements for distribution providers and generator operators; and (3) clarifications regarding the proposed terms Interpersonal Communication and Alternative Interpersonal Communication.

24. Timely comments on the NOPR were filed by: NERC; the Edison Electric Institute and the Electric Power Supply Association (EEI/EPSA); ISO/RTO Council; the National Rural Electric Cooperative Association (NRECA); International Transmission Company (ITC); Idaho Power Company (Idaho Power); and Tri-State G&T. In addition, on March 6, 2015, NERC filed Supplemental Comments.

II. Discussion

25. Pursuant to section 215(d)(2) of the FPA, we adopt our NOPR proposal and approve Reliability Standards COM–001–2 and COM–002–4, including the associated definitions, violation risk factors, violation severity levels, and implementation plans, as just, reasonable, not unduly discriminatory or preferential and in the public interest. We note that all of the commenters that addressed the overall value of the Reliability Standards supported, or did not oppose, approval of the two revised standards. We determine that COM–001–2 will enhance reliability by expanding the

[18] *Id.* at 25.

[19] *Id.* at 26.

[20] *See id.* at 29.

[21] *Id.* at 39.

[22] *Id.* at 25–26.

[23] *Communications Reliability Standards,* Notice of Proposed Rulemaking, 79 FR 58709 (Sept. 30, 2014), 148 FERC ¶ 61,210 (2014) (NOPR).

[24] *Id.* PP 22, 23.

applicability of currently effective COM–001–1.1 to include generator operators and distribution providers as applicable entities under the COM–001 standard, and by expanding the applicability of COM–002–4 to include distribution providers. We further find that COM–002–4 will enhance reliability by requiring all issuers and recipients of Operating Instructions to develop communications protocols that require use of three-part communications, by requiring training on those protocols, and by adopting a zero-tolerance enforcement approach to the use of three-part communications during an Emergency. Moreover, we conclude that requiring issuers of Operating Instructions to perform an annual assessment of their personnel's adherence to the communications protocols will help ensure a high level of compliance with three-part communications at all times.

26. Pursuant to section 215(d)(5) of the FPA, the Commission directs that NERC develop one modification to COM–001–2 to address our concerns regarding applicability to certain internal communications, as discussed below.

27. Below, we discuss the following matters: (A) Ensuring use of three-part communications by generator owners and transmission owners; (B) internal communication capability requirements; (C) testing requirements for distribution providers and generator operators; and (D) scope of the terms Interpersonal Communication and Alternative Interpersonal Communication.

A. Applicability to Generator Owners and Transmission Owners NOPR

28. In the NOPR, the Commission raised the concern that generator owners and transmission owners are not ''applicable entities'' under either COM–001–2 or COM–002–4, although these entities could, under some circumstances, receive and act on Operating Instructions.[25] The Commission sought comment on the obligations of an applicable entity when issuing an Operating Instruction to a transmission owner or generator owner, including information regarding which entity is responsible if the transmission owner or generator owner fails to perform three-part communication properly. In addition, the Commission asked NERC to explain its auditing practices when reviewing operating agreements between transmission operators and transmission owners, and between generator operators and generation owners, including NERC's approach to reviewing the protocols of any transmission owner or generator owner that acts on an Operating Instruction in order to ensure that three-part communication is used appropriately.

Comments

29. All commenters that address this issue maintain that the two revised COM Reliability Standards appropriately identify the entities that issue and/or receive Operating Instructions, and that the two standards should not be expanded to include transmission owners or generator owners.[26] NERC states that the two COM standards are appropriately tailored to apply to those functional entities that operate the Bulk-Power System as described in the NERC Functional Model and, therefore, apply to transmission operators and generator operators rather than transmission owners and generator owners. However, NERC acknowledges that ''there are instances in which Transmission Owners or Generator Owners may receive and act on Operating Instructions within areas operated by RTOs or ISOs.'' [27] NERC asserts that, in these instances, the generator owner or transmission owner is ''acting on behalf of a registered Transmission Operator or Generator Operator under delegation as a member of the RTO or ISO.'' [28] NERC asserts that, if performance of a reliability requirement is not achieved for a delegated task, ''the relevant Transmission Operator or Generator Operator responsible for compliance with the Reliability Standards is and has been held accountable.'' [29]

30. NERC provides several examples of the various approaches to assigning compliance responsibility, including a Joint Registration Organization or Coordinated Functional Registration (as used in ERCOT), and assignment of compliance responsibility through operating agreements and manuals (as used in PJM). In both circumstances, NERC and Regional Entity auditors review the relevant documents assigning compliance responsibility ''to determine whether there are gaps in performance under the Reliability Standards as a result of the delegation.'' [30] In addition, NERC states that ''the registered entity for a particular function retains responsibility for providing supporting documentation regarding how a task is delegated,'' and ''for providing proof of compliance under the Reliability Standards.'' [31]

31. EEI/EPSA maintains that generator owners do not receive and act on Operating Instructions, and therefore should not be included as applicable entities under the proposed standards. EEI/EPSA further maintains that transmission owners do not typically receive and act on Operating Instructions, except in regions where the transmission owners have arrangements to do so under specific operating contracts, and, in those cases, act ''sol[ely] at the direction of a responsible regional TOP, having broad area responsibilities.'' [32]

32. Like NERC, ISO/RTO Council acknowledges that transmission owners and generator owners may act on Operating Instructions from an ISO/RTO, at least within some ISO/RTO regions, but states that in those cases the ISOs have market rules and operating procedures in place for communicating Operating Instructions to utilities and other market participants within their footprint. ISO/RTO Council also asserts that ISOs and RTOs do not control the registration of transmission owners and generator owners within their footprint, but that the entity and the relevant Regional Entity ''make the final determination on their registration.'' [33] Finally, ISO/RTO Council suggests that applying the requirements of the proposed COM standards to generator owners and transmission owners ''seems to address an administrative concern as opposed to a reliability concern,'' given that the ''core reliability issue at hand is determining whether the RC, BA or TOP command was followed by the relevant recipient,'' and given that ISOs and RTOs have market rules or tariff provisions in place that require strict adherence by utilities and market participants.[34] ISO/RTO Council also asserts that, if an ISO or RTO issues a command to an entity that is not registered as a transmission operator or generator operator, and there is a three-part communication failure resulting in an enforcement action, then the NERC Rules of Procedure should be used to hold that entity responsible.[35]

33. ITC asserts that Operating Instructions, as defined by NERC,

[25] *See id.* PP 25–27.

[26] *See* NERC Comments at 2, 8; EEI/EPSA Comments at 3–4; ISO/RTO Council Comments at 4; ITC Comments at 4–5; Tri-State G&T Comments at 1.

[27] NERC Comments at 8.

[28] *Id.*

[29] *Id.*

[30] *Id.* at 10.

[31] *Id.* at 11.

[32] EEI/EPSA Comments at 3.

[33] ISO/RTO Council Comments at 3.

[34] *Id.*

[35] *Id.* at 4 (asserting that the NERC Rules of Procedure, Appendix 4C, Section 5.11 allows for an ISO or RTO to include in an enforcement proceeding an entity that causes or contributes to an alleged violation of a Reliability Standard).

cannot apply to a generator owner or transmission owner. ITC raises a related question, however, as to whether a transmission operator can issue an Operating Instruction to another transmission operator under the proposed Reliability Standards.[36] ITC seeks confirmation from the Commission that a transmission operator cannot issue such an instruction or directive to another transmission operator, or if no such confirmation is given, ITC asks that the Commission ''explain the basis and process under which a Transmission Operator could issue such an Operating Instruction.'' [37]

34. Idaho Power asserts that COM–002–4 does not apply to generator owners or transmission owners, without further discussion of whether such entities could ever receive and act on Operating Instructions as defined by NERC. Tri-State G&T agrees that generator owners and transmission owners should not be added as applicable entities, as they rarely, if ever receive an Operating Instruction.

Commission Determination

35. While several commenters have acknowledged that transmission owners and generator owners can receive and act on Operating Instructions in certain regions, we are persuaded that the proposed Reliability Standards need not be expanded to include those entities at this time. In doing so, we are persuaded by the explanation of NERC that ''[w]hile the Transmission Operator or Generator Operator may delegate tasks under the proposed Reliability Standards to other member entities within [an RTO or ISO], the Transmission Operator and Generator Operator retain responsibility for compliance with the Requirements in the proposed Reliability Standards.'' [38] Moreover, we rely on NERC's explanation that NERC and Regional Entity auditors examine contractual arrangements ''to ascertain how tasks are delegated and to determine whether there are gaps in performance . . . as a result of the delegation. Responsibility will always rest with the entity registered with NERC as the Transmission Operator.'' [39] Thus, in the PJM example, if a transmission owner with delegated operating responsibilities fails to use three-part communication as required under COM–002–4, the registered entity that has delegated the operating responsibilities will remain responsible for the violation.

36. ITC requests clarification whether or not a transmission operator can issue an Operating Instruction to another transmission operator, pursuant to COM–001–2 and COM–002–4. We find that the issue is beyond the scope of this rulemaking. The two standards at issue in this proceeding relate to requirements for communications capability and communications protocols, and do not address the relative authorities as between functional entities to require another entity to modify its operations in real-time, which is more properly addressed in the TOP and IRO Reliability Standards, including currently effective Reliability Standard TOP–1–1a.[40]

B. Internal Communication Capability

NOPR

37. In the NOPR, the Commission raised the concern that Reliability Standard COM–001–2 does not appear to carry forward an explicit requirement to maintain adequate internal communications capabilities, unlike the existing COM–001 standard, which states that each reliability coordinator, transmission operator, and balancing authority ''shall provide adequate and reliable telecommunication facilities for the exchange of Interconnection and operating information . . . internally.'' [41] The Commission stated that maintaining adequate internal communications could be critical to reliability, pointing to specific recommendations in the 2003 Blackout Report. The Commission proposed to direct NERC to develop modifications to COM–001–2, or to develop a separate standard, ''that ensures that entities maintain adequate internal communications capability, at least to the extent that such communications could involve the issuance or receipt of Operating Instructions or other communications that could have an impact on reliability.'' [42] Alternatively, the Commission suggested that a requirement for internal communication capability could be considered to be implicit in the proposed requirements for communications capability between functional entities, even if those functional entities reside within the same utility, and sought comment on this suggested interpretation as well as the proposed directive.

Comments

38. NERC and most other commenters assert that Reliability Standard COM–002–4 can and should be read to apply to internal communications between functional entities within the same organization, as the Commission suggested in the NOPR.[43] NERC and NRECA also assert that acceptance of this interpretation should eliminate the need for further modification to COM–002–4.[44] ITC comments that COM–001–2 should apply to internal communications between different functional entities within the same organization but only ''when those communications are performed by means other than in direct, face-to-face situations.'' [45] ITC continues, stating that ''[f]or entities performing multiple functions that are located in close proximity such that direct, face-to-face communication is available, ITC does not see a reliability need for a requirement for Alternative Interpersonal Communication, and believes the Standards should be interpreted as not requiring AIC in these situations.'' [46] ITC also advocates that, if the Commission does not find that COM–001–2 as submitted includes these kinds of internal communications, the standard ought to be modified to do so.

39. EEI/EPSA acknowledges that the approach taken in COM–001–2 is different than the currently-effective COM standard with respect to internal communications, but maintains that this change is consistent with results-based standards. EEI/EPSA maintains that ''a result-based standard should not need to specifically cite facility requirements or the specific internal communication obligations,'' and maintains that COM–001–2 properly specifies

[36] ITC Comments at 5.

[37] *Id.* at 6.

[38] *See also* ISO/RTO Council Comments at 3–4; EEI/EPSA Comments at 3–4 (Commission approved Operating Agreements ''contractually bind TOs to act in conformance with TOP obligations'').

[39] NERC Comments at 10–11.

[40] Requirement R1 of TOP–1–1a states that ''Each Transmission Operator shall have the responsibility and clear decision-making authority to take whatever actions are needed to ensure the reliability of its area and shall exercise specific authority to alleviate operating emergencies.'' The obligation of a functional entity to respond to an Operating Instruction is also expected to be more explicitly addressed in other TOP and IRO standards under development or awaiting Commission approval, including proposed Reliability Standard IRO–001–4, which requires transmission operators, balancing authorities, generator operators, and distribution providers to comply with their Reliability Coordinator's Operating Instructions except under certain described circumstances.

[41] NOPR, 148 FERC ¶ 61,210 at P 28 (quoting COM–001–1.1, Requirement R1).

[42] *Id.* P 30.

[43] NERC Comments at 13; *see also, e.g.,* NRECA Comments at 1, Idaho Power Comments at 4, and Tri-State Comments at 1.

[44] NERC Comments at 13; NRECA Comments at 1–2.

[45] ITC Comments at 7.

[46] *Id.*

communications capability ''at the Functional Entity level.'' [47]

Commission Determination

40. We agree with NERC and other commenters that Reliability Standard COM–001–2 applies to communications between functional entities within a single organization. For example, COM–001–2, Requirement R3, provides that ''each Transmission Operator shall have Interpersonal Communication capability'' with the reliability coordinator, and each balancing authority, distribution provider, and generator operator ''within its Transmission Operator Area.'' We agree with NERC, ITC and other commenters that a reasonable understanding of Requirement R3 is that the transmission operator must have Interpersonal Communication capability with a balancing authority, distribution provider and/or generator operator within the same organization. Moreover, we agree with ITC that the COM–001–2 requirements concerning Alternative Interpersonal Communication only apply when those communications are performed by means other than direct, face-to-face situations.

41. However, the application of COM–001–2 to different functional entities within the same organization, as discussed above, does not fully address our concern set forth in the NOPR regarding internal communications.[48] In particular, the NOPR explained that Requirement R1.1 of currently-effective COM–001–1.1 provides that each reliability coordinator, transmission operator, and balancing authority ''shall provide adequate and reliable telecommunication facilities for the exchange of Interconnection and operating information . . . internally.'' This currently-effective Requirement applies more broadly to internal communications, including internal communications *within* the same functional entity. Thus, unlike the currently-effective Reliability Standard, COM–001–2 does not address the adequacy of internal telecommunications (or other internal communication systems) that may have an adverse effect on reliability, even within a single functional entity, including: (1) Communications between geographically separate control centers within the same functional entity; and (2) communications between a control center and field personnel. These scenarios present a gap in reliability of the Bulk-Power System that NERC should address. Accordingly, pursuant to section 215(d)(5) of the FPA, we direct NERC to develop modifications to COM–001–2, or to develop a new standard, to address our concerns regarding ensuring the adequacy of internal communications capability whenever internal communications could directly affect the reliable operation of the Bulk-Power System.

C. Testing Requirements for Distribution Providers and Generator Operators

NOPR

42. In the NOPR, the Commission expressed concern that Reliability Standard COM–001–2 did not include a requirement that distribution providers and generator operators test or actively monitor their telecommunications systems, but were merely required to consult with each affected entity to determine a mutually agreeable action for restoration whenever a failure is detected.[49] The Commission asked for comment on ''why generator operators and distribution providers should not have some form of requirement to test or actively monitor vital primary and emergency telecommunication facilities.'' [50]

Comments

43. NERC and the other commenters on this issue maintain that there is no need for a testing requirement for generator operators and distribution providers comparable to that required for reliability coordinators, balancing authorities and transmission operators, because generator operators and distribution providers are required to maintain only primary Interpersonal Communication capability, which is tested through routine use.[51] NERC further explains that its approach is consistent with the Commission's statement in Order No. 693 that ''[w]e expect the telecommunication requirements for all applicable entities will vary according to their roles and that these requirements will be developed under the Reliability Standards development process.'' [52] NERC also explains that the standard drafting team found that the obligation to detect and address failures in a primary communication system, as set out in Requirement R11 of COM–001–2, is sufficient, given ''the limited impact a failure might have on Distribution Providers and Generator Operators overall.'' [53]

Commission Determination

44. We are persuaded by the comments of NERC and others that additional testing requirements for distribution providers and generator operators are not necessary at this time. NERC and other commenters assert that the primary Interpersonal Communication systems used by a distribution provider or generator operator will effectively be tested through routine use, and that any potential failures in a given generator operator or distribution provider's external communication system will not have a substantial impact on the Bulk-Power System. In light of this explanation, as well as our recognition in Order No. 693 that telecommunication requirements for applicable entities will vary according to their roles, we decline to require any additional testing requirements for distribution providers and generator operators at this time.

D. Definition of Interpersonal Communication and Alternative Interpersonal Communication

NOPR

45. In the NOPR, the Commission sought clarification on the intended scope of the newly defined terms Interpersonal Communication and Alternative Interpersonal Communication.[54] The Commission noted that NERC had explained the introduction of these terms as a means of eliminating the ambiguity in the terms ''adequate and reliable'' and ''redundant and diversely routed'' as currently used in Requirements R1 and R1.4 of COM–001–1.1.

46. The Commission raised two concerns about the new terms as used in proposed Reliability Standard COM–001–2. First, the Commission noted that the definitions do not state a minimum expectation of communication performance, such as speed and

[47] *Id.* at 4–5.

[48] *See* NOPR, 148 FERC ¶ 61,210 at PP 28–31.

[49] NOPR, 148 FERC ¶ 61,210 at P 31 (citing to COM–001–2, Requirement R11).

[50] *Id,* (citing *System Restoration Reliability Standards,* Order No. 749, 134 FERC ¶ 61,215, at P 28 (2011)).

[51] *See, e.g.,* NERC Comments at 14 (''routine use is sufficient to demonstrate functionality of this . . . primary capability''); EEI/EPSA Comments at 5–6 (''a system in regular use would gain little through routine testing''); and ISO/RTO Council Comments at 6–7 (''capability will be 'tested' through regular use'').

[52] NERC Comments at 14–15 (quoting Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 487).

[53] NERC Comments at 14.

[54] NOPR, 148 FERC ¶ 61,210 at P 32. As previously noted, NERC is proposing to define the terms, respectively, as follows:

Interpersonal Communication—Any medium that allows two or more individuals to interact, consult, or exchange information.

Alternative Interpersonal Communication—Any Interpersonal Communication that is able to serve as a substitute for, and does not utilize the same infrastructure (medium) as, Interpersonal Communication used for day-to-day operation.

quality.[55] Second, the Commission asked for clarification as to whether Interpersonal Communication includes mediums used directly to exchange or transfer data, which communications appear to be covered under the currently-approved version of COM–001.[56] The Commission, thus, asked for further explanation ''regarding acceptable (and unacceptable) performance of communication for both Interpersonal and Alternative Interpersonal Communications.'' [57]

Comments

47. With respect to minimum performance standards or specifications for the required communications mediums, none of the commenters believe such specifications are necessary or advisable. NERC maintains that additional specifications are not necessary because the standard as written requires applicable entities to have the working capability needed to maintain reliability.[58] EEI/EPSA agrees that performance specifications are not necessary, and questions whether it is even possible to set such standards given the diversity of systems used.[59] ISO/RTO Council asserts that it would be inadvisable to include technical specifications on the communication mediums required, as it could result in the use of the least expensive medium that could achieve compliance.[60] Idaho Power suggests that the kinds of measurable characteristics that might be appropriate for use to establish minimum performance levels for data exchanges are not available here, because the proposed COM standards do not include data exchange. Tri-State G&T states that the most common expected mediums for communication under the standard will likely be email and telephone, and that there is no need to include minimum expectations of speed or performance because ''all entities are focused on reliability and would always use the fastest and most reliable means of communication.'' [61]

48. With respect to the transfer of data as opposed to communications between persons, all of the commenters to directly address the issue acknowledge that proposed Reliability Standard COM–001–2 is not intended to, and does not, cover data exchanges or transfers. NERC (through its initial and supplemental comments) and ISO/RTO Council maintain that COM–001–2 need not include requirements regarding data transfer capability because such capability is covered under other existing or proposed standards.

49. With respect to existing standards, NERC states that the standard drafting team determined that IRO–010–1a and IRO–014–1 ''provided the necessary mandatory Requirements to ensure proper data exchange is occurring.'' [62] ISO/RTO Council provides several additional examples of existing Reliability Standards that address data exchange and transfer capability, including BAL–004–2b, R14; IRO–002–2, R1; and TOP–006–2, R1.[63]

50. With respect to standards under development, NERC asserts that four proposed IRO and TOP standards, now approved by the Board, ''include specific coverage related to data exchange,'' and ''collectively require data exchange capability'' for reliability coordinators, transmission operators, balancing authorities, generator operators, and distribution providers.[64] NERC describes the specific requirements in proposed Reliability Standards TOP–001–3, IRO–010–2, TOP–003–3, and IRO–002–4 that will address data exchange capabilities and/or data exchange specifications for applicable functional entities.

51. EEI/EPSA and Idaho Power also maintain that the term Interpersonal Communication does not cover data exchange, with EEI/EPSA asserting that the phrase requires a system ''that enables effective communications between two or more individuals.'' [65] Moreover, EEI/EPSA understands the term Alternative Interpersonal Communication to require certain entities to have backup communications that do not utilize the same infrastructure.

52. ITC asserts that the definitions of Interpersonal Communication and Alternative Interpersonal Communication ''could ostensibly be interpreted to extend the Standard beyond verbal and written communications and Operating Instructions to include the transmission of electronic data between control systems that are monitored/used by system operators.'' [66] ITC warns that ''[i]f the Commission does indeed intend the scope of the Standards to extend to such electronic data transmission, the requirement for Alternative Interpersonal Communication may not be achievable'' because ''[i]t may simply not be possible to maintain a second pathway for the transmission of such data, whether by dint of data format, system compatibility, or the feasibility of installing a redundant system.'' [67] ITC accordingly recommends that if an alternative pathway for data transmission is deemed necessary, then the Commission should retain the language from COM–001–1 which requires ''redundant and diversely routed systems.'' [68]

Commission Determination

53. First, we are satisfied that technical specifications regarding minimum levels of performance for the mediums used to satisfy the requirements of COM–001–2 are not necessary at this time. In doing so, we note NERC's explanation that the requirements in COM–001–2 are ''absolute'' and that entities must ''have the capability in place to 'establish Interpersonal Communication capabilities necessary to maintain reliability.' '' [69] Moreover, we are persuaded by the commenters that setting performance criteria for the email and telephonic communications at issue here is both impractical and unnecessary.

54. Second, the NOPR raised concerns pertaining to whether COM–001–2 addresses ''facilities that directly exchange or transfer data.'' [70] In response, NERC states that data exchange capability is being addressed in proposed IRO and TOP standards.[71] Accordingly, we do not make any determinations regarding data exchange capability in the immediate rulemaking. Rather, based on NERC's explanation, we will address any issues regarding

[55] NOPR, 148 FERC ¶ 61,210 at P 33.

[56] *Id.* As the Commission noted, COM–001–1.1, Requirement R1 addresses ''telecommunications facilities for the exchange of Interconnection and operating information.''

[57] *Id.*

[58] NERC Comments at 4, 15–16.

[59] EEI/EPSA Comments at 6–7.

[60] ISO/RTO Council at 5. ISO/RTO Council also notes that its members already have requirements in place with their stakeholders on necessary technical requirements for voice and data exchange.

[61] Tri-State G&T Comments at 2.

[62] NERC Comments at 16. *See also* ISO/RTO Council Comments at 5–6 (noting that the standard drafting team explained that data communication is covered under Requirement R3 of IRO–010–1).

[63] ISO/RTO Council Comments at 6, n.10.

[64] NERC Supp. Comments at 3. NERC identified these same four standards in its Initial Comments, but provides a more detailed discussion of the proposed standards and their status in its Supplemental Comments.

[65] EEI/EPSA at 7. Similarly, Idaho Power states that the term was intended to include voice and electronic messaging between people, and exclude data exchanges, such as SCADA and metering data. Idaho Power Comments at 4–5.

[66] ITC Comments at 8.

[67] *Id.*

[68] *Id.* at 9.

[69] NERC Comments at 15–16.

[70] *See* NOPR, 148 FERC ¶ 61,210 at P 33.

[71] *See* NERC Supplemental Filing at 2–3. On March 18, 2015, NERC submitted a petition for approval of proposed Transmission Operations and Interconnection Reliability Operations and Coordination Reliability Standards, Docket No. RM15–15–000, pending before the Commission.

data exchange capability in the pending rulemaking pertaining to NERC's proposed TOP and IRO Reliability Standards.

III. Information Collection Statement

55. The collection of information contained in this Final Rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[72] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[73] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

56. The Commission solicited comments on the need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asked that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates were generated.

57. The Final Rule approves Reliability Standards COM–001–2 and COM–002–4, as well as NERC's proposed retirement of currently-effective Reliability Standards COM–001–1.1 and COM–002–2. Reliability Standard COM–001–2 establishes Interpersonal Communication capability necessary to maintain reliability, while Reliability Standard COM–002–4 improves communications related to Operating Instructions, requiring issuers of Operating Instructions to adopt predefined communications protocols and requiring both issuers and recipients of Operating Instructions to use three-part communications.

Public Reporting Burden: Reliability Standards COM–001–2 and COM–002–4 do not require responsible entities to file information with the Commission. However, the Reliability Standards require applicable entities to develop and maintain certain information, subject to audit. In particular, COM–001–2 requires that transmission operators, balancing authorities, reliability coordinators, distribution providers, and generator operators must maintain documentation of Interpersonal Communication capability and designation of Alternate Interpersonal Communication, as well as evidence of testing of the Alternate Interpersonal Communication facilities. COM–002–4 requires balancing authorities, distribution providers, reliability coordinators, transmission operators, and generator operators to develop and maintain documented communication protocols, and to be able to provide evidence of training on the protocols and of their annual assessment of the protocols. Additionally, all applicable entities (balancing authorities, reliability coordinators, transmission operators, generator operators, and distribution providers) must be able to provide evidence of three-part communication when issuing or receiving an Operating Instruction during an Emergency.

Many of the record retention or information collection requirements in COM–001–2 and COM–002–4 are translated in some form from the currently-effective Reliability Standards (COM–001–1 and COM–002–2). For these requirements, the Commission estimates a zero net change in burden. Accordingly, our estimate below shows the increase in record-retention or information collection burden, based on the new requirements to:

(1) Develop communications protocols (a one-time burden under COM–002–4, Requirement R1),

(2) maintain evidence of required training, assessments, and use of three-part communications, as applicable (an on-going burden under COM–002–4 Requirements R2, R3, R4, R5 and R6); and

(3) maintain evidence to demonstrate Interpersonal Communication capability (a new, on-going burden for distribution providers and generator operators under COM–001–2 Requirements R7 and R8).

The Commission's estimate of the number of respondents is based on the NERC compliance registry as of August 15, 2014. According to the NERC compliance registry, NERC has registered 179 transmission operators, 107 balancing authorities, 15 reliability coordinators, 475 distribution providers, and 853 generator operators within the United States. However, under NERC's compliance registration program, entities may be registered for multiple functions, so these numbers incorporate some double counting, which has been accounted for in the table below. The Commission estimates the annual reporting burden and cost as follows:

Information collection requirement	Number and type of respondents	Annual number of responses per respondent	Total number of responses	Avg. burden & cost per response [74]	Total annual burden hours & total annual cost [75]
	(1)	(2)	(1)*(2) = (3)	(4)	(3)*(4) = (5)
(One-time) Development of Communication Protocols [COM–002–4 R1].	212 (BA, RC & TOP)	1	212	8 hrs. & $522.72	1,696 hours & $110,816.64
(On-going) Maintain evidence of Interpersonal Communication capability [COM–001–2 R7 and R8].[76]	1,217 (DP & GOP)	1	1,217	4 hrs. & $133.68	4,868 hours & $162,688.56
(On-going) Maintain evidence of training and assessments [COM–002–4 R2, R4, R5 and R6].	212 (BA, RC & TOP)	1	212	8 hrs. & $267.36	1,696 hours & $56,680.32
(On-going) Maintain evidence of training [COM–002–4 R3, and R6].	1,217 (DP & GOP)	1	1,217	8 hrs. & $267.36	9,736 hours & $ 325,377.12

[72] 44 U.S.C. 3507(d) (2012).

[73] 5 CFR 1320.11 (2013).

[74] The estimated hourly costs (salary plus benefits) are based on Bureau of Labor Statistics (BLS) information, as of March 19, 2015, for an electrical engineer ($65.34/hour for review and documentation) and for an Information and Record Clerk ($33.42/hour for record retention). These figures have been updated since issuance of the NOPR, and are *available at: http://bls.gov/oes/current/naics3_221000.htm#17-0000.* The first row of the table (one-time burden) is done by an engineer, and the latter three rows (ongoing burden) are done by a file clerk.

[75] This dollar burden figure in row 3 of this chart was incorrectly stated in the NOPR, which led to an incorrect estimate of the total dollar burden for the industry in row 5. Both estimates as stated in the NOPR were higher than the corrected and updated estimate reflected in this Final Rule.

[76] No change is expected in the record-keeping burden under COM–001–2 for reliability coordinators, balancing authorities, and transmission operators as compared to the currently-effective COM–001 standard.

Information collection requirement	Number and type of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2) = (3)	Avg. burden & cost per response [74] (4)	Total annual burden hours & total annual cost [75] (3)*(4) = (5)
Total			2,858		17,996 hours & $655,562.64

Title: Mandatory Reliability Standards for the Bulk-Power System: COM Reliability Standards.

Action: Proposed FERC–725V.

OMB Control No: 1902–0277.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: One-time and ongoing.

Necessity of the Information: The approval of Reliability Standards COM–001–2 and COM–002–4 implements the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the purpose of the Reliability Standards is to establish Interpersonal Communication capability necessary to maintain reliability, and to improve communications for the issuance of Operating Instructions with predefined communications protocols. The proposed Reliability Standards require entities to maintain records subject to review by the Commission and NERC to ensure compliance with the Reliability Standards.

Internal Review: The Commission has reviewed the requirements pertaining to the Reliability Standards for the Bulk-Power System and determined that the requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

58. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

59. Comments concerning the information collections approved in this Final Rule and the associated burden estimates should be sent to the Commission in these dockets and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please reference FERC–725V and the docket numbers of this Notice of Proposed Rulemaking (Docket No. RM14–13–000) in your submission.

IV. Regulatory Flexibility Act Certification

60. The Regulatory Flexibility Act of 1980 (RFA) [77] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. Reliability Standard COM–001–2 is expected to impose burdens for the first time on 1,217 entities (*i.e.,* distribution providers and generator operators).[78] Reliability Standard COM–002–4 may apply to as many as 1,279 entities.[79] Comparison of the applicable entities with FERC's small business data indicates that approximately 934 of the 1,279 entities are small entities.[80]

61. Reliability Standard COM–002–4 will serve to enhance reliability by, among other things, requiring adoption of predefined communication protocols, annual assessment of those protocols and operating personnel's adherence thereto, training on the protocols, and use of three-part communications. The Commission estimates that each small balancing authority, reliability coordinator, and transmission operator subject to Reliability Standard COM–002–4 will incur one-time compliance costs of about $523 (*i.e.* development of communication protocols), plus on-going annual costs of about $790 (*i.e.* performing training and maintaining evidence of training and assessments).[81] The Commission estimates that each of the small distribution provider and generator operator entities potentially subject to Reliability Standards COM–001–2 and COM–002–4 will incur on-going annual costs of about $887 (*i.e.* performing training and maintaining evidence of interpersonal communication capability and of training).[82] The Commission does not consider the estimated costs per small entity to have a significant economic impact on a substantial number of small entities. Accordingly, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Analysis

62. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[83] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[84] The actions approved herein fall within this

[77] 5 U.S.C. 601–612.

[78] The number of small distribution providers required to comply with the COM standards may decrease significantly. In March 2015, the Commission approved revisions to the NERC Rules of Procedure to implement NERC's ''risk based registration'' program, which raised the registry threshold for distribution providers from a 25 MW to 75 MW peak load. *North American Electric Reliability Corp.,* 150 FERC ¶ 61,213 (2015).

[79] The applicable entities are balancing authorities, reliability coordinators, transmission operators, generator operators, and distribution providers. After accounting for entities registered for more than one function, the total count is 1,279 entities.

[80] The Small Business Administration sets the threshold for what constitutes a small business. Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. The possible categories for the applicable entities have a size threshold ranging from 250 employees to 1,000 employees. We are using the 1000 employee threshold for this analysis.

[81] The ongoing annual costs for both paperwork and training are based on (8 hours * $33.42) + (8 * $65.34) = $790.16 or approximately $790.00.

[82] The ongoing annual cost is based on (12 * $33.42) + (8 * $60.70) = $886.64 or approximately $887.00.

[83] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[84] 18 CFR 380.4(a)(2)(ii).

categorical exclusion in the Commission's regulations.

VI. Document Availability

63. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

64. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

65. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

66. This Final Rule is effective June 22, 2015.

67. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[85] The Commission will submit the Final Rule to both houses of Congress and to the General Accountability Office.

68. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

By direction of the Commission.

Issued: April 16, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–09225 Filed 4–21–15; 8:45 am]

BILLING CODE 6717–01–P

[85] *See* 5 U.S.C. 804(2).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM14–10–000; Order No. 810]

Real Power Balancing Control Performance Reliability Standard

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) approves Reliability Standard BAL–001–2 (Real Power Balancing Control Performance) and four new definitions submitted by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. Reliability Standard BAL–001–2 is designed to ensure that applicable entities maintain system frequency within narrow bounds around a scheduled value, and improves reliability by adding a frequency component to the measurement of a Balancing Authority's Area Control Error. In addition, the Commission directs NERC to submit an informational filing pertaining to the potential impact of the Reliability Standard, and also directs NERC to revise one definition.

DATES: This rule is effective June 22, 2015.

FOR FURTHER INFORMATION CONTACT: Enakpodia Agbedia (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6750, *Enakpodia.Agbedia@ferc.gov.*

Mark Bennett (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8524, *Mark.Bennett@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Order No. 810

Final Rule

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission approves Reliability Standard BAL–001–2 (Real Power Balancing Control Performance) submitted by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). Reliability Standard BAL–001–2 applies to balancing authorities and Regulation Reserve Sharing Groups,[2] and is intended to ensure that Interconnection frequency is maintained within predefined frequency limits. The Commission also finds that Reliability Standard BAL–001–2 addresses the Commission's directive set forth in Order No. 693 pertaining to BAL–002–0.[3] The Commission approves the retirement of currently-effective Reliability Standard BAL–001–1 immediately prior to the effective date of Reliability Standard BAL–001–2.

2. Further, the Commission approves NERC's four proposed definitions, associated violation risk factors and violation severity levels, implementation plan, and effective date. The Commission also directs NERC to submit an informational filing 90 days after the end of the two-year period following implementation that includes an analysis of data on whether experience with the Balancing Authority ACE Limit in the first two years after approval has seen ACE swings and inadvertent interchange[4] and unscheduled power flows[5] that could cause system operating limit (SOL) and interconnection reliability operating limit (IROL) exceedances, and further directs NERC to revise one definition.

I. Background

3. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards that are subject to Commission review and approval. Specifically, the Commission may approve, by rule or order, a proposed

[1] 16 U.S.C. 824(o).

[2] NERC defines Regulation Reserve Sharing Group as ''[a]group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply the Regulating Reserve required for all member Balancing Authorities to use in meeting applicable regulating standards.'' NERC Petition at 7.

[3] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[4] Inadvertent interchange is ''[t]he difference between the Balancing Authority's Net Actual Interchange and Net Scheduled Interchange. (I_A–I_S).'' NERC Glossary of Terms Used in Reliability Standards (NERC Glossary) at 42.

[5] Unscheduled power flows generally refers to power flows that result from the law of physics that causes power from a given source to flow over all possible paths to its destination.

Reliability Standard or modification to a Reliability Standard if it determines that the Reliability Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.[6] Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.[7]

4. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[8] and subsequently certified NERC as the ERO.[9] Subsequent to the Commission's issuance of Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, the Commission approved Reliability Standard BAL–001–0 and companion Reliability Standard BAL–002–0.[10] While approving Reliability Standard BAL–002–0, the Commission directed NERC ''to modify this Reliability Standard to define a significant deviation and a reportable event, taking into account all events that have an impact on frequency, *e.g.,* loss of supply, loss of load and significant scheduling problems, which can cause frequency disturbances and to address how balancing authorities should respond.'' [11]

II. NERC Petition and Reliability Standard BAL–001–2

5. On April 2, 2014, NERC filed a petition seeking approval of Reliability Standard BAL–001–2, four new definitions to be added to the NERC Glossary and the associated violation risk factors and violation severity levels, effective date, and implementation plan.[12] In its petition, NERC explained that balancing generation and load is necessary to ensure that system frequency is maintained within narrow bounds based on a scheduled value. NERC stated that the purpose of Reliability Standard BAL–001–2 is to maintain Interconnection frequency within predefined frequency limits and that the Reliability Standard ''improves reliability by adding a frequency component to the measurement of a Balancing Authority's Area Control Error (ACE) and allows for the formation of Regulation Reserve Sharing Groups.'' [13] NERC further stated that Reliability Standard BAL–001–2 is just, reasonable, not unduly discriminatory or preferential, and in the public interest because it satisfies the factors set forth in Order No. 672, which the Commission applies when reviewing a proposed Reliability Standard.[14] Also, NERC asserted that Reliability Standard BAL–001–2 addresses the Commission's Order No. 693 directive pertaining to Reliability Standard BAL–002–0.

6. Reliability Standard BAL–001–2 replaces the Control Performance Standard 2 (CPS2) in currently-effective Requirement R2 with a new term: ''Balancing Authority ACE Limit.'' [15] The Balancing Authority ACE Limit, unique for each balancing authority, contains dynamic limits as a function of Interconnection frequency and provides the basis for a balancing authority's obligation to balance its resources and demand in real-time so that its clock-minute average ACE does not exceed its Balancing Authority ACE Limit for more than 30 consecutive clock-minutes.[16]

7. Reliability Standard BAL–001–2 has two requirements and two attachments that contain the mathematical equations for calculating the Control Performance Standard 1 (CPS1) in Requirement R1, the Balancing Authority ACE Limit in Requirement R2, and associated measures. NERC stated that the only change to Requirement R1 is to move the equation and explanation of the individual components of CPS1 to Attachment 1. NERC explained that the revisions to Requirement R1 ''are administratively efficient and clarify the intent of the Requirement.'' [17] NERC further stated that the ''underlying performance aspect'' of Requirement R1 remains the same: ''to measure how well a Balancing Authority is able to control its generation and load management programs, as measured by its ACE, to support its Interconnection's frequency over a rolling one-year period.'' [18]

8. Requirement R2 is new and replaces the existing Control Performance Standard 2 requirement. Currently-effective Reliability Standard BAL–001–1, Requirement R2 requires each balancing authority to operate such that for at least 90 percent of the ten-minute periods in a calendar month (using six non-overlapping periods per hour), the average ACE must be within a specific limit, referred to as L_{10}.

9. Requirement R2 of Reliability Standard BAL–001–2 states:

> Balancing Authority shall operate such that its clock-minute average of Reporting ACE does not exceed its clock-minute Balancing Authority ACE Limit (BAAL) for more than 30 consecutive clock-minutes, calculated in accordance with Attachment 2, for the applicable Interconnection in which the Balancing Authority operates.

10. NERC explained that the Balancing Authority ACE Limit is unique for each balancing authority and provides dynamic limits for the balancing authority's ACE value as a function of its Interconnection frequency.[19] NERC stated that Reliability Standard BAL–001–2 is intended to enhance the reliability of each Interconnection by maintaining frequency within predefined limits under all conditions. Furthermore, NERC stated that Reliability Standard BAL–001–2 and accompanying definitions include the benefits of the ATEC equation in the Western Electricity Coordinating Council's (WECC) regional variance in Reliability Standard BAL–001–1.[20]

11. In its petition, NERC proposed violation risk factors and violation severity levels for each requirement of Reliability Standard BAL–001–2, an implementation plan and an effective date. NERC stated that these proposals were developed and reviewed for consistency with NERC and Commission guidelines.

12. NERC proposed an effective date for Reliability Standard BAL–001–2 that is the first day of the first calendar quarter that is twelve months after the date of Commission approval. NERC stated that this implementation date will allow entities to make any software adjustment that may be required to perform the Balancing Authority ACE Limit calculations.[21]

13. On May 9, 2014, NERC submitted a supplemental filing to address the status of the Commission directive in

[6] 16 U.S.C. 824o(d)(2).

[7] *Id.* 824o(e).

[8] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[9] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[10] *North American Electric Reliability Corporation,* Docket No. RD13–11–000 (Oct. 16, 2013) (delegated letter order).

[11] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 355.

[12] Reliability Standard BAL–001–2 not attached to this Final Rule. The standard is available on the Commission's eLibrary document retrieval system in Docket No. RM14–10–000 and on the NERC Web site, *www.nerc.com.*

[13] NERC Petition at 2.

[14] *Id.* at 6 and Exhibit C (Order No. 672 Criteria) (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at PP 323–335, 444).

[15] Area Control Error (ACE) is the ''instantaneous difference between a Balancing Authority's net actual and scheduled interchange, taking into accounts the effects of Frequency Bias, correction for meter error, and Automatic Time Error Correction (ATEC), if operating in the ATEC mode. ATEC is only applicable to Balancing Authorities in the Western Interconnection.'' NERC Glossary at 7.

[16] NERC Petition at 12.

[17] NERC Petition at 11.

[18] *Id.*

[19] *Id.* at 12.

[20] *Id.* at 2.

[21] *Id.* at 3.

Order No. 693 that NERC ''define a significant deviation and a reportable event, taking into account all events that have an impact on frequency, *e.g.*, loss of supply, loss of load and significant scheduling problems. . . .'' [22] Further, NERC provided an update regarding the status of the field trial undertaken for BAL–001–2. In the supplemental filing, NERC reiterated the importance of establishing dynamic limits for a balancing authority's ACE as a function of the Interconnection frequency, stating that ''[o]ne of the reliability benefits of the proposed Reliability Standard is that it allows Balancing Authorities to calculate their position within these boundaries on a real-time basis and take action to support reliability.'' [23] Further, NERC stated that Reliability Standard BAL–001–2 addresses the Commission's directive related to BAL–002–0 ''in an equally efficient and effective manner.'' [24] NERC added that revisions to Reliability Standard BAL–002–1 are currently being developed and will complement Reliability Standard BAL–001–2. Regarding the ongoing field trial, discussed below, NERC stated that ''the widespread participation of Balancing Authorities has provided insight into how the changes in Reliability Standard BAL–001–2 will impact reliability.'' [25]

14. On July 31, 2014, NERC submitted an informational filing of its Preliminary Field Trial Report evaluating the effects of Reliability Standard BAL–001–2.[26] NERC stated that the Field Trial Report results to date demonstrate that the correlation between Requirements R1 and R2 of Reliability Standard BAL–001–2 drive corrective actions to support Interconnection frequency and reliability.[27] NERC also stated that the Balancing Authority ACE Limit, in conjunction with currently-effective Reliability Standard BAL–003–1 (Frequency Response and Frequency Bias Setting), satisfies the directive in Order No. 693 pertaining to Reliability Standard BAL–002–0.[28]

III. Notice of Proposed Rulemaking

15. On November 20, 2014, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve Reliability Standard BAL–001–2 as just, reasonable, not unduly discriminatory or preferential and in the public interest.[29] The Commission also proposed to approve NERC's four proposed definitions, violation risk factor and violation severity level assignments, and the retirement of currently-effective Reliability Standard BAL–001–1.[30] The NOPR stated that the new Balancing Authority ACE Limit in Reliability Standard BAL–001–2 encourages operation in support of Interconnection frequency and drives corrective action back within predefined ACE limits when needed to adjust Interconnection frequency.

16. While the Commission proposed to approve Reliability Standard BAL–001–2, the Commission raised concerns regarding the potential of the Reliability Standard to contribute to unscheduled power flows and inadvertent interchange. Based on that concern, the Commission proposed to direct NERC to monitor unscheduled power flows and inadvertent interchange in the Western and Eastern Interconnections and submit an informational filing following implementation of the Reliability Standard providing the number of SOL/IROL violations, the date, time, location, duration and magnitude due to unscheduled power flows and inadvertent interchange. In the NOPR, the Commission sought comments on the following issues: (1) The need for an informational filing and whether NERC should include additional data pertaining to unscheduled power flows and inadvertent interchange in its informational filing; and (2) whether a regional variance would be necessary for a region experiencing adverse impacts from the Reliability Standard due to inadvertent interchange.

17. In response to the NOPR, the Commission received comments from: NERC, Tri-State Generation and Transmission Association, (Tri-State), Arizona Public Service Company (APS), Edison Electric Institute (EEI), NaturEner USA (NaturEner), Regional Transmission Organizations—Midcontinent Independent System Operator, ISO New England, and PJM Interconnection (collectively ''Indicated RTOs''), The Steel Manufacturers Association (SMA), Duke Energy Corporation (Duke), Western Area Power Administration (WAPA), Powerex Corp (Powerex), New York Independent System Operator (NYISO), and Bonneville Power Administration (BPA).

IV. Discussion

18. Pursuant to FPA section 215(d)(2), we approve Reliability Standard BAL–001–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The purpose of Reliability Standard BAL–001–2 is to control Interconnection frequency within defined limits. The Commission determines that the Reliability Standard will help ensure that Interconnection frequency is maintained through both long and short term performance measures for Interconnection frequency control and dynamic (*i.e.*, real-time) limits that are specific for each balancing authority and Interconnection.[31] We find that, by basing Balancing Authority ACE Limits on predefined frequency trigger limits for each Interconnection, the real-time measurements established in the Reliability Standard will help ensure that the Interconnection frequency returns to a reliable state should a balancing authority's ACE, or the Interconnection's frequency, exceed acceptable bounds.

19. We also determine that the Reliability Standard satisfies the outstanding directive concerning Reliability Standard BAL–002 set forth in Order No. 693, as explained in the NOPR,[32] and approve NERC's four definitions, violation risk factor and violation severity level assignments, and the retirement of currently-effective Reliability Standard BAL–001–1. Further, we approve NERC's implementation plan, in which NERC proposes an effective date of the first day of the first calendar quarter, twelve months after the date of Commission approval.[33]

20. While approving Reliability Standard BAL–001–2, as discussed below, we direct NERC to submit an informational filing to assess the potential impact of the Reliability Standard as described herein and to revise the definition of the term Reporting ACE in the NERC Glossary.

[22] NERC May 9, 2014 Supplemental Filing at 3–5 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 355).

[23] *Id.* at 2.

[24] *Id.* at 3.

[25] NERC Supplemental Filing at 6 (stating that 47 balancing authorities participated in the field trial: 16 in the Eastern Interconnection, 29 in the Western Interconnection, ERCOT and Québec).

[26] NERC July 31, 2014 Informational Filing (Field Trial Report).

[27] NERC Field Trial Report at 1.

[28] *Id.* at 14.

[29] *Real Power Balancing Control Performance Reliability Standard*, Notice of Proposed Rulemaking, 79 FR 70,483 (November 26, 2014), 149 FERC ¶ 61,139 (2014).

[30] The four proposed definitions for inclusion in the NERC Glossary are: Regulation Reserve Sharing Group, Reserve Sharing Group Reporting ACE, Reporting ACE, and Interconnection. NERC Petition at 7–10. The standard drafting team explained that Regulation Reserve Sharing Group will be added to the NERC Compliance Registry prior to implementation of the Reliability Standard. NERC Petition, Exhibit G (Summary of Development History and Complete Record of Development), Consideration of Comments, April 2013 at 13.

[31] NERC Supplemental Filing at 2.

[32] NOPR, 149 FERC ¶ 61,139 at PP 18–19.

[33] NERC Petition, Ex. B (Implementation Plan for Proposed Reliability Standard BAL–001–2) at 4.

21. We discuss below the following issues raised in the NOPR and addressed in the comments: (A) The proposed informational filing and NOPR comments regarding the need to revise the definition of the term Reporting ACE; and (B) whether a regional variance is necessary to address possible adverse impacts from the implementation of Reliability Standard BAL–001–2.

A. Informational Filing and Definition of Reporting ACE NOPR

22. In the NOPR, the Commission noted that feedback from some stakeholders who participated in the field trial indicated that the Balancing Authority ACE Limit established in Requirement R2 of Reliability Standard BAL–001–2 could increase unscheduled power flows, possibly resulting in approaching or exceeding SOL/IROL violations. The NOPR observed that, in comments submitted to NERC's standard drafting team, one large transmission operator stated that the Balancing Authority ACE Limit could increase the number of system operating limit violations, and could cause large unscheduled power flows resulting in an increased ACE.[34] Another stakeholder commented that the Balancing Authority ACE Limit could provide opportunities for entities to create unscheduled power flows within the boundaries established by the Reliability Standard.[35]

23. The NOPR stated that, while NERC asserted that there was no relationship between the Balancing Authority ACE Limit field trial and accumulated inadvertent interchange, a large allowance of ACE deviations could increase the amount of inadvertent interchange on the bulk electric system. The NOPR explained that Reliability Standard BAL–001–2 could allow balancing authorities to have a very large deviation from an ACE of zero and still be compliant with the dynamic values of the Balancing Authority ACE Limits in the proposed Reliability Standard.[36]

24. Based on this information, in the NOPR, the Commission expressed concern that Reliability Standard BAL–001–2 may have the ''unintended consequence'' of (i) creating large unscheduled power flows that could unduly burden transmission operators and reliability coordinators in addressing power flows that approach or exceed system operating limits or interconnection reliability operating limits, and (ii) causing significant increases in inadvertent interchange resulting in an adverse reliability impact between real-time operations and day and/or hour-ahead analysis performed by reliability coordinators and transmission operators.[37]

25. In order to evaluate the effect of the Reliability Standard on unscheduled power flows and inadvertent interchange and the potential impact on the Bulk-Power System, the NOPR proposed to direct NERC to submit an informational filing to monitor unscheduled flows and inadvertent interchange in the Western and Eastern Interconnections 90 days after the end of the two-year period following implementation. Specifically, the NOPR proposed that NERC's informational filing provide ''the number of SOL/IROL violations, the date, time, location, the duration and magnitude, due to unscheduled power flows and inadvertent interchange within [the] Western and Eastern Interconnections.'' [38] Further, the NOPR stated that the Commission expects NERC will immediately propose and implement adequate remedies should there be increases in unscheduled flow and inadvertent interchange causing reliability issues under the new Balancing Authority ACE Limit during the two-year period covered by the informational filing.

Comments

26. NERC states that it does not support the Commission's proposed directive to submit an informational filing with the data described in the NOPR, because it ''will not conclusively demonstrate that large ACE swings are correlated with unscheduled power flow and Inadvertent Interchange causing SOL/IROL exceedances.'' [39] NERC asserts that the proposed directive ''is based on the speculative opinions of commenters, supported by no documented evidence that the proposed Reliability Standard contributes to unscheduled power flows and Inadvertent Interchange,'' and would not be an effective use of NERC or industry resources.[40]

27. NERC states that the field trial has not produced any ''positive evidence'' establishing that implementing the Balancing Authority ACE Limit causes high ACE swings negatively affecting frequency, or relates to unscheduled power flows or inadvertent interchange causing SOL/IROL exceedances. Further, NERC asserts that ''high ACE swings are not necessarily determinative of overloading transmission or SOL/IROL exceedances because SOL/IROL exceedances can still occur when ACE is zero.'' [41]

28. While disagreeing with the directive as proposed in the NOPR, NERC states that as a ''first step'' to addressing the Commission's concerns, and to ''investigate a possible correlation between [the] Balancing Authority ACE Limit and SOL/IROL exceedances as attributed to Inadvertent Interchange and unscheduled power flows,'' NERC will provide the Commission with a ''set of baseline data'' including ''tracking the number of SOL/IROL exceedances occurring in each interconnection where a Balancing Authority's ACE was within BAAL.'' [42] NERC states that it would include this data in an informational filing, with the commitment to work with Commission staff to analyze the data.

29. EEI, Indicated RTOs, NYISO, WAPA, APS, Duke, Tri-State, Powerex and BPA support the Commission's proposed informational filing. While supporting the proposed informational filing, EEI believes that the Reliability Standard ''will support stronger management of interconnection frequency.'' [43] Indicated RTOs assert that ''the trend in manual Time Error Correction is a better indicator of unscheduled flows. Operating limit violations resulting from unscheduled power flows and the trend in Time Error Correction will enable the Commission to evaluate the severity of any issues, and NERC and/or its operating committees routinely collect that information.'' [44]

30. NYISO, Tri-State, BPA and Powerex, while supporting the Commission's proposal, urge that the Commission require NERC to provide more data in the informational filing than described in the NOPR. NYISO states that NERC should provide ACE and Balancing Authority ACE Limit values for the SOL/IROL violations associated with unscheduled power flows or inadvertent interchange. BPA asserts that NERC should examine all unscheduled power flows resulting from the implementation of the Balancing Authority ACE Limit, not just those related to SOL/IROL violations. BPA further states that NERC should be required to conduct an analysis every

[34] NOPR, 149 FERC ¶ 61,139 at P 20 (citing NERC Petition, Ex. G (Summary of Development History and Complete Record of Development), Consideration of Comments, April 2013 at 43).

[35] *Id.*, Ex. G, Consideration of Comments, at 77.

[36] NOPR, 149 FERC ¶ 61,139 at P 21.

[37] *Id.* P 22.

[38] *Id.* P 23.

[39] NERC Comments at 6.

[40] *Id.* at 8.

[41] *Id.*

[42] *Id.* at 8–9.

[43] EEI Comments at 3–4.

[44] Indicated RTOs Comments at 5–6.

six months for the initial two year implementation period, including an examination of loss of supply events and their impact on frequency recovery.[45]

31. BPA states that the proposed definition of ''Reporting ACE'' should be revised to include the ATEC upper payback limit term ''Lmax'' and the bounds of that upper payback limit for I_{ATEC}. BPA notes that, while incorporating the WECC regional variance contained in currently effective Reliability Standard BAL–001–1 may have been NERC's intent, this cannot be accomplished without including the ''Lmax'' upper payback limit and the bounds of that upper payback limit in the NERC Glossary. BPA asserts that without this language in the definition, the ATEC payback does not have an upper bound, which could cause some significant unscheduled flows in the interconnection, because a balancing authority with a large primary inadvertent accumulation could pay most of it off within a three hour period.

32. While supporting the objective of Reliability Standard BAL–001–2, Powerex expresses concern that ''the 'inadvertent interchange' permitted by the modified standard will have a material, adverse impact on the western transmission markets subject to the Commission's jurisdiction . . . [and] Powerex believes that features of the proposed standard could be used to harm competition to the detriment of both transmission customers and system reliability.'' [46] Powerex argues that the Balancing Authority ACE Limit ''creates opportunities for commercially-interested [balancing authorities] to deliberately reduce their control of imbalances, effectively leaning on the grid to balance their systems. Such activity creates unscheduled flows on adjacent systems that can inequitably and inefficiently curtail the transmission capacity available to the transmission customers that have paid to use the transmission system.'' [47]

33. Powerex urges the Commission to ''take additional steps to ensure that implementation of the BAAL requirement does not thwart the provision of open access transmission service in accordance with Commission policies.'' [48] Specifically, Powerex states that the Commission should ''direct NERC to supplement its petition with information regarding any rules or requirements that may be in place to protect against potential curtailments of transmission customers due to unscheduled flows associated with BAAL ACEs.'' [49] Additionally, Powerex asserts that NERC's informational filing should describe instances in which unscheduled flows associated with the Balancing Authority ACE Limit required curtailment of transmission customers or other mitigation measures, and that this information should be provided every six months during the initial two year implementation period. Powerex also asks the Commission to ''provide guidance concerning the creation of deliberate [balancing authority] imbalances,'' require balancing authorities to disclose ACE and Balancing Authority ACE Limit information, and direct NERC to implement safeguards to ensure that balancing authorities reduce their ACEs before the curtailment of transmission customers.[50] Tri-State agrees with Powerex's comments.

34. EEI, Indicated RTOs and Duke suggest limiting the informational filing to the Western Interconnection. Indicated RTOs state that ''there has been a decline in the number of time error corrections in the Eastern Interconnection during the course of the field trial. These outcomes suggest that BAL–001–2 works as intended, and does not trigger issue with respect to inadvertent interchange, at least in the Eastern Interconnection.'' [51] EEI asserts that unscheduled power flows and inadvertent interchange ''have not been an issue within the Eastern Interconnection Field Trial, which has been in place now for nearly ten years. During this trial, approximately two-thirds of the Eastern Interconnection operated under the BAAL measure without issue. Therefore, EEI does not envision problems arising.'' [52] Similarly, Duke notes that the Field Trial Report specifically states that unscheduled power flows were not cited as problems within the Eastern Interconnection.[53]

35. NaturEner addresses the time component of the Balancing Authority ACE Limit, an issue not raised in the NOPR. NaturEner states that the 30 consecutive clock-minute limitation on the time during which a balancing authority's Reporting ACE can exceed its Balancing Authority ACE Limit should be extended to 60 consecutive clock-minutes. NaturEner asserts that the 30 minute time period provides insufficient time for a balancing authority to use market mechanisms to resolve imbalance events.[54] Further, NaturEner states that if Reliability Standard BAL–001–2 is approved in its current form, the Commission should ''include severe loss of wind events as qualifying events under BAL–002, thereby qualifying such events as allowable contingency reserve events under which contingency reserves may be called upon.'' [55]

Commission Determination

36. The Commission adopts the NOPR proposal regarding NERC's submission of an informational filing. We determine that the field trial NERC conducted for Reliability Standard BAL–001–2 raised sufficient concerns regarding unscheduled power flows and inadvertent interchange to warrant NERC's continued monitoring and submission of an informational filing 90 days after the end of the two-year period following implementation, as proposed in the NOPR. Further, we find that the informational filing should encompass both the Western and Eastern Interconnections, as there were concerns about possible increases of SOL/IROL exceedances in both Interconnections.[56] EEI supports limiting the informational filing to the Western Interconnection, stating that the Balancing Authority ACE Limit has ''been extensively used [in the Eastern Interconnection] for many years without issue.'' [57] However, the Commission believes that including both Interconnections is reasonable, because less than 20 percent of balancing authorities in the Eastern Interconnection were in the field trial.[58]

37. We are not persuaded by NERC's objection to the informational filing, that the field trial ''produced no conclusive results that large ACE swings are correlated with unscheduled power flow and Inadvertent Interchange causing SOL/IROL exceedances.'' [59] While the field trial may not have been ''conclusive,'' the information in the report indicates the possibility of a

[45] BPA Comments at 7.

[46] Powerex Comments at 7.

[47] *Id.* at 8.

[48] *Id.* at 9.

[49] *Id.* at 22.

[50] Powerex Comments at 24–29.

[51] Indicated RTOs Comments at 5.

[52] EEI Comments at 4 (citing Field Trial Report at 13).

[53] Duke Comments at 4 (citing Field Trial Report at 13).

[54] NaturEner Comments at 1.

[55] *Id.* at 2–3.

[56] NYISO supports the inclusion of the Eastern Interconnection within the scope of the information filing. NYISO described the fundamental concern that ''BAL–001–2 will allow balancing authorities to have a very large deviation from an Area Control Error (''ACE'')—and potentially negatively affect reliability—yet still be compliant with the dynamic values of the [Balancing Authority ACE Limits calculated pursuant to the proposed Reliability Standard.'' NYISO Comments at 1.

[57] EEI Comments at 1–2.

[58] Twenty-seven balancing authorities participated in the Western Interconnection field trial and eleven in the Eastern Interconnection. Field Trial Report at 11, 14.

[59] NERC Comments at 8.

correlation between large ACE swings and unscheduled power flows that warrant further study and analysis. Thus, we agree with the commenters who observed that the field trial demonstrated clear potential for the Balancing Authority ACE Limit to cause unscheduled power flows and inadvertent interchange that could lead to SOL/IROL problems.[60] While the Field Trial Report suggests that unscheduled flow events in the Western Interconnection may have occurred due to a number of factors, the Report does not eliminate large ACE swings as the cause.[61] Accordingly, we conclude that the matter warrants further study and analysis, as directed.

38. We acknowledge NERC's commitment to take a ''first step'' to address the Commission's concerns by providing baseline data, including SOL/IROL exceedances where a balancing authority's ACE was within its Balancing Authority ACE Limit. However, we agree with those commenters who urge the Commission to require NERC to provide more data than described in the NOPR. Therefore, we direct NERC to make an informational filing 90 days after the end of the two-year period following implementation that includes an analysis of data (all relevant events or a representative sample) on whether experience with the Balancing Authority ACE Limit in the first two years after approval has seen ACE swings and unscheduled power flows or inadvertent interchange that could cause SOL/IROL exceedances. However, if it is evident that during this two-year period the issues discussed above are creating SOL/IROL exceedances NERC should provide that information to the Commission, together with appropriate recommendations for mitigation, as this information becomes available. Further, NERC should also make the underlying data available to Commission staff upon request. Regarding BPA's concerns about the interplay of Reliability Standards BAL–001–2 and BAL–002–1, the Commission believes those concerns are best addressed if and when NERC files with the Commission proposed changes to Reliability Standard BAL–002–1. However, we expect NERC to retain the data pursuant to the analysis directed above so that it will be available, if needed, to examine the effect of Reliability Standard BAL–002–1 in relation to the Balancing Authority ACE Limit in the future.[62]

39. Based on the record before us, the Commission is not persuaded by Powerex's assertion that Reliability Standard BAL–001–2 allows inadvertent interchange that ''will have a material, adverse impact on the western transmission markets.'' [63] Further, there is no support in the record for Powerex's claim that there is evidence that during the field trial market participants seized ''opportunities . . . to deliberately reduce their control of imbalances, effectively leaning on their systems . . . resulting in an increase in unscheduled flows and degradation of transmission service in the region.'' [64] Powerex's broad assertions lack factual support in the record of this proceeding and are largely speculative.

40. We also note that Powerex presented an analysis of the impact of the Balancing Authority ACE Limit on unscheduled flow on the California Oregon Intertie to WECC's Unscheduled Flow Administrative Subcommittee. The WECC staff assessment of Powerex's analysis concluded that ''[t]he results of the Powerex analysis are valid only within the assumptions they have made, but based upon actual path flow data we believe the assumptions are incorrect and lead to large overestimations of the RBC (Balancing Authority ACE Limit) impact on Unscheduled Flow.'' [65] Powerex's reliance on the increase in e-tag curtailments across Path 36 (''TOT3'' in eastern Wyoming and Colorado) noted in the WECC Performance Work Group's December 2011 Quarterly Report on the RBC Field Trial as demonstrating that its concerns are ''neither speculative or theoretical'' is similarly unpersuasive.[66] The existence of e-tag curtailments during the field trial does not establish a causal connection with the Balancing Authority ACE Limit, because other factors, such as outages at the San Onofre Nuclear Generating Station unit in California; poor hydro conditions in Northern California; and other outages impacting energy import to California may have contributed to the curtailments. However, this uncertainty reinforces the need for the informational filing and additional study directed herein.

41. We determine that Powerex's concerns about the possible adverse impacts from Reliability Standard BAL–001–2 on reliability, as well as competition and transmission markets, are unpersuasive. While expressing concern about the reliability risks associated with implementing Reliability Standard BAL–001–2, Powerex acknowledges that the extent to which the reliability risks it describes ''will materialize remains to be seen.'' [67] Instead, we agree with NERC that ''[t]he field trial report finds that the results to date demonstrate that the correlation between Requirements R1 and R2 of Reliability Standard BAL–001–2 drive corrective actions to support Interconnection frequency and reliability.'' [68] With respect to Powerex's concerns about the possibility that ''gaps'' in Reliability Standard BAL–001–2 could be ''exploited to the detriment of transmission customers,'' we encourage Powerex to engage in the ongoing monitoring effort and bring any specific instances of deliberate misconduct to the Commission's attention if they occur.[69]

42. We do not adopt NaturEner's proposal that the 30 consecutive clock-minute time component should be extended to no less than 60 consecutive clock-minutes to allow the use of market mechanisms to address imbalance events. We note that in the Technical Conclusion section of the Field Trial Report the standard drafting team concluded that ''[t]he selection of 30 consecutive clock minutes is appropriate and actually improves reliability.'' [70] This conclusion is supported in the Field Trial Report by an adequate justification for the 30 consecutive clock-minute time period:

> [S]imilar to the approach taken to address an IROL where operators are provided 30 minutes to assess options for mitigation, the team chose to use the more conservative limit of 30 minute, well within the risk-based criteria of the next resource loss, while also providing appropriate time for the operator to assess the current situation and take corrective actions as needed. Actual experience operating under the proposed standards has met with the support of all participating Real-time system operators.[71]

[60] Tri-State Comments at 5, APS Comments at 3, EEI Comments at 4, Duke Energy Comments at 3–4, WAPA Comments at 3–4, Powerex Comments at 7, NYISO Comments at 1–2 and BPA Comments at 7–8.

[61] NERC Field Trial Report at 16–17, 20.

[62] We leave it to NERC's discretion whether to include in the informational filing time error correction data, as suggested by the Indicated RTOs. (*See* Indicated RTOs Comments at 5–6.)

[63] Powerex Comments at 7.

[64] *Id.* at 8.

[65] NERC May 9, 2014 Supplemental Filing at 5, n.8 (citing Reliability-based Control Field Trial Report presented at January 2013 WECC Board of Directors meeting at 32) (*available at: https://www.wecc.biz/Administrative/Board%20Packet%20January%2023%202013.pdf.*)

[66] Powerex Comments at 17.

[67] *Id.* at 20.

[68] Field Trial Report at 1.

[69] Powerex Comments at 9.

[70] Field Trial Report at 19.

[71] *Id.* The Commission notes that in accordance with Reliability Standard IRO–009–1 Requirement R2 and the definition for Interconnection Reliability Operating Limit Tv in the NERC Glossary, the 30 minute period is provided for operators to assess and implement options for mitigation of an IROL.

In light of this justification and our directive to NERC to monitor the implementation of Reliability Standard BAL–001–2 and submit an informational filing, we believe that NaturEner's request for annual reviews of the 30 consecutive clock-minute time component is unnecessary.[72]

43. The Commission is persuaded by BPA's comments that a revision to the definition of Reporting ACE is warranted. In its petition, NERC states that currently-effective Reliability Standard BAL–001–1 includes a WECC regional variance which has been incorporated into the continent-wide Reliability Standard BAL–001–2 through the definition of Reporting ACE. However the definition of Reporting ACE does not include the ''Lmax'' upper payback limit and the bounds of that upper payback limit in the definition. Accordingly, the Commission directs NERC to revise the definition of Reporting ACE to include the ''Lmax'' upper payback limit and the bounds of that upper payback limit prior to the effective date of Reliability Standard BAL–001–1.

B. Need for a Regional Variance

NOPR

44. In the NOPR, the Commission sought comment on whether a regional variance would be necessary for those regions that experienced adverse impacts from inadvertent interchange during the field trial. The NOPR observed that the Western Interconnection applies a limit of four times a balancing authority's L_{10} to limit ACE deviations from balancing authority flows that negatively impact the transmission system.

Comments

45. WAPA and BPA state that the Commission should direct NERC to include a regional variance to establish limits to the Balancing Authority ACE Limits for balancing authorities in the WECC before BAL–001–2 is implemented in the Western Interconnection. BPA states that currently in the Western Interconnection a limit of 4 times L_{10} is used, due to concerns with unscheduled flow. BPA states that WECC should continue to use this limit until a new limit is established.[73] Rather than a regional variance, Indicated RTOs state that a regional standard, or adjustments allowed by Reliability Standard BAL–001–2 to address inadvertent interchange, would be preferable.

Commission Determination

46. The Commission is not persuaded that there is a need for a regional variance for Reliability Standard BAL–001–2 for use in the Western Interconnection. NERC stated in its NOPR comments that NERC will develop a regional variance, or a modification to Reliability Standard BAL–001–2, should NERC's analysis following the implementation of the Reliability Standard confirm the need for either measure.[74] We determine that NERC has described a sound approach for addressing this issue.

V. Information Collection Statement

47. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[75] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information displays a valid OMB control number.

48. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the Paper work Reduction Act. The NOPR solicited comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. No comments were received.

49. This final rule approves revisions to Reliability Standard BAL–001–2. NERC states in its petition that the Reliability Standard defines a new term: Balancing Authority ACE Limit, which is unique for each balancing authority and provides dynamic limits for a balancing authority's ACE value as a function of the Interconnection frequency.[76] NERC states that the Reliability Standard improves reliability by adding a frequency component to the measurement of a balancing authority's ACE, and allows for the formation of ''Regulation Reserve Sharing Groups.'' NERC's Reliability Standard requires a balancing authority to balance its resources and demand in real-time so that the clock-minute average of its ACE does not exceed its Balancing Authority ACE Limit for more than 30 consecutive clock-minutes. Furthermore, NERC states that Reliability Standard BAL–001–2 and accompanying definitions include the benefits of the Automatic Time Error Correction equation in the WECC-specific regional variance in Reliability Standard BAL–001–1.[77] The Reliability Standard and related reporting requirements are applicable to balancing authorities and regulation reserve sharing groups.

50. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC Compliance Registry as of October 17, 2014. According to the NERC Compliance Registry, there are 71 balancing authorities in the Eastern Interconnection, 34 balancing authorities in the Western Interconnection and one balancing authority in the Electric Reliability Council of Texas (ERCOT). The Commission bases individual burden estimates on the time needed for balancing authorities to develop tools needed to facilitate reporting that is required in the Reliability Standard. These burden estimates are consistent with estimates for similar tasks in other Commission-approved Reliability Standards. The following estimates relate to the requirements for this final rule in Docket No. RM14–10–000.

[72] Regarding NaturEner's comment that the Commission should require that ''severe loss of wind events'' be considered Qualifying Events under BAL–002, we decline to do so in this rulemaking. NaturEner Comments at 9. NaturEner may raise its concern in NERC's current project to revise Reliability Standard BAL–002.

[73] BPA Comments at 8. BPA states that NERC will need to retain the definition of L_{10} after currently-effective Reliability Standard BAL–001–1 is retired. *Id.*

[74] NERC Comments at 9.

[75] 5 CFR 1320.11.

[76] NERC Petition at 12.

[77] *Id.* at 2.

FERC–725R, MODIFICATIONS IN FINAL RULE IN RM14–10–000 FINAL RULE [78]

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2) = (3)	Average burden & cost per response (4)	Total annual burden hours & total annual cost [79] (3)*(4) = (5)	Cost per respondent ($) (5) ÷ (1)
BA/RRSG: [80] Update and Maintain Energy Management Systems.	106	1	106	8 hours per response. $522 (8 × $65.34).	848 $55,332	$522
BA: Record Retention [81]	106	1	106	4 $118	424 $12,508	$118
Total			212	640	1,272 $67,840	$640

Title: FERC–725R Mandatory Reliability Standards: Resource and Demand Balancing (BAL) Reliability Standards.

Action: Proposed revision.

OMB Control No.: 1902–0268.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This Final Rule approves Reliability Standard BAL–001–2 pertaining to requiring balancing authorities to operate such that its clock-minute average reporting ACE does not exceed its clock-minute Balancing Authority ACE Limits for more than 30 consecutive clock-minutes. Requirement R2 provides each balancing authority a dynamic ACE limit that is a function of Interconnection frequency. Reliability Standard BAL–001–2 will provide dynamic limits that are balancing authority and Interconnection-specific. In addition, these ACE limits are based on identified Interconnection frequency limits to ensure the Interconnection returns to a reliable state when an individual balancing authority's ACE or Interconnection frequency deviation contributes undue risk to the Interconnection.

Internal Review: The Commission has reviewed Reliability Standard BAL–001–2 and has determined that it is necessary to implement section 215 of the FPA. The requirements of Reliability Standard BAL–001–2 should conform to the Commission's expectation for generation and demand balance throughout the Eastern and Western Interconnections as well as within the ERCOT Region.

51. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

Comments on the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include FERC–725R and Docket Number RM14–10–000.

VI. Environmental Analysis

52. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[82] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[83] The actions here fall within this categorical exclusion in the Commission's regulations.

VII. Regulatory Flexibility Act Certification

53. The Regulatory Flexibility Act of 1980 (RFA) [84] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The NOPR stated that, as shown in the information collection section, Reliability Standard Reliability Standard BAL–001–2 applies to 106 entities. Comparison of the applicable entities with the Commission's small business data indicates that approximately 23 are small business entities.[85] Of these, the Commission estimates that approximately five percent, or one of these small entities, will be affected by the new requirements of Reliability Standard BAL–001–2.

54. In the NOPR, the Commission estimated that the small entities that will be affected by proposed Reliability Standard BAL–001–2 will incur one-time compliance cost up to $109,180 (*i.e.,* the cost of updating and maintaining energy management systems), resulting in cost of approximately $1,030 per balancing authority and/or Regulation Reserve Sharing Groups. The Commission has revised the cost for small entities that will be affected by Reliability Standard BAL–001–2 and estimates that small entities will incur a one-time compliance cost up to $55,332 (*i.e.,* the cost of updating and maintaining energy management systems), resulting in cost of approximately $522 per balancing

[78] Reliability Standard BAL–001–2 applies to balancing authorities and regulation reserve sharing groups. However, the burden associated with the balancing authority complying with Requirement R1 is not included within this table because the Commission accounted for it under Commission-approved Reliability Standards BAL–001–1.

[79] The estimated hourly cost (salary plus benefits) of $98.17 is based on Bureau of Labor Statistics (BLS) information of May 2013 (*and available at: http://www.bls.gov/oes/current/naics2_22.htm*) and is the average for an electrical engineer (NAICS 17–2071; $65.34/hour) and a lawyer (NAICS 23–1011; $128.76).

[80] BA = Balancing Authority; RRSG = Regulation Reserve Sharing Group.

[81] The $29.52/hour estimate for salary plus benefits is based on the BLS data of May 2013 for a file clerk (NAICS 43–4071).

[82] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[83] 18 CFR 380.4(a)(2)(ii).

[84] 5 U.S.C. 601–612.

[85] This figure constitutes 21.4 percent of the total number of affected entities.

authority and/or Regulation Reserve Sharing Group. These costs represent an estimate of the costs a small entity could incur if the entity is identified as an applicable entity. The Commission does not consider the estimated cost per small entity to have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments regarding this aspect of the NOPR. Based on the above, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VIII. Document Availability

55. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

56. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

57. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

58. This Final Rule is effective June 22, 2015. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[86] The Commission will submit the final rule to both houses of Congress and to the General Accountability Office.

By the Commission.
Issued: April 16, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–09227 Filed 4–21–15; 8:45 am]

BILLING CODE 6717–01–P

[86] *See* 5 U.S.C. 804(2).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 16

[Docket No. FDA–2013–N–0365]

Administrative Detention of Drugs Intended for Human or Animal Use; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule entitled ''Administrative Detention of Drugs Intended for Human or Animal Use'' that appeared in the **Federal Register** of May 29, 2014 (79 FR 30716). The rule sets forth the procedures for detention of drugs believed to be adulterated or misbranded and amends the scope of FDA's part 16 regulatory hearing procedures to include the administrative detention of drugs. The rule published with incorrect statements regarding the impact of the final rule on small entities. This document corrects those errors.

DATES: Effective April 22, 2015 and applicable beginning June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Emily Leongini, Office of Regulatory Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4339, Silver Spring, MD 20993–0002, 301–796–5300, *FDASIAImplementationORA@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 29, 2014, in FR Doc. 2014–12458, the following corrections are made:

1. On page 30718, in the third column, under ''Analysis of Impacts (Summary of the Regulatory Impact Analysis),'' the last sentence of the second paragraph is corrected to read: ''FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.''

2. On page 30719, in the first column, the third sentence of the last full paragraph is corrected to read: ''We certify that this final rule will not have a significant economic impact on a substantial number of small entities.''

Dated: April 16, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–09301 Filed 4–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810–AB19

[Docket ID ED–2014–OESE–0050]

Indian Education Discretionary Grants Program; Professional Development Program and Demonstration Grants for Indian Children Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations that govern the Professional Development program and the Demonstration Grants for Indian Children program (Demonstration Grants program), authorized under title VII of the Elementary and Secondary Act of 1965, as amended (ESEA). The regulations govern the grant application process for new awards for each program for the next fiscal year in which competitions are conducted for that program and subsequent years. For the Professional Development program, the regulations enhance the project design and quality of services to meet the objectives of the program; establish post-award requirements; and govern the payback process for grants in existence on the date these regulations become effective. For the Demonstration Grants program, the regulations add new priorities, including a priority for native youth community projects (NYCPs), and new application requirements.

DATES: These regulations are effective May 22, 2015.

FOR FURTHER INFORMATION CONTACT: John Cheek, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W207, Washington, DC 20202–6135. Telephone: (202) 401–0274 or by email: *john.cheek@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: On December 3, 2014, the Secretary published a notice of proposed rulemaking (NPRM) for Indian Education Discretionary Grant Programs; Professional Development Program and Demonstration Grants for Indian Children Program in the **Federal Register** (79 FR 71930–71947).

In the preamble of the NPRM, we discussed on pages 71931 through 71938 the major changes proposed in that document to improve the Professional Development program and the Demonstration Grants program. These included the following:

- Amending § 263.3 to change the definitions of ''Indian organization,'' ''induction services,'' and ''professional development;'' and to remove the term, ''undergraduate degree.''
- Amending § 263.4 to provide greater detail about the kinds of training costs that may be covered under the Professional Development program.
- Amending § 263.5 to revise the competitive preference priorities for tribes, Indian organizations, and Indian institutions of higher education (IHE); to amend pre-service priorities to include project-specific goals; and to require applicants to submit a letter of support from an entity in the applicant's service area agreeing to consider program graduates for qualifying employment.
- Amending § 263.6 to remove fixed points assigned to each criterion; to include in the regulations only program-specific factors and to eliminate the factors that are separately codified in 34 CFR 75.210; and to revise the selection criteria.
- Amending § 263.7 to specify that participants who do not return from a leave of absence by the end of the grant period will be considered not to have completed the program for the purposes of project performance reporting.
- Amending § 263.8 to consolidate all of the regulatory provisions that govern the payback process, currently in § 263.8 through § 263.10, into § 263.8.
- Amending § 263.9 to specify the two types of deferral that are available: Education and military service; to add a provision for military deferrals; and to remove the provision stating that payback begins within six months of program completion.
- Amending § 263.10 to eliminate the work-related payback plan and the requirement that eligible employment must be continuous.
- Amending § 263.11 to add a requirement for grantees to conduct a payback meeting with each participant; to require that grantees report participant and payback information to the U.S. Department of Education (Department); to require the grantee to obtain a signed payback agreement from each participant and submit it to the Department; to require that grantees assist participants in finding qualifying employment after completing the program; and to clarify that the hiring preference provisions of the Indian Self-Determination and Education Assistance Act apply to this program.
- Amending § 263.12 to add to the criteria we use in making continuation awards; and to clarify that we may reduce continuation awards based on a grantee's failure to meet project goals.
- Amending § 263.20 to modify the definition of ''Indian organization''; and to add a definition of ''native youth community project.''
- Amending § 263.21 to remove the set number of competitive preference priority points; to revise the priority for applications submitted by Indian entities in paragraph (b), and to propose in paragraph (c) five new priorities, including one for native youth community projects.
- Adding § 263.22 to include application requirements for the Demonstration Grants program.
- Adding § 263.23 to clarify that the hiring preference provisions of the Indian Self-Determination and Education Act apply to this program.

These final regulations contain changes from the NPRM, which are fully explained in the Analysis of Comments and Changes section of this document.

Public Comment: In response to our invitation in the NPRM, 15 parties submitted comments on the proposed regulations. We discuss substantive issues under the section number of the item to which they pertain. Several comments did not pertain to a specific section of the proposed regulations. We discuss these comments based on the general topic area. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

General Comments

Comments: Several commenters expressed strong support for the changes in the NPRM generally. One commenter requested that the Secretary issue a tribal consultation policy.

Discussion: We appreciate the support for the changes to the Professional Development program and the Demonstration Grants program. The tribal consultation policy is outside the scope of this rulemaking. However, we are in the process of developing an updated tribal consultation policy. During this process, we are consulting with tribes, in accordance with the requirements of Executive Order 13175. We expect to publish this revised policy during FY 2015.

Changes: None.

Professional Development Program

General

Comments: Several commenters expressed support for the Professional Development program, and gave examples of impressive results from past grants, which have expanded the number of American Indian teachers in tribal communities.

Discussion: We appreciate the support for this program.

Changes: None.

Comment: One commenter asked that we ensure active collaboration among grantees, tribes, and local schools to ensure that the training provided under the grants meets the educational needs of local communities.

Discussion: We expect that the competitive priority for consortia that include a tribal entity (§ 263.5(a)), the new priority for applicants with a letter of support from a school district or other entity that will consider hiring graduates of this project (§ 263.5(b)(3)), and the new selection criteria for need that relates to employment opportunities and shortages in certain fields (§ 263.6(a)), will all contribute to the commenter's expressed goal.

Changes: None.

Eligible Applicants (§ 263.2)

Comments: Several commenters objected to the requirement that a tribal applicant (tribe or Indian organization) be required to apply in consortium with an IHE. One commenter asked that we allow a period of time after funding in order for a grantee to obtain a partner IHE. Another commenter asked that we define ''in consortium with an institution of higher education,'' in terms of the level of commitment required from the IHE, and suggested we permit an Indian organization to apply as a sole applicant without an IHE. This commenter also asked whether an Indian organization can apply with more than one IHE, and if so, what is required to demonstrate the partnerships.

Discussion: The statute requires that any eligible entity that is not an IHE (other than a Department of the Interior Bureau of Indian Education (BIE)-funded school) must apply in consortium with an IHE (section 7122 of the ESEA), and we cannot change that statutory requirement. That eligibility requirement also precludes us from

permitting grantees to obtain a partner IHE after grants are made; for entities required to be in a consortium with an IHE in order to be eligible for a grant, the application must be from the consortium.

With regard to the level of commitment required from the IHE, we do not believe it is necessary to prescribe the details of an arrangement with an IHE. To demonstrate an eligible consortium, the applicant must submit a consortium agreement that complies with the requirements of 34 CFR 75.127–129, including the requirement that the agreement detail the activities to be performed by each member, and bind each member to every statement and assurance in the application. The IHE is the entity that will provide the actual education and training to Indian individuals to enable those individuals to teach in or administer schools serving Indians. By receiving a federally-funded education, these individuals do not need to take on loans and other financial obligations that can be onerous and can often dissuade students from pursuing a career in education. The level of commitment required by the IHE is large; the IHE educates and trains the participants, granting them the degree needed to teach or administer in accordance with State requirements. Often the IHE is the entity that recruits the students, assists with job placement, provides support services during the first year of a participant's teaching or administrative job, and complies with the grantee reporting requirements. However, an eligible entity partner such as an Indian organization or other nonprofit could provide these required support services under the Professional Development grant. It is possible for an eligible entity to apply in consortium with more than one IHE.

Changes: None.

Comment: One commenter asked that eligibility for these grants be expanded to include national non-profit organizations.

Discussion: The eligibility requirements are statutory (see section 7122 of the ESEA) and we cannot expand eligibility beyond the statutory authority.

Changes: None.

Comment: One commenter asked whether two local educational agencies (LEAs) and a particular land grant college that does not target Native students could serve as partners for the Professional Development program under the proposed changes. The commenter also asked whether a regional education association (REA) is eligible to apply.

Discussion: Any number of eligible entities, in consortium with an eligible IHE, can join together to apply for a Professional Development grant. The IHE must be accredited to provide the coursework and level of degree required by the project, as specified in § 263.2(c). The IHE does not have to target or serve primarily Native students; however, in order to receive the priority for an application submitted by an Indian entity, the IHE must be an Indian IHE that meets the definition in § 263.3. A consortium applicant must submit a consortium agreement that complies with the requirements of 34 CFR 75.127–129. With regard to the eligibility of an REA, that entity would need to meet the definition of one of the eligible entities: IHE, State educational agency (SEA), LEA, Indian tribe or Indian organization, or BIE-funded school, and would need to partner with an eligible IHE.

Changes: None.

Definitions (§ 263.3)

Comments: Several commenters supported the broader definition of ''Indian organization'' that provides eligibility to organizations that have education as one of their purposes, rather than the sole purpose. One commenter asked that we ensure that the expansion of the definition would not preclude existing grantees from receiving funds.

Discussion: We agree that the broader definition better serves the purposes of this program. The change in definition will not affect existing grantees, which will continue to be eligible for continuation awards. It also will not affect past grantees that qualified under the more narrow definition and will continue to be eligible if they apply for a new grant.

Changes: None.

Comments: A few commenters asked that the definition of ''Indian institution of higher education'' be expanded to include Native American Serving Non-Tribal Institutions (NASNTIs).

Discussion: ''Indian IHE'' is currently defined in § 263.3 of these regulations, and includes only tribal colleges and universities. NASNTIs are defined in Title III, Parts A and F, of the Higher Education Act, to mean IHEs that are not tribal colleges or universities, but that meet certain eligibility requirements, including a minimum number of enrolled students who are Native American. We decline to change the definition of ''Indian IHE'' for ESEA because, while the term ''Indian IHE'' is not defined in the ESEA, we believe that the plain meaning of the statutory term is limited to tribal colleges and universities, as reflected in our regulations.

Changes: None.

Priorities (§ 263.5)

Comments: Several commenters asked that the priority for Indian entities in § 263.5(a) be expanded to include NASNTIs. These commenters stated that NASNTIs are often located in close proximity to tribal communities, and gave examples, including an institution that was founded in response to local tribal needs for qualified teachers in reservation schools, and another institution that educates and trains large numbers of native students to serve as teachers on a reservation. One commenter asked that the priority include NASNTIs that partner with a tribal college, for example, when students feed from a two-year tribal college into a four-year NASNTI. Another commenter requested that the priority include all IHEs that predominantly serve Native students.

Discussion: We agree with the commenter that many NASNTIs fulfill an important role in educating Native students to serve as teachers in tribal communities. However, Congress specifically identified in section 7143 of the ESEA the group of entities to which we must give priority (Indian tribes, Indian organizations, and Indian IHEs). This group does not include NANSTIs, and we decline to expand the priority for Indian entities to include NASNTIs. Furthermore, because non-Indian IHEs, including those designated as NASNTI, received almost half of all awards under this grant program over the past three years, we decline to add an additional priority for NASNTIs.

Changes: None.

Comments: Several commenters objected to the consolidation of the two existing priorities (in current § 263.5(a) and (b)) in proposed § 263.5(a)); previously, one priority was for applications from any tribal entity, and one priority was for a consortium that includes an Indian IHE as fiscal agent.

Discussion: We agree with the comments about the difficulties caused by our proposal to combine the two existing priorities into one. The statute requires that we give priority to applications from all three types of tribal entities: Tribes, Indian organizations, and Indian IHEs. As proposed, the combined priority could result in a tribal entity that is part of a consortium, but is not the fiscal agent or lead applicant, not receiving a preference. However, when an Indian IHE or other Indian entity is the lead applicant in a consortium, that entity has more influence in directing and

administering the grant. Therefore we are revising the regulations to create two separate priorities rather than the proposed combined one.

The first priority, in § 263.5(a)(1), gives preference to an Indian entity—tribe, organization, or IHE—either applying alone, or in a consortium for which it serves as the lead applicant. The second priority, in § 263.5(a)(2), is for an Indian entity that is part of a consortium but is not the lead applicant. This will satisfy the statutory requirement to give priority to the three types of Indian entities, while enabling us to provide a competitive preference to applications for which the Indian entity is the sole or lead applicant. An applicant cannot receive competitive preference points under both of these priorities.

Changes: We have revised § 263.5(a) to create two separate competitive preference priorities. The first is for an Indian entity—tribe, organization, or IHE—either applying alone or as lead applicant in a consortium. The second is for an Indian entity that is part of a consortium but is not the lead applicant.

Comment: One commenter was concerned about the requirement that a consortium applicant would be eligible for the priority in proposed § 263.5(a) only if an Indian IHE leads the consortium as fiscal agent. The commenter stated that the high overhead costs of IHEs limit the funding delivered directly to the program, and that the requirement would limit flexibility for an entity that trains teachers and administrators by working with a variety of IHEs to provide the required coursework. This commenter suggested that, alternatively, an Indian organization should be able to serve as lead applicant or fiscal agent in a consortium, and be eligible for the priority.

Discussion: Our goal was to ensure that, in order to receive competitive preference points, a consortium would be led by an Indian entity. We agree with the commenter, however, that the proposed requirement that the lead of the consortium must be an IHE was too narrow. We agree that it is possible for an Indian organization to operate a Professional Development grant in consortium with an IHE, and for the Indian organization to be the actual lead entity for the project. The same is true for a tribe as lead applicant. The tribe or Indian organization would receive the grant and provide the funding to the IHE to pay for the cost of the participants' education. We agree that this could result in more direct funding for student training. Therefore, we are revising the priority in § 263.5(a)(1) to permit a consortium to receive a competitive preference if the lead applicant is an Indian tribe, Indian organization, or Indian IHE. Before awarding priority points, we will examine the proposed project and activities to ensure that the Indian entity will in fact be serving as lead entity for the project.

Changes: We have revised § 263.5(a)(1) to provide that a consortium may receive a competitive preference if the lead applicant is an Indian tribe, Indian organization, or Indian IHE.

Comment: None.

Discussion: During our internal review we reexamined the proposed requirement that the Indian entity leading a consortium must be the fiscal agent in order to receive priority points. While not common, we recognize that it is possible to have a fiscal agent that is not the lead applicant. Accordingly, in § 263.5(a)(1) we are revising the proposed requirement that an Indian entity be the ''fiscal agent,'' to instead require that the Indian entity be the lead applicant, which is the entity that receives the grant.

Changes: We have revised § 263.5(a) to change the preference for consortia in which the fiscal agent is an Indian entity, to consortia in which the lead applicant is an Indian entity.

Comments: Several commenters were generally concerned that the proposed priority in § 263.5(a) would prevent entities other than tribal entities from obtaining grants.

Discussion: Due to the confusion evident in some comments, we are clarifying that the priorities in § 263.5(a) for tribal entities are competitive preference priorities. We will not use those priorities as absolute priorities, but we will use them as competitive preference priorities in each year of a new competition. If they were absolute priorities, then a non-tribal IHE would not be eligible to receive a grant, which would be inconsistent with the statutory list of eligible entities. This is different from the priorities in § 263.5(b), which we can designate as absolute or competitive in any year, or can decline to use.

Changes: We have revised § 263.5(a) to clarify that the priorities for tribal entities are competitive preference priorities.

Comments: One commenter objected to removing the point values from the priorities for applications submitted by Indian entities, arguing that it would cause confusion for applicants and that applicants may not have timely information about eligibility requirements. Another commenter was opposed to removing the five-point priority for tribal colleges. Another commenter suggested that we rely upon letters of support to show collaboration but not assign preference points for partnerships.

Discussion: We removed the specific number of points from the priorities for Indian entities, including the five points for tribal colleges, so that we have the flexibility to assign more (or fewer) points in a particular grant competition. This will allow us to provide additional points as needed in any application year to ensure that tribal entities, including tribal colleges, are eligible to receive a competitive preference. We do not believe this will confuse applicants. For each year in which we have a competition for new awards, we will announce the points for the tribal entity preferences in the notice inviting applications. Typically the notice is published 60 days in advance of the application deadline.

With regard to the comment objecting to the awarding of competitive preference points for partnerships, eligible entities for this program include consortia, and we are required by statute to give priority to Indian entities; thus consortia that include such Indian entities will receive priority under revised § 263.5(a). An Indian IHE, however, that applies as the lead applicant in a consortium would receive no advantage, under § 263.5(a), over an Indian IHE that is the sole applicant, because both scenarios are included in § 263.5(a)(1) and would receive an equal number of competitive preference points. With respect to letters of support, § 263.5(b)(3) adds a new priority for applicants that include in their applications a letter of support from an entity, including a local school district, that agrees to consider program graduates for qualifying employment. We believe that such letters of support strengthen the likelihood that graduates will find employment in schools serving Indian students following their training.

Changes: None.

Comments: One commenter asked whether we are removing the absolute priority for pre-service training. Several commenters requested that we permit the use of funds to support and train Indian individuals in obtaining masters and doctoral degrees under the priorities in proposed § 263.5(b) for pre-service training for teachers and administrators.

Discussion: We have not removed the priority for pre-service training, and in any grant competition in which the Department uses this priority, we retain the discretion to designate that priority an absolute priority (see § 263.5(b)).

With regard to masters and doctoral degrees, funds under the Professional Development program can be used to support a student in obtaining any degree that is required by the State for the teaching or administrative position for which individuals are being trained. However, the focus of this program is on preparing teachers and administrators for elementary and secondary education. The current regulations include graduate degrees as part of the definitions of ''full-time student'' and ''pre-service training'' in § 263.3, and we have not changed those definitions. However, we are providing further clarification in the priorities for pre-service training for teachers and administrators by removing the references to bachelor's degrees for teachers and master's degrees for administrators so that a student pursuing a higher-level degree may be supported as a participant under this program if that degree is required for a specific position. However, because we interpret the statute to support only the preparation of teachers and administrators in elementary and secondary education, we are not expanding the scope of the program to include doctoral degrees for Indian students seeking employment in higher education.

Changes: We have revised the priorities for pre-service training in proposed §§ 263.5(b)(1) and (2) to remove the references to a ''bachelor's degree'' for pre-service teacher training, and, for administrator training, changing the reference from ''master's degree'' to ''graduate degree.''

Comments: None.

Discussion: During our internal review we analyzed the existing requirements in the priorities for pre-service teacher training and administrator training (in current § 263.5(c), proposed § 263.5(b)) and believe it would be helpful to clarify certain provisions. We are revising the regulation to make clear that the requirement that training be provided before the end of the award period applies to all three situations: An education degree, a subject-matter degree, and specialized training. We are removing the exception for a fifth year from the education degree provision because a review of funded projects shows that this exception is not necessary. We are also removing, in the provision on degrees in a subject area (new § 263.5(b)(1)(i)(B)), the reference to the requirement that training meet the requirements for full State certification or licensure, because it is redundant with the introductory language of that paragraph.

Changes: We have revised the priority for pre-service training for teachers in proposed § 263.5(b)(1) by moving the reference to earning a degree before the end of the award period from proposed § 263.5(b)(1)(i)(a) to the introductory language of final § 263.5(b)(1)(i), by removing the proposed exception for a fifth year from § 263.5(b)(1)(i)(A), and by removing the reference to the requirement that training meets the requirements for full State certification or licensure from proposed § 263.5(b)(1)(i)(B).

Selection Criteria (§ 263.6)

Comments: One commenter objected to the job market analysis element of the selection criterion for ''Need for Project'' in proposed § 263.6, and stated that this would increase the burden for applicants to search for and interpret market analysis data. The commenter also requested that appropriate market analysis Web site links be made available to applicants.

Discussion: Under the selection criterion ''Need for Project'' in § 263.6, we will evaluate the extent to which the proposed project will prepare personnel in specific fields, and the extent to which employment opportunities exist in the project's service area, with both elements to be demonstrated by a job market analysis. The purpose of a job market analysis is to determine whether there is a need for qualified education personnel to fill vacancies in teacher and administrator positions within the geographic region to be served. To conduct the job market analysis, applicants can use accessible data sources at the national, State and local level to determine current and future teacher and administrator shortages in selected fields. Because job market data are now generally available online, a market analysis would not increase an applicant's burden. We also note that prior applicants under the current regulations also addressed need for personnel, documenting education personnel shortages in the region to be served and designing their proposed programs accordingly.

Accessible resources for determining teacher shortages are available at the national level; however, applicants should rely on State and local sources for more accurate and timely data. We also note that this is an element of a selection criterion, not an application requirement, so it is optional for applicants to address, although we encourage all applicants to do so.

Changes: None.

Payback Requirements (§ 263.8)

Comments: Commenters supported the proposed regulations clarifying the payback requirements and procedures.

Discussion: We appreciate the support for these changes.

Changes: None.

Demonstration Grants Program

General

Comments: Several commenters were generally supportive of the proposed changes to the Demonstration Grants program regulations.

Discussion: We appreciate the support for the changes.

Changes: None.

Definitions (§ 263.20)

Comments: Several commenters addressed the proposed definition of ''Indian organization'' as it applies to both this program and the Professional Development program; it is the same definition for both programs.

Discussion: We address those comments under the discussion of Definitions for the Professional Development program (§ 263.3).

Changes: None.

Definition of Native Youth Community Project

Comments: Several commenters supported the proposed definition of ''Native Youth Community Project,'' and specifically the requirement that a community come together to address the adverse experiences affecting Indian children. However, several other commenters expressed concern that the requirement for a partnership among the specified entities could adversely affect the success of some applications. For example, one commenter was concerned that some applicants do not have readily available partner organizations, which would reduce the likelihood that such applicants would receive funding.

Discussion: We appreciate the support for encouraging partnerships among entities to more effectively address the complex barriers facing native youth. We believe that greater collaboration among the organizations increases the likelihood that an NYCP will improve the college and career readiness of Indian youth. Furthermore, we believe that proposed projects that demonstrate the existence of a partnership at the time of application are more likely to become strong, viable projects. Therefore, we disagree with the commenters who objected to the partnership requirement.

While we cannot ensure that partnerships and agreements formed in order to apply for a grant will stand the

test of time, we believe that an applicant with a formal partnership agreement will have a greater chance of success than an applicant with only letters of support. We expect that in ranking applications, reviewers will judge the quality of the partnerships presented in those application, based on the selection criteria. Moreover, a partnership that fails after being awarded a grant would not be able to show substantial progress in order to receive continuation funding.

Changes: None.

Comment: One commenter asked that we not give priority to applicants simply because of their geographic proximity to locally available and willing partners.

Discussion: We agree that if a community comes together to create an NYCP, that partnership should have the flexibility to include non-local partners. A tribe and school district may wish to engage with a national nonprofit organization that is skilled in addressing the focus of the local project, whether it is academic success, drug prevention, parental engagement in schools, or any other project focus. Therefore we are broadening part of the definition of NYCP; rather than requiring the applicant or a partner to show that it has the capacity to improve outcomes for Indian students, we are requiring the applicant or a partner to demonstrate that it has the capacity to improve outcomes that are relevant to the project focus. This allows an applicant to partner with a national organization that has demonstrated the capacity to improve outcomes that are relevant to the project focus, and not be limited to locally available and willing partners. There is a statutory application requirement that projects must be based either on scientific research or on an existing program that has been modified to be culturally appropriate for Indian students (see *§ 263.22(a)(3)*. Thus, an applicant that partners with an entity that has demonstrated success with non-Indian students, and proposes to use that entity's program model, will need to explain how it has modified that program to be culturally appropriate.

Changes: We have revised paragraph (6) of the definition of NYCP in § 263.20 to provide that an applicant or a partner must have demonstrated the capacity to improve outcomes that are relevant to the project focus.

Comment: One commenter requested that we ensure that States and local public schools actively participate and coordinate with tribal grantees.

Discussion: We are requiring that at least one tribe and at least one local school district be partners in a proposed project. We are not requiring State involvement, although States may be partners in a project. Because of the focus on local community-driven solutions, it would not be appropriate to require a State's involvement.

Changes: None.

Comments: Two commenters asked that we include tribal colleges in NYCP partnerships, and one asked that we include both tribal colleges and NASNTIs.

Discussion: Tribal colleges are eligible entities under the Demonstration Grants program, and nothing in the regulations precludes either a tribal college or a NASNTI from being a partner in an NYCP. Although we agree that a college or university could be a valuable partner in an NYCP, we decline to make tribal colleges or any other IHEs mandatory partners in NYCPs, because the focus of these projects is a local community area, and not all tribal communities have a college in the vicinity.

Changes: None.

Comments: We received several comments asking whether one NYCP can include multiple tribes. We also received additional comments expressing the concern that urban communities often include Indian youth from many different tribes, and that urban applicants might face unfair challenges in partnering with tribes or their tribal education agencies because of the distance between the tribes and the urban communities in which the Indian youth live and attend school. Another commenter expressed concern that a partnering tribe would refuse to serve youth from other tribes. Some commenters specifically requested that we eliminate the requirement that applicants form a partnership with a tribe. Another commenter asked whether one tribe can participate in more than one NYCP.

Discussion: Nothing in the definition of NYCP prohibits a project from including multiple tribes as partners. To meet the NYCP definition, applicants must identify and address significant barriers and needs within a local community. It is likely that in many areas, including urban areas, Indian youth and their families from many tribes live within a defined local community. Also, members of one tribe often live in several different communities. The entities responsible for Indian youth in the identified local community should partner with one another. We agree that certain NYCP applicants may need to partner with multiple tribes or their tribal education agencies in order to address the identified need in the local community. We are therefore clarifying in the final regulations that partnerships can include more than one tribe.

However, we disagree with the commenters that it is unfair to urban areas to require applicants to partner with one or more tribes. The NYCPs are intended to support the involvement of tribes in the education of Indian children, which is one of the goals of title VII of the ESEA. Each project must therefore include a partnership among a school district or BIE-funded school, a tribe or its education agency, and other organizations as necessary, to address the need identified by the project. The partnering entities must agree to serve the Indian youth living in the defined local community, regardless of their tribal membership.

With regard to whether one tribe can participate in more than one NYCP, nothing in the regulations prohibits such participation.

Changes: We have revised paragraph (5)(i) of the definition of NYCP in § 263.20 to include one or more tribes or their tribal education agencies.

Comment: One commenter objected to the requirement that NYCPs include a school district as a partner, arguing that this would lead to more bureaucracy and undue attention to the school district's own programs as opposed to those favored by a qualifying Indian organization.

Discussion: We believe that schools, tribes, and Indian organizations similarly value better outcomes for Indian youth, including academic achievement and readiness for postsecondary education and employment. The NYCPs are intended to leverage the resources and capacity currently spread among tribes, LEAs, BIE-funded schools, or other organizations, through a partnership to increase the likelihood of reaching these better outcomes. We believe that, especially for communities where most American Indian/Alaska Native (AI/AN) students attend the local public schools, the inclusion of the LEA in these projects is essential to the success of the projects.

Changes: None.

Comment: One commenter suggested that the Department should revise the definition of NYCP to allow for a project to include a partnership with organizations such as the Boys and Girls Club of America.

Discussion: Paragraph (5) of the NCYP definition permits community organizations to be included in a partnership. However, we do not recommend any specific community organizations as partners in an NYCP. The applicants must determine which entities are necessary partners in order

to address the identified need of the Indian youth in the local community to be served by the NYCP.

Changes: None.

Definition of ''Rural''

Comment: One commenter requested that we add a definition of ''rural'' in the final regulations.

Discussion: There is no need to define ''rural'' because the priority for rural applicants under § 263.21(c)(5) explains which entities are considered rural. We include further discussion of the rural priority under the Priorities section of the Analysis of Comments and Changes in this notice.

Changes: None.

Priorities (§ 263.21)

Comments: Several commenters supported our proposal to expand the Demonstration Grants program beyond the two absolute priorities of early childhood and college readiness. One commenter further commended the Department for supporting complex projects to address the complex issues facing some Indian communities.

Discussion: We appreciate the support for the priorities.

Changes: None.

Comments: Several commenters generally objected to the proposed revisions to the priorities in § 263.21(b), and to the parallel provision in the Professional Development regulations. One objected to removing the priority preference for consortia that include an Indian entity; another commenter objected to removing the required number of priority preference points.

Discussion: The statute for both the Professional Development and Demonstration Grants requires that we give priority to applications from all three types of tribal entities: Tribes, Indian organizations, and Indian IHEs. We proposed to remove the priority for consortia that include a tribal entity because a tribal entity that is not a sole applicant or lead applicant in a consortium does not necessarily have the influence that a sole applicant, or lead applicant in a consortium, has. However, if we only give priority when the Indian entity is the lead applicant, it would result in a tribal entity receiving no preference when it is part of a consortium but not the lead applicant. Therefore we are creating two separate priorities for the Demonstration Grants, similar to those created for the Professional Development Grants. The first priority, in § 263.21(b)(1), gives preference to an Indian entity—tribe, organization, or IHE—either applying alone, or in a consortium or partnership if it serves as the lead applicant. The second priority, in § 263.21(b)(2), is for an Indian entity that is part of a consortium or partnership but is not the lead applicant. This will enable us to satisfy the statutory requirement to give priority to the three types of Indian entities, while retaining the ability to provide more points to applications for which the Indian entity is the sole or lead applicant. Applicants cannot receive points under both of these priorities.

With regard to the concern about removing point values from the regulations, we have removed the five-point limitation for both priorities so that we have the flexibility to assign more (or fewer) points as needed to ensure that applicants from tribal entities have an advantage over other applicants.

Changes: We have revised § 263.21(b) to create two separate competitive preference priorities. The first priority is for an Indian entity—tribe, organization, or IHE—either applying alone or as lead applicant in a consortium or partnership. The second is for an Indian entity that is part of a consortium or partnership but is not the lead applicant.

Comments: One commenter objected to the revisions in § 263.21(c) that would give the Department discretion to choose specific priorities for a competition in any given year. The commenter stated that changing the priorities would make it hard for long-term grantees to create stable programs across multiple years.

Discussion: Under § 263.21(c), the Department has the discretion to choose any of the listed priorities in any year the Department conducts a grant competition for this program. This is consistent with the previous provisions in the same paragraph, which provided that the Department could choose among three different priorities in any given year, although all of those were absolute priorities. We recognize that potential applicants will need to respond to the priorities as published under each notice inviting applications. However, grantees will have the full grant period, typically 48 months, to implement their projects. We also note that there is no guarantee that a grantee under a discretionary grant program will receive another grant under the same program at the end of its grant period. The revisions to the priorities in § 263.21(c) enable the Secretary to prioritize projects that address the needs of the target communities.

Changes: None.

Priority for Native Youth Community Project (NYCP) (§ 263.21(c)(1))

Comments: Several commenters supported the proposed priority for NYCP; one commenter mentioned the benefits of collaboration between tribes and schools and noted how out-of-school environments significantly affect in-classroom success. Other commenters requested that we support parent and family engagement in funding NYCPs.

Discussion: We appreciate the support for the NYCP priority. We agree that parent and family engagement both in school and in the community is a crucial component in efforts to improve the outcomes of all children, including Indian children and youth. Each applicant must include in its application a description of how parents of Indian children have been and will be involved in developing and implementing the proposed activities, as required by § 263.22(a)(1). In addition, an existing AI/AN parent organization or tribal parent committee could serve as a valuable partner in an NYCP.

Changes: None.

Priority for Grantees Under Other Programs (§ 263.21(c)(2))

Comments: Several commenters objected to the priority for applicants that have been awarded grants under other programs. One commenter stated that Indian organizations would be unfairly excluded under this priority, which would interfere with their ability to receive funding. Another commenter stated that the priority would provide undue advantage to applicants that are already receiving Federal funds.

Discussion: This priority is designed to increase the likelihood that funded projects will attain their goals. The Demonstration Grants program is intended to target the most persistent issues facing Indian children, and to provide models that others can use. Grantees with existing resources to leverage are likely to have greater opportunities to address the needs of Indian children and to provide models that can be disseminated broadly.

Although we did not receive a comment requesting clarification, the proposed regulations did not state the timeframe within which applicants must have received these other awards in order to qualify for this preference. We are clarifying that, to receive preference under this priority, the lead applicant or its partner must have received an award within the last four years. A longer period of time would make it less likely that the grantee could build on the experience gained by that grant.

Changes: We have revised § 263.21(c)(2) to provide that the applicant or one of its partners must have received an award under a selected program within the last four years in order to receive this preference.

Comment: One commenter objected to the priority for applicants that consolidate funds through a plan that complies with section 7116 of the ESEA or other authority. The commenter argued that this preference would unduly favor tribes, which manage multiple programs, as opposed to Indian organizations that have a more narrow focus.

Discussion: The purpose of the priority in § 263.21(c)(3) for entities that have Department approval to consolidate funds is to encourage entities to take advantage of measures available to them to reduce duplication and bureaucracy, such as the authority under section 7116 of the ESEA for consolidation of funding designed to benefit Indian students. Even though we recognize that not every eligible entity will be able to take advantage of this priority, we seek to encourage this consolidation in order to increase the impact of Federal funding by reducing duplication of effort.

Changes: None.

Rural Priority (§ 263.21(c)(5))

Comments: We received several comments regarding the competitive preference priority for rural applicants. Some commenters commended our efforts to address the needs associated with rural poverty. However, other commenters stated that urban areas, like rural communities, face the challenges of poverty. Several commenters stated that projects serving urban communities and those serving rural communities should not be required to compete for funding. One commenter stated that more American Indian children live in urban than in rural areas. Several commenters argued that because the Department's Impact Aid program compensates school districts in rural areas, such districts should not receive a priority under this program. A commenter also argued that the Department should allocate more funds to Impact Aid programs in order to address rural poverty, rather than providing a priority under this program.

Discussion: Based on the Common Core of Data reported by SEAs in school year 2012–2013, nearly one-third of AI/AN children are enrolled in rural school districts, whereas fewer than one-fourth of AI/AN children live in city school districts. Therefore, we believe that giving preference to rural districts will appropriately focus on the geographical areas with proportionately larger populations of Indian children.

Furthermore, we believe that the solutions to educational challenges may be different in rural communities than in urban communities and that there is a need for solutions that are unique to rural communities. The scarcity of services and resources available in rural communities may require additional attention to address these needs.

With regard to the argument concerning the Impact Aid program, we note that not all rural school districts receive Impact Aid funding, often because they do not meet the eligibility requirements. For example, compared to the more than 1,200 school districts that receive title VII formula grants for Indian students, fewer than 700 school districts receive Impact Aid funding for students residing on Indian lands. Moreover, Impact Aid funds are intended to replace lost tax revenues or increased expenses due to a Federal presence. The Impact Aid funds are considered general aid to the recipient school districts, and they may use the funds in whatever manner they choose in accordance with their local and State requirements. Thus a school district that receives Impact Aid may be as much in need of supplemental funding for Indian students through the Demonstration Grants program as any other school district.

Changes: None.

Comment: None.

Discussion: During our internal review of the proposed priority for rural applicants in § 263.21(c)(5), we reviewed again whether all BIE-funded schools serve rural locales and determined that not all BIE-funded schools serve those locales. Accordingly, we are revising the regulations to add a reference to the census locale codes as the indicator for BIE-funded schools that would be considered rural for purposes of this priority.

Changes: We have revised the language in § 263.21(c)(5) with regard to BIE-funded schools to add that, to meet the rural priority, they must be in locale codes 42 or 43, as designated by the U.S. Census Bureau.

Application Requirements (§ 263.22)

Comment: One commenter objected to the requirement in § 263.22(b)(2) that applicants submit a written agreement between the partners in a proposed project.

Discussion: This is an application requirement that the Department may choose to use in any year of a new competition. For a priority such as the NYCP priority, we would select this application requirement because it would be essential for such a project to show agreement between the required partners. For other priorities, such as a priority for early learning projects, this requirement may not be appropriate. We will publish the selected application requirements in the notice inviting applications in the **Federal Register**.

Changes: None.

Comment: None.

Discussion: During our internal review of the proposed application requirements, we noted that the requirement to submit measureable objectives in § 263.22(b)(3) insufficiently communicated the expectation for the project to use the measureable objectives in evaluating the progress toward and success in meeting its goal or goals. Accordingly, we are revising the regulations to include a project evaluation plan.

Changes: We have revised the language in § 263.22(b)(3) to clarify that the applicant must submit, in response to a notice inviting applications published in the **Federal Register**, an evaluation plan that includes measureable objectives.

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 final 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 these regulations 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 final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or 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 associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs and Benefits: The potential costs associated with the priorities and requirements would be minimal while the potential benefits are significant.

For Professional Development grants, applicants may anticipate costs in developing their applications and time spent reporting participant payback information in the Data Collection System (DCS). Additional costs would be associated with participant and employer information entered in the DCS, but program funds would pay for the costs of carrying out these activities.

The benefits include enhancing project design and quality of services to better meet the program objectives, with the end result that more participants successfully complete their programs of study and obtain employment as teachers and administrators.

For the Demonstration Grants program, applicants may anticipate costs associated with developing a partnership agreement and providing evidence of a local needs assessment or data analysis. These requirements should improve the quality of projects funded and conducted under these grants, and we believe the benefits of these improvements will outweigh the costs. Elsewhere in this section, under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Paperwork Reduction Act of 1995

Sections 263.6, 263.10, 263.11 and 263.22 Indian Education Discretionary Grant Programs; Professional Development Program and Demonstration Grants for Indian Children Program contain information collection requirements. Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections and related application forms to the Office of Management and Budget (OMB) for its review and approval. In accordance with the PRA, the OMB Control number associated with the Professional Development final regulations, related application forms, and ICRs for section 263.6, is OMB approved 1810–0580, and for sections 263.10 and 263.11 it is OMB approved 1810–0698. The Department also submitted to OMB for its review and approval a new Information Collection Request (ICR) for control number 1810—New Application for Demonstration Grants for Indian Children Program for section 263.22. An approved OMB control number will be assigned to this new ICR at the time of publication of the final rule.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Intergovernmental Review

These programs are subject to the requirements of 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 these programs.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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.

(Catalog of Federal Domestic Assistance Numbers: 84.299A Demonstration Grants for Indian Children Program; 84.299B Professional Development Program)

List of Subjects in 34 CFR Part 263

Business and industry, Colleges and universities, Elementary and secondary education, Grant programs—education, Grant program—Indians, Indians—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: April 17, 2015.

Deborah Delisle,

Assistant Secretary for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Secretary of Education amends title 34 of the Code of Federal Regulations by revising part 263 to read as follows:

PART 263—INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

Subpart A—Professional Development Program

Sec.
263.1 What is the Professional Development Program?
263.2 Who is eligible to apply under the Professional Development program?
263.3 What definitions apply to the Professional Development program?
263.4 What costs may a Professional Development program include?
263.5 What priority is given to certain projects and applicants?
263.6 How does the Secretary evaluate applications for the Professional Development program?
263.7 What are the requirements for a leave of absence?
263.8 What are the payback requirements?
263.9 What are the requirements for payback deferral?
263.10 What are the participant payback reporting requirements?
263.11 What are the grantee post-award requirements?
263.12 What are the program-specific requirements for continuation awards?

Authority: 20 U.S.C. 7442, unless otherwise noted.

Subpart B—Demonstration Grants for Indian Children Program

Sec.
263.20 What definitions apply to the Demonstration Grants for Indian Children program?
263.21 What priority is given to certain projects and applicants?
263.22 What are the application requirements for these grants?
263.23 What is the Federal requirement for Indian hiring preference that applies to these grants?

Authority: 20 U.S.C. 7441, unless otherwise noted.

Subpart A—Professional Development Program

Authority: 20 U.S.C. 7442, unless otherwise noted.

§ 263.1 What is the Professional Development program?

(a) The Professional Development program provides grants to eligible entities to—

(1) Increase the number of qualified Indian individuals in professions that serve Indian people;

(2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) Improve the skills of qualified Indian individuals who serve in the education field.

(b) The Professional Development program requires individuals who receive training to—

(1) Perform work related to the training received under the program and that benefits Indian people, or to repay all or a prorated part of the assistance received under the program; and

(2) Periodically report to the Secretary on the individual's compliance with the work requirement until work-related payback is complete or the individual has been referred for cash payback.

§ 263.2 Who is eligible to apply under the Professional Development program?

(a) In order to be eligible for either pre-service or in-service training programs, an applicant must be an eligible entity which means—

(1) An institution of higher education, including an Indian institution of higher education;

(2) A State educational agency in consortium with an institution of higher education;

(3) A local educational agency (LEA) in consortium with an institution of higher education;

(4) An Indian tribe or Indian organization in consortium with an institution of higher education; or

(5) A Bureau of Indian Education (Bureau)-funded school.

(b) Bureau-funded schools are eligible applicants for—

(1) An in-service training program; and

(2) A pre-service training program when the Bureau-funded school applies in consortium with an institution of higher education that is accredited to provide the coursework and level of degree required by the project.

(c) Eligibility of an applicant requiring a consortium with any institution of higher education, including Indian institutions of higher education, requires that the institution of higher education be accredited to provide the coursework and level of degree required by the project.

§ 263.3 What definitions apply to the Professional Development program?

The following definitions apply to the Professional Development program:

Bureau-funded school means a Bureau of Indian Education school, a contract or grant school, or a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

Department means the U.S. Department of Education.

Dependent allowance means costs for the care of minor children under the age of 18 who reside with the training participant and for whom the participant has responsibility. The term does not include financial obligations for payment of child support required of the participant.

Full course load means the number of credit hours that the institution requires of a full-time student.

Full-time student means a student who—

(1) Is a degree candidate for a baccalaureate or graduate degree;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

Good standing means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

Graduate degree means a post-baccalaureate degree awarded by an institution of higher education.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements of paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the

Indian Education Act of 1988 as it was in effect on October 19, 1994.

Indian institution of higher education means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

Indian organization means an organization that—

(1) Is legally established—

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Induction services means services provided after participants complete their training program and during their first year of teaching. Induction services support and improve participants' professional performance and promote their retention in the field of education and teaching. They include, at a minimum, these activities:

(1) High-quality mentoring, coaching, and consultation services for the participant to improve performance;

(2) Access to research materials and information on teaching and learning;

(3) Assisting new teachers with use of technology in the classroom and use of data, particularly student achievement data, for classroom instruction;

(4) Clear, timely and useful feedback on performance, provided in coordination with the participant's supervisor; and

(5) Periodic meetings or seminars for participants to enhance collaboration, feedback, and peer networking and support.

In-service training means activities and opportunities designed to enhance the skills and abilities of individuals in their current areas of employment.

Institution of higher education means an accredited college or university within the United States that awards a baccalaureate or post-baccalaureate degree.

Participant means an Indian individual who is being trained under the Professional Development program.

Payback means work-related service or cash reimbursement to the Department of Education for the training received under the Professional Development program.

Pre-service training means training to Indian individuals to prepare them to meet the requirements for licensing or certification in a professional field requiring at least a baccalaureate degree.

Professional development activities means pre-service or in-service training offered to enhance the skills and abilities of individual participants.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means that portion of an award that is used for room, board, and personal living expenses for full-time participants who are living at or near the institution providing the training.

(Authority: 20 U.S.C. 7442 and 7491)

§ 263.4 What costs may a Professional Development program include?

(a) A Professional Development program may include, as training costs, assistance to—

(1) Fully finance a student's educational expenses including tuition, books, and required fees; health insurance required by the institution of higher education; stipend; dependent allowance; technology costs; program required travel; and instructional supplies; or

(2) Supplement other financial aid, including Federal funding other than loans, for meeting a student's educational expenses.

(b) The Secretary announces the expected maximum amounts for stipends and dependent allowance in the annual notice inviting applications published in the **Federal Register**.

(c) Other costs that a Professional Development program may include, but that must not be included as training costs, include costs for—

(1) Collaborating with prospective employers within the grantees' local service area to create a pool of potentially available qualifying employment opportunities;

(2) In-service training activities such as providing mentorships linking experienced teachers at job placement sites with program participants; and

(3) Assisting participants in identifying and securing qualifying employment opportunities in their field of study following completion of the program.

§ 263.5 What priority is given to certain projects and applicants?

(a) The Secretary gives competitive preference priority to—

(1) An application submitted by an Indian tribe, Indian organization, or an Indian institution of higher education that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive preference under this priority only if the lead applicant for the consortium is the Indian tribe, Indian organization, or Indian institution of higher education. In order to be considered a consortium application, the application must include the consortium agreement, signed by all parties; or

(2) A consortium application of eligible entities that—

(i) Meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education; and

(ii) Is not eligible to receive a preference under paragraph (a)(1) of this section.

(b) The Secretary may annually establish as a priority any of the priorities listed in this paragraph. When inviting applications for a competition under the Professional Development program, the Secretary designates 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 is described in 34 CFR 75.105.

(1) *Pre-Service training for teachers.* The Secretary establishes a priority for projects that—

(i) Provide support and training to Indian individuals to complete a pre-service education program before the end of the award period that enables the individuals to meet the requirements for full State certification or licensure as a teacher through—

(A) Training that leads to a degree in education;

(B) For States allowing a degree in a specific subject area, training that leads to a degree in the subject area; or

(C) Training in a current or new specialized teaching assignment that requires a degree and in which a documented teacher shortage exists;

(ii) Provide one year of induction services, during the award period, to

participants after graduation, certification, or licensure, while they are completing their first year of work in schools with significant Indian student populations; and

(iii) Include goals for the—

(A) Number of participants to be recruited each year;

(B) Number of participants to continue in the project each year;

(C) Number of participants to graduate each year; and

(D) Number of participants to find qualifying jobs within twelve months of completion.

(2) *Pre-service administrator training.* The Secretary establishes a priority for projects that—

(i) Provide support and training to Indian individuals to complete a graduate degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator;

(ii) Provide one year of induction services, during the award period, to participants after graduation, certification, or licensure, while they are completing their first year of work as administrators in schools with significant Indian student populations; and

(iii) Include goals for the—

(A) Number of participants to be recruited each year;

(B) Number of participants to continue in the project each year;

(C) Number of participants to graduate each year; and

(D) Number of participants to find qualifying jobs within twelve months of completion.

(3) *Letter of support.* The Secretary establishes a priority for applicants that include a letter of support signed by the authorized representative of an LEA or Department of the Interior Bureau of Indian Education (BIE)-funded school or other entity in the applicant's service area that agrees to consider program graduates for qualifying employment.

(Authority: 20 U.S.C. 7442 and 7473)

§ 263.6 How does the Secretary evaluate applications for the Professional Development program?

The Secretary uses the procedures for establishing selection criteria and factors in 34 CFR 75.200 through 75.210 to establish the criteria and factors used to evaluate applications submitted in a grant competition for the Professional Development program. The Secretary may also consider one or more of the criteria and factors listed in paragraphs (a) through (e) of this section to evaluate applications.

(a) *Need for project.* In determining the need for the proposed project, the Secretary considers one or more of the following:

(1) The extent to which the proposed project will prepare personnel in specific fields in which shortages have been demonstrated through a job market analysis.

(2) The extent to which employment opportunities exist in the project's service area, as demonstrated through a job market analysis.

(b) *Significance.* In determining the significance of the proposed project, the Secretary considers one or more of the following:

(1) The potential of the proposed project to develop effective strategies for teaching Indian students and improving Indian student achievement, as demonstrated by a plan to share findings gained from the proposed project with parties who could benefit from such findings, such as other institutions of higher education who are training teachers and administrators who will be serving Indian students.

(2) The likelihood that the proposed project will build local capacity to provide, improve, or expand services that address the specific needs of Indian students.

(c) *Quality of the project design.* The Secretary considers one or more of the following factors in determining the quality of the design of the proposed project:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are ambitious but also attainable and address—

(i) The number of participants expected to be recruited in the project each year;

(ii) The number of participants expected to continue in the project each year;

(iii) The number of participants expected to graduate; and

(iv) The number of participants expected to find qualifying jobs within twelve months of completion.

(2) The extent to which the proposed project has a plan for recruiting and selecting participants that ensures that program participants are likely to complete the program.

(3) The extent to which the proposed project will incorporate the needs of potential employers, as identified by a job market analysis, by establishing partnerships and relationships with appropriate entities (*e.g.,* Bureau-funded schools, organizations providing educational services to Indian students, and LEAs) and developing programs that meet their employment needs.

(d) *Quality of project services.* The Secretary considers one or more of the following factors in determining the quality of project services:

(1) The likelihood that the proposed project will provide participants with learning experiences that develop needed skills for successful teaching and/or administration in schools with significant Indian populations.

(2) The extent to which the proposed project prepares participants to adapt teaching and/or administrative practices to meet the breadth of Indian student needs.

(3) The extent to which the applicant will provide job placement activities that reflect the findings of a job market analysis and needs of potential employers.

(4) The extent to which the applicant will offer induction services that reflect the latest research on effective delivery of such services.

(e) *Quality of project personnel.* The Secretary considers one or more of the following factors when determining the quality of the personnel who will carry out the proposed project:

(1) The qualifications, including relevant training, experience, and cultural competence, of the project director and the amount of time this individual will spend directly involved in the project.

(2) The qualifications, including relevant training, experience, and cultural competence, of key project personnel and the amount of time to be spent on the project and direct interactions with participants.

(3) The qualifications, including relevant training, experience, and cultural competence (as necessary), of project consultants or subcontractors, if any.

(Approved by the Office of Management and Budget under control number 1810–0580)

§ 263.7 What are the requirements for a leave of absence?

(a) A participant must submit a written request for a leave of absence to the project director not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the project director chooses to waive the prior notification requirement.

(b) The project director may approve a leave of absence, for a period not longer than twelve months, provided the participant has completed at least twelve months of training in the project and is in good standing at the time of request.

(c) The project director permits a leave of absence only if the institution

of higher education certifies that the training participant is eligible to resume his or her course of study at the end of the leave of absence.

(d) A participant who is granted a leave of absence and does not return to his or her course of study by the end of the grant project period will be considered not to have completed the course of study for the purpose of project performance reporting.

§ 263.8 What are the payback requirements?

(a) *General.* All participants must—

(1) Either perform work-related payback or provide cash reimbursement to the Department for the training received. It is the preference of the Department for participants to complete a work-related payback;

(2) Sign an agreement, at the time of selection for training, that sets forth the payback requirements; and

(3) Report employment verification in a manner specified by the Department or its designee.

(b) *Work-related payback.* (1) Participants qualify for work-related payback if the work they are performing is in their field of study under the Professional Development program and benefits Indian people. Employment in a school that has a significant Indian student population qualifies as work that benefits Indian people.

(2) The period of time required for a work-related payback is equivalent to the total period of time for which pre-service or in-service training was actually received on a month-for-month basis under the Professional Development program.

(3) Work-related payback is credited for the actual time the participant works, not for how the participant is paid (*e.g.,* for work completed over 9 months but paid over 12 months, the payback credit is 9 months).

(4) For participants that initiate, but cannot complete, a work-related payback, the payback converts to a cash payback that is prorated based upon the amount of work-related payback completed.

(c) *Cash payback.* (1) Participants who do not submit employment verification within twelve months of program exit or completion, or have not submitted employment verification for a twelve-month period during a work-related payback, will automatically be referred for a cash payback unless the participant qualifies for a deferral as described in § 263.9.

(2) The cash payback required shall be equivalent to the total amount of funds received and expended for training received under this program and may be prorated based on any approved work-related service the participant performs.

(3) Participants who are referred to cash payback may incur non-refundable penalty and administrative fees in addition to their total training costs and will incur interest charges starting the day of referral.

(4) The cash payback obligation may only be discharged through bankruptcy if repaying the loan would cause the participant undue hardship as defined in 11 U.S.C. 523(a)(8).

§ 263.9 What are the requirements for payback deferral?

(a) *Education deferral.* If a participant completes or exits the Professional Development program, but plans to continue his or her education as a full-time student without interruption, in a program leading to a degree at an accredited institution of higher education, the Secretary may defer the payback requirement until the participant has completed his or her educational program.

(1) A request for a deferral must be submitted to the Secretary within 30 days of completing or exiting the Professional Development program and must provide the following information—

(i) The name of the accredited institution the student will be attending;

(ii) A copy of the letter of admission from the institution;

(iii) The degree being sought; and

(iv) The projected date of completion.

(2) If the Secretary approves the deferral of the payback requirement on the basis that a participant is continuing as a full-time student, the participant must submit to the Secretary a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(b) *Military deferral.* If a participant exits the Professional Development program because he or she is called or ordered to active duty status in connection with a war, military operation, or national emergency for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), the Secretary may defer the payback requirement until the participant has completed his or her military service, for a period not to exceed 36 months. Requests for deferral must be submitted to the Secretary within 30 days of the earlier of receiving the call to military service or completing or exiting the Professional Development program, and must provide—

(1) A written statement from the participant's commanding or personnel officer certifying—

(i) That the participant is on active duty in the Armed Forces of the United States;

(ii) The date on which the participant's service began; and

(iii) The date on which the participant's service is expected to end; or

(2)(i) A true certified copy of the participant's official military orders; and

(ii) A copy of the participant's military identification.

§ 263.10 What are the participant payback reporting requirements?

(a) *Notice of intent.* Participants must submit to the Secretary, within 30 days of completion of, or exit from, as applicable, their training program, a notice of intent to complete a work-related or cash payback, or to continue in a degree program as a full-time student.

(b) *Work-related payback.* (1) Starting within six months after exit from or completion of the program, participants must submit to the Secretary employment information, which includes information explaining how the employment is related to the training received and benefits Indian people.

(2) Participants must submit an employment status report every six months beginning from the date the work-related service is to begin until the payback obligation has been fulfilled.

(c) *Cash payback.* If a cash payback is to be made, the Department contacts the participant to establish an appropriate schedule for payments.

(Approved by the Office of Management and Budget under control number 1810–0698)

§ 263.11 What are the grantee post-award requirements?

(a) Prior to providing funds or services to a participant, the grantee must conduct a payback meeting with the participant to explain the costs of training and payback responsibilities following training.

(b) The grantee must report to the Secretary all participant training and payback information in a manner specified by the Department or its designee.

(c)(1) Grantees must obtain a signed payback agreement from each participant before the participant begins training. The agreement must include—

(i) The estimated total training costs;

(ii) The estimated length of training; and

(iii) Information documenting that the grantee held a payback meeting with the participant that meets the requirements of this section.

(2) Grantees must submit a signed payback agreement to the Department within seven days of signing the payback agreement.

(d) Grantees must conduct activities to assist participants in identifying and securing qualifying employment opportunities following completion of the program.

(e)(1) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(i) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(ii) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(2) For the purposes of paragraph (e), an Indian is a member of any federally recognized Indian tribe.

(Authority: 25 U.S.C. 450b, 450e(b))

(Approved by the Office of Management and Budget under control number 1810–0698)

§ 263.12 What are the program-specific requirements for continuation awards?

(a) In making continuation awards, in addition to applying the criteria in 34 CFR 75.253, the Secretary considers the extent to which a grantee has achieved its project goals to recruit, retain, graduate, and place in qualifying employment program participants.

(b) The Secretary may reduce continuation awards, including the portion of awards that may be used for administrative costs, as well as student training costs, based on a grantee's failure to achieve its project goals specified in paragraph (a) of this section.

Subpart B—Demonstration Grants for Indian Children Program

(Authority: 20 U.S.C. 7441, unless otherwise noted.)

§ 263.20 What definitions apply to the Demonstration Grants for Indian Children program?

The following definitions apply to the Demonstration Grants for Indian Children program:

Federally supported elementary or secondary school for Indian students means an elementary or secondary school that is operated or funded, through a contract or grant, by the Bureau of Indian Education.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements described in paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

Indian institution of higher education means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

Indian organization means an organization that—

(1) Is legally established—

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction of or by charter from the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Native youth community project means a project that is—

(1) Focused on a defined local geographic area;

(2) Centered on the goal of ensuring that Indian students are prepared for college and careers;

(3) Informed by evidence, which could be either a needs assessment conducted within the last three years or other data analysis, on—

(i) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(ii) Opportunities in the local community to support Indian students; and

(iii) Existing local policies, programs, practices, service providers, and funding sources;

(4) Focused on one or more barriers or opportunities with a community-based strategy or strategies and measurable objectives;

(5) Designed and implemented through a partnership of various entities, which—

(i) Must include—

(A) One or more tribes or their tribal education agencies; and

(B) One or more BIE-funded schools, one or more local educational agencies, or both; and

(ii) May include other optional entities, including community-based organizations, national nonprofit organizations, and Alaska regional corporations; and

(6) Led by an entity that—

(i) Is eligible for a grant under the Demonstration Grants for Indian Children program; and

(ii) Demonstrates, or partners with an entity that demonstrates, the capacity to improve outcomes that are relevant to the project focus through experience with programs funded through other sources.

Professional development activities means in-service training offered to enhance the skills and abilities of individuals that may be part of, but not exclusively, the activities provided in a Demonstration Grants for Indian Children program.

§ 263.21 What priority is given to certain projects and applicants?

(a) The Secretary gives priority to an application that presents a plan for combining two or more of the activities described in section 7121(c) of the Elementary and Secondary Education Act of 1965, as amended, over a period of more than one year.

(b) The Secretary gives a competitive preference priority to—

(1) An application submitted by an Indian tribe, Indian organization, or Indian institution of higher education that is eligible to participate in the Demonstration Grants for Indian Children program. A group application submitted by a consortium that meets the requirements of 34 CFR 75.127 through 75.129 or submitted by a partnership is eligible to receive the preference only if the lead applicant is an Indian tribe, Indian organization, or Indian institution of higher education; or

(2) A group application submitted by a consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 or submitted by a partnership if the consortium or partnership—

(i) Includes an Indian tribe, Indian organization, or Indian institution of higher education; and

(ii) Is not eligible to receive the preference in paragraph (b)(1) of this section.

(c) The Secretary may give priority to an application that meets any of the priorities listed in this paragraph. When inviting applications for a competition under the Demonstration Grants program, the Secretary designates the type of each priority as absolute, competitive preference, or invitational through a notice inviting applications published in the **Federal Register**. The effect of each type of priority is described in 34 CFR 75.105.

(1) Native youth community projects.

(2) Projects in which the applicant or one of its partners has received a grant in the last four years under a federal program selected by the Secretary and announced in a notice inviting applications published in the **Federal Register**.

(3) Projects in which the applicant has Department approval to consolidate funding through a plan that complies with section 7116 of the ESEA or other authority designated by the Secretary.

(4) Projects that focus on a specific activity authorized in section 7121(c) of the ESEA as designated by the Secretary in the notice inviting applications.

(5) Projects that include either—

(i) An LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title VI, part B of the ESEA; or

(ii) A BIE-funded school that is located in an area designated with locale code of either 42 or 43 as designated by the U.S. Census Bureau.

(Authority: 20 U.S.C. 7426, 7441, and 7473)

§ 263.22 What are the application requirements for these grants?

(a) Each application must contain—

(1) A description of how Indian tribes and parents of Indian children have been, and will be, involved in developing and implementing the proposed activities;

(2) Assurances that the applicant will participate, at the request of the Secretary, in any national evaluation of this program;

(3) Information demonstrating that the proposed project is based on scientific research, where applicable, or an existing program that has been modified to be culturally appropriate for Indian students;

(4) A description of how the applicant will continue the proposed activities once the grant period is over; and

(5) Other assurances and information as the Secretary may reasonably require.

(b) The Secretary may require an applicant to satisfy any of the requirements in this paragraph. When inviting applications for a competition under the Demonstration Grants program, the Secretary establishes the application requirements through a notice inviting applications published in the **Federal Register**. If specified in the notice inviting applications, an applicant must submit—

(1) Evidence, which could be either a needs assessment conducted within the last three years or other data analysis, of—

(i) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(ii) Opportunities in the local community to support Indian students; and

(iii) Existing local policies, programs, practices, service providers, and funding sources.

(2) A copy of an agreement signed by the partners in the proposed project, identifying the responsibilities of each partner in the project. The agreement can be either—

(i) A consortium agreement that meets the requirements of 34 CFR 75.128, if each of the entities are eligible entities under this program; or

(ii) Another form of partnership agreement, such as a memorandum of understanding or a memorandum of agreement, if not all the partners are eligible entities under this program.

(3) A plan, which includes measurable objectives, to evaluate reaching the project goal or goals.

§ 263.23 What is the Federal requirement for Indian hiring preference that applies to these grants?

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian tribe.

(Authority: 25 U.S.C. 450b, 450e(b)).

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Copyright Royalty Board

37 CFR Part 386

[Docket No. 15–CRB–0009 SA (2015)]

Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) of 1.7% in the royalty rates satellite carriers pay for a compulsory license under the Copyright Act. The COLA is based on the change in the Consumer Price Index from October 2013 to October 2014.

DATES: *Effective Date:* April 22, 2015.

Applicability Dates: These rates are applicable to the period January 1, 2015, through December 31, 2015.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The satellite carrier compulsory license establishes a statutory copyright licensing scheme for the retransmission of distant television programming by satellite carriers. 17 U.S.C. 119. Congress created the license in 1988 and has reauthorized the license for additional five-year periods, most recently with the passage of the STELA Reauthorization Act of 2014, Public Law 113–200.

On August 31, 2010, the Copyright Royalty Judges (Judges) adopted rates for the section 119 compulsory license for the 2010–2014 term. *See* 75 FR 53198. The rates were proposed by Copyright Owners and Satellite Carriers [1] and were unopposed. *Id.* Section 119(c)(2) of the Copyright Act provides that, effective January 1 of each year, the Judges shall adjust the royalty

[1] Program Suppliers and Joint Sports Claimants comprised the Copyright Owners while DIRECTV, Inc., DISH Network, LLC, and National Programming Service, LLC, comprised the Satellite Carriers.

fee payable under Section 119(b)(1)(B) ''to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) [CPI–U] published by the Secretary of Labor before December 1 of the preceding year.'' Section 119 also requires that ''[n]otification of the adjusted fees shall be published in the **Federal Register** at least 25 days before January 1.'' 17 U.S.C. 119(c)(2). Today's notice fulfills this notice obligation.[2]

The change in the cost of living as determined by the CPI–U during the period from the most recent index published before December 1, 2013, to the most recent index published before December 1, 2014, is 1.7%.[3] Application of the 1.7% COLA to the current rate for the secondary transmission of broadcast stations by satellite carriers for private home viewing—27 cents per subscriber per month — results in a rate of 27 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(1). Application of the 1.7% COLA to the current rate for viewing in commercial establishments—55 cents per subscriber per month—results in an adjusted rate of 56 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(2).

List of Subjects in 37 CFR Part 386

Copyright, Satellite, Television.

Final Regulations

In consideration of the foregoing, the Judges amend part 386 of title 37 of the Code of Federal Regulations as follows:

PART 386—ADJUSTMENT OF ROYALTY FEES FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 17 U.S.C. 119(c), 801(b)(1).

■ 2. Section 386.2 is amended by adding paragraphs (b)(1)(vi) and (b)(2)(vi) to read as follows:

§ 386.2 Royalty fee for secondary transmission by satellite carriers.

* * * * *

(b) * * *

(1) * * *

(vi) 2015: 27 cents per subscriber per month (for each month of 2015).[1]

(2) * * *

(vi) 2015: 56 cents per subscriber per month (for each month of 2015).[2]

Dated: April 16, 2015.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2015–09284 Filed 4–21–15; 8:45 am]

BILLING CODE 1410–72–P

[1] This is the 2014 rate adjusted for the amount of inflation as measured by the change in the Consumer Price Index for All Urban Consumers All Items from October 2013 to October 2014.

[2] This is the 2014 rate adjusted for the amount of inflation as measured by the change in the Consumer Price Index for All Urban Consumers All Items from October 2013 to October 2014.

[2] Given passage of the act extending the Section 119 license in December 2014, publication of the rate adjustment 25 days prior to January 1, 2015, would have been impracticable, if not impossible. On March 30, 2015, the Judges published notice of the commencement of a proceeding to set rates under section 119 of the Copyright Act, but subsequently withdrew the notice after determining that the reauthorization of STELA obviated the need for a rate proceeding.

[3] On November 20, 2014, the Bureau of Labor Statistics announced that the CPI–U increased 1.7% over the last 12 months.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

Control of Emissions From Nonroad Spark-Ignition Engines at or Below 19 Kilowatts

CFR Correction

■ In Title 40 of the Code of Federal Regulations, Parts 87 to 95, revised as of July 1, 2014, on page 199, in § 90.116, after paragraph (a) and before the first paragraph (1), add paragraph (b) introductory text to read as follows: ''(b) Engines will be divided into classes by the following:''.

[FR Doc. 2015–09241 Filed 4–21–15; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0339; FRL–9923–57]

Saflufenacil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of saflufenacil in or on alfalfa, forage and alfalfa, hay. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 22, 2015. Objections and requests for hearings must be received on or before June 22, 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–2014–0339, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation

and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0339 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 June 22, 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–2014–0339, 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 August 1, 2014 (79 FR 44729) (FRL–9911–67), 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 4F8256) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide saflufenacil (2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2*H*)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl)amino]sulfonyl]benzamide) and its metabolites, *N*-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2*H*)-pyrimidinyl)-4-fluorobenzoyl]-*N'*-isopropylsulfamide and *N*-[4-chloro-2-fluoro-5-({[(isopropylamino)sulfonyl]amino}carbonyl)phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil, in or on alfalfa, forage at 0.075 parts per million (ppm) and alfalfa, hay at 0.10 ppm. That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA agrees with the tolerance levels proposed by BASF Corporation for alfalfa commodities with the minor exception of a rounding adjustment for the alfalfa, forage tolerance from 0.075 ppm to 0.80 ppm.

III. Aggregate Risk Assessment and Determination of Safety

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

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

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

The toxicology database for the saflufenacil is considered complete for the purpose of risk assessment. In the **Federal Register** of September 3, 2014 (79 FR 52215) (FRL–9912–91), EPA published a final rule establishing tolerances for residues of saflufenacil and its metabolites in or on barley, grass, olive, livestock, and wheat commodities based on EPA's conclusion that aggregate exposure to saflufenacil is safe for the general population, including infants and children. Since that rulemaking, the toxicity profile for saflufenacil has not changed. The requested tolerances will not result in residues on human food commodities, only animal feed. The available residue data submitted for use in alfalfa indicates that the dietary burden for livestock will not change from the current levels that were previously assessed for use in grass pastures. Therefore, the residues of saflufenicil on alfalfa from the proposed new use will not impact the existing human dietary and aggregate risk assessments for saflufenacil. For a detailed discussion of the aggregate risk assessments and determination of safety, as well as a summary of the toxicological endpoints used for human risk assessment, please refer to the final rules published in the **Federal Register** of February 21, 2014 (79 FR 9861) (FRL–9905–87) and September 3, 2014 (79 FR 52215) (FRL–9912–91). EPA relies upon those supporting risk assessments and the findings made in the **Federal Register** documents in support of this final rule.

Based on the risk assessments and information described above, 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 saflufenacil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectroscopy/mass spectroscopy (LC–MS/MS) (Method D0603/04)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905;

email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for saflufenacil in or on alfalfa, forage or alfalfa, hay at this time.

C. Revisions to Petitioned-For Tolerances

EPA has modified the tolerance level proposed for alfalfa, forage, from 0.075 ppm to 0.08 ppm, which is the appropriate rounding class according to the tolerance calculation procedures of the Organization for Economic Co-operation and Development (OECD) that EPA utilizes.

V. Conclusion

Therefore, tolerances are established for residues of, saflufenacil and its metabolites, in or on alfalfa, forage at 0.08 ppm and alfalfa, hay at 0.10 ppm.

VI. 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).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 9, 2015.

Susan T. 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 § 180.649, add alphabetically the commodities to the table in paragraph (a)(1) to read as follows:

§ 180.649 Saflufenacil; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Alfalfa, forage	0.08
Alfalfa, hay	0.10
* * * * * * *	

* * * * *

[FR Doc. 2015–09394 Filed 4–21–15; 08:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket Number MARAD–2014–0011]

Final Action Regarding ''Other Relevant Criteria'' for Consideration When Evaluating the Economic Soundness of Title XI Maritime Loan Guarantee Program Applications

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final policy.

SUMMARY: This document serves to inform interested parties and the public of the Maritime Administration's (MARAD) final policy regarding the factors MARAD will consider as ''Other Relevant Criteria'' in its review of the economic soundness of applications under the Title XI Loan Guarantee Program [also known as ''Title XI'' or the Federal Ship Financing Program (FSFP)]. On February 24, 2014, MARAD published a Notice of Proposed Policy (NPP) and sought comments relating to the agency's evaluation of Title XI Maritime Loan Guarantee applications. In this document MARAD: Responds to comments received during the public notice; clarifies and reinforces that applicants with projects to construct or reconstruct vessels to use alternative energies, or to meet current or future U.S. or international environmental and safety standards, are eligible and encouraged to apply for FSFP loan guarantees; and implements the final policy.

DATES: This policy is effective April 22, 2015.

FOR FURTHER INFORMATION CONTACT: Owen Doherty, Associate Administrator for Business and Finance Development, Maritime Administration, Telephone: 202–366–1883; Email: *owen.doherty@dot.gov*; Mail: MARAD, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

A. Introduction

In order to be eligible for a FSFP loan guarantee an obligation must, among other things, aid the financing of the ''construction, reconstruction, or reconditioning of a vessel.'' 46 U.S.C. 53706. The terms construction, reconstruction and reconditioning are broadly defined to include ''designing, inspecting, outfitting, and equipping.'' 46 U.S.C. 53701(3).

Chapter 537 of Title 46 of the United States Code, as implemented by part 298 of title 46 of the Code of Federal Regulations (CFR), details the factors MARAD must consider in processing FSFP loan guarantee applications. The factors include economic soundness, project feasibility and specifically enumerated priorities. For the economic soundness determination, 46 U.S.C. 53708(a) provides six mandatory factors MARAD must consider, but allows consideration of ''other relevant criteria'' as well. The accompanying regulation, 46 CFR 298.14(b), also provides that MARAD may take into account ''other relevant criteria.'' Sections 53708(a) and (b) explicitly provide ''the need for technical improvements, including increased fuel efficiency or improved safety'' as matters the Administrator and Secretary must consider with regard to applications for vessels intended for use on inland waterways and for fishing vessels, respectively.

On February 24, 2014, MARAD published a Notice of Proposed Policy (79 FR 10075) in which it proposed to consider ''various environmental initiatives that are likely to increase efficiency and lead to future cost savings as 'other relevant criteria' in evaluation of [the economic soundness of] Title XI loan guarantee applications.'' A non-exclusive list of such initiatives are alternative fuel systems designs, fuel cells, hybrid propulsion systems, air emissions reduction technologies and ballast water treatment technologies.

The policy provides that, ''demand for environmentally friendly designs, fuel and technologies is growing rapidly throughout the maritime industry because, among other things, they meet new air emissions and other discharge standards, and present the potential for greater efficiency and cost savings.'' The proposed policy also stated, ''. . . that many of the economic benefits of environmentally friendly designs, fuels and technologies take the form of public benefits.'' Many of these public benefits cannot be captured by vessel owners and operators using traditional economic metrics, but are valuable nonetheless, because they contribute to environmental sustainability and human health. MARAD sought public comment on the NPP.

In this final policy, MARAD is responding to the comments received, announcing that it intends to clarify and implement the policy as proposed in the prior notice, and clarifying that applicants with projects to construct or reconstruct vessels to be powered by alternative energies, or to meet U.S. or international environmental standards as required for continued operations, are eligible and encouraged to apply for FSFP loan guarantees.

The comments received varied in the degree to which they directly addressed the substantive provisions in the policy. Some commenters expressed agreement with the general principle of considering environmental factors in the review of applications for FSFP loan guarantees. The majority disagreed with the proposal to include environmental considerations as a factor used to determine the economic soundness of projects.

B. Comments

MARAD received a total of 11 comments in response to the policy. Nine commenters disagreed with the proposal to include environmental considerations as ''other relevant criteria'' in the economic soundness analysis. MARAD received three comments indicating general support for including environmental considerations when evaluating FSFP applications. One commenter suggested that doing so could help accelerate replacement of an aging U.S.-flag fleet. Another stated that FSFP guarantees should be granted in order to make the new ships as environmentally friendly as possible. However, these commentators did not provide input on specific actions MARAD could take to further those interests. The comments, as submitted to the docket for the policy (Docket No. MARAD–2014–0011–0001) may be accessed via *http://www.regulations.gov*.

While many of the other comments included general support for considering environmental factors at some point when evaluating applications that are otherwise economically sound, none of those commenters supported including such factors in the ''economic soundness'' analysis required under 46 U.S.C. 53703(b). Many commenters focused on the reference to ''public benefits'' in the original document. They expressed concern that it would be difficult and expensive for applicants and MARAD to incorporate the public benefits (*e.g.,* human health and lower air emissions) of environmentally friendly technologies into a review of economic soundness, which is based on traditionally quantifiable financial factors. Commenters stated that attempting to address public benefits in the economic soundness analysis would result in additional time and expense, which would be inconsistent with MARAD's stated desire to streamline the application review process. Other commenters noted that cost savings from increased efficiency resulting from

the use of alternative fuels are already captured in the current economic soundness factors.

MARAD received two comments that suggested that the policy might be interpreted to mean that MARAD does not consider projects to reconstruct or reconstruct vessels to use alternative energies (*e.g.,* from a diesel propulsion system to a liquefied natural gas (LNG) propulsion or a hybrid diesel/LNG propulsion system) to be eligible for FSFP loan guarantees.

Several commenters noted that MARAD is already authorized, under 46 U.S.C. 53706(c), implemented by 46 CFR 298.3(k), to prioritize applications for certain vessels, and that a formal rulemaking to add environmental considerations to that section would be more appropriate than adding such considerations to the economic soundness analysis.

MARAD received three comments that referenced issues beyond the scope of the proposed policy.

C. MARAD Response to Comments

MARAD understands the concerns commenters expressed about potential ramifications of implementing this policy. In response to these concerns, MARAD clarifies the policy as described below. The Department of Transportation and MARAD are committed to supporting the development and implementation of technologies that help the U.S.-flag fleet meet or exceed national and international environmental standards and result in environmental improvements. MARAD is also determined to reduce FSFP application processing times and administrative burdens that potential applicants face.

D. Final Policy

By this document, MARAD announces that it will implement the core of the proposed policy. Under this final policy, in addition to the factors listed in 46 U.S.C. 53708(a)(1)–(4) and (6), MARAD will consider whether such projects include environmental initiatives that are likely to increase efficiency and lead to future cost savings. As noted by several commenters, cost savings resulting from increased fuel efficiency are captured in the current economic soundness analysis factors—most notably projected revenues and expenses of the vessel(s). This final policy merely states explicitly what MARAD is authorized to do under current law and regulations.

MARAD clarifies that it will not require applicants to quantify the potential public benefits of environmentally friendly designs, fuels and technologies. MARAD encourages applicants to emphasize any public benefits or costs of greenhouse gas or criteria pollutant emissions caused or reduced by vessel(s) to be constructed or reconstructed. MARAD encourages applicants to quantify such public benefits to the extent practicable. Consult the following authorities for guidance for undertaking such calculations: (1) White House Office of Management and Budget, Circular A–94, *Circular A–94 Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs* (October 29, 1992) (*https://www.whitehouse.gov/sites/default/files/omb/assets/a94/a094.pdf*); Interagency Working group on Social Cost of Carbon, United States Government, *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866* (May 2013; revised November 2013) (*https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*).

In addition, MARAD considers as part of economic soundness the degree to which applications include the use of such designs, fuels or technologies for: (1) Reconstruction of vessels to ensure compliance with current or future environmental and safety operating standards, or (2) construction of new vessels to replace vessels that would not meet such standards. MARAD encourages applicants to include information in their applicants regarding the degree to which the vessel(s) to be constructed or reconstructed meets these components of economic soundness analysis.

Consideration of the impact of environmental and safety standards on the economic soundness of an application is consistent with the factors MARAD is required to review. See, 46 U.S.C. 53708(a)(1)–(3). For example, pursuant to new global standards promulgated by the International Maritime Organization, and enforced in the U.S. by the Environmental Protection Agency, NOx emissions from large ''Category 3'' vessel engines are required to be substantially reduced by 2020. Implementation of these standards will result in many vessels currently in operation being taken out of service, unless they are converted to reduce emissions. These environmental factors directly impact the need for, and market potential and projected revenues and expenses of, any proposed construction or reconstruction.

Further, MARAD clarifies that projects to reconstruct existing vessels are eligible for Title XI loan guarantees. Reconstruction includes conversion of vessels to LNG or dual-fuel power.

Authority: 46 U.S.C. 53708.

Dated: April 17, 2015.

By Order of the Maritime Administrator.

Thomas M. Hudson, Jr.,

Acting Secretary, Maritime Administration.

[FR Doc. 2015–09385 Filed 4–21–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140818679–5356–02]

RIN 0648–BE47

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 40

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

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in Amendment 40 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule contains measures to establish two components within the recreational sector for Gulf of Mexico (Gulf) red snapper (a Federal charter vessel/headboat (for-hire) component and private angling component) with a 3-year sunset provision; allocate the red snapper recreational quota and annual catch target (ACT) between the components; and establish separate red snapper season closure provisions for the two components. The purpose of Amendment 40 and this rule is to provide a basis for increased flexibility in future management of the recreational sector, and reduce the likelihood of recreational quota overruns, which could negatively impact the rebuilding of the red snapper stock.

DATES: This rule is effective May 22, 2015.

ADDRESSES: Electronic copies of Amendment 40, which includes an environmental impact statement, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from

the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/am40/index.html.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727–824–5305; email: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On January 16, 2015, NMFS published a notice of availability for Amendment 40 and requested public comment (80 FR 2379). On January 23, 2015, NMFS published a proposed rule for Amendment 40 and requested public comment (80 FR 3541). NMFS approved Amendment 40 on April 10, 2015. The proposed rule and Amendment 40 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by Amendment 40 and this final rule is provided below.

Management Measures Contained in This Final Rule

This final rule establishes two components in the Gulf red snapper recreational sector: A Federal for-hire component and a private angling component. In addition, this rule establishes a Federal for-hire quota and a private angling quota based on the component allocation of the recreational quota, component ACTs, and seasonal closure provisions for the two components. These management measures will be in effect for 3 years, unless changed by subsequent Council action.

Establishing Private Angling and Federal For-Hire Components

This final rule establishes a Federal for-hire component and a private angling component for the Gulf red snapper recreational sector. The Federal for-hire component includes operators of vessels with Federal charter vessel/headboat permits for Gulf reef fish and the private angling component includes anglers fishing from private vessels and state-permitted for-hire vessels.

Component Quotas

This final rule establishes component quotas based on the allocation of 42.3 percent for the Federal for-hire component and 57.7 percent for the private angling component, as selected in Amendment 40. All weights given in this rule are in round weight. Currently, the 2015 recreational quota is set at 5.390 million lb (2.445 million kg). Therefore, this final rule sets the Federal for-hire component quota at 2,279,970 lb (1,034,177 kg), and the private angling component quota at 3,110,030 lb (1,410,686 kg), for the 2015 fishing year.

However, the Council has developed a framework action to revise the commercial and recreational quotas for the 2015, 2016, and 2017 fishing years and subsequent fishing years for red snapper based on new acceptable biological catches (ABCs) recommended by the Council's Scientific and Statistical Committee (SSC) and on the current commercial and recreational allocations (51-percent commercial and 49-percent recreational). A proposed rule for the framework action was published on April 1, 2015 (80 FR 17380). If the framework action is approved, a final rule containing revised component quotas would be published and effective prior to the June 1, 2015, start date of the Federal fishing season.

Recreational Season Closure Provisions

This final rule establishes separate red snapper seasonal closure provisions for the Federal for-hire and private angling components based on each component's ACT. Each component's season will begin on June 1 and the season length will be projected from each component's ACT. The ACTs are reduced from each component's quota by 20 percent.

Given the current component quotas, the Federal charter vessel/headboat component ACT will be 1.824 million lb (0.827 million kg), and the private angling ACT will be 2.488 million lb (1.129 million kg). However, if the final rule for the 2015 Gulf red snapper framework action is implemented the component ACTs for the 2015, 2016, and 2017 and subsequent fishing years will be revised.

The 2015 season lengths will be announced prior to the June 1 Federal fishing season start date; most likely in the final rule for the 2015 Gulf red snapper framework action.

Sunset Provision

This rule implements a 3-year sunset provision for the establishment of the Federal for-hire and private angling components and associated management measures. The components and associated management measures will be effective through the end of the 2017 fishing year, on December 31, 2017. For these components and management measures to extend beyond 3 years, the Council would need to take further action.

ACLs and AMs

Prior to Amendment 40, rather than establishing ACLs for red snapper management, the Council chose to refer to the sector quotas as the functional equivalent to sector ACLs, and the sum of all quotas as the stock ACLs. This led to confusion when discussing and implementing red snapper catch levels. In the preamble to the proposed rule for Amendment 40, NMFS failed to explain that this rule would add sector ACLs and an AM for the commercial sector to the regulations. However, the proposed rule's regulatory text, and the discussion in Amendment 40, did include sector ACLs. Consistent with what was proposed, this final rule adds commercial and recreational ACLs, which are equivalent to the commercial and recreational quotas, respectively, and adds language explaining that the commercial AM is defined as the IFQ program for red snapper.

Changes From the Proposed Rule

A recent framework action (80 FR 14328) implemented a post-season AM for the recreational sector as a whole. This AM requires that NMFS adjust the subsequent year's total recreational quota and ACT if the quota is exceeded in the prior fishing year and red snapper are classified as overfished. The proposed rule for Amendment 40 included the provision for adjusting the total recreational quota and the component ACTs, but not the provision for adjusting the component quotas. If an overage of the total recreational ACL (equal to the total recreational quota) occurs, the component quotas must be adjusted to reflect the adjustment to the total quota, otherwise the combined component quotas would exceed the total quota. The adjusted component quotas are also necessary to calculate the reduced component ACTs. NMFS has determined the provision for adjusting component quotas was reasonably foreseeable from what was included in the proposed rule, and is a logical outgrowth of the proposed rule because it is necessary to implement the AM as proposed. Therefore, this final rule adds the necessary language for reducing the component quotas to § 622.41(q)(2)(ii).

Comments and Responses

A total of 18,353 comments were received on Amendment 40 and the proposed rule, including comments from individuals, 2 state agencies, 4 non-governmental organizations (NGOs), 6 fishing associations, 1 U.S. Congressman, and 1 U.S. Senator. NMFS received 3,212 comments in

opposition to Amendment 40 or the proposed rule, of which 1,806 comments were letters attached to a submission from a recreational fishing organization. There were 15,089 comments in support of Amendment 40 and the proposed rule, of which 15,025 comments were copies of emails submitted by members of an NGO, which submitted them to NMFS. There were 52 commenters who did not indicate whether they supported or were in opposition to the amendment. In addition to these comments, a minority report was submitted by the 7 members of the Council who voted against approval of Amendment 40.

Comments opposing the action include: There is a lack of significant support for the action; the action disproportionately harms private anglers by reducing their Federal season; the action privatizes the resource; all anglers should be treated alike; the Council lacked certain information before making its decision; the action does little to improve recreational management; and the action violates National Standards 2, 4, 5, 8, and 10. In addition, commenters suggested several Council members had a conflict of interest and should not have voted for approval of Amendment 40.

Comments in support of the action include that the action will: Give better access to red snapper fishing by non-boat-owning anglers; provide management flexibility; increase recreational accountability; and help to stabilize the for-hire component. NMFS also received comments that addressed issues outside the scope of this action. Comments in this category include: Asking for different red snapper size and bag limits, weekend-only red snapper seasons, and a tagging system to allocate fish; halting the removal of oil rigs; and opposing creation of a catch share-like program for the for-hire component. Although these measures could be developed for one or both components as a result of Amendment 40, Amendment 40 does not specifically address these topics. Specific comments related to the actions contained in the amendment and the rule as well as NMFS' respective responses, are summarized below.

Comment 1: Amendment 40 disproportionately harms private anglers by reducing the length of their Federal season.

Response: NMFS disagrees that Amendment 40 disproportionately harms private anglers. NMFS recognizes that the Federal season for private anglers is likely to be shorter than the Federal fishing season for the federally permitted for-hire vessels. However, this is a result of the unlimited number of private recreational vessels and state-permitted for-hire vessels, increasing fish size, and the decisions by the Gulf states to extend their red snapper fishing seasons in state waters beyond the Federal fishing season. As explained in Amendment 40, the number of private recreational vessels has increased over time and the moratorium on Federal for-hire permits has limited growth in the for-hire industry and, in turn, anglers' access to these vessels. In addition, last year, all the Gulf states extended their red snapper fishing seasons beyond the Federal fishing season, and some states extended their fishing seasons in previous years. Private anglers and state-permitted vessel operators are able to harvest red snapper outside of the Federal season as long as the fish are caught in state waters during the extended state fishing seasons. On the other hand, fishermen fishing from federally permitted reef fish for-hire vessels are prohibited from harvesting red snapper caught in state waters when the Federal fishing season is closed, but state waters are open. Therefore, fishermen fishing from private and state-permitted vessels have seen increased fishing opportunities in recent years, whereas, fishermen fishing from federally-permitted for-hire vessels have seen their Federal fishing season reduced under current conditions. While the Federal for-hire component fishing season will be longer than the Federal private angling component fishing season, the private angling component is expected to have additional fishing opportunities in state waters.

Comment 2: Amendment 40 complicates management by creating a different set of rules for each component that must fish under the same recreational quota. All recreational anglers, whether they are fishing from their own boat or from a federally permitted for-hire vessel, should be treated alike and have the same size limit, bag limit, and season.

Response: The overall management program may be slightly more complex as modified by Amendment 40, however NMFS disagrees that Amendment 40 complicates management. For both recreational components, the Federal bag and size limits and the start date of the Federal fishing season (June 1) are the same. The only difference is that the end date of the fishing season for the respective components will be different. The projections of the season length provided in Amendment 40 show the Federal for-hire component to have a longer fishing season than the private angling component, in part, due to red snapper harvested in state waters during extended state fishing seasons. Differences in catch rates, size of fish, and total effort also contribute to season-length differences.

The Council may determine that other component-specific management measures are needed to improve the management of the recreational sector fishing for red snapper. Any new management measures would be developed through a framework action or plan amendment and would require public participation.

Comment 3: Amendment 40 does little or nothing to improve accountability and the collection of data. Although the amendment identifies factors that contribute to quota overruns, it does not identify how the proposed action will do anything to minimize quota overruns.

Response: The purpose of Amendment 40 is not to improve data collection. However, Amendment 40 may facilitate greater certainty in data collected by establishing distinct private angling and Federal for-hire components of the red snapper recreational sector in the Gulf, which will provide a basis for flexible management approaches tailored to each component. NMFS disagrees that this amendment does little or nothing to improve accountability. The landings data for each component have different degrees of uncertainty because of differences in how recreational data are collected. Private angler data are derived from surveys whereas for-hire data are collected through surveys and logbooks. In addition, the number of for-hire vessels is known and is much smaller than vessels operated by private anglers. When private recreational landings estimates, that have a higher degree of uncertainty, are combined with for-hire landings data, projecting when the season should close is more difficult, and less effective management measures may result for the recreational sector. The analysis in Amendment 40 explains that because it is easier to both monitor and project landings for the for-hire component, it is easier to ensure that this component will not exceed its quota. Thus, separating management of the components is expected to improve the projections of when the recreational quota is reached and create a platform for future management of the recreational sector that can focus on maximizing opportunities for each component.

Comment 4: Amendment 40 violates National Standard 2 because the Council did not have the best scientific information available when making its

decision. The final allocation percentages, which were dependent on recalibrated landings from a Marine Recreational Information Program (MRIP) workshop, were not available when the Council made its final decision. Thus, the Council did not have a clear idea of what the social and economic impacts would be from the final allocations set in Amendment 40. In addition, there was no attempt to quantify the economic consequences to the Federal for-hire component or the recreational sector as a whole.

Response: NMFS disagrees that Amendment 40 is inconsistent with National Standard 2 and that the Council did not have a clear idea of the social and economic impacts that would result from the final allocations. National Standard 2 states that conservation and management measures shall be based on the best scientific information available. At the time the Council took final action on Amendment 40, the document contained a complete analysis of the social and economic impacts of establishing separate recreational components and the allocation alternatives. As discussed in Amendment 40 and the proposed rule, a quantitative economic analysis could not be conducted because the information required for such an analysis is not available. Instead, a qualitative analysis based on the best scientific information available was provided. This analysis acknowledged that the allocation would result in decreased harvest and associated economic benefits to anglers in the private component compared to recent years, and increased harvest and associated economic benefits for the Federal for-hire component. The analysis also indicated, however, that in the long term, total economic benefits would be expected to increase due to the enhanced quota monitoring capability and ability to better tailor management, through subsequent rulemaking, to the needs of each component.

To ensure that the Council's allocation decision was based on the best scientific information available, the preliminary results of the MRIP workshop were presented to the Council at its October 2014 meeting and the Council was advised that the preferred allocation could change by as much as ±3.3 percent. The methods used to calibrate the MRIP landings were reviewed earlier in October 2014 by the Council's SSC. The SSC did not note any concerns about the methodology. When the final results from the workshop were incorporated in Amendment 40, 1.7 percent of the recreational quota was shifted from the Federal for-hire component to the private angling component. This change in allocation did not change the season length projections for the two components that were included in Amendment 40 at the time the Council took final action. In a memorandum dated January 7, 2015, the Southeast Fisheries Science Center certified that the actions in Amendment 40 are based on the best scientific information available.

Comment 5: Amendment 40 violates National Standard 4 because sector separation will have disparate impacts on residents from different states, particularly given different states have differing proportions of for-hire and private angling fishers.

Response: NMFS disagrees that Amendment 40 is inconsistent with National Standard 4. National Standard 4 states, in part, that conservation and management measures shall not discriminate between residents of different states and that if allocation is assigned, it is fair and equitable to all fishermen, and reasonably calculated to promote conservation.

Amendment 40 may have different impacts on the residents of different states because of the proportion of fishers using federally permitted for-hire vessels and private vessels varies regionally. In addition, as explained in the proposed rule, because red snapper availability and abundance in state waters can vary regionally, fishing opportunities for individual fishermen in the private-angling component may vary if the Gulf States set state seasons inconsistent with one another. However, the actions in Amendment 40 do not differentiate between residents of different states. For the private-angling component, there will be a single Federal season in the exclusive economic zone (EEZ) off all Gulf states that will be determined using past landings data and will take into account any harvest allowed in state waters.

The National Standard 4 Guidelines state that ''conservation and management measures that have different effects on persons in various geographic locations are permissible if they satisfy the other guidelines under Standard 4.'' 50 CFR 600.325(b). NMFS has determined that Amendment 40 is reasonably calculated to promote conservation and that the allocation is fair and equitable. Amendment 40 is reasonably calculated to promote conversation because it will provide a basis for increased flexibility in future management of the recreational sector, it will reduce the likelihood of recreational quota overruns, and is likely to have positive indirect effects on discard mortality as compared to the status quo. With respect to the allocation of the recreational quota between the private angling and for-hire components, a detailed discussion of the basis for the Council's decision is discussed in the amendment and proposed rule. NMFS has determined that the allocation is fair and equitable because it reflects both historical changes in the recreational sector as well as current conditions, and is expected to increase the total benefits to the recreational sector.

Comment 6: Amendment 40 violates National Standard 5 because it only establishes an economic sub-allocation of a quota. Thus economic allocation is the sole purpose of the action.

Response: NMFS disagrees that Amendment 40 is inconsistent with National Standard 5. National Standard 5 requires that conservation and management measures, where practicable, shall consider efficiency in the utilization of fishery resources, except no such measure shall have economic allocation as its sole purpose. As stated in the proposed rule and in the response to Comment 5, the purpose of Amendment 40 is to improve management of the recreational sector and increase both biological and economic benefits. Amendment 40 will allow the development and implementation of management measures better tailored to the specific needs of the separate components; improve quota monitoring; and reduce bycatch and associated discard mortality compared to the status quo. Thus, NMFS has determined that Amendment 40 and this final rule are consistent with National Standard 5.

Comment 7: Amendment 40 violates National Standard 8 because, without having sufficient information, particularly quantitative information of the economic impacts to the Federal for-hire component, the Council could not effectively evaluate the effects of the allocations. For example, no discussion of the impact of the longer season for the Federal for-hire component relative to the shorter season for the private angler component was provided. In addition, Amendment 40 does not take into account the importance of fishery resources to fishing communities dependent on private anglers who target red snapper. Nor does it provide for the sustained participation or minimize adverse economic impacts on these communities.

Response: NMFS disagrees that Amendment 40 is inconsistent with National Standard 8. National Standard

8 requires that conservation and management measures take into account the importance of fishery resources to fishing communities by utilizing economic and social data consistent with National Standard 2 in order to provide for the sustained participation of such communities and, to the extent practicable, to minimize adverse economic impacts on such communities. As discussed in the response to Comment 4, a quantitative economic analysis was not provided in Amendment 40 because the information required for such an analysis is not available. However, Amendment 40 includes a qualitative economic analysis based on the best scientific information available, which concludes that, overall, greater percentages allocated to the Federal for-hire component would correspond to increasing economic benefits to the Federal for-hire component and decreasing benefits to the private angling component.

Amendment 40 does not include an analysis of the impacts of season length because the season length depends on a number of factors in addition to each component's allocation. As explained in Amendment 40, even under the status quo alternative (a single recreational quota), the length of the 2015 recreational red snapper season could not be projected at the time the Council took final action because final 2014 harvest information and the results of a 2014 red snapper update assessment were not available. However, Amendment 40 did provide estimated season lengths for each allocation alternative if sector separation was implemented for the 2014 fishing season, and as explained below, did consider fishing communities, which generally service recreational anglers fishing from all fishing modes.

With respect to impacts on fishing communities, the National Standard 8 Guidelines define a fishing community as place-based, such that members of the community ''reside in a specific location'' 50 CFR 600.345(b)(3). As explained above, Amendment 40 includes an extensive economic analysis. Amendment 40 also includes an extensive qualitative social analysis including identifying the communities where most fishing activity takes place. These analyses are based on the best scientific information available.

Amendment 40 provides a ranked list of fishing communities most reliant on recreational fishing, generally, as recreational landings of red snapper are not available at the community level. Recreational fishing infrastructure, such as marinas and tackle shops, are used by recreational anglers fishing from all fishing modes, including charter vessels, headboats, and private vessels. The resulting communities are all ''general'' recreational fishing communities and not disaggregated as private angling communities or for-hire communities. Generally, communities that service one component would be expected to service the other, such that distinct private angling communities and for-hire communities do not exist. However, there are more private recreational fishing vessels, there are more departure sites for these vessels, and there are no minimum geographic or population size requirements to define a community. Thus, there are likely some small and/or isolated locations that may only cater to private anglers. In general, however, NMFS expects that most communities with substantial amounts of recreational fishing infrastructure and services cater to both components.

The National Standard 8 Guidelines define ''sustained participation'' as ''continued access to the fishery within the constraints of the condition of the resource'' 50 CFR 600.345(b)(4). To the extent there may be some small or isolated locations that cater only to private anglers who target red snapper, based on historical participation, these communities' sustained participation is secured by the 57.7 percent of the quota allocated to that component.

Concerning the requirement to minimize adverse economic impacts on communities, as described above, communities from which for-hire vessels and private angling vessels depart overlap. Thus, NMFS does not expect there to be distinct Federal for-hire communities and private angling communities that will experience different effects from this action. Further, fishermen in both recreational components also target other species, including other reef fish, in addition to red snapper. Fishing trips for these species would be unaffected by this action and the associated economic benefits from these trips would continue to support these coastal communities. Although some anglers may only fish for red snapper, the continued viability of these communities, despite the brevity of the red snapper recreational fishing season in recent years, demonstrates the diversity and resilience of the recreational fishing industry and the general absence of reliance on individual species at the community level.

Comment 8: Amendment 40 violates National Standard 10 because it would create a derby for private anglers, which will likely result in crowded boat ramps, waterways, and artificial reefs, as well as negatively affect law enforcement's ability to effectively monitor catches.

Response: NMFS disagrees Amendment 40 violates National Standard 10. NMFS has determined that Amendment 40 and the final rule are consistent with National Standard 10, which requires that conservation and management measures, to the extent practicable, promote the safety of human life at sea. As noted in the proposed rule, a shorter Federal fishing season for the private-angling component will likely be offset by extended state fishing seasons. This will reduce both the incentive to fish in the EEZ if unsafe fishing conditions exist during the open season and the likelihood that boat ramps, waterways, and artificial reefs will be crowded to the point of creating a safety concern or impeding the ability of law enforcement to effectively monitor catches. In addition, private anglers do not have an economic incentive, compared to commercial fishermen who earn their living fishing, to fish in unsafe conditions. Thus, NMFS has determined that it is unlikely that private anglers will attempt to fish for red snapper in Federal waters in hazardous weather conditions.

Comment 9: Given other actions the Gulf Council is working on, it is unclear how sector separation will improve red snapper management.

Response: The purpose and need statement for Amendment 40 explains that ''Establishing separate components within the recreational sector would provide a basis for flexible management approaches tailored to each component and reduce the likelihood for recreational quota overruns which could jeopardize the rebuilding of the red snapper stock.'' Currently, the Council is working on amendments that consider regional management, options for private anglers such as tags and slot limits, and the development of for-hire allocation-based programs. By separating the recreational sector into the two components and establishing component quotas, the Council now has the flexibility to focus on maximizing opportunities for each component independently. For example, regional management would allow Gulf states or sub-regions of the Gulf to be managed differently so long as the proposed regional management measures are not projected to exceed the regional quota allocation. With two components, the Council has greater flexibility in how it manages each.

Comment 10: No actions should be applied to the recreational sector until

there are better data to determine red snapper recreational harvest.

Response: NMFS disagrees that no recreational red snapper management measures should be developed until some unspecified time in the future. National Standard 2 requires that management measures be based on the best scientific information available. Consistent with this requirement, NMFS currently determines red snapper harvest based on harvest information obtained from an MRIP-based private angler/charter survey; the Southeast Region Headboat Survey; the Louisiana Department of Wildlife and Fisheries (LDWF) creel survey; and the Texas Parks and Wildlife Department (TPWD) creel survey. NMFS agrees there are opportunities to improve the data collection process and is collaborating with many of the Gulf States' marine fisheries resource agencies to make improvements in both data collection and analysis. Any improvements will be incorporated into future management decisions and season projections.

Comment 11: Amendment 40 violates the Magnuson-Stevens Act because the fish belong to the recreational sector as a whole. The Magnuson-Stevens Act does not provide the authority for the Council to divide the recreational quota between the Federal for-hire and private-angling components. For this same reason, approval of Amendment 40 would violate the Administrative Procedure Act.

Response: NMFS disagrees that Amendment 40 violates the Magnuson-Stevens Act by separating the recreational sector into two components. As discussed in the proposed rule, Section 407(d) of the Magnuson-Stevens Act requires separate quotas for commercial and recreational fishing (which, for the purposes of the subsection includes for-hire fishing), and a prohibition on the retention of fish when each quota is reached. The Magnuson-Stevens Act does not prohibit the Council from further subdividing the recreational quota among different components of the recreational sector to improve the management of the fishery, and the approach of subdividing a quota has been used repeatedly by fishery management councils nationwide as consistent with the authority provided in the Act. See *e.g.,* 16 U.S.C. 1853(b)(3)(A) (allowing the councils to establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—''(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors)'').

The one constraint on managing the two components of the recreational sector independently, per section 407(d) of the Magnuson-Stevens Act, is the mandate to prohibit the retention of red snapper when the recreational red snapper quota is reached. Consistent with this requirement, this rule does not change the fact that there is a total recreational quota or the requirement that the recreational sector be closed when that total quota is reached. Thus, if NMFS determines that the Gulf-wide recreational quota has been met, all recreational harvest of red snapper in the EEZ will be prohibited regardless of whether one component has remaining allocation. However, the use of an ACT to set the component season lengths will reduce the likelihood of this occurring.

Comment 12: NMFS should disapprove Amendment 40 because several Council members should not have voted to submit the amendment for implementation. These include two members who have charter for-hire vessels and so have a conflict of interest (*i.e.,* the amendment would directly benefit them). Three other Council members are members of a commercial fishing lobbying-group and failed to list this activity on their financial disclosure forms.

Response: NMFS disagrees. First, Council members appointed by the Secretary ''must be individuals who, by reason of their occupational or other experience, scientific expertise or training, are knowledgeable'' about the relevant fishery resources, and often are individuals who are engaged in the fishing industry. Consequently, the MSA provides that a conflict of interest alone does not disqualify a Council member from voting on a Council decision. Section 302(j)(7) of the Magnuson-Stevens Act and the regulations at 50 CFR 600.235(c), prohibit a Council member from voting on a Council decision only in specific circumstances, and there is no indication that any Council member had a financial interest that met the criteria for mandatory recusal. Second, under section 302(j)(6) of the Magnuson-Stevens Act, the participation of a Council member in an action by the Council during any time in which the Council member is not in compliance with the financial disclosure regulations is not a basis for invalidating that action.

Comment 13: Amendment 40 does not differentiate between commercial and recreational sustenance fishing and should take into account the families of these fishermen who they need to feed.

Response: It is unclear whether the commenter meant sustenance or subsistence fishing. Sustenance refers to the consumption of what is harvested, whereas subsistence is a circumstance under which the harvest of fish, or other foodstuff, is required to meet the minimum dietary requirements necessary for living and other more cost-effective means to meet these needs are not available. The two terms are not equivalent and simply eating what one catches does not qualify as subsistence. Amendment 40 would not prevent either recreational or commercial fishermen from harvesting and consuming red snapper as long as they follow current regulations. Amendment 40 discusses subsistence and explains that there are no known claims for subsistence consumption of Gulf red snapper by any population including tribes or indigenous groups. This rule pertains to the harvest of red snapper in the EEZ, which would require a boat capable of safely travelling 3–9 miles (5–14 km) offshore, depending on its departure location, and associated high fuel and gear costs. As a result, the costs associated with the harvest of red snapper are inconsistent with the concept of subsistence fishing because alternative foods, as well as fresh fish, including red snapper, could be purchased more cheaply than the cost of a fishing trip. Thus, it is unlikely that there would be any concerns associated with subsistence fishing resulting from the actions in this amendment.

Comment 14: Amendment 40 could force anglers to use for-hire services if they want to harvest red snapper and will cause prices for for-hire trips to increase as a few people will be able to control prices.

Response: NMFS disagrees that Amendment 40 forces anglers to use for-hire services if they want to harvest red snapper and that this will cause price increase. Anglers in the private component would only have to use for-hire services if they choose to fish in Federal waters when the season for the private component is closed. These anglers could continue to fish in open state waters during the extended state fishing seasons, without using for-hire services. For those anglers who choose to use for-hire services to fish in Federal waters, there is sufficient capacity in the for-hire fleet to prevent price control. As stated in Amendment 40, there are an estimated 1,269 charter vessels and 67 headboats operating in the Gulf with charter/headboat reef fish permits. The average number of red snapper target trips in the charter mode is approximately 54,000 trips, or approximately 40 angler trips per charter vessel. Assuming 6 anglers per trip, the average number of vessel trips

per charter vessel would be approximately 7 trips, equivalent to 7 days if full-day trips are taken, or fewer than 7 days if some trips are half-day trips. Similar information is not available for headboats because target information is not collected for these vessels. Although all of the charter vessels may not operate in areas where red snapper is available, these results show there is ample capacity to increase the number of for-hire trips without substantial price changes.

Comment 15: The analysis in Amendment 40 underestimates the expected economic impacts on private anglers and associated businesses and communities. Private anglers contribute more to the local economy than commercial fishing operations.

Response: NMFS disagrees. As discussed in Amendment 40, anglers in the private angling component would be expected to experience decreased harvests and associated economic benefits compared to recent years, if their harvest is sufficiently constrained by state regulations, because their sub-quota would be less than the portion of the red snapper recreational quota they have harvested in recent years. In the long term, however, the total economic benefits to the private angling component and the recreational sector as a whole would be expected to increase due to the enhanced quota monitoring capability and ability to better tailor management, through subsequent rulemaking, to the needs of each component. Quantitative estimates of the short- or long-term economic impacts were not provided because of the lack of appropriate data. Although the amount of allowable harvest by the private angling component would be reduced, these anglers would retain the ability to fish for other species in Federal and state waters. It is unknown, however, how many anglers may continue to fish but target other species, how many may cease to fish, or the appropriate economic values to assign to these anglers. Additionally, even though the private angling component quota will be less than recent harvests, if state regulations are ineffective in adequately restraining red snapper harvest, the total red snapper harvest and associated economic benefits accruing to the private angling component may be largely unaffected, resulting in shortening of the Federal for-hire season because of the quota closure requirements. Nevertheless, if effort is reduced, the economic benefits accruing to the private angling component would be reduced.

With respect to the comment that private anglers contribute more to the local economy than commercial fishing operations, because the provision of for-hire services is a commercial activity, NMFS assumes that the commenter was referring to for-hire businesses and not the commercial reef fish sector (otherwise the comment is beyond the scope of this rule, as Amendment 40 does not affect the commercial sector). Although the percent distributions were not provided, the information shown in Amendment 40 demonstrates that charter fishing produces more business activity per trip than private angling. Although red snapper target effort by anglers fishing on charter vessels typically comprises less than 20 percent in Louisiana through Florida (comparable information on Texas is not available) of total red snapper target effort, with the exception of Mississippi, which has minimal charter vessel activity compared to the other Gulf states, the business activity associated with these trips ranges from approximately 54 percent to 67 percent. Anglers fishing on charter vessels spend, on average, more per trip than private anglers. Although these estimates may include anglers that fish on charter vessels and target red snapper in state waters, this activity is expected to be minimal compared to anglers fishing on charter vessels in Federal waters. Thus, the per trip contribution of charter vessel anglers to business activity in local communities exceeds that of private anglers. Similar information is not available for headboats. Because there are more private angler vessels and suitable launch sites for private angler vessels than there are for for-hire vessels, there may be isolated areas where the for-hire presence is limited compared to private angling. However, generally, areas with substantial amounts of private angling activity also support for-hire businesses. Thus, although there will be areas with no access to for-hire services and it is possible to define a community as an area so small that for-hire activity is excluded, generally, it is expected that the areas that provide private angling services also provide for-hire angling services. As a result, areas that may experience changes in fishing by private anglers may benefit from changes in fishing by for-hire anglers.

Comment 16: NMFS withheld a decision tool that contained information that was vital for the Council to make an informed decision on Amendment 40.

Response: No information vital to the Council decision was withheld. The ''decision tool'' referred to in the comment was merely an Excel spreadsheet developed by NMFS staff at the request of a single for-hire fisherman, and was not related to Amendment 40 or allocating quota between the for-hire component and private angling component. Rather, the spreadsheet as the fisherman requested, allowed him to calculate various quota percentages for use in discussing hypothetical individual fishing quota (IFQ) allocations for a hypothetical charter vessel IFQ program.

Comment 17: After any red snapper recreational quota overage, the ACT should be reset using the Council's ACL/ACT control rule.

Response: NMFS disagrees that the component ACT should be reset using the ACL/ACT control rule after a recreational quota overage. The ACT is not intended to address quota overages. The ACT is used to account for management uncertainty in setting the recreational fishing season and is intended to help ensure that the quota is not exceeded. If a quota overage occurs, the accountability measure's payback provision, which reduces the quota by the amount of the overage and sets the ACT at 20-percent less than the adjusted quota, mitigates for that excess harvest. Keeping a consistent buffer of 20 percent between the quota and ACT provides for more stable management of the recreational sector. If new information indicates that a 20-percent buffer may no longer be appropriate, the Council may consider revising the ACT in the future. The ACL/ACT control rule could be used to determine one alternative for an appropriate buffer. The Council may also consider other reasonable alternatives before deciding whether to adjust the ACT.

Comment 18: The use of ''historic'' harvest information that is more than 30 years old in setting the allocation is not reflective of the current make-up of the recreational sector or how communities in the Gulf have grown and changed to accommodate the expansion of the private recreational component. More recent information including MRIP and state marine resource agency harvest data should be used to set the allocation.

Response: The Council, in evaluating different allocation alternatives, did consider some alternatives based solely on more recent years. However, the Council determined the allocations based only on these limited time series did not capture changes that have occurred in the fishery, such as changes in regulations and disruptive events such as hurricanes and oil spills that have affected how recreational fishing is prosecuted. At the same time, the Council also recognized the importance of including more recent landings

information to reflect current conditions in recreational red snapper fishing. Therefore, the Council determined, and NMFS agrees, that a fair and equitable allocation resulted by using both historic harvest information (1986–2013) and more recent harvest information (2006–2013). This is an approach used by the Council in setting allocations for other species (*e.g.,* the jurisdictional apportionment of black grouper and yellowtail snapper resources between the Gulf and South Atlantic Councils).

Comment 19: Amendment 40 fails to include any instructions for how the quotas for the private and charter vessel/headboat components will be managed, but assumes there will be separate harvest accounting measures for each component.

Response: As stated in the response to Comment 2, red snapper management for the for-hire and private angling components will be managed with a 2-fish bag limit, 16-inch (40.6 cm), total length, minimum size limit, and a June 1 season opening and the season for each component will be projected based on each component's ACT. However, these measures may change in the future as the Council explores flexible management approaches tailored to each component. The component ACTs, which are 20-percent reductions from the component quotas, serve as in-season AMs designed to reduce the likelihood of a component exceeding its component quota. If the total recreational ACL is exceeded in a fishing year and red snapper are classified as overfished, NMFS will adjust the applicable recreational component quota(s) and ACT(s) the following fishing year, based on the overage on the total recreational quota. As has been done in the past, harvest information to compare landings to the quotas for each component will be obtained from an MRIP-based private angler/charter survey and the LDWF and the TPWD creel surveys. Additional information for the for-hire component will come from the Southeast Region Headboat Survey. These harvest information programs are likely to change as NMFS, collaborating with its state partners, work to make improvements in both data collection and analysis.

Comment 20: No portion of the recreational quota should be privatized.

Response: Amendment 40 does not privatize any portion of the red snapper recreational quota. The actions in the amendment do four things: Split the recreational sector that fishes for red snapper into a private angler and a Federal for-hire component; sunsets the components after 3 years; provides an allocation of the recreational red snapper quota to each of the components; and revises the recreational red snapper AMs to account for the two components.

Comment 21: Amendment 40 does not contain a full fishery impact statement (FIS) that takes into consideration the effects of the proposed actions on all entities involved.

Response: The Magnuson-Stevens Act requires that an FIS be prepared for all fishery management plans and amendments prepared by or submitted to the Secretary after October 1, 1990. The FIS assesses, specifies, and analyzes the likely effects, if any, including the cumulative conservation, economic, and social impacts of the conservation and management measures on fishery participants and their communities, participants in the fisheries conducted in adjacent areas under the authority of another Fishery Management Council, and the safety of human life at sea. Amendment 40, as submitted by the Council, contains a full FIS that describes the effects of the action on fishery participants and their communities, participants in the fisheries conducted in adjacent areas, and the safety of human life at sea. These effects are fully analyzed based on the best scientific information available (per National Standard 2). The FIS focuses on the effects of the preferred alternatives, which are the management measures submitted for implementation and approval. Amendment 40 contains additional analysis that addresses both the impacts of the preferred alternatives as well as those alternatives that were not selected for implementation.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of Gulf red snapper and is consistent with Amendment 40, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification to the Small Business Administration. Comments regarding the general economic effects of the action are addressed in the comments and responses section of this final rule. No changes to the final rule were made in response to these comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Quotas, Recreational, Red snapper.

Dated: April 16, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.8, paragraphs (a) and (c) are revised to read as follows:

§ 622.8 Quotas—general.

(a) Quotas apply for the fishing year for each species, species group, sector or component, unless accountability measures are implemented during the fishing year pursuant to the applicable annual catch limits and accountability measures sections of subparts B through V of this part due to a quota overage occurring the previous year, in which case a reduced quota will be specified through notification in the **Federal Register**. Annual quota increases are contingent on the total allowable catch for the applicable species not being exceeded in the previous fishing year. If the total allowable catch is exceeded in the previous fishing year, the RA will file a notification with the Office of the Federal Register to maintain the quota for the applicable species, sector or component from the previous fishing year for following fishing years, unless NMFS determines based upon the best scientific information available that maintaining the quota from the previous year is unnecessary. Except for the quotas for Gulf and South Atlantic coral, the quotas include species harvested from state waters adjoining the EEZ.

* * * * *

(c) *Reopening.* When a species, sector or component has been closed based on a projection of the quota specified in this part, or the ACL specified in the

applicable annual catch limits and accountability measures sections of subparts B through V of this part being reached and subsequent data indicate that the quota or ACL was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the species, sector or component to provide an opportunity for the quota or ACL to be harvested.

■ 3. In § 622.39, paragraphs (a)(2)(i) and (c) are revised to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(2) * * *

(i) *Recreational quota for red snapper*—(A) *Total recreational quota (Federal charter vessel/headboat and private angling component quotas combined)*—5.390 million lb (2.445 million kg), round weight.

(B) *Federal charter vessel/headboat component quota*—2,279,970 lb (1,034,177 kg), round weight. The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(C) *Private angling component quota*—3,110,030 lb (1,410,686 kg), round weight. The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

* * * * *

(c) *Restrictions applicable after a recreational quota closure or recreational component quota closure.* The bag limit for the applicable species for the recreational sector or recreational sector component in or from the Gulf EEZ is zero. When the Federal charter vessel/headboat component is closed or the entire recreational sector is closed, this bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

■ 4. In § 622.41, paragraph (q) is revised to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) *Red snapper*—(1) *Commercial sector.* The IFQ program for red snapper in the Gulf of Mexico serves as the accountability measure for commercial red snapper. The commercial ACL for red snapper is equal to the commercial quota specified in § 622.39(a)(1)(i).

(2) *Recreational sector.* (i) The AA will determine the length of the red snapper recreational fishing season, or recreational fishing seasons for the Federal charter vessel/headboat and private angling components, based on when recreational landings are projected to reach the recreational ACT, or respective recreational component ACT specified in paragraph (q)(2)(iii) of this section, and announce the closure date(s) in the **Federal Register**. These seasons will serve as in-season accountability measures. On and after the effective date of the recreational closure or recreational component closure notifications, the bag and possession limit for red snapper or for the respective component is zero. When the recreational sector or Federal charter vessel/headboat component is closed, this bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(ii) In addition to the measures specified in paragraph (q)(2)(i) of this section, if red snapper recreational landings, as estimated by the SRD, exceed the total recreational quota specified in § 622.39(a)(2)(i)(A), and red snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the total recreational quota by the amount of the quota overage in the prior fishing year, and reduce the applicable recreational component quota(s) specified in § 622.39(a)(2)(i)(B) and (C) and the applicable recreational component ACT(s) specified in paragraph (q)(2)(iii) of this section (based on the buffer between the total recreational ACT and the total recreational quota specified in the FMP), unless NMFS determines based upon the best scientific information available that a greater, lesser, or no overage adjustment is necessary.

(iii) The recreational ACL is equal to the total recreational quota specified in § 622.39(b)(2)(i)(A). The total recreational ACT for red snapper is 4.312 million lb (1.956 million kg), round weight. The recreational component ACTs for red snapper are 1.824 million lb (0.827 million kg), round weight, for the Federal charter vessel/headboat component and 2.488 million lb (1.129 million kg), round weight, for the private angling component. These recreational component ACTs are effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the total recreational ACT will apply to the recreational sector.

[FR Doc. 2015–09353 Filed 4–21–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 77
Wednesday, April 22, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–FV–14–0091; FV15–929–1 PR]

Cranberries Grown in States of Massachusetts, et al.; Revising Determination of Sales History

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Cranberry Marketing Committee (Committee) to revise the determination of sales history provisions currently prescribed under the cranberry marketing order (order). The Committee, which consists of 13 growers and 1 public member, locally administers the order regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. Under the order, there are two different sales history calculations that have been established for this program. This action would clarify when the different methods for calculating sales history would be used. This action would also remove the fresh fruit exemption from one of the calculations.

DATES: Comments must be received by May 7, 2015.

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

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

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

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

There are two sales history calculations in effect under two separate sections of the order. This action would clarify when the different methods for calculating sales history would be used. This proposed rule also invites comments on the removal of the exemption for fresh fruit from the sales history calculation found in § 929.149. The Committee unanimously recommended these changes at meetings held on February 10, and August 20, 2014.

The order provides authority for volume control in the form of a producer allotment program. When in effect, this program limits the quantity of cranberries that handlers may purchase or handle on behalf of growers in years of oversupply. Each year, prior to determining if volume regulation is needed, grower sales histories are calculated. The sales history averages recent years' sales data using information submitted by each grower on a production and eligibility report filed with the Committee. If the Committee determines that volume regulation is needed, a producer allotment percentage is calculated. Each grower's allotment of cranberries eligible for handling is then calculated by multiplying the allotment percentage by the grower's sales history.

Section 929.48 of the order contains provisions for computing an annual grower sales history. Section 929.48 also provides that the Committee, with the approval of the Secretary, may establish alternative grower's sales history calculations as warranted. One such alternative calculation is established in § 929.149. This alternative calculation supplements the calculation found in § 929.48 by including an additional sales history for growers with new and renovated acreage. It also provides that

the sales history be computed for processed fruit only, with fresh fruit sales deducted from the calculation. The alternative calculation method established in § 929.149 was developed for the 2001–02 marketing year, the last time volume regulation was implemented, and was recently revised so that it could be used for any season.

The Committee believes the provisions in the alternative sales history calculation are beneficial and provide equity to growers who have recently planted or renovated acreage. However, the alternative method for calculating sales history requires physical verification of the renovated or new acreage, thus resulting in additional costs to the Committee. When considering the costs and the benefits of both sales history calculation methods, the Committee concluded that the method in § 929.48 was adequate for annual calculations when volume regulation was not anticipated. However, due to the importance of a grower's sales history in the determination of that grower's allotment during years of volume regulation, the inclusion of new and renovated acreage is paramount. Accordingly, the Committee concluded that the sales history calculation in § 929.149 should be used in all years when volume regulation is anticipated.

Consequently, at its February 10 and August 20, 2014, meetings, the Committee recommended that the alternative calculation method found in § 929.149 only apply during times when a producer allotment volume regulation is being implemented. When a producer allotment volume regulation is not being implemented, the Committee would calculate grower's sales history according to the provisions provided in § 929.48 of the order.

The Committee also recommended revising the alternative calculation method in § 929.149 by removing the exemption for fresh fruit sales. Committee members stated that automatically exempting fresh fruit from the sales history calculation provides the grower with an inaccurate representation of their total sales. Further, the exclusion of fresh fruit affects the industry's total sales history, which is used to determine the allotment percentage under a producer allotment program. The Committee believes if any exemptions to future producer allotment calculations are warranted, such exemptions should be considered and recommended to USDA as part of a proposed volume regulation. Removing the fresh exemption provision from the alternative calculation would allow the Committee to determine, on an as-needed basis, whether or not volume regulation should apply to the fresh cranberry supply.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 1,300 cranberry growers in the regulated area and approximately 45 cranberry handlers who are subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000 and small agricultural service firms are defined as those having annual receipts of less than $7,000,000 (13 CFR 121.201).

According to industry and Committee data, grower prices ranged between $15 and $47 per barrel for cranberries during the 2012–13 marketing year, and total sales were around 7.8 million barrels. Based on production data and grower prices, the average annual grower revenue is below $750,000. Using Committee information and shipment data, 44 out of the 45 cranberry handlers could also be considered small businesses under SBA's definition. Therefore, the majority of cranberry growers and handlers may be classified as small entities.

This proposal would revise the rules and regulations pertaining to the determination of sales history currently prescribed in § 929.149 of the order. There are two sales history calculations under two separate sections of the order. This action would clarify when the different methods for calculating sales history would be used. It would also remove the exemption for fresh fruit from the calculation method found in § 929.149. These changes were unanimously recommended by the Committee at meetings held on February 10, and August 20, 2014. Authority for these changes is provided in § 929.48 of the order.

It is not anticipated that this action would impose any additional costs on the industry. Each year, the Committee is required to calculate a sales history for each grower. This rule would clarify that the alternative sales history calculation method established under § 929.149 would only apply when a producer allotment regulation is being implemented. The calculation method found in § 929.48 would be used when volume regulation is not being implemented.

Removing the fresh exemption provision from the calculation found in § 929.149 would allow the Committee to determine, on an as-needed basis, whether or not volume regulation should apply to the fresh cranberry supply. It also would provide growers, and the Committee, with a more accurate representation of their sales history. The benefits of this proposed rule are not expected to be disproportionately greater or lesser for small handlers or producers than for large entities.

The Committee considered the alternative of making no changes to the rules and regulations pertaining to the determination of sales history. However, the Committee recognized that this change would help the industry avoid the additional costs of acreage verification in years when volume regulation is not being implemented. Also, the Committee agreed that the current grower sales history tabulation exempting fresh fruit was not representative of the actual sales. Therefore, this alternative was rejected.

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

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

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

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

Further, the Committee's meetings were widely publicized throughout the cranberry industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the February 10, and August 20, 2014, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this proposed rule would need to be in place as soon as possible as the Committee is beginning discussions regarding establishing a producer allotment volume regulation for the coming season. As such, it would be important to have these changes in place as the Committee moves forward with these discussions and potential implementation. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 929.149 [Amended]

■ 2. In § 929.149, the words ''when a producer allotment volume regulation is in effect'' are added to the end of the introductory text, and paragraphs (e) and (f) are removed.

Dated: April 16, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–09291 Filed 4–21–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. AMS–FV–15–0014; FV15–929–2]

Cranberries Grown in States of Massachusetts, et. al.; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, to determine whether they favor continuance of the marketing order regulating the handling of cranberries grown in the production area.

DATES: The referendum will be conducted from May 4 through May 26, 2015. To vote in this referendum, producers must have produced cranberries within the designated production area during the period September 1, 2013, through August 31, 2014.

ADDRESSES: Copies of the marketing order may be obtained from the referendum agents at 1124 First Street South, Winter Haven, FL 33880, or the Office of the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1124 First Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 929, as amended (7 CFR part 929), hereinafter referred to as the ''order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the producers. The referendum shall be conducted from May 4 through May 26, 2015, among cranberry growers in the production area. Only cranberry producers that were engaged in the production of cranberries, during the period of September 1, 2013, through August 31, 2014, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether producers favor the continuation of marketing order programs. USDA would terminate the order if less than 50 percent of the producers voting in the referendum and producers of less than 50 percent of the volume of cranberries represented in the referendum favor continuance.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the ballot materials to be used in the referendum have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189, Generic Fruit Crops. It has been estimated that it will take an average of 20 minutes for each of the approximately 1,300 producers of cranberries to cast a ballot. Participation is voluntary. Ballots postmarked after May 26, 2015, will not be included in the vote tabulation.

Doris Jamieson and Christian D. Nissen of the Southeast Marketing Field Office, Fruit and Vegetable Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400–900.407).

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents, or from their appointees.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing Agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: April 16, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–09282 Filed 4–21–15; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2014–0118]

RIN 3150–AJ41

Enhanced Security of Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory basis.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making available a regulatory basis document to support a rulemaking potentially amending its regulations concerning the security of special nuclear material. The NRC is not seeking public comments on this document.

DATES: At this time, the NRC is not soliciting public comments on this document. There will be an opportunity for formal public comment on the proposed rule when it is published in the **Federal Register**.

ADDRESSES: Please refer to Docket ID NRC–2014–0118 when contacting the NRC about the availability of information for this document. You may obtain publicly-available information related to this document by any of the following methods:

- Federal Rulemaking Web site: Go to *www.regulations.gov* and search for Docket ID NRC–2014–0118. Address questions about NRC dockets to Carol Gallagher; telephone:

(301) 415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, please 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 (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Timothy Harris, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 287–3594 email: *Tim.Harris@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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III. Plain Writing

I. Background

On June 18, 2014, the NRC solicited comment from members of the public on a draft regulatory basis addressing the need for a rulemaking to enhance the security of special nuclear material (79 FR 34641). The public comment period ended on October 17, 2014. The NRC received a total of 26 comment submissions from individuals, non-government organizations, and industry. The NRC staff reviewed and considered the comments in finalizing the regulatory basis. The regulatory basis is available in ADAMS under Accession No. ML14321A007 or on the Federal rulemaking Web site, *www.regulations.gov,* under Docket ID NRC–2014–0118.

II. Publicly-Available Documents

As the NRC continues its ongoing proposed rulemaking effort to amend portions of part 73 of Title 10 of the *Code of Federal Regulations* (10 CFR) to enhance security of special nuclear material, the NRC is making documents publicly available on the Federal rulemaking Web site, *www.regulations.gov,* under Docket ID NRC–2014–0118. By making these documents publicly available, the NRC seeks to inform stakeholders of the current status of the NRC's rulemaking development activities and to provide preparatory material for future public meetings.

The NRC may post additional materials relevant to this rulemaking at *www.regulations.gov,* under Docket ID NRC–2014–0118. Please take the following actions if you wish to receive alerts when changes or additions occur in a docket folder: (1) Navigate to the docket folder (NRC–2014–0118); (2) click the ''Email Alert'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

III. Plain Writing

The Plain Writing Act of 2010, (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. Although regulations are exempt under the Act, the NRC is applying the same principles to its rulemaking documents. Therefore, the NRC has written this document to be consistent with the Plain Writing Act.

Dated at Rockville, Maryland, this 9th day of April 2015.

For the Nuclear Regulatory Commission.

Laura A. Dudes,

Director, Division of Material Safety, State, Tribal and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–09403 Filed 4–21–15; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 131

RIN 3245–AG02

Office of Women Owned Business: Women's Business Center Program

AGENCY: U.S. Small Business Administration.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The U.S. Small Business Administration (SBA) is issuing this Advanced Notice of Proposed Rulemaking (ANPRM) to solicit comments on issues involving the Women's Business Center (WBC) Program. SBA is evaluating the policies and procedures governing the management and oversight of the program and believes that public input could enhance its efforts to provide clear comprehensive and consistent guidance to the WBC grantees. Among other things, the ANPRM seeks public feedback on: (1) The standards and procedures for evaluating applications for new or renewal application for WBC grant; (2) procedures and requirements for resolving findings and disputes resulting from financial exams,

programmatic reviews, accreditation reviews, and other SBA oversight activities; and (3) the form and function of the required WBC information clearinghouse. SBA expects this effort will remove any ambiguity and uncertainty in the program and result in improved delivery of services to the small business clients WBCs serve throughout the country.

DATES: Comments must be received by June 22, 2015.

ADDRESSES: You may submit comments, identified by RIN 3245–AG02 by one of the following methods:

(1) *Federal Rulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments;

(2) *Mail/Hand Delivery/Courier:* U.S. Small Business Administration, Attn: Bruce Purdy, Deputy Assistant Administrator for the Office of Women's Business Ownership (DAA/OWBO), 409 3rd Street SW., Washington, DC 20416, via facsimile (202) 481–0554; or

(3) Email to *owbo@sba.gov.* SBA will post all comments to this Advance Notice of Proposed Rulemaking on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to the U.S. Small Business Administration, Attn: Bruce Purdy, Deputy Assistant Administrator for the Office of Women's Business Ownership (DAA/OWBO), 409 3rd Street SW., Washington, DC 20416, via facsimile (202) 481–0554, or submit them via email to *owbo@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Bruce Purdy, DAA/OWBO, U.S. Small Business Administration, 490 3rd Street SW., Washington, DC 20416, telephone number (202) 205–7532 or *bruce.purdy@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Women's Business Ownership (OWBO) and the Women's Business Center program were created under the authority of Title II of the Women's Business Ownership Act of 1988 (Pub. L. 100–533) and the Women's Business Development Act of 1991 (Pub. L. 102–191). The program authority is now codified in Section 29 of the Small Business Act 15 U.S.C. 656. The initial Demonstration Training Program, later renamed the Women's Business Center Program and the Office of Women's Business Ownership were created in response to Congress's desire to remove barriers to the creation and development of small businesses owned and controlled by women and to stimulate the economy by aiding and encouraging the growth and development of such businesses. The specific objectives of the demonstration were to provide long term training and counseling to potential and current women business owners including those who are socially and economically disadvantaged.

Since its creation, the Women's Business Center program has changed through a number of public laws that have turned the program from a demonstration program into a permanent program. The program has grown and evolved to provide a variety of services to the many entrepreneurs ranging from those interested in starting a business to those looking to expand an existing business.

Over the last several years, SBA has incorporated processes to monitor the WBC program, including conducting financial examinations required by statute. However, as the program was still a demonstration program until 2007, regulations have never been drafted and issued for the program.

According to section 29(a)(4) of the Small Business Act, 15 U.S.C. 656(a)(4), a women's business center must reach a distinct population that would otherwise not be served; whose services are targeted to women; and whose scope, function, and activities are similar to those of the primary women's business center or centers in conjunction with which it was established.

The SBA is seeking comments on how to define ''distinct population that would otherwise not be served'' and ''whose services are targeted to women'' with respect to this statutory requirement. Currently, the SBA defines ''a distinct population that would otherwise not be served'' as economically and socially disadvantaged women. SBA defines ''services targeted to women'' as a Women's Business Center having a majority of their clients as women.

In addition, the Small Business Act at section 29(c)(2), 15 U.S.C. 656(c)(2), states that Women's Business Center Program grantees shall not have more than one-half of the non-Federal sector matching assistance be in the form of in-kind contributions that are budget line items only. The SBA is seeking comments on how to define what is acceptable for activities that fall under ''in-kind'' and what guidelines grantees should use in determining reasonable costs associated with in-kind activities and acceptable guidelines for documenting in-kind match. Currently, the SBA finds donated time by subject matter experts (*e.g.,* lawyers, accountants) conducting training or counseling and real estate donations (*e.g.,* donated office space) as legitimate in-kind activities. The SBA is also seeking comments on guidelines for determining what should or should not be a ''budget line item.''

The Small Business Act at section 29(f), 15 U.S.C. 656(f), also states that selection criteria used in deciding whether to award an initial Women's Business Center grant are: (1) The experience of the applicant in conducting programs or ongoing efforts designed to impart or upgrade the business skills of women business owners or potential owners; (2) the present ability of the applicant to commence a project within a minimum amount of time; (3) the ability of the applicant to provide training and services to a representative number of women who are both socially and economically disadvantaged; and (4) the location for the women's business center site proposed by the applicant. Based on these statutory criteria, the SBA is seeking comments on what guidelines SBA should use in evaluating ''the experience of the applicant'' and ''the proposed location for the women's business center.'' Additionally, the SBA is seeking comments on how to define what an appropriate ''minimum amount of time'' would be to commence operating as a Women's Business Center following receipt of an award.

According to section 29(g)(2)(B)(i), 15 U.S.C. 656(g)(2)(B)(i), one of the responsibilities of the Office of Women's Business Ownership is to ''maintain a clearinghouse to provide for the dissemination and exchange of information between women's business centers.'' The SBA is seeking comments on how to maintain this clearinghouse and in what form the clearinghouse should exist.

Section 29(l)(2)(a)(ii), 15 U.S.C. 656(l)(2)(a)(ii), the Small Business Act states that in order for a non-profit organization to renew its original grant, the applicant must certify that the organization ''employs a full-time executive director or program manager to manage the center.'' The SBA is seeking comments on how to define ''full-time'' for purposes of managing the center. This same section states that the applicant must submit information about its ''ability to fundraise.'' The SBA is seeking comments on what factors and types of information the

SBA should collect to make a determination on the applicant's ability to fundraise.

Finally, in addition to the specific issues raised above, SBA invites comments on other aspects of the WBC program that the public believes should be evaluated and revised where possible. We ask that you provide a brief justification for any suggested changes.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2015–09391 Filed 4–21–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1008; Directorate Identifier 2013–SW–064–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Type Certificate Previously Held by Schweizer Aircraft Corporation)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model 269A, 269A–1, 269B, 269C, 269C–1, 269D, and TH–55A helicopters. This proposed AD would require repetitively inspecting and lubricating the tail rotor (T/R) driveshaft splined fittings. This proposed AD is prompted by a report that the T/R driveshaft can disconnect due to deterioration of the splined coupling. The proposed actions are intended to detect and prevent excessive wear of the splined coupling, which could lead to failure of the T/R driveshaft and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by June 22, 2015.

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

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

Examining the AD Docket

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

For service information identified in this proposed AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email *sikorskywcs@sikorsky.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1008.

FOR FURTHER INFORMATION CONTACT: Stephen Kowalski, Aviation Safety Engineer, New York Aircraft Certification Office, Engine & Propeller Directorate, 1600 Stewart Ave., suite 410, Westbury, New York 11590; telephone (516) 228–7327; email *stephen.kowalski@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We propose to adopt a new AD for Sikorsky Model 269A, 269A–1, 269B, 269C, 269C–1, 269D, and TH–55A helicopters. This proposed AD would require a one-time inspection and lubrication of the T/R driveshaft splined fittings and replacing a splined fitting and the T/R driveshaft if the fitting has excessive wear. This proposed AD would also require repetitively inspecting the driveshaft for straightness, twists, and scratches, repetitively inspecting the internal coupling splines, internal stops, and coupling drive splines for wear, and repetitively correcting the torque of each main transmission aft pinion nut (pinion nut).

This proposed AD is prompted by a report of excessive spline wear on the forward and aft T/R driveshaft splined fittings installed on Sikorsky Model 269A, 269A–1, 269B, 269C, 269C–1, 269D, and TH–55A helicopters. This abnormal spline wear can lead to the T/R driveshaft disconnecting. An investigation has determined that insufficient lubrication of the splined fittings can result in deterioration of the splined teeth and subsequent failure of the T/R driveshaft coupling. The proposed actions are intended to detect excessive wear of the splined coupling and prevent failure of the T/R driveshaft and subsequent loss of control of the helicopter.

Sikorsky has developed a one-time inspection that requires cleaning, inspecting, and lubricating the driveshaft splines. Sikorsky has also developed a repetitive 100-hour time-in-service (TIS) requirement for inspecting the T/R driveshaft for straightness, twists, and scratches; each coupling and internal stop for wear; each coupling drive spline for wear; and each pinion nut for correct torque.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

We reviewed Sikorsky 269 Alert Service Bulletin (ASB) B–299.1 for Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters; 269C–1 ASB C1B–036.1 for Model 269C–1 helicopters; and 269D ASB DB–041.1 for Model 269D helicopters, each Revision 1 and dated February 24, 2012. Each ASB describes procedures for cleaning, inspecting, and lubricating the forward and aft T/R driveshaft splined fittings and returning to Sikorsky any parts that exceed wear limits. Each ASB also requires implementing a 100 hour TIS recurring inspection of the T/R driveshaft, coupling and internal stop, coupling drive splines, and the pinion nut by following the procedures in each model helicopter's Handbook of Maintenance Instructions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

Proposed AD Requirements

This proposed AD would require, within 100 hours TIS, inspecting for wear and lubricating the forward and aft T/R driveshaft splines by following certain procedures in the Sikorsky ASBs for each model helicopter. If there is excessive wear of the T/R driveshaft splines, the proposed AD would require replacing the driveshaft fitting before further flight. If the helicopter has a T/R driveshaft grease fitting installed, the proposed AD would also require inspecting each grease fitting for certain conditions and replacing the grease fitting if necessary. The proposed AD would also require, at intervals not exceeding 100 hours TIS, inspecting the T/R driveshaft for straightness, twists, and scratches; inspecting each forward and aft T/R driveshaft splines for wear; and correcting the torque of each pinion nut.

Differences Between This Proposed AD and the Service Information

The Sikorsky ASBs require returning any splined fittings that exceed wear limits to Sikorsky, while this proposed AD requires replacing those fittings and the T/R driveshaft.

Costs of Compliance

We estimate that this proposed AD would affect 1,085 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per work-hour, inspecting and lubricating the T/R driveshaft splined fittings would require 1.8 hours, for a cost per helicopter of $153 and a total cost of $166,005 for the fleet. Inspecting the grease fittings would require 0.25 hour, for a cost of $21 per helicopter and a total cost of $22,785 for the fleet. Inspecting the driveshaft, fittings, internal stops, and drive spines would require 1.8 hours, for a cost per helicopter of $153 and a total cost of $166,005 for the fleet, per inspection cycle.

If required, replacing the T/R driving spline and driveshaft would require 1.6 work-hours, and required parts would cost about $14,853, for a cost per helicopter of $14,989.

If required, replacing a T/R driven spline and driveshaft would require 1.5 work-hours, and required parts would cost about $14,836, for a cost per helicopter of $14,964.

If required, replacing a grease fitting would require about .25 work-hour, and required parts would cost about $5, for a cost per helicopter of $26.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Sikorsky Aircraft Corporation (Type Certificate Previously Held by Schweizer Aircraft Corporation) Helicopters: Docket No. FAA–2015–1008; Directorate Identifier 2013–SW–064–AD.

(a) Applicability

This AD applies to Sikorsky Aircraft Corporation (Sikorsky) Model 269A, 269A–1, 269B, 269C, 269C–1, 269D, and TH–55A helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as insufficient lubrication of a tail rotor (T/R) driveshaft splined fitting. This condition could result in excessive wear of the T/R driveshaft splines, which could lead to failure of the T/R driveshaft and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by June 22, 2015.

(d) Compliance

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

(e) Required Actions

(1) Within 100 hours time-in-service (TIS):

(i) Inspect each T/R driveshaft splined fitting for a crack, a break, excessive wear, galling, spalling, chipping, corrosion, heat discoloration, and distortion by following the

Accomplishment Instructions, paragraphs 3.B.(1) through 3.B.(2), of Sikorsky 269 Alert Service Bulletin (ASB) B–299.1 for Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters; 269C–1 ASB C1B–036.1 for Model 269C–1 helicopters; or 269D ASB DB–041.1 for Model 269D helicopters, each Revision 1 and dated February 24, 2012. If there is a crack, a break, excessive wear, galling, spalling, chipping, corrosion, heat discoloration, or distortion on any T/R driveshaft splined fitting, before further flight, replace the affected splined fitting and the T/R driveshaft.

(ii) If installed, inspect each T/R driveshaft grease fitting for looseness, presence of a check ball inside each fitting, and for proper operation and seating of each check ball. If any grease fitting is loose, missing a check ball, fails to properly operate, or if a check ball fails to seat, before further flight, replace the grease fitting.

(iii) Lubricate each driveshaft fitting by following the Accomplishment Instructions, paragraph 3.B.(6), of Sikorsky 269 ASB B–299.1 for Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters; 269C–1 ASB C1B–036.1 for Model 269C–1 helicopters; or 269D ASB DB–041.1 for Model 269D helicopters, each Revision 1 and dated February 24, 2012.

(2) Within 100 hours TIS after the inspections required by paragraph (e)(1) of this AD, and thereafter at intervals not exceeding 100 hours TIS:

(i) Remove the driveshaft from the gearbox and clean any grease from each end fitting.

(ii) Inspect the driveshaft for straightness, a twist, and a scratch. If the driveshaft has any bends, twists, or scratches, before further flight, replace the driveshaft.

(iii) Inspect the internal splines of each forward and aft fitting and each internal stop for wear. If there is any wear, before further flight, replace the fitting.

(iv) Inspect the drive splines of each splined drive fitting for wear. If there is any wear, before further flight, replace the splined drive fitting.

(v) Loosen the aft frame clamp and apply a torque of 750 to 1,000 inch-pounds to each main transmission aft pinion nut.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, New York Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Stephen Kowalski, Aviation Safety Engineer, New York Aircraft Certification Office, Engine & Propeller Directorate, 1600 Stewart Ave., suite 410, Westbury, New York 11590; telephone (516) 228–7327; email *stephen.kowalski@faa.gov.*

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

(g) Additional Information

For service information identified in this AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email *sikorskywcs@sikorsky.com.* You may review a copy of information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6500: Tail Rotor Drive.

Issued in Fort Worth, Texas, on April 14, 2015.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–09098 Filed 4–21–15; 8:45 am]

BILLING CODE 4910–13P–

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0927; Directorate Identifier 2013–NM–172–AD]

RIN 2120–AA64

Airworthiness Directives; Zodiac Aerotechnics (Formerly Intertechnique Aircraft Systems)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Zodiac Aerotechnics (formerly Intertechnique Aircraft Systems) flightcrew oxygen mask regulators as installed on, but not limited to, various transport and small airplanes. This proposed AD was prompted by a report that improper maintenance on oxygen mask regulators was found. This proposed AD would require the identification and replacement of all potentially affected units. This proposed AD also would require installation of a placard and revision of the airplane flight manual to include an operational procedure for use in case of depressurization. We are proposing this AD to detect and correct affected oxygen mask regulators, which could lead to inadequate protection to the affected flightcrew against hypoxia. Hypoxia can start from a headache and drowsiness and lead eventually to unconsciousness with severe consequence in terms of airplane controllability.

DATES: We must receive comments on this proposed AD by June 8, 2015.

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

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

For service information identified in this proposed AD, contact Zodiac Services, Technical Publication Department, Zodiac Aerotechnics, Oxygen Systems Europe, 61 Rue Pierre Curie—CS20001, 78373 Plaisir Cedex, France; phone: (33) 01 61 24 23 23; fax: (33) 01 30 55 71 61; email: *yann.laine@zodiacaerospace.com;* Internet: *http://www.zodiacaerospace.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0927; 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 Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ian Lucas, Aerospace Engineer, Boston Aircraft Certification Office (ACO) ANE–150, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7757; fax: 781–238–7170; email: *ian.lucas@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–2015–0927; Directorate Identifier 2013–NM–172–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 based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2012–0254R1, dated December 21, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> In a repair station, improper maintenance on [flightcrew] oxygen mask regulators was reported to Intertechnique: during an inspection of the oxygen test bench by its manufacturer, incorrect settings were noticed. This test bench setting discrepancy on the oxygen mask regulator could cause an improper mask dilution schedule.
>
> This condition, if not detected and corrected, could lead, in case of a diversion above 10,000 feet after a depressurization event, to the inhalation of air with improper content of oxygen, due to the bad dilution settings, thereby providing inadequate protection to the affected flightcrew member against hypoxia, which can start from a headache and drowsiness and lead eventually to unconsciousness with severe consequence in term of aeroplane controllability.
>
> For the reasons described above, this [EASA] AD requires the identification and replacement of all potentially affected units. This [EASA] AD also requires installation of a placard and [a revision to the airplane flight manual to include] . . . an operational procedure [in case of depressurization] pending replacement of the affected units.
>
> * * * * *

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–0927.

Related Service Information Under 1 CFR Part 51

Zodiac Services has issued Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012. The service information describes procedures for the identification and replacement of all potentially affected units. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 13 appliances installed on, but not limited to, various transport and small airplanes of U.S. registry.

We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $225 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $6,240, or $480 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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):

Zodiac Aerotechnics (formerly Intertechnique Aircraft Systems): Docket No. FAA–2015–0927; Directorate Identifier 2013–NM–172–AD.

(a) Comments Due Date

We must receive comments by June 8, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Zodiac Aerotechnics (formerly Intertechnique Aircraft Systems) flightcrew oxygen mask regulators having part number MC10, MF10, and MF20 series, with serial numbers listed in Appendix 1 of Zodiac Services Service Bulletin MCF–SBU–35–001, Revision 01, dated December 3, 2012. These oxygen mask regulators are installed on various transport and small airplanes, certificated in any category, including, but not limited to, the airplanes of the manufacturers specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), and (c)(7) of this AD. An oxygen mask regulator

having part number MC10–04–127 with serial number 48573 is affected only if it is part of part number MSE101–27 with serial number 7521.

(1) Airbus.

(2) ATR—GIE Avions de Transport Régional.

(3) The Boeing Company.

(4) Bombardier, Inc.

(5) Cessna Aircraft Company.

(6) Gulfstream Aerospace Corporation.

(7) Gulfstream Aerospace LP.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by a report that improper maintenance on oxygen mask regulators was found. During an inspection of the oxygen test bench, incorrect settings were noticed. This test bench setting discrepancy on the oxygen mask regulator could cause an improper mask dilution schedule. We are issuing this AD to detect and correct affected oxygen mask regulators, which could lead, in case of mask usage at or above 10,000 feet after a depressurization event, to the inhalation of air with improper content of oxygen, due to the bad dilution settings, thereby providing inadequate protection to the affected flightcrew against hypoxia. Hypoxia can start from a headache and drowsiness and lead eventually to unconsciousness with severe consequence in terms of airplane controllability.

(f) Compliance

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

(g) Inspection

Within 30 days after the effective date of this AD, inspect each flightcrew oxygen mask regulator to identify the part number and serial number, in accordance with the Accomplishment Instructions of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012. A review of airplane maintenance records is acceptable to make the determination as specified in this paragraph, provided those records can be relied upon for that purpose, and each flightcrew oxygen mask regulator can be conclusively identified from that review.

(h) Action for Affected Regulators

If the part number and serial number, identified as required by paragraph (g) of this AD, are listed in Appendix 1 of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012, within 30 days after the effective date of this AD, accomplish the actions specified in paragraph (h)(1) or (h)(2) of this AD.

(1) Replace each affected flightcrew oxygen mask regulator with a part identified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD.

(i) A serviceable part, not having a part number and serial number listed in Appendix 1 of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012.

(ii) A part that has been tested and passed the test in accordance with paragraph 3.A.(4) of the Accomplishment Instructions of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012

(2) Do the actions specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Revise the Emergency Procedures section of the airplane flight manual (AFM) by inserting the statement provided in figure 1 to paragraph (h)(2)(i) of this AD. This may be done by inserting a copy of figure 1 to paragraph (h)(2)(i) of this AD into the AFM.

FIGURE 1 TO PARAGRAPH (h)(2)(i) OF THIS AD

In case of depressurization, both pilots must use the mask regulator on 100% demand or Emergency mode only.

Note 1 to paragraph (h)(2)(i) of this AD: For oxygen over-consumption, refer to applicable airplane type certificate holder limitations, if existing, depending on the airplane configuration and/or flight plan.

Note 2 to paragraph (h)(2)(i) of this AD: It is the operators' responsibility to assess the operational consequences of the oxygen over-consumption and ensure that the operational requirements with regard to supplemental oxygen and crew protective breathing equipment are still done. Operators are expected to amend, as applicable, their operations manual(s) accordingly.

(ii) Fabricate and install a placard on the flightcrew oxygen mask container that states: ''USE SELECTOR on ''100%'' OR ''EMERGENCY'' ONLY.''

(i) Regulator Replacement

Within 12 months after the effective date of this AD, unless already accomplished as specified in paragraph (h)(1) of this AD, replace each affected flightcrew oxygen mask regulator identified in paragraph (h) of this AD with a part identified in paragraph (i)(1) or (i)(2) of this AD. After replacement of all affected flightcrew oxygen mask regulators on an airplane, the actions specified in paragraph (h)(2) of this AD are no longer required, the AFM revision specified in paragraph (h)(2)(i) of this AD may be removed from the AFM, and the placard identified in paragraph (h)(2)(ii) of this AD may be removed from the airplane.

(1) A serviceable part, not having a part number and serial number listed in Appendix 1 of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012.

(2) A part that has been tested and passed the test in accordance with paragraph 3.A.(4) of the Accomplishment Instructions of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g), (h)(1)(ii), and (i)(2) of this AD, if those actions were performed before the effective date of this AD using Zodiac Aerospace Service Bulletin MCF–SBU–35–001, dated October 25, 2012, which is not incorporated by reference in this AD.

(k) Parts Installation Limitation

As of the effective date of this AD, no person may install any flightcrew oxygen mask regulator with a part number and serial number listed in Appendix 1 of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012, on any airplane, unless the regulator has been tested and passed the test, in accordance with paragraph 3.A.(4) of the Accomplishment Instructions of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012.

(l) Alternative Methods of Compliance (AMOCs)

The Manager, Boston Aircraft Certification Office (ACO) ANE–150, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Ian Lucas, Aerospace Engineer, Boston Aircraft Certification Office (ACO) ANE–150, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7757; fax: 781–238–7170; email: *ian.lucas@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012–0254R1, dated December 21, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–0927.

(2) For service information identified in this AD, contact Zodiac Services, Technical Publication Department, Zodiac Aerotechnics, Oxygen Systems Europe, 61 Rue Pierre Curie—CS20001, 78373 Plaisir Cedex, France; phone: (33) 01 61 24 23 23; fax: (33) 01 30 55 71 61; email: *yann.laine@zodiacaerospace.com;* Internet:_ *http://www.zodiacaerospace.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 10, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–09103 Filed 4–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM15–4–000]

Disturbance Monitoring and Reporting Requirements Reliability Standard

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to approve Reliability Standard PRC–002–2 (Disturbance Monitoring and Reporting Requirements) submitted by the North American Electric Reliability Corporation. The purpose of proposed Reliability Standard PRC–002–2 is to have adequate data available to facilitate analysis of bulk electric system disturbances.

DATES: Comments are due June 22, 2015.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

• Electronic Filing through *http://www.ferc.gov*. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Juan R. Villar (Technical Information), Office of Electric Reliability, Division of Reliability Standards and Security, 888 First Street NE., Washington, DC 20426, Telephone: (202) 536–2930, *Juan.Villar@ferc.gov*.

Alan Rukin (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8502, *Alan.Rukin@ferc.gov*.

SUPPLEMENTARY INFORMATION: 1. Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) proposes to approve proposed Reliability Standard PRC–002–2 (Disturbance Monitoring and Reporting Requirements).[1] The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted proposed Reliability Standard PRC–002–2 for approval. The purpose of proposed Reliability Standard PRC–002–2 is to have adequate data available to facilitate analysis of bulk electric system disturbances. In addition, the Commission proposes to approve the associated violation risk factors and violation severity levels, implementation plan, and effective date proposed by NERC.

I. Background

A. Section 215 and Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[2] Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or by the Commission independently.[3] In 2006, the Commission certified NERC as the ERO pursuant to FPA section 215.[4]

B. Order No. 693

3. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including Reliability Standard PRC–018–1.[5] Reliability Standard PRC–018–1 requires the installation of disturbance monitoring equipment and the reporting of disturbance data in accordance with comprehensive requirements.[6]

4. In Order No. 693, the Commission determined that proposed Reliability Standard PRC–002–1 was a ''fill-in-the-blank'' Reliability Standard because it required Regional Reliability Organizations to establish requirements for installation of disturbance monitoring equipment and report disturbance data to facilitate analyses of events and verify system models.[7] The Commission stated that it would not approve or remand proposed Reliability Standard PRC–002–1 until NERC submitted additional necessary information to the Commission.[8]

C. NERC Petition and Proposed Reliability Standard PRC–002–2

5. On December 15, 2014, NERC submitted a petition seeking Commission approval of proposed Reliability Standard PRC–002–2.[9] NERC contends that proposed Reliability Standard PRC–002–2 is just, reasonable, not unduly discriminatory or preferential, and in the public interest. NERC explains that the proposed Reliability Standard consolidates the requirements of unapproved Reliability Standard PRC–002–1 and currently-effective Reliability Standard PRC–018–1.[10]

6. NERC states that it is important to monitor and analyze disturbances to plan and operate the Bulk-Power System to avoid instability, separation and cascading failures.[11] NERC maintains that the proposed Reliability Standard improves reliability by providing personnel with necessary data to enable more effective post event analysis, which can also be used to verify system models.[12] Moreover, NERC explains that the proposed Reliability Standard ''focuses on ensuring that the requisite data is captured and the Requirements constitute a results-based approach to capturing data.'' [13]

7. NERC states that, in the United States, proposed Reliability Standard PRC–002–2 will apply to planning coordinators in the Eastern Interconnection, planning coordinators or the reliability coordinator in the Electric Reliability Council of Texas (ERCOT) Interconnection, and the reliability coordinator in the Western Interconnection, which are collectively referred to as ''Responsible Entities.'' The proposed Reliability Standard will also apply to transmission owners and generation owners.

8. NERC states that proposed Reliability Standard PRC–002–2

[1] 16 U.S.C. 824o.

[2] *Id.* 824o(c) and (d).

[3] *Id.* 824o(e).

[4] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *order on compliance,* 118 FERC ¶ 61,190, *order on reh'g,* 119 FERC ¶ 61,046 (2007), *rev. denied sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[5] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. and Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[6] *Id.* at PP 1550–1551.

[7] *Id.* at P 1451.

[8] *Id.* at P 1456.

[9] Proposed Reliability Standard PRC–002–2 is not attached to this Notice of Proposed Rulemaking. The proposed Reliability Standard is available on the Commission's eLibrary document retrieval system in Docket No. RM15–4–00 and is posted on NERC's Web site, *available* at *http://www.nerc.com*.

[10] NERC Petition at 15.

[11] *Id.* at 13. NERC defines a ''Disturbance'' as: ''(1) an unplanned event that produces an abnormal system condition; (2) any perturbation to the electric system; [or] (3) the unexpected change in [area control error] that is caused by the sudden failure of generation or interruption of load.'' *Id.* (quoting Glossary of Terms Used in NERC Reliability Standards at 30).

[12] *Id.* at 15.

[13] *Id.* at 14–15.

includes 12 Requirements. Requirement R1 requires transmission owners: (1) To identify bulk electric system buses, *e.g.,* substations, for which sequence of event recording and fault record data is required; (2) to notify other owners of bulk electric system elements connected to those particular bulk electric system buses where sequence of event recording and fault record data will be necessary; and (3) to re-evaluate all bulk electric system buses every five years. Requirement R2 requires transmission owners and generation owners to collect sequence of event data. Requirement R3 and Requirement R4 require transmission owners and generation owners to collect fault recording data and parameters of that data. Requirement R5 through Requirement R9 lay out thresholds where dynamic disturbance recording data are required and provide more specifics on its collection. Requirement R10 requires transmission owners and generation owners to time synchronize the recordings. According to NERC, Requirement R10 provides the synchronization requirements in response to Recommendation No. 28 from the final report on the August 2003 blackout issued by the U.S.-Canada Power System Outage Task Force (Blackout Report).[14] Requirement R11 requires transmission owners and generation owners to provide sequence of event recording, fault recording and dynamic disturbance recording data upon request and establishes specific guidelines to ensure that data can be used in the analysis of events. Requirement R12 requires transmission owners and generation owners to restore the recording capability of the equipment used to record disturbances, if this capability is interrupted.

9. NERC proposes an implementation plan that includes an effective date for proposed Reliability Standard PRC–002–2 that is the first day of the first calendar quarter that is six months after the date that the Commission approves the standard. Concurrent with the effective date, the implementation plan calls for the retirement of currently-effective Reliability Standard PRC–018–1 and ''pending'' Reliability Standard PRC–002–1.[15]

II. Discussion

10. Pursuant to section 215(d)(2) of the FPA, the Commission proposes to approve proposed Reliability Standard PRC–002–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission also proposes to approve the associated violation risk factors and violation severity levels, implementation plan, and effective date proposed by NERC. Further, the Commission proposes to approve the retirement of ''pending'' Reliability Standard PRC–002–1 and currently-effective Reliability Standard PRC–018–1, as proposed by NERC.[16]

11. Proposed Reliability Standard PRC–002–2 enhances reliability by imposing mandatory requirements concerning the monitoring and reporting of disturbances. Proposed Reliability Standard PRC–002–2 provides greater continent-wide consistency regarding collection methods for data used in the analysis of disturbances on the Bulk-Power System. Specifically, proposed Reliability Standard PRC–002–2 enhances reliability by consistently requiring covered entities to collect time-synchronized information and to report disturbances on the Bulk-Power System. Accordingly, proposed Reliability Standard PRC–002–2 satisfies the relevant directive in Order No. 693.[17] In addition, we agree with NERC that Reliability Standard PRC–018–1 can be retired due to its consolidation with proposed Reliability Standard PRC–002–2.

III. Information Collection Statement

12. The collection of information addressed in this Notice of Proposed Rulemaking is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[18] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[19] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

13. We solicit comments on the need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

14. *Public Reporting Burden:* The number of respondents below is based on an examination of the NERC compliance registry for transmission owners and generation owners and the estimation of how many entities from that registry will be affected. At the time of Commission review of proposed Reliability Standard PRC–002–2, 330 transmission owners and 914 generation owners in the United States are registered in the NERC compliance registry. The Commission estimates that two-thirds (216) of these registered transmission owners will need to comply with at least one of the requirements contained in proposed Reliability Standard PRC–002–2. The Commission notes that many generation sites share a common generation owner. Due to the nature of this task, it is likely generator owners will manage this information aggregation task using a centralized staff. Therefore, we estimate that one-third of the generation owners (305) will have to meet the requirements contained in proposed Reliability Standard PRC–002–2. Finally, the Commission finds the number of ''Responsible Entities'' [20] in the United States to equal fifty, based on the NERC compliance registry. The following table illustrates the burden to be applied to the information collection.[21]

[14] NERC Petition at 35–36 (quoting *U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations* at 162 (Apr. 2004), *available at http://energy.gov/sites/prod/files/oeprod/DocumentsandMedia/BlackoutFinal-Web.pdf*).

[15] *Id.* at Ex. B (Implementation Plan).

[16] As noted above, the Commission in Order No. 693 did not approve proposed Reliability Standard PRC–002–1 but, rather, took no action on the Reliability Standard pending the receipt of additional information. Order No. 693, FERC Stats. and Regs. ¶ 31,242 at P 1456. Approval of Reliability Standard PRC–002–2, as proposed herein, will render PRC–002–1 ''retired,'' *i.e.,* withdrawn, and no longer pending before the Commission.

[17] Order No. 693, FERC Stats. and Regs. ¶ 31,242 at P 1456 (''the ERO should consider whether greater consistency can be achieved'' regarding disturbance monitoring and reporting).

[18] 44 U.S.C. 3507(d).

[19] 5 CFR 1320.11.

[20] As discussed above, proposed Reliability Standard PRC–002–2 defines the term ''Responsible Entity'' to include planning coordinators in the Eastern Interconnection, the reliability coordinator in the Western Interconnection, and planning coordinators or the reliability coordinator in the ERCOT Interconnection.

[21] In the burden table, engineering is abbreviated as ''Eng.'' and record keeping is abbreviated as ''R.K.''

Requirement and respondent category for PRC–002–2	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2) = (3)	Average burden hours & cost per response [22] (4)	Annual burden hours & total annual cost (3)*(4) = (5)
R1. Each Transmission Owner.	324	1	324	(Eng.) 24 hrs. ($1,568.16); (R.K.) 12 hrs. ($401.04).	11,664 hrs. (7776 Eng., 3888 R.K.); $638,020.80 ($508,083.84 Eng., $129,936.96 R.K.)
R2. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	7,294 hrs. (5210 Eng., 2084 R.K.); $410,068.68 ($340,421.40 Eng., $69,647.28 R.K.)
R3 & R4. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	7,294 hrs. (5210 Eng., 2084 R.K.); $410,068.68 ($340,421.40 Eng., $69,647.28 R.K.)
R5. Each Responsible Entity	50	1	50	(Eng.) 24 hrs. ($1,568.16); (R.K.) 12 hrs. ($401.04).	1,800 hrs. (1200 Eng., 600 R.K.); $98,460 ($78,408 Eng., $20,052 R.K.)
R6. Each Transmission Owner.	216	1	216	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	3,024 hrs. (2160 Eng., 864 R.K.); $170,009.28 ($141,134.40 Eng., $28,874.88 R.K.)
R7. Each Generator Owner ...	305	1	305	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	4,270 hrs. (3050 Eng., 1220 R.K.); $240,059.40 ($199,287 Eng., $40,772.40 R.K.)
R8. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	7,294 hrs. (5210 Eng., 2084 R.K.); $410,068.68 ($340,421.40 Eng., $69,647.28 R.K.)
R9. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	7,294 hrs. (5210 Eng., 2084 R.K.); $410,068.68 ($340,421.40 Eng., $69,647.28 R.K.)
R10. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	7,294 hrs. (5210 Eng., 2084 R.K.); $410,068.68 ($340,421.40 Eng., $69,647.28 R.K.)
R11. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 8 hrs. ($522.72); (R.K.) 4 hrs. ($133.68).	6,252 hrs. (4168 Eng., 2084 R.K.); $341,984.4 ($272,337.12 Eng., $69,647.28 R.K.)
R12. Each Transmission Owner and Generator Owner [23].	52	1	52	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	728 hrs. (520 Eng., 208 R.K.); $40,928.16 ($33,976.80 Eng., $6,951.36 R.K.)
Total	.....	.....	.....	.....	64,208 hrs. (44,924 Eng., 19,284 R.K.); $3,579,805.44 ($2,935,334.16 Eng., $644,471.28 R.K.)

Title: FERC–725G2 [24] Disturbance Monitoring and Reporting Requirements.

Action: Revision to existing collection.

OMB Control No: To be determined.

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: Annually.

Necessity of the Information: Proposed Reliability Standard PRC–002–2 sets forth requirements for disturbance monitoring and reporting requirements that will ensure adequate data are available to facilitate analysis of bulk electric system disturbances.

Internal review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

15. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First

[22] The estimates for cost per response are derived using the following formula: Burden Hours per Response * $/hour = Cost per Response. The $65.34/hour figure for an engineer and the $33.42/hour figure for a record clerk are based on the average salary plus benefits data from Bureau of Labor Statistics.

[23] The Commission estimates that 10% (or 52) of the 521 registered entities will have to restore recording capability or institute a corrective action plan (CAP) each year.

[24] FERC–725G2 is temporarily being used because FERC–725G (OMB Control No. 1902–0252) is currently pending review at OMB.

Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

16. Comments concerning the information collection proposed in this Notice of Proposed Rulemaking and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov*. Please reference FERC–725G2 and the docket numbers of this Notice of Proposed Rulemaking (Docket No. RM15–4–000) in your submission.

IV. Environmental Analysis

17. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[25] This action has been categorically excluded under section 380.4(a)(2)(ii) of the Commission's regulations, addressing the collection of information.[26]

V. Regulatory Flexibility Act

18. The Regulatory Flexibility Act of 1980 (RFA)[27] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities.

19. The Small Business Administration (SBA) revised its size standards (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates. Under SBA's new standards, some transmission owners and generation owners will possibly fall under the following category and associated size threshold: Electric bulk power transmission and control at 500 employees; hydroelectric power generation at 500 employees; fossil fuel electric power generation at 750 employees; nuclear electric power generation at 750 employees.

20. The Commission estimates that the number of applicable small entities will be minimal due to the gross million volt amps (MVA) thresholds embedded into proposed Reliability Standard PRC–002–2, which focus information collection on bulk electric system facilities having Interconnection-wide impacts worthy of collecting. The proposed Reliability Standard applies to approximately 526 entities in the United States. The Commission estimates, applying the MVA thresholds above, that approximately 52 (or 10 percent of the 521) are small entities. The Commission estimates for these small entities, proposed Reliability Standard PRC–002–2 Requirement R1 may need to be evaluated and documented every five years with costs of $9,847 for each evaluation. From this set of small entities, the Commission estimates that five percent, or only two or three small entities, may be affected by the other requirements, *i.e.,* Requirements R2 through R12, of proposed Reliability Standard PRC–002–2. Based on a prior industry-sponsored survey, annual compliance costs will average $100,000–$160,000 for entities subject to these requirements.[28] Accordingly, the Commission certifies that the proposed Reliability Standard will not have a significant economic impact on a substantial number of small entities.

VI. Comment Procedures

21. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due June 22, 2015. Comments must refer to Docket No. RM15–4–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

22. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

23. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

24. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

25. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

26. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits in the docket number field.

27. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1 (866) 208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Issued: April 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–09219 Filed 4–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM15–9–000]

Protection System, Automatic Reclosing, and Sudden Pressure Relaying Maintenance Reliability Standard

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the Federal Power Act, the Commission proposes to approve a revised Reliability Standard,

[25] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[26] 18 CFR 380.4(a)(2)(ii).

[27] 5 U.S.C. 601–612.

[28] *See* NERC Petition Ex. G (Record of Development) at 257 of pdf file, providing link to: NERC Cost Effective Analysis Process (CEAP) Pilot for NERC Project 2007–11—Disturbance Monitoring—PRC–002–2 at 8 (Apr. 9, 2014).

PRC–005–4 (Protection System, Automatic Reclosing and Sudden Pressure Relaying Maintenance), developed and submitted by the North American Electric Reliability Corporation (NERC). In addition, the Commission proposes to approve one new definition and four revised definitions referenced in the proposed Reliability Standard, as well as NERC's proposed violation risk factors, violation severity levels, and implementation plan. Consistent with Order No. 758, the proposed Reliability Standard requires applicable entities to test and maintain certain sudden pressure relays as part of a protection system maintenance program.

DATES: Comments are due June 22, 2015.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

• *Electronic Filing through http://www.ferc.gov*. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Tom Bradish (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (301) 665–1391, *Tom.Bradish@ferc.gov*.

Julie Greenisen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6362, *julie.greenisen@ferc.gov*.

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve a revised Reliability Standard, PRC–005–4 (Protection System, Automatic Reclosing and Sudden Pressure Relaying Maintenance), developed and submitted by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). In addition, the Commission proposes to approve one new definition and four revised definitions referenced in the proposed Reliability Standard, as well as NERC's proposed violation risk factors, violation severity levels, and implementation plan. Consistent with Order No. 758,[2] the proposed Reliability Standard requires applicable entities to test and maintain certain sudden pressure relays as part of a protection system maintenance program.

I. Background

A. Regulatory Background

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[3] Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or by the Commission independently.[4] In 2006, the Commission certified NERC as the ERO pursuant to FPA section 215.[5]

3. In 2007, the Commission approved an initial set of Reliability Standards submitted by NERC, including initial versions of four protection system and load-shedding-related maintenance standards: PRC–005–1, PRC–008–0, PRC–011–0, and PRC–017–0.[6] In addition, the Commission directed NERC to develop a revision to PRC–005–1 incorporating a maximum time interval during which to conduct maintenance and testing of protection systems, and to consider combining into one standard the various maintenance and testing requirements for all of the maintenance and testing-related standards for protection systems, underfrequency load shedding (UFLS) equipment and undervoltage load shedding (UVLS) equipment.

4. In February 2012, the Commission issued Order No. 758 in response to NERC's request for approval of its interpretation of Requirement R1 of the then-current version of the protection system maintenance standard, Reliability Standard PRC–005–1. In that order, the Commission accepted NERC's proposed interpretation of Requirement R1, which interpretation provided guidance on the types of protection system equipment to which the Reliability Standard did or did not apply. In reviewing NERC's interpretation, the Commission raised several concerns about potential gaps in the coverage of PRC–005–1, including a concern that the standard as written may not include all components that serve in some protective capacity.[7]

B. NERC Petition and Proposed Standard PRC–005–4

5. On December 18, 2014, NERC submitted a petition seeking approval of proposed Reliability Standard PRC–005–4, which would add to the applicability of Reliability Standard PRC–005–3 those sudden pressure relays that NERC has identified as having a potential effect on the reliable operation of the Bulk-Power System.[8] NERC states that these revisions were developed to satisfy NERC's commitment to develop modifications to PRC–005 that would address the Commission's concerns, as set out in Order No. 758, regarding the lack of maintenance requirements for non-electrical sensing relays (such as sudden pressure relays) that could affect the reliable operation of the Bulk-Power System.[9]

6. NERC states that sudden pressure relays ''are designed to quickly detect faults on the Bulk-Power System transformer equipment that may remain undetected by other Protection Systems, and can operate to limit any potential damage on the equipment.'' [10] NERC

[1] 16 U.S.C. 824o (2012).

[2] *Interpretation of Protection System Reliability Standard*, Order No. 758, 138 FERC ¶ 61,094, *clarification denied*, 139 FERC ¶ 61,227 (2012).

[3] 16 U.S.C. at 824o(c) and (d).

[4] *See id.* at 824o(e).

[5] *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g & compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

[6] *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at PP 1474, 1492, 1497, and 1514, *order on reh'g*, Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[7] *See* Order No. 758, 138 FERC ¶ 61,094 at P 12. NERC has addressed the Commission's concerns stated in Order No. 758 through a series of projects modifying the PRC–005 standard. *See Protection System Maintenance Reliability Standard*, Order No. 793, 145 FERC ¶ 61,253 (2013) (approving Reliability Standard PRC–005–2, which incorporated specific minimum maintenance activities and maximum time intervals for maintenance of individual components of the protection systems and load shedding equipment affecting the bulk electric system); *Protection System Maintenance Reliability Standard*, Order No. 803,150 FERC ¶ 61,039 (2015) (approving PRC–005–3 and directing NERC to develop a modification to include maintenance and testing of supervisory relays associated with relevant autoreclosing relay schemes).

[8] Proposed Reliability Standard PRC–005–4 is not attached to the NOPR; however, the complete text of the proposed Reliability Standard is available on the Commission's eLibrary document retrieval system in Docket No. RM15–9–000 and is posted on NERC's Web site, *available at: http://www.nerc.com*.

[9] *See* NERC Petition at 3, 9.

[10] *Id.* at 3. NERC describes sudden pressure relays as relays which ''respond to changes in pressure and are utilized as protective devices for power transformers,'' and which may ''detect rapid changes in gas pressure, oil pressure, or oil flow that are indicative of faults within the transformer equipment.'' *Id.* at 13. NERC notes that in addition

Continued

states that the ''misoperation of sudden pressure relays that initiate tripping in response to fault conditions can impact the reliability of the Bulk-Power System,'' and accordingly proposes revisions to PRC–005–3 that will require entities to document and implement programs for maintenance of applicable sudden pressure relays.[11]

7. NERC explains that, consistent with Order No. 758, NERC's System Protection and Control Subcommittee (SPCS) performed a technical study ''to determine which devices that respond to non-electrical quantities should be addressed within PRC–005 identified devices.'' [12] NERC states that the SPCS considered a broad range of devices that respond to non-electrical quantities, starting with the list of ninety-four devices included in the IEEE Standard Electrical Power System Device Function Numbers, then applying ''multiple layers of analysis to each device to select the ones that can affect the reliability of the Bulk-Power System.'' [13] The SPCS first determined that only those devices that initiate action to clear faults or mitigate abnormal system conditions presented a risk to the Bulk-Power System. Next, the SPCS eliminated those devices that were ''previously considered as a result of the revised definition of Protection System or those that are clearly not protective devices, such as primary equipment and control devices.'' [14] Finally, the SPCS conducted an in-depth analysis of the remaining devices, and concluded that only one category—sudden pressure relays that are utilized in a trip application—should be included in the revised PRC–005–4.

8. NERC also explains that the SPCS developed a Supplemental Report in response to comments and questions about its initial recommendations from the Commission staff. These comments and questions focused on whether PRC–005 should include turbine generator vibration monitors and circuit breaker arc extinguishing systems.[15] The SPCS Supplemental Report, issued on October 31, 2014, examined these two kinds of devices and provided information on events during which these devices operated or failed to operate. The Supplemental Report concluded that neither device affected the reliable operation of the Bulk-Power System.

9. NERC states that the standard drafting team that was tasked with developing the modifications to PRC–005 in response to Order No. 758 adopted the SPCS Report's recommendations, both as to the scope of additional relays included, and as to the required minimum maintenance activities and maximum maintenance intervals for these relays.

10. NERC maintains that proposed Reliability Standard PRC–005–4 will enhance reliability by extending the coverage of an applicable entity's protection system maintenance program to include sudden pressure relaying components. NERC further maintains that the proposed standard satisfies the Commission's concerns as raised in Order No. 758 ''by including . . . sudden pressure relays that detect [a] fault on Bulk-Power System transformer equipment and trip in response to fault conditions, as recommended by the SPCS Report.'' [16]

11. NERC explains that proposed Reliability Standard PRC–005–4 has been modified to include a new definition for ''Sudden Pressure Relaying,'', as well as four revised definitions as part of an applicable entity's protection system maintenance program.[17] NERC further explains that the proposed standard would include a sudden pressure relay that trips an interrupting device to isolate the equipment it is monitoring, but ''does not include other non-electric sensing devices, pressure relays that only initiate an alarm, or pressure relief devices.'' [18] In addition, NERC explains that the revised standard replaces the term ''Special Protection System'' with the term ''Remedial Action Scheme,'' to align the standard with NERC's employment of the latter term moving forward, and revises Applicability section 4.2.6.1 to address how the largest BES generating unit would be determined in circumstances involving a Reserve Sharing Group.

12. NERC's proposed implementation plan for PRC–005–4 incorporates the phased-in implementation period approved for PRC–005–2, which has a twelve year phase-in period, with the addition of compliance dates for the new requirements for applicable sudden pressure relays. NERC asks that PRC–005–4 become effective the first day of the first calendar quarter following Commission approval. Reliability Standard PRC–005–3 would be retired immediately prior to PRC–005–4 becoming effective.

13. NERC explains that the evidence retention period for PRC–005–4 is shorter than that required in the preceding versions of the standard, as it requires entities to maintain records for one maintenance cycle, rather than two cycles, if the interval of the maintenance activity is longer than the audit cycle. For maintenance activities where the interval is shorter than the audit cycle, documentation is to be retained for all maintenance activities since the previous audit.

14. NERC states that the violation risk factors proposed in PRC–005–4 track those in previous versions of the standard, and that the violation severity levels have been revised to include the additional component (sudden pressure relays) in a manner consistent with the approach taken for PRC–005–3.

II. Discussion

15. Pursuant to section 215(d)(2) of the FPA, the Commission proposes to approve Reliability Standard PRC–005–4, as well as the new definition of Sudden Pressure Relaying, the four revised definitions referenced in the proposed standard, the assigned violation risk factors and violation severity levels, and the proposed implementation plan. We believe that proposed Reliability Standard PRC–005–4 will enhance reliability by requiring the inclusion of sudden pressure relays of certain criteria that are utilized in a trip application as part of the protection system maintenance program, and by requiring entities to undertake minimum required maintenance activities at maximum defined maintenance intervals.

16. NERC has relied on the SPCS's determination that the only non-electrical sensing devices that can impact reliable operation of the Bulk-Power System are the sudden pressure relays that can detect rapid changes in gas pressure, oil pressure, or oil flow that are indicative of faults within the transformer equipment, and can trip associated transformer circuitry to isolate the transformer and limit the potential damage of the equipment. We agree that these relays should be included in an adequate protection system maintenance program.

17. However, we continue to have some concern that the misoperation of other types of non-electrical sensing relays or devices, such as pressure

to detecting faults, certain sudden pressure relays can trip the associated transformer circuitry in response to the fault conditions.

[11] *Id.* at 3–4.

[12] *Id.* at 4.

[13] *Id.* at 10.

[14] *Id.*

[15] NERC Petition at 11, Ex. E, *Sudden Pressure Relays and Other Devices that Respond to Non-Electrical Quantities: Supplemental Information to Support Project 2007–17.3: Protection System Maintenance and Testing*, NERC SPCS (Oct. 31, 2014) (SPCS Supplemental Report).

[16] NERC Petition at 12.

[17] NERC proposes to modify the definitions of Protection System Maintenance Program, Component Type, Component, and Countable Event to reflect the addition of sudden pressure relays to the scope of a required maintenance program. NERC Petition at 15–16.

[18] *Id.* at 18.

sensing devices associated with air blast or SF6 circuit breaker arc extinguishing systems, could affect the reliable operation of the Bulk-Power System. These non-electrical sensing devices are utilized in this context to give an indication that the circuit breaker may be unable to operate as designed on the Bulk-Power System. With regard to these types of devices, the SPCS stated that, ''there is no operating experience in which misoperation of a density switch or sensor [*i.e*, pressure sensing device] in response to a system disturbance has contributed to a cascading event.'' [19] However, we expect Commission staff to continue exploring this issue with NERC, particularly in light of the findings in NERC's 2014 and 2013 State of Reliability reports that AC substation equipment failures remain among the leading causes of Bulk Power System problems.

III. Information Collection Statement

18. The following collection of information contained in this Notice of Proposed Rulemaking is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[20] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[21] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

19. We solicit comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

20. The Commission proposes to approve Reliability Standard PRC–005–4, which will replace PRC–005–3 (Protection System and Automatic Reclosing Maintenance). The proposed Reliability Standard expands the existing standard to cover sudden pressure relays that meet certain criteria, thereby imposing mandatory minimum maintenance activities and maximum maintenance intervals for the applicable relays. Because the specific requirements were designed to reflect common industry practice, entities are not expected to experience a meaningful change in actual maintenance and documentation practices. However, each applicable entity will have to perform a one-time review of sudden pressure relays that detect rapid changes in gas pressure, oil pressure, or oil flow that are indicative of faults within transformer equipment, and, if it has applicable sudden pressure relay devices, review current maintenance programs to ensure that they meet the requirements of proposed standard PRC–005–4. Accordingly, all additional information collection costs are expected to be limited to the first year of implementation of the revised standard.

21. Proposed Reliability Standard PRC–005–4 reduces the evidence retention requirements approved in previously-approved versions of the standard, and now requires entities to maintain documentation of maintenance activities for only one maintenance cycle (a maximum of twelve years) if the maintenance interval is longer than the audit cycle. For maintenance activities where the interval is shorter than the audit cycle, documentation is to be retained for all maintenance activities since the previous audit. While the potential data retention requirement exceeds the three-year period that is routinely allowed for regulations requiring record retention under the OMB regulations implementing the PRA,[22] the maximum evidence retention period has been reduced from 24 years to a maximum of 12 years as a result of the Commission's prior request for comment on the reasonableness of the evidence retention period in earlier versions of the standard, and appears to reflect the minimum time needed to ensure compliance with maintenance requirements.[23]

22. *Public Reporting Burden:* Affected entities must perform a one-time review of their existing sudden pressure relay schemes and associated maintenance programs to ensure that the programs contain at a minimum the activities required by Reliability Standard PRC–005–4. If the existing maintenance program does not meet the criteria in Reliability Standard PRC–005–4, the entity will have to make certain adjustments to the program.

23. Our estimate below assumes that the number of unique applicable entities (distribution providers, generator owners and transmission owners, or a combination of those) in the United States is approximately 1,287 [24] and the time required to do the one-time review will be approximately eight hours. The estimate further assumes that the one-time review would be performed by an engineer at a rate of $65.34 per hour.[25]

RM15–9–000 (MANDATORY RELIABILITY STANDARDS: RELIABILITY STANDARD PRC–005–4)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2) = (3)	Average burden (hours) cost per response (4)	Total annual burden hours total annual cost (3)*(4) = (5)	Cost per respondent ($) (5) ÷ (1)
One-time review of sudden pressure relay maintenance program and adjustment	1,287	1	1,287	8 $523	10,296 $673,101	$523

[19] SPCS Supplemental Report at 4.

[20] 44 U.S.C. 3507(d) (2006).

[21] 5 CFR 1320.11 (2012).

[22] *See* 5 CFR 1320.5(d)(2)(iv).

[23] *See* Order No. 803, 150 FERC ¶ 61,039 at PP 37–38.

[24] This figure reflects the generator owners, transmission owners, and distribution providers identified in the NERC Compliance Registry as of February 27, 2015.

[25] The figure is taken from the Bureau of Labor Statistics at *http://www.bls.gov/oes/current/naics2_22.htm*; Occupation Code: 17–2071).

Title: FERC–725P1,[26] Mandatory Reliability Standards: Reliability Standard PRC–005–4.

Action: Proposed Collection of Information.

OMB Control No: To be determined.

Respondents: Business or other for-profit and not-for-profit institutions.

Frequency of Responses: One time.

Necessity of the Information: The proposed Reliability Standard PRC–005–4, if adopted, would implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the proposal would ensure that transmission and generation protection systems affecting the reliability of the bulk electric system are maintained and tested.

24. *Internal review:* The Commission has reviewed revised Reliability Standard PRC–005–4 and made a determination that approval of this standard is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

25. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

26. Comments concerning the information collections proposed in this NOPR and the associated burden estimates should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please reference the docket number of this Notice of Proposed Rulemaking (Docket No. RM15–9–000) in your submission.

[26] The FERC–725P1 is a temporary collection established so the Commission can submit this proposed rulemaking to OMB on time. However, the burden contained in this rulemaking should be contained in FERC–725G (OMB Control No. 1902–0252). Commission staff plans eventually to move this burden to FERC–725G.

IV. Regulatory Flexibility Act Analysis

27. The Regulatory Flexibility Act of 1980 (RFA)[27] generally requires a description and analysis of Proposed Rules that will have significant economic impact on a substantial number of small entities. Proposed Reliability Standard PRC–005–4 is expected to impose an additional, one-time burden on 1,287 entities (distribution providers, generator owners, and transmission owners, or a combination thereof). Comparison of the applicable entities with FERC's small business data indicates that approximately 789 of the 1,287 entities are small entities, or 61.31 percent of the respondents affected by this proposed Reliability Standard.[28]

28. On average, each small entity affected may have a one-time cost of $523, representing a one-time review of the program for each entity, consisting of 8 man-hours at $65.34/hour, as explained above in the information collection statement. We do not consider this cost to be a significant economic impact for small entities. Accordingly, the Commission certifies that proposed Reliability Standard PRC–005–4 will not have a significant economic impact on a substantial number of small entities. The Commission seeks comment on this certification.

V. Environmental Analysis

29. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[29] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[30] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

VI. Comment Procedures

30. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due June 22, 2015. Comments must refer to Docket No. RM15–9–000, and must include the commenter's name, the organization they represent, if applicable, and address.

31. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

32. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

33. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

34. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

35. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this

[27] 5 U.S.C. 601–12. The number of small distribution providers required to comply with PRC–005–4 may decrease significantly. In March 2015, the Commission approved revisions to the NERC Rules of Procedure to implement NERC's ''risk based registration'' program, which raised the registry threshold for distribution providers from a 25 MW to 75 MW peak load. *North American Electric Reliability Corp.,* 150 FERC ¶ 61,213 (2015).

[28] The Small Business Administration sets the threshold for what constitutes a small business. Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. For the analysis in this NOPR, we are using a 500 employee threshold for each affected entity. Each entity is classified as Electric Bulk Power Transmission and Control (NAICS code 221121).

[29] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[30] 18 CFR 380.4(a)(2)(ii).

document excluding the last three digits in the docket number field.

36. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Issued: April 16, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–09228 Filed 4–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2015–C–1154]

E. & J. Gallo Winery; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by E. & J. Gallo Winery, proposing that the color additive regulations be amended to provide for the safe use of mica-based pearlescent pigments as color additives in certain distilled spirits.

DATES: The color additive petition was filed on March 19, 2015.

FOR FURTHER INFORMATION CONTACT: Salome Bhagan, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–3041.

SUPPLEMENTARY INFORMATION: Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(d)(1)), we are giving notice that we have filed a color additive petition (CAP 5C0302), submitted by E. & J. Gallo Winery, c/o Keller and Heckman LLP, Three Embarcadero Center, Suite 1420, San Francisco, CA 94111. The petition proposes to amend the color additive regulations in § 73.350 *Mica-based pearlescent pigments* (21 CFR 73.350) to provide for the safe use of mica-based pearlescent pigments at a level of up to 0.07 percent by weight in distilled spirits containing not less than 18 percent and not more than 25 percent alcohol by volume, and to remove the current exclusion for distilled spirit mixtures containing more than 5 percent wine on a proof gallon basis.

We have determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: April 15, 2015.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2015–09248 Filed 4–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[REG–103281–11]

RIN 1545–BK06

Tax on Certain Foreign Procurement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 5000C of the Internal Revenue Code relating to the 2 percent tax on payments made by the U.S. government to foreign persons pursuant to certain contracts. The proposed regulations affect U.S. government acquiring agencies and foreign persons providing certain goods or services to the U.S. government pursuant to a contract. This document also contains proposed regulations under section 6114, with respect to foreign persons claiming an exemption from the tax under an income tax treaty.

DATES: Written or electronic comments and requests for a public hearing must be received by July 21, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–103281–11), Internal Revenue Service, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–103281–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–103281–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kate Hwa at (202) 317–6934, or for questions related to tax treaties, Rosy Lor at (202) 317–6933; concerning submissions of comments, Oluwafunmilayo Taylor, (202) 317–5179, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by June 22, 2015. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in the proposed regulations is contained in a number of provisions including §§ 1.5000C–2, 1.5000C–3, and 1.5000C–4. Responses to these collections of information are required to verify the status of foreign persons to whom specified Federal procurement payments subject to the section 5000C tax are made; to obtain a benefit (to claim an exemption to, or a reduction in, withholding); and to facilitate tax compliance (to verify entitlement to an

exemption). The IRS intends that these information collection requirements will be satisfied primarily on existing chapter 3 withholding forms by U.S. government acquiring agencies, along with Form 1120–F, ''U.S. Income Tax Return of a Foreign Corporation,'' and Form 1040NR, ''U.S. Nonresident Alien Income Tax Return.'' However, in certain circumstances, foreign persons must collect certain information in order to demonstrate to an acquiring agency the appropriate amount to withhold, if any, on a Section 5000C Certificate. This reporting burden will be reflected in a new Form W–14, ''Certificate of Party Receiving Federal Procurement Payment,'' or the Section 5000C Certificate.

The likely respondents are the U.S. government and foreign persons that enter into contracts with the U.S. government.

Estimated total annual reporting or recordkeeping burden: 11,840 hours.

Estimated average annual burden hours per respondent or recordkeeper varies from .5 hours to 40 hours, depending on individual circumstances, with an estimated average of 5 hours, 55 minutes.

Estimated number of respondents or recordkeepers: 2,000.

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 control number assigned by the OMB.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1 under section 5000C of the Internal Revenue Code (Code). On January 2, 2011, section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347 (the Act), 124 Stat. 3623, added section 5000C to the Code. Section 5000C imposes on any foreign person a 2 percent tax on certain payments received from the Government of the United States (U.S. government) for goods and services. Section 301(a)(3) of the Act provides that section 5000C applies to payments received pursuant to contracts entered into on and after January 2, 2011. Additionally, section 301(b)(1) of the Act stipulates that no funds are to be disbursed to any foreign contractor in order to reimburse the tax imposed under section 5000C. The Federal Acquisition Regulation (FAR) is the body of rules that generally governs acquisitions and contracting procedures for federal agencies. See 48 CFR Chapter 1. To comply with section 301(b)(1) of the Act, the Federal Acquisition Regulation Council has amended the FAR to reflect that the 2 percent tax imposed under section 5000C is disallowed as a contract cost, excluded from the contract price, and not reimbursed under the contract. See 48 CFR 31.205–41(b), 52.229–3(b)(2), 52.229–4(b)(2), 52.229–6(c)(2), and 52.229–7(b)(2).

Section 301(c) of the Act provides that section 5000C shall be applied in a manner consistent with United States obligations under international agreements.

This document also contains amendments to 26 CFR part 301 under section 6114 of the Code. Section 6114(a) generally requires reporting when a taxpayer takes the position that a treaty of the United States overrules (or otherwise modifies) an internal revenue law. Section 6114(b) provides that the Secretary may waive the reporting requirement under section 6114(a) with respect to classes of cases for which the Secretary determines that the waiver will not impede the assessment and collection of tax.

Explanation of Provisions

The proposed regulations provide rules relating to the imposition of, and exemption from, the tax under section 5000C. They also contain rules relating to the obligation of the U.S. government to withhold, deposit, and report amounts to the IRS under section 5000C. Further, they provide guidance to foreign persons who must report and pay the tax under section 5000C in certain circumstances. If the U.S. government fails to withhold an amount equal to the tax due under section 5000C, the foreign person must file a U.S. return and pay the tax due. In addition, the proposed regulations provide guidance as to when the imposition of tax would be inconsistent with U.S. treaty obligations. Proposed regulations under section 6114(b) generally waive the reporting requirements under section 6114(a) when a taxpayer takes the position that a nondiscrimination provision of an income tax treaty exempts a payment from tax under section 5000C, provided that certain other requirements are satisfied.

I. Payments Subject to Section 5000C Tax

Section 5000C(a) applies to foreign persons that are party to certain contracts with the U.S. government entered into on and after January 2, 2011. In particular, section 5000C imposes on the foreign person a tax equal to 2 percent of the amount of a specified Federal procurement payment in certain circumstances. Section 5000C(b) defines the term *specified Federal procurement payment* as any payment made pursuant to a contract with the U.S. government for goods or services if the goods are manufactured or produced in or the services are provided in any country that is not a party to an international procurement agreement with the United States.

II. Definitions

Proposed § 1.5000C–1(c) sets forth definitions that apply solely for purposes of section 5000C and the proposed regulations, several of which are described as follows.

A. Contracting Party, Foreign Contracting Party

Under the proposed regulations, the term *contracting party* means any person that is a party to a contract with the U.S. government entered into on and after January 2, 2011. The term *foreign contracting party* means a contracting party that is not a U.S. person.

B. U.S. Government

For purposes of section 5000C, the proposed regulations define the term *Government of the United States* or *U.S. government* as the executive departments specified in 5 U.S.C. 101 (such as the Department of Agriculture and the Department of Transportation), the military departments specified in 5 U.S.C. 102 (which includes the Department of the Army, the Department of the Navy, and the Department of the Air Force), the independent establishments specified in 5 U.S.C. 104(1), and wholly owned Government corporations specified in 31 U.S.C. 9101(3) (such as the Export-Import Bank of the United States and the Pension Benefit Guaranty Corporation). Unless otherwise specified in 5 U.S.C. 101, 102, or 104(1), or 31 U.S.C. 9101(3), the term U.S. government does not include any quasi-governmental entities or instrumentalities of the U.S. government. The proposed regulations refer to U.S. government departments or agencies that are party to a contract as acquiring agencies. Moreover, to the extent that a U.S. government department or agency other than the

acquiring agency is making the payments pursuant to the contract, that department or agency is also treated as the acquiring agency for purposes of the proposed regulations.

C. International Procurement Agreement

The proposed regulations define the term *international procurement agreement* as the World Trade Organization Government Procurement Agreement within the meaning of 48 CFR 25.400(a)(1) and any Free Trade Agreement to which the United States is a party that includes government procurement obligations that provide appropriate competitive government procurement opportunities to U.S. goods, services, and suppliers. For purposes of this definition, a party to an agreement is a signatory to the agreement and does not include a country that is merely an observer with respect to the agreement.

D. Contract

The proposed regulations provide that the term *contract* has the same meaning as provided in § 2.101 of the FAR. Under the FAR, a contract does not include a grant agreement or cooperative agreement within the meaning of 31 U.S.C. 6304 and 6305, respectively. A grant agreement is an agreement between the U.S. government and a recipient when: (1) The principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the U.S. government; and (2) substantial involvement is not expected between the executive agency and the recipient when carrying out the activity contemplated in the agreement. See 31 U.S.C. 6304. A cooperative agreement is similar to a grant agreement except that substantial involvement is expected between the U.S. government and the recipient when carrying out the activity contemplated in the agreement. See 31 U.S.C. 6305. Thus, consistent with the FAR, the proposed regulations provide that the tax imposed under section 5000C does not apply to grant or cooperative agreements with the U.S. government.

III. Exemptions From Section 5000C Tax

The proposed regulations provide five exemptions from the tax imposed under section 5000C. The first exemption excludes payments for purchases under the simplified acquisitions procedures that do not exceed the simplified acquisitions threshold (as described in the FAR). The second exemption excludes payments pursuant to contracts for certain emergency acquisitions (as defined in the FAR). The third exemption excludes payments if the imposition of the tax would be inconsistent with any international agreement with the United States, including for example, when a foreign contracting party is entitled to the benefit of a nondiscrimination provision of an international agreement with the United States, such as a qualified income tax treaty. The fourth exemption applies if the goods are manufactured or produced, or services are provided, in the United States. The final exemption is for goods manufactured or produced or services provided in a country that is a party to an international procurement agreement with the United States. Sections III.A–C of this preamble discuss several of the exemptions.

A. Payments for Simplified Acquisitions

The IRS and the Department of the Treasury (Treasury Department) recognize that withholding under section 5000C on contracts in certain circumstances may be administratively burdensome and, in some cases, more costly than the tax actually collected. Accordingly, the proposed regulations provide that the tax imposed under section 5000C will not apply to payments for purchases under the simplified acquisition procedures described in the FAR that do not exceed the simplified acquisition threshold. See 48 CFR 2.101. In general, simplified acquisition procedures apply when the U.S. government makes purchases of supplies or services of $150,000 or less.

B. Emergency Acquisitions

From time to time, the U.S. government makes purchases in emergency situations. The IRS and Treasury Department recognize that in those emergency situations it may not be practicable to impose tax on payments otherwise subject to section 5000C because it may impede the ability of the U.S. government to make certain acquisitions that are necessary to prevent serious injury, financial or other, to the U.S. government. Therefore, § 1.5000C–1(d)(2) exempts payments pursuant to contracts (1) awarded under the ''unusual and compelling urgency'' authority of 48 CFR 6.302–2, and (2) entered into under the emergency acquisition flexibilities as defined in 48 CFR part 18. Acquisitions pursuant to the unusual and compelling urgency authority of 48 CFR 6.302–2 are subject to special rules and procedures when the need for supplies or services is of such an urgency that serious injury, financial or other, could result for the U.S. government if the special procedures did not apply. Certain written justifications and approvals described in 48 CFR 6.303 and 6.304 are required for acquisitions in these circumstances. Acquisitions entered into under the emergency acquisition flexibilities of 48 CFR part 18 refer to acquisitions of supplies or services by the U.S. government that, as determined by the head of an executive agency, may be used (1) in support of a contingency operation (as defined in 48 CFR 2.101), (2) to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States, or (3) when the President issues an emergency declaration, or a major disaster declaration.

C. Certain International Agreements

Section 301(c) of the Act requires that section 5000C be applied in a manner consistent with United States obligations under international agreements. The reference to ''international agreements'' includes income tax treaties to which the United States is a party. The General Explanation of Tax Legislation prepared by the Joint Committee on Taxation accompanying section 5000C explains that treaties generally provide that neither country may subject nationals of the other country to taxation more burdensome than the tax it imposes on its own nationals. This explanation by the Joint Committee on Taxation refers to the nondiscrimination provisions of tax treaties. See Staff of the Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 111th Congress, at 693–4.

The United States currently has 58 comprehensive income tax treaties in force that cover 66 countries. Virtually all nondiscrimination articles in these treaties contain provisions that prohibit the imposition of tax on a foreign national that is more burdensome than the taxation to which a U.S. national under similar circumstances may be subjected. A national is generally defined in tax treaties to include both individuals possessing citizenship and legal persons whose status is derived from the laws of that country. Some of these income tax treaties only prohibit discrimination against foreign nationals who are individuals, and a few provide protection only for foreign nationals who are also U.S. residents. The majority of nondiscrimination articles contain provisions that prohibit discrimination against all foreign nationals of the treaty country,

regardless of whether the national is a resident of the treaty country.

Many of these income tax treaties have a nondiscrimination article that applies to ''taxes of every kind and description,'' whether or not an income tax, and are broad enough to apply to the tax imposed under section 5000C. Consistent with section 301(c) of the Act, any foreign contracting party that is entitled to the benefits of such a nondiscrimination article is not subject to tax under section 5000C. The proposed regulations refer to a treaty with such an article as a qualified income tax treaty. The term is defined as a U.S. income tax treaty in force that contains a nondiscrimination provision that applies to the tax imposed under section 5000C and prohibits taxation that is more burdensome on a foreign national than a U.S. national (or in the case of some income tax treaties, taxation that is more burdensome on a foreign citizen than a U.S. citizen), regardless of residence. Notice 2015–35, 2015–18 IRB, identifies income tax treaties in force, as of the date the proposed regulations are issued, that are qualified income tax treaties (available on *www.irs.gov*). This Notice may be updated or amended in subsequent IRS Forms, Instructions, Publications, or other media (including electronic media).

IV. Rules for Determining Where Goods Are Manufactured or Produced, and Where Services Are Performed

Section 5000C(b) applies when payments are made pursuant to a contract for goods or services if the goods are manufactured or produced in or the services are provided in a country that is not a party to an international procurement agreement with the United States. Solely for purposes of section 5000C, the proposed regulations provide rules for determining where goods are manufactured or produced, and where services are performed. In particular, the proposed regulations provide that goods are manufactured or produced in the country (or countries) where property has been substantially transformed into the goods that are procured, or alternatively, where there has been assembly or conversion of component parts into the final product. Further, the proposed regulations provide that services will be considered to be provided in the country where the individuals performing the services are physically located when they perform their duties pursuant to the contract.

If, pursuant to a single contract, goods are manufactured or produced or services are provided in multiple countries, the proposed regulations provide that a foreign contracting party may use a reasonable allocation method to determine how the goods or services must be allocated to each country for purposes of applying the relevant exemptions for payments pursuant to that contract. A reasonable allocation method would include taking into account the proportionate costs (including the cost of labor and raw materials) incurred to manufacture or produce the goods in each country, or taking into account the proportionate costs incurred to provide the services in each country.

V. Withholding by the U.S. Government on Specified Federal Procurement Payments

A. Increase Amount Deducted and Withheld Under Chapter 3

Section 5000C(d)(1) provides that the amount deducted and withheld under chapter 3 shall be increased by the amount of tax imposed under section 5000C. Accordingly, the proposed regulations generally follow the procedural requirements in the Code and Treasury regulations for situations in which withholding is required under chapter 3 on fixed or determinable annual or periodical income (FDAP). For example, similar to withholding agents under chapter 3, acquiring agencies with an obligation to withhold under section 5000C must file Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' and Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' to report amounts withheld. However, the proposed regulations differ from the withholding and reporting rules under chapter 3 to take into account the differences between the tax imposed under section 5000C and the tax imposed under subtitle A to which chapter 3 applies. Thus, a foreign contracting party is not required to submit a Form W–8BEN, ''Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding,'' or Form W–8BEN–E, ''Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities),'' to an acquiring agency under the proposed regulations to certify its foreign status or claim a reduction in withholding under an applicable income tax treaty.

The proposed regulations require instead that a foreign contracting party must submit a ''Section 5000C Certificate,'' signed under penalties of perjury, that provides all of the information required by the proposed regulations to claim an exemption from section 5000C. The term ''Section 5000C Certificate'' also includes any form that the IRS may prescribe as a substitute for the certificate. Under the proposed regulations, an acquiring agency may generally rely on a claim made in a Section 5000C Certificate if the foreign contracting party provides complete information in the time and manner required by the regulations. However, an acquiring agency may not rely on the information provided by the foreign contracting party if it has reason to know that the information is incorrect or unreliable. An acquiring agency has reason to know that the information is incorrect or unreliable if it has knowledge of relevant facts or statements contained in the submitted information such that a reasonably prudent person in the position of the acquiring agency would know that the information provided is incorrect or unreliable.

For the convenience of both acquiring agencies and foreign contracting parties, a model Section 5000C Certificate is included as part of the proposed regulations. A foreign contracting party may choose not to use the format of the model certificate, but in all cases it must submit all the necessary information required by the proposed regulations accompanied by a signed penalties of perjury statement. Each Section 5000C Certificate applies to a single contract, and thus a foreign contracting party with multiple contracts with the U.S. government must complete a new certificate for each contract, if necessary.

B. Steps for Acquiring Agencies

The proposed regulations provide steps that an acquiring agency must follow to comply with its withholding obligations under section 5000C. Applying these steps will identify the payments that are subject to withholding under section 5000C and eliminate those that are not. The steps are organized so that if an acquiring agency already possesses information that establishes that the payment is not subject to the tax imposed under section 5000C (because, for example, the payment is made to a U.S. person), the acquiring agency may conclude based on that particular information that the payment is not subject to withholding and will not have to continue to evaluate the other steps.

The first of these steps instructs an acquiring agency to determine whether the payment is made pursuant to a contract for goods or services. If the U.S. government is making a payment for any other purpose, there will not be an obligation to withhold under section

5000C on the payment. Thus, this step will eliminate from withholding payments made pursuant to grant or cooperative agreements, and payments made pursuant to contracts that are not for goods or services, such as a contract for the purchase or lease of land or an interest in land.

Under the second step, an acquiring agency must determine whether the payment is made to a U.S. person. This step takes into account that only foreign persons are subject to tax under section 5000C and § 1.5000C–1(b). Under this step, if the acquiring agency determines that the contracting party is a U.S. person based on its TIN as reflected in a U.S. government information system, such as the System for Award Management (or because there is a completed Form W–9, ''Request for Taxpayer Identification Number (TIN) and Certification,'' on file), payments made pursuant to this contract are not subject to withholding under section 5000C.

Under the third step, an acquiring agency determines whether the payment is for purchases under the simplified acquisition procedures as described in the FAR. If it is, the acquiring agency does not have an obligation to withhold under section 5000C on the payment. This step takes into account the exemption from tax for simplified acquisitions in § 1.5000C–1(d)(1).

Under the fourth step, the acquiring agency determines whether the payment is made for certain emergency acquisitions. If it is, the acquiring agency does not have an obligation to withhold under section 5000C on the payment. This step takes into account the exemption from tax for emergency acquisitions as described in § 1.5000C–1(d)(2).

Under the fifth and sixth steps, the acquiring agency determines whether the payment is subject to withholding (in whole or in part) based on the information contained in a Section 5000C Certificate, if one has been provided by the foreign contracting party. Under the fifth step, if the acquiring agency determines that the foreign contracting party is exempt from the tax under section 5000C by reason of an international agreement with the United States, as represented on a completed Section 5000C Certificate, the acquiring agency does not have an obligation to withhold. For example, under this step, the acquiring agency does not have an obligation to withhold if a foreign contracting party provides a completed Section 5000C Certificate that accurately identifies the nondiscrimination article of a qualified income tax treaty on which it is relying to claim an exemption and the basis for that reliance.

Under the sixth step, the acquiring agency must determine from the Section 5000C Certificate if the payments are (in whole or part) made pursuant to a contract for goods manufactured or produced or services provided in the United States, or in a foreign country that is a party to an international procurement agreement and therefore exempt (to that extent) from withholding under Section 5000C.

Under the seventh step, if the acquiring agency determines that it has an obligation to withhold, the acquiring agency computes the amount of withholding based on the information contained in the Section 5000C Certificate, including a claim for a partial exemption from withholding, and withholds that amount from the payment.

Under the final step, the acquiring agency must deposit and report any amounts withheld.

VI. Procedure for the Foreign Contracting Party To Request Offset for Underwithholding or Overwithholding

Under certain circumstances, the proposed regulations provide that the foreign contracting party may request that the acquiring agency increase or decrease the amount of withholding on future payments for which withholding is required under section 5000C. The IRS and Treasury Department intend for this procedure to provide flexibility for foreign contracting parties that discover that the previous amounts withheld did not satisfy, or exceeded, their tax liability under section 5000C and the proposed regulations. These requests must be in writing, and provide an explanation, signed under penalties of perjury. Any increase or decrease in amounts withheld under this procedure may occur only if the payments to which it applies are made on or before the date on which the acquiring agency must file Form 1042 for the year with respect to the payment for which the overwithholding or underwithholding occurred.

VII. Administrative Provisions Relating to Withholding by U.S. Government

Under § 1.6302–2 of the Income Tax Regulations, the amount of tax under chapter 3 that U.S. withholding agents are required to withhold determines the frequency of their deposits: Monthly, quarter-monthly, or annual. Section 5000C(d)(1) instructs acquiring agencies to increase amounts deducted and withheld under chapter 3 by amounts withheld under section 5000C. Therefore, for purposes of determining the frequency of their deposits, the proposed regulations require acquiring agencies that have chapter 3 deposit obligations for a period to add amounts withheld under section 5000C to the amounts withheld under chapter 3. This rule applies regardless of whether the chapter 3 deposit obligation is with respect to the contracting party or any other person. However, to reduce the burden on acquiring agencies that have no chapter 3 withholding obligations, the proposed regulations require these acquiring agencies to make deposits monthly, regardless of the amount of tax withheld. Acquiring agencies must deposit all withheld amounts by electronic funds transfer, as that term is defined in § 31.6302–1(h)(4)(i).

VIII. Special Arrangement for Certain Contracts and Classified Contracts

The IRS and Treasury Department have determined that, in limited circumstances, it may be in the interest of sound tax administration to allow flexibility in some of the rules provided in the proposed regulations. Thus, the proposed regulations authorize the IRS to consent to alternative means for depositing the tax due under section 5000C when agreed to by the acquiring agency and the foreign contracting party subject to tax under section 5000C. In these situations, the IRS may also modify any reporting or return requirements of the acquiring agency or the foreign contracting party. Similarly, § 1.5000C–3 provides that an acquiring agency is not required to report information on Form 1042–S for payments made pursuant to classified contracts, as described in section 6050M(e)(3), unless the acquiring agency determines that the information reported on the Form 1042–S does not compromise the safeguarding of classified information or national security.

IX. Requirement for Foreign Contracting Party To File a Return and Pay Tax, and Procedures for Contracting Party To Seek a Refund

Section 5000C(d)(2) provides that for purposes of subtitle F of the Code (relating to procedure and administration), the tax imposed under section 5000C on foreign contracting parties is treated as a tax imposed under subtitle A (rather than as an excise tax under subtitle D). As such, and because section 5000C(d)(1) provides only that the amount deducted and withheld under chapter 3 shall be increased by the amount of tax imposed under section 5000C, the proposed regulations treat the tax imposed on foreign contracting parties under section 5000C

as administered in a manner similar to gross basis income taxes. Thus, if a payment is subject to the tax imposed under section 5000C and the foreign contracting party remains liable for the tax because, for example, it was not fully satisfied by withholding by the acquiring agency, the foreign contracting party must make an income tax return (for example, Form 1120–F, ''U.S. Income Tax Return of a Foreign Corporation'') and remit payment by the due date of that income tax return. See sections 6012 and 6072 and the regulations thereunder. Penalties may apply for the foreign contracting party's failure to comply, including those in sections 6651 and 6662.

If the acquiring agency has overwithheld under section 5000C and has made a deposit of the amount withheld, the contracting party may claim a refund of the amount overwithheld pursuant to the procedures described in chapter 65. See section 6402 and the regulations thereunder for refund procedures. See section 6511 and the regulations thereunder for the statute of limitations on refund claims.

X. Anti-Abuse Rule

The proposed regulations contain an anti-abuse rule to prevent circumvention of the tax under section 5000C. Under this rule, if a foreign person engages in a transaction (or series of transactions) with a principal purpose of avoiding the tax imposed under section 5000C, the transaction (or series of transactions) may be disregarded or the arrangement may be recharacterized in accordance with its substance.

XI. Section 6114 Reporting

Ordinarily any foreign person claiming that a nondiscrimination provision of an income tax or any other treaty obligation precludes the application of an otherwise applicable Code provision is required to report that position under § 301.6114–1(b)(1). Proposed § 301.6114–1(c)(1)(ix) provides that this reporting obligation is waived when a foreign person is claiming that a qualified income tax treaty precludes the application of section 5000C, but only if the foreign person has provided a Section 5000C Certificate (or such other form as may be prescribed by the Commissioner pursuant to section 5000C) in accordance with section 5000C and the regulations thereunder. Accordingly, if a foreign person relying on a qualified income tax treaty has not provided the certificate or is relying on a treaty obligation other than an income tax treaty to claim an exemption from the tax, reporting is not waived.

Proposed Effective/Applicability Date

Section 5000C applies to specified Federal procurement payments received pursuant to contracts entered into on and after January 2, 2011. Proposed §§ 1.5000C–1 through 1.5000C–7 and proposed § 301.6114–1(c)(1)(ix) will apply on and after the date that is 90 days after the date they are published as final regulations in the **Federal Register**.

Contracting parties and acquiring agencies may generally rely upon the rules in the proposed regulations until the date they become effective/applicable as final regulations. To the extent that a foreign contracting party is eligible for an exemption under the proposed regulations that would eliminate the tax imposed under section 5000C for any specified Federal procurement payments received on or before April 22, 2015, no further action is required, and the requirement to provide a Section 5000C Certificate is waived. Further, prior to the date these rules become effective/applicable as final regulations, the requirement to file a Form 8833, ''Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b),'' under section 6114 and the regulations thereunder (with respect to relief pursuant to the nondiscrimination provision of a qualified income tax treaty) is waived for positions related to the tax imposed under section 5000C (and thus no information reporting penalties will be imposed under section 6712).

If a foreign contracting party has a tax liability under section 5000C for any specified Federal procurement payment received before the date these rules become effective/applicable as final regulations (taking into account any exemptions in the proposed regulations as finalized) that has not been satisfied by withholding, the foreign contracting party should file a tax return and pay the tax in accordance with applicable IRS forms, such as Form 1120–F. If a foreign contracting party fully satisfies its tax and filing obligations under section 5000C with respect to any payments received before the date these rules become effective/applicable as final regulations, penalties will not be asserted with respect to those payments. However, with respect to tax due under section 5000C, a foreign contracting party is subject to applicable interest on the underpayments (as described in Subchapter A of Chapter 67 of the Code).

Special Analyses

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the proposed regulations. The collection of information requirement in the proposed regulations will not have a significant economic impact on a substantial number of small entities because a limited number of foreign contracting parties that are small entities will be subject to the tax. Pursuant to section 7805(f) of the Code, the proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on all aspects of the proposed rules, including comments on the clarity of the proposed rules and how they may be made easier with which to comply. All comments will be available for public inspection and copying at *www.regulations.gov* or upon request.

Drafting Information

The principal authors of the proposed regulations are Kate Hwa, Brad McCormack, and Rosy Lor, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are proposed to be amended as follows:

PART I—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U. S. C. 7805 * * *

■ **Par. 2.** An undesignated center heading is revised immediately following § 1.5000A–5 to read as follows:

Tax on Certain Foreign Procurement

■ **Par. 3.** Section 1.5000C–0 is added to read as follows:

§ 1.5000C–0 Table of contents.

This section lists the table of contents for §§ 1.5000C–1 through 1.5000C–7.

§ 1.5000C–1 Tax on specified Federal procurement payments.

(a) Overview.
(b) Imposition of tax.
(c) Definitions.
(d) Exemptions.
(1) Simplified acquisitions.
(2) Emergency acquisitions.
(3) Certain international agreements.
(4) Goods manufactured or produced or services provided in the United States.
(5) Goods manufactured or produced or services provided in a country that is a party to an international procurement agreement.
(e) Country in which goods are manufactured or produced or services provided.
(1) Goods manufactured or produced.
(2) Provision of services.
(3) Allocation of total contract price to determine the nonexempt amount.
(4) Reduction or elimination of withholding by an acquiring agency.

§ 1.5000C–2 Withholding on specified Federal procurement payments.

(a) In general.
(b) Steps in determining the obligation to withhold under section 5000C.
(1) Determine whether the payment is pursuant to a contract for goods or services.
(2) Determine whether the payment is made pursuant to a contract with a U.S. person.
(3) Determine whether the payment is for purchases under the simplified acquisition procedures.
(4) Determine whether the payment is for emergency acquisitions.
(5) Determine whether the foreign contracting party is entitled to relief pursuant to an international agreement.
(6) Determine whether the contract is for goods manufactured or produced or services provided in the United States or in a foreign country that is a party to an international procurement agreement.
(7) Compute amounts to withhold.
(8) Deposit and report amounts withheld.
(c) Determining whether the contracting party is a U.S. person.
(1) In general.
(2) Determination based on Taxpayer Identification Number (TIN).
(3) Determination based on the Form W–9.
(4) Contracting party treated as a foreign contracting party.
(d) Withholding when a foreign contracting party submits a Section 5000C Certificate.
(1) In general.
(2) Exemption for a foreign contracting party entitled to the benefit of relief pursuant to certain international agreements.
(3) Exemption when goods are manufactured or produced or services provided in the United States, or in a foreign country that is a party to an international procurement agreement.
(4) Information required for Section 5000C Certificate.
(5) Validity period of Section 5000C Certificate.
(6) Change in circumstances.
(7) Model Section 5000C Certificate.
(8) Time for submitting Section 5000C Certificate or Form W–9, ''Request for Taxpayer Identification Number and Certification''.
(e) Offset for underwithholding or overwithholding.
(1) In general.
(2) Underwithholding.
(3) Overwithholding.

§ 1.5000C–3 Payment and returns of tax withheld by the acquiring agency.

(a) In general.
(b) Deposit rules.
(1) Acquiring agency with a chapter 3 deposit requirement treats amounts withheld as under chapter 3.
(2) Acquiring agency with no chapter 3 filing obligation deposits withheld amounts monthly.
(c) Return requirements.
(1) In general.
(2) Classified contracts.
(d) Special arrangement for certain contracts.

§ 1.5000C–4 Requirement for the foreign contracting party to file a return and pay tax, and procedures for the contracting party to seek a refund.

(a) In general.
(b) Tax obligation of foreign contracting party independent of withholding.
(c) Return of tax by the foreign contracting party.
(d) Time and manner of paying tax.
(e) Refund requests when amount withheld exceeds tax liability.

§ 1.5000C–5 Anti-abuse rule.

§ 1.5000C–6 Examples.

§ 1.5000C–7 Effective/applicability date.

(a) In general.
(b) Reliance on proposed regulations.
(c) Obligation to file a return and pay tax.
(d) Waiver of penalties under certain circumstances.

■ **Par. 4.** Sections 1.5000C–1 through 1.5000C–7 are added to read as follows:

§ 1.5000C–1 Tax on specified Federal procurement payments.

(a) *Overview.* This section provides definitions and general rules relating to the imposition of, and exemption from, the tax on specified Federal procurement payments under section 5000C. Section 1.5000C–2 provides rules concerning withholding under section 5000C(d)(1), including the steps that must be taken to determine the obligation to withhold and whether an exemption from withholding applies. Section 1.5000C–3 provides the time and manner for depositing the amounts withheld under section 5000C and the related reporting requirements. Section 1.5000C–4 contains the rules for a foreign contracting party that must pay and report the tax under section 5000C when the tax obligation under section 5000C is not fully satisfied by withholding, as well as procedures by which a contracting party may seek a refund when the amount withheld exceeds its tax liability under section 5000C. Section 1.5000C–5 contains an anti-abuse rule. Section 1.5000C–6 contains examples illustrating the principles of §§ 1.5000C–1 through 1.5000C–7. Finally, § 1.5000C–7 contains the effective/applicability date for §§ 1.5000C–1 through 1.5000C–7.

(b) *Imposition of tax.* Except as otherwise provided, section 5000C imposes on any foreign contracting party a tax equal to 2 percent of the amount of a specified Federal procurement payment. In general, the tax imposed under section 5000C applies to specified Federal procurement payments received pursuant to contracts entered into on and after January 2, 2011. Specified Federal procurement payments received by a nominee or agent on behalf of a contracting party are considered to be received by that contracting party. The tax imposed under section 5000C is to be applied in a manner consistent with U.S. obligations under international agreements. Payments for the purchase or lease of land or an interest in land are not subject to the tax imposed under section 5000C.

(c) *Definitions.* Solely for purposes of section 5000C and §§ 1.5000C–1 through 1.5000C–7, the following definitions apply:

(1) The term *acquiring agency* means the U.S. government department, agency, independent establishment, or corporation described in paragraph (c)(7) of this section that is a party to the contract. To the extent that a U.S. government department or agency, other

than the acquiring agency, is making the payments pursuant to the contract, that department or agency is also considered to be the acquiring agency.

(2) The term *contract* has the same meaning as provided in 48 CFR 2.101, and thus does not include a grant agreement or a cooperative agreement within the meaning of 31 U.S.C. 6304 and 6305, respectively.

(3) The term *contract ratio* refers to the nonexempt amount over the total contract price.

(4) The term *contracting party* means any person that is a party to a contract with the U.S. government that is entered into on or after January 2, 2011.

(5) The term *foreign contracting party* means a contracting party that is a foreign person.

(6) The term *foreign person* means any person other than a United States person (as defined in section 7701(a)(30)).

(7) The term *Government of the United States* or *U.S. government* means the executive departments specified in 5 U.S.C. 101, the military departments specified in 5 U.S.C. 102, the independent establishments specified in 5 U.S.C. 104(1), and wholly owned government corporations specified in 31 U.S.C. 9101(3). Unless otherwise specified in 5 U.S.C. 101, 102, or 104(1), or 31 U.S.C. 9101(3), the term Government of the United States or U.S. government does not include any quasi-governmental entities or instrumentalities of the U.S. government.

(8) The term *international procurement agreement* means the World Trade Organization Government Procurement Agreement within the meaning of 48 CFR 25.400(a)(1) and any Free Trade Agreement to which the United States is a party that includes government procurement obligations that provide appropriate competitive government procurement opportunities to U.S. goods, services, and suppliers. A party to an international procurement agreement is a signatory to the agreement and does not include a country that is merely an observer with respect to the agreement.

(9) The term *nonexempt amount* means the portion of the contract price allocated to nonexempt goods and nonexempt services.

(10) The term *nonexempt goods* means goods manufactured or produced in a foreign country that is not a party to an international procurement agreement with the United States.

(11) The term *nonexempt services* means services provided in a foreign country that is not a party to an international procurement agreement with the United States.

(12) The term *outlying areas* has the same meaning as set forth in 48 CFR 2.101(b), which includes Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(13) The term *qualified income tax treaty* means a U.S. income tax treaty in force that contains a nondiscrimination provision that applies to the tax imposed under section 5000C and prohibits taxation that is more burdensome on a foreign national than a U.S. national (or in the case of certain income tax treaties, taxation that is more burdensome on a foreign citizen than a U.S. citizen), regardless of its residence.

(14) The term *Section 5000C Certificate* means a written statement that includes the information described in § 1.5000C–2(d) that the foreign contracting party submits to an acquiring agency for the purposes of demonstrating that the foreign contracting party is eligible for certain exemptions from withholding (in whole or in part) under section 5000C with respect to a contract. The term also includes any form that the Internal Revenue Service may prescribe as a substitute for the Section 5000C Certificate.

(15) The term *specified Federal procurement payment* means any payment made pursuant to a contract with a foreign contracting party that is for goods manufactured or produced or services provided in a foreign country that is not a party to an international procurement agreement with the United States. For purposes of the prior sentence, a foreign country does not include an outlying area.

(16) The term *Taxpayer Identification Number* or *TIN* means the identifying number assigned to a person under section 6109, as defined in section 7701(a)(41).

(17) The term *total contract price* means the total cost to the U.S. Government of the goods and services procured under a contract and paid to the contracting party.

(d) *Exemptions.* The tax imposed under paragraph (b) of this section does not apply to the payments made in the following situations. For the exemptions in paragraphs (d)(3), (4) and (5) of this section, see § 1.5000C–2(d) for the procedures to eliminate withholding by an acquiring agency.

(1) *Simplified acquisitions.* Payments for purchases under the simplified acquisition procedures that do not exceed the simplified acquisition threshold as described in 48 CFR 2.101.

(2) *Emergency acquisitions.* A payment made pursuant to a contract if the contract is—

(i) Awarded under the ''unusual and compelling urgency'' authority of 48 CFR 6.302–2, or

(ii) Entered into under the emergency acquisition flexibilities as defined in 48 CFR Part 18.

(3) *Certain international agreements.* A payment made by the U.S. government pursuant to a contract with a foreign contracting party when the payment is entitled to relief from the tax imposed under section 5000C pursuant to an international agreement with the United States, including relief pursuant to a nondiscrimination provision of a qualified income tax treaty, because the foreign contracting party is entitled to the benefit of that provision.

(4) *Goods manufactured or produced or services provided in the United States.* A payment made pursuant to a contract to the extent that the payment is for goods manufactured or produced or services provided in the United States.

(5) *Goods manufactured or produced or services provided in a country that is a party to an international procurement agreement.* A payment made pursuant to a contract to the extent the payment is for goods manufactured or produced or services provided in a country that is a party to an international procurement agreement, as defined in paragraph (c)(8) of this section.

(e) *Country in which goods are manufactured or produced or services provided*—(1) *Goods manufactured or produced.* Solely for purposes of section 5000C, goods are manufactured or produced in the country (or countries)—

(i) Where property has been substantially transformed into the goods that are procured pursuant to a contract; or

(ii) Where there has been assembly or conversion of component parts (involving activities that are substantial in nature and generally considered to constitute the manufacture or production of property) into the final product that constitutes the goods procured pursuant to a contract.

(2) *Provision of services.* Solely for purposes of section 5000C, services are considered to be provided in the country where the individuals performing the services are physically located when they perform their duties pursuant to the contract.

(3) *Allocation of total contract price to determine the nonexempt amount.* If, pursuant to a contract, goods are manufactured or produced, or services

are provided, in multiple countries and only a portion of the goods manufactured or produced or the services provided pursuant to the contract are nonexempt goods or nonexempt services, a foreign contracting party may use a reasonable allocation method to determine the nonexempt amount. A reasonable allocation method would include taking into account the proportionate costs (including the cost of labor and raw materials) incurred to manufacture or produce the goods in each country, or taking into account the proportionate costs incurred to provide the services in each country.

(4) *Reduction or elimination of withholding by an acquiring agency.* For procedures to reduce or eliminate withholding by an acquiring agency based on where goods are manufactured or produced or where services are provided, including as a result of an allocation under this paragraph (e), see § 1.5000C–2(d).

§ 1.5000C–2 Withholding on specified Federal procurement payments.

(a) *In general.* Except as otherwise provided in this section, every acquiring agency making a specified Federal procurement payment on which tax is imposed under section 5000C and §§ 1.5000C–1 through 1.5000C–7 must deduct and withhold an amount equal to 2 percent of the payment. For rules relating to the liability of a foreign contracting party with respect to specified Federal procurement payments not fully withheld upon at source, see § 1.5000C–4. An acquiring agency may rely upon any information furnished by a contracting party under this section unless the acquiring agency has reason to know that the information is incorrect or unreliable. An acquiring agency has reason to know that the information is incorrect or unreliable if it has knowledge of relevant facts or statements contained in the submitted information such that a reasonably prudent person in the position of the acquiring agency would know that the information provided is incorrect or unreliable.

(b) *Steps in determining the obligation to withhold under section 5000C.* An acquiring agency generally determines its obligation to withhold under section 5000C according to the steps described in this paragraph (b). See, however, paragraph (e) of this section for situations in which withholding may be increased in the case of underwithholding, or may be decreased in the case of overwithholding.

(1) *Determine whether the payment is pursuant to a contract for goods or services.* The acquiring agency determines whether it is making a payment pursuant to a contract for goods or services. If the acquiring agency is making a payment for any other purpose, it does not have an obligation to withhold under section 5000C on the payment.

(2) *Determine whether the payment is made pursuant to a contract with a U.S. person.* The acquiring agency determines whether the payment is made pursuant to a contract with a person considered to be a United States person (U.S. person) in accordance with paragraph (c) of this section. If the contracting party is a U.S. person, the acquiring agency does not have an obligation to withhold under section 5000C on the payment.

(3) *Determine whether the payment is for purchases under the simplified acquisition procedures.* The acquiring agency determines whether the payment is for purchases under the simplified acquisitions procedures that do not exceed the simplified acquisition threshold as described in 48 CFR 2.101. If it is, the acquiring agency does not have an obligation to withhold under section 5000C on the payment.

(4) *Determine whether the payment is for emergency acquisitions.* The acquiring agency determines whether the payment is made for certain emergency acquisitions within the meaning of § 1.5000C–1(d)(2). If it is, the acquiring agency does not have an obligation to withhold under section 5000C on the payment.

(5) *Determine whether the foreign contracting party is entitled to relief pursuant to an international agreement.* If the foreign contracting party submits a Section 5000C Certificate in accordance with paragraph (d) of this section representing that the foreign contracting party is entitled to relief from the tax imposed under section 5000C pursuant to an international agreement with the United States (such as relief pursuant to the nondiscrimination provision of a qualified income tax treaty), the acquiring agency does not have an obligation to withhold under section 5000C on the payment.

(6) *Determine whether the contract is for goods manufactured or produced or services provided in the United States or in a foreign country that is a party to an international procurement agreement.* If the foreign contracting party submits a Section 5000C Certificate in accordance with paragraph (d) of this section that represents that the contract is for goods manufactured or produced or services provided in the United States, or in a foreign country that is a party to an international procurement agreement, the acquiring agency does not have an obligation to withhold. If the Section 5000C Certificate provides that payments under the contract are only partially exempt from withholding under section 5000C, the acquiring agency must withhold to the extent described in paragraph (b)(7).

(7) *Compute amounts to withhold.* If, after evaluating each step described in this paragraph (b), the acquiring agency determines that it has an obligation to withhold, the acquiring agency computes the amount of withholding by multiplying the amount of the payment by 2 percent, unless the foreign contracting party has provided a Section 5000C Certificate. In cases in which the Section 5000C Certificate demonstrates that the exemption in Step 6 applies, the acquiring agency generally computes the amount of withholding by multiplying the amount of the payment by the contract ratio provided on the most recent Section 5000C Certificate, the product of which is multiplied by 2 percent. However, in cases in which the exemption in Step 6 applies and the requirements of paragraph (d)(4)(iii)(B)(*2*) of this section are met, the acquiring agency computes the amount of withholding based on the payment for the specifically identified items, which may be identified by the contract line item number, or CLIN. The acquiring agency withholds the computed amount from the payment.

(8) *Deposit and report amounts withheld.* The acquiring agency deposits and reports the amounts determined in the prior step in accordance with § 1.5000C–3.

(c) *Determining whether the contracting party is a U.S. person*—(1) *In general.* An acquiring agency must rely on the provisions of this paragraph (c) to determine the status of the contracting party as a U.S. person for purposes of withholding under section 5000C.

(2) *Determination based on Taxpayer Identification Number (TIN).* An acquiring agency must treat a contracting party as a U.S. person if the U.S. government information system (such as the System for Award Management (SAM)) indicates that the contracting party is a corporation (for example, because the name listed in SAM contains the term ''Corporation,'' ''Inc,'' or ''Corp'') and that it has a TIN that begins with two digits other than ''98'' (a limited liability company or LLC is not treated as a corporation for purposes of this paragraph (c)(2)). Further, an acquiring agency must treat a contracting party as a U.S. person if the acquiring agency has access to a U.S.

government information system that indicates that the contracting party is an individual with a TIN that begins with a digit other than ''9''.

(3) *Determination based on the Form W–9.* An acquiring agency must treat a contracting party as a U.S. person if the person has submitted to it a valid Form W–9, ''Request for Taxpayer Identification Number (TIN) and Certificate'' (or valid substitute form described in § 31.3406(h)–3(c)(2) of this chapter), signed under penalties of perjury.

(4) *Contracting party treated as a foreign contracting party.* If an acquiring agency cannot determine that a contracting party is a U.S. person based on application of paragraph (c)(2) or (3) of this section, then the contracting party is treated as a foreign contracting party for purposes of this section.

(d) *Withholding when a foreign contracting party submits a Section 5000C Certificate*—(1) *In general.* Unless the acquiring agency has reason to know that the information is incorrect or unreliable, the acquiring agency may rely on a claim that a foreign contracting party is entitled to an exemption (in whole or in part) from withholding on payments pursuant to a contract if the foreign contracting party provides a Section 5000C Certificate to the acquiring agency as prescribed in this paragraph (d). When a Section 5000C Certificate is furnished, the acquiring agency is not required to withhold, or must reduce the amount of withholding, on payments made to a foreign person if the certificate establishes that the foreign person is wholly or partially exempt from withholding. An acquiring agency may establish a system for a foreign contracting party to electronically furnish a Section 5000C Certificate.

(2) *Exemption for a foreign contracting party entitled to the benefit of relief pursuant to certain international agreements.* An acquiring agency is not required to withhold on payments pursuant to a contract with a foreign contracting party when the payment is entitled to relief from the tax imposed under section 5000C pursuant to an international agreement, including relief pursuant to a nondiscrimination provision of a qualified income tax treaty, because the foreign contracting party is entitled to the benefit of that agreement and the foreign contracting party has submitted a Section 5000C Certificate that includes all of the information described in paragraphs (d)(4)(i) and (ii) of this section.

(3) *Exemption when goods are manufactured or produced or services provided in the United States, or in a foreign country that is a party to an international procurement agreement.* An acquiring agency is not required to withhold on payments pursuant to a contract with a foreign contracting party to the extent that the payments are for goods manufactured or produced or services provided in the United States or in a foreign country that is a party to an international procurement agreement with the United States, provided that the foreign contracting party has submitted a Section 5000C Certificate that includes all of the information described in paragraphs (d)(4)(i) and (iii) of this section. If the Section 5000C Certificate provides that the payment is only partially exempt from withholding under section 5000C, the acquiring agency must withhold to the extent that the payment is not exempt.

(4) *Information required for Section 5000C Certificate*—(i) *In general.* The Section 5000C Certificate, entitled ''Section 5000C Certificate,'' must be signed under penalties of perjury by the foreign contracting party, and contain—

(A) The name of the foreign contracting party, country of organization (if applicable), and permanent residence address of the foreign contracting party;

(B) The mailing address of the foreign contracting party (if different than the permanent residence address);

(C) The TIN assigned to the foreign contracting party (if any);

(D) The identifying or reference number on the contract (if known);

(E) The name and address of the acquiring agency;

(F) A statement that the person signing the Section 5000C Certificate is the foreign contracting party listed in paragraph (d)(4)(i)(A) of this section (or is authorized to sign on behalf of the foreign contracting party);

(G) A statement that the foreign contracting party is not acting as an agent or nominee for another foreign person with respect to the goods manufactured or produced or services provided under the contract;

(H) A statement that the foreign contracting party agrees to pay an amount equal to any tax (including any applicable penalties and interest) due under section 5000C that the acquiring agency does not withhold under section 5000C;

(I) A statement that the foreign contracting party acknowledges and understands the rules in § 1.5000C–4 relating to procedural obligations related to section 5000C; and

(J) A statement that the foreign contracting party has not engaged in a transaction (or series of transactions) with a principal purpose of avoiding the tax imposed under section 5000C as defined in § 1.5000C–5.

(ii) *Additional information required for claiming an exemption based on the certain international agreements with the United States.* In addition to the information required by paragraph (d)(4)(i) of this section, a foreign contracting party claiming an exemption from withholding in reliance on a provision of an international agreement with the United States, including a qualified income tax treaty, must provide—

(A) The name of the international agreement under which the foreign contracting party is claiming benefits;

(B) The specific provision of the international agreement relied upon (for example, the nondiscrimination article of a qualified income tax treaty); and

(C) The basis on which it is entitled to the benefits of that provision (for example, because the foreign contracting party is a corporation organized in a foreign country that has in force a qualified income tax treaty with the United States that covers all nationals, regardless of their residence).

(iii) *Additional required information for claiming exemption based on country where goods are manufactured or services provided.* (A) *In general.* In addition to the information required by paragraph (d)(4)(i) of this section, a foreign contracting party claiming an exemption from withholding (in whole or in part) because payments will be pursuant to a contract for goods manufactured or produced or services provided in the United States or a foreign country that is party to an international procurement agreement, the information submitted on the Section 5000C Certificate must describe the relevant goods or services and the country (or countries) in which they are manufactured or produced or are provided and include the name of the international procurement agreement or agreements (if relevant).

(B) *Information on allocation to exempt and nonexempt amounts.* (*1*) *In general.* In situations in which a foreign contracting party claims the exemption in paragraph (d)(3) of this section with respect to only a portion of the payments received under the contract, the Section 5000C Certificate must include an explanation of the method used by the foreign contracting party to allocate the total contract price among the countries, as described in § 1.5000C–1(e)(3), if applicable. In general, the Section 5000C Certificate also must include the total contract price and the nonexempt amount; however, when necessary, an estimate

of the total contract price or the nonexempt amount may be used. For example, total contract price may be estimated when a Section 5000C Certificate is being completed with respect to payments to be made pursuant to a cost-reimbursement contract that is paid on the basis of actual incurred costs and the total amount of such costs is not known at the time the certificate is provided.

(*2*) *Specific identification of exempt items.* If agreed to by the acquiring agency, the Section 5000C Certificate may identify specific exempt and nonexempt amounts. For example, specific contract line items (such as a contract line item number or CLIN) identified in the contract may be listed on the Section 5000C Certificate as exempt and nonexempt amounts (in whole or in part), as applicable. When this paragraph applies, and whether or not the contract identifies exempt and nonexempt amounts, a foreign contracting party must provide the information required by paragraphs (d)(4)(iii)(A) and (d)(4)(iii)(B)(*1*) of this section, on the Section 5000C Certificate to explain why the contract line items are eligible for an exemption; however, the foreign contracting party is not required to include information about the total contract price under this paragraph. In these circumstances, only one Section 5000C Certificate is required to be provided identifying the exempt and nonexempt contract line items that relate to the contract (for example, a spreadsheet may be attached to the Section 5000C Certificate that identifies the contract line items with an explanation for the treatment as exempt or nonexempt).

(5) *Validity period of Section 5000C Certificate.* Except as otherwise provided in paragraph (d)(6) of this section, the Section 5000C Certificate is valid for the term of the contract.

(6) *Change in circumstances.* A foreign contracting party must submit a revised Section 5000C Certificate within 30 days of a change in circumstances that causes the information in a Section 5000C Certificate held by the acquiring agency to be incorrect with respect to the acquiring agency's determination of whether to withhold or the amount of withholding under Section 5000C. An acquiring agency must request a new Section 5000C Certificate from a contracting party in circumstances in which it knows (or has reason to know) that a previously submitted Section 5000C Certificate becomes incorrect or unreliable. An acquiring agency may request an updated Section 5000C Certificate at any time, including when other documentation is required under the contract, such as the annual representations and certifications required in 48 CFR 4.1201.

(7) *Model Section 5000C Certificate.* The following is a sample of a Section 5000C Certificate. A foreign contracting party that chooses to use this model as a template for the Section 5000C Certificate must include all the necessary information required by this paragraph (d) on the completed model Section 5000C Certificate it submits to the acquiring agency.

BILLING CODE 4830–01–P

Section 5000C Certificate	
. Identification of Foreign Contracting Party	
1 Name of foreign contracting party	**2** Country of organization if applicable (do not abbreviate)
3 Permanent residence address (street, apt. no. or rural route). Do not use P.O. Box or in-care-of address	
City or town, state or province (include postal code, if applicable)	Country (do not abbreviate)
4 Mailing address (if different from above)	
City or town, state or province (include postal code, if applicable)	Country (do not abbreviate)
5 U.S. TIN, if any	**6** Contract/reference number (if known)
7 Name and address of the acquiring agency	
City or town, state or province (including the postal code, if applicable)	Country (do not abbreviate)
. Exemption Based on an International Agreement (If Applicable)	
8 ☐ Check this box if claiming relief from the tax under section 5000C pursuant to an international agreement with the United States (such as a qualified income tax treaty), and complete Part IV.	
. Exemption Based on an International Procurement Agreement or because Goods/Services Produced/Performed in the U.S.	
9 ☐ Check this box if identifying specific exempt and nonexempt amounts (for example, by CLIN) and skip Lines 10 through 14 and complete Part IV, Line 15.	**10** Total Contract Price or Estimated Total Contract Price
11 Nonexempt Amount or Estimated Nonexempt Amount	**12** Contract Ratio (Line 11 over Line 10)

.	Explanation (Complete if Part II or Part III Is Applicable)

13 If you checked the box in Part II, state the name of the agreement and specific provision relied upon (for example, the nondiscrimination article of a qualified income tax treaty); and the basis on which you are entitled to the benefits of that provision (for example, because you are a corporation organized in a foreign country with which the United States has a qualified income tax treaty that covers all nationals). (Use additional sheets as necessary.)

14 If you completed Part III, but did not check the box on Line 9, state the relevant countries where the goods are manufactured or produced or services provided and the international procurement agreements relied upon, if relevant. If applicable, explain the method relied upon to allocate the total contract price between exempt and nonexempt amounts. (Use additional sheets as necessary.)

15 If you checked the box on Line 9, provide an explanation for each item by stating the relevant countries where the goods are manufactured or produced or services provided and the international procurement agreements relied upon, if relevant. If applicable, explain the method relied upon to allocate the total contract price between exempt and nonexempt amounts. For example, you may attach a spreadsheet listing the various contract line items with an explanation for the treatment of each line item as exempt or nonexempt. If the contract includes details necessary to complete this section (such as exempt or nonexempt amounts by contract line item), you may incorporate by reference the relevant information in the explanation. (Use additional sheets as necessary.)

.	Certificate

Under penalties of perjury, I declare that I have examined the information on this certificate (and in the contract, if relevant) and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

1 I am the foreign person (or am authorized to sign on behalf of the foreign person) identified in Line 1 above,

2 I am not acting as an agent or nominee for another foreign person,

3 I agree to pay an amount equal to any tax due under section 5000C that the acquiring agency does not withhold under section 5000C and pay any applicable penalties and interest,

4 I acknowledge and understand the rules in §1.5000C-4 relating to procedural obligations under section 5000C, and

5 I have not engaged in any transaction (or series of transactions) with a principal purpose of avoiding the tax imposed under section 5000C as defined in §1.5000C-5.

Sign Here ►	_ / _ / _ _ _ _ _ _ _ _ Signature of Foreign Person (or Authorized Representative) Date Capacity to Act

BILLING CODE 4830–01–C

(8) *Time for submitting Section 5000C Certificate or Form W–9, "Request for Taxpayer Identification Number and Certification."* A contracting party must submit the Section 5000C Certificate or Form W–9 (as applicable) as early as practicable (for example, when the offer for the contract is submitted to the U.S. government). In all cases, however, the Section 5000C Certificate or Form W–9 must be submitted to the acquiring agency no later than the date of execution of the contract.

(e) *Offset for underwithholding or overwithholding*—(1) *In general.* If the foreign contracting party discovers that amounts withheld on prior payments either were insufficient or in excess of the amount required to satisfy its tax liability under section 5000C, the foreign contracting party may request the acquiring agency to increase or decrease the amount of withholding on future payments for which withholding is required under section 5000C. The request must be in writing, signed under penalties of perjury, contain the amount by which the foreign contracting party requests to increase or decrease future amounts withheld under section 5000C, and explain the reason for the request. The request may be submitted in conjunction with an original or updated Section 5000C Certificate.

(2) *Underwithholding.* Upon receipt of a request described in paragraph (e)(1) of this section, acquiring agencies may increase the amount of withholding under this paragraph to correct underwithholding only if the payment for which the increase is applied is otherwise subject to withholding under section 5000C and made before the date that Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' is required to be filed (not including extensions) with respect to the payment for which the underwithholding occurred. Amounts withheld under this paragraph must be deposited and reported in the time and manner as prescribed by § 1.5000C–3. See § 1.5000C–4 for procedures for a foreign contracting party that must pay tax due when its tax liability under section 5000C was not fully satisfied by withholding by an acquiring agency.

(3) *Overwithholding.* Upon receipt of a request described in paragraph (e)(1) of this section, acquiring agencies may decrease the amount of withholding on subsequent payments made to the foreign contracting party that are otherwise subject to withholding under section 5000C provided that the payment for which the decrease is applied is made on or before the date on which Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' is required to be filed (not including extensions) with respect to the payment for which the overwithholding occurred. See § 1.5000C–4(e) for procedures for foreign contracting parties to file a claim for refund for the overwithheld amount under section 5000C.

§ 1.5000C–3 Payment and returns of tax withheld by the acquiring agency.

(a) *In general.* This section provides administrative procedures that acquiring agencies must follow to satisfy their obligations to deposit and report amounts withheld under § 1.5000C–2. An acquiring agency with a section 5000C withholding obligation must increase the amount it deducts and withholds under chapter 3 for fixed or determinable annual or periodical income (FDAP income) by the amount it must withhold under § 1.5000C–2. Accordingly, this section generally applies the administrative provisions of chapter 3 for FDAP income relating to the deposit, payment, and reporting for amounts withheld under § 1.5000C–2, and contains some variation from those provisions to take into account the nature of the tax imposed under section 5000C.

(b) *Deposit rules*—(1) *Acquiring agency with a chapter 3 deposit requirement treats amounts withheld as under chapter 3.* If an acquiring agency has a chapter 3 deposit obligation for a period, it must treat any amount withheld under § 1.5000C–2 as an additional amount of tax withheld under chapter 3 for purposes of the deposit rules of § 1.6302–2. Thus, depending on the combined amount withheld under chapter 3 and § 1.5000C–2, an acquiring agency subject to this paragraph (b)(1) must make monthly deposits, quarter-monthly deposits, or annual deposits under the rules in § 1.6302–2. To the extent provided in forms, instructions, or publications prescribed by the Internal Revenue Service (IRS), acquiring agencies must deposit all withheld amounts by *electronic funds transfer,* as that term is defined in § 31.6302–1(h)(4)(i) of this chapter.

(2) *Acquiring agency with no chapter 3 filing obligation deposits withheld amounts monthly.* If an acquiring agency has no chapter 3 deposit obligation to which the deposit rules of § 1.6302–2 apply for a calendar month, it must make monthly deposits of the amounts withheld under the rules in this paragraph (b)(2). Thus, an acquiring agency with no chapter 3 deposit obligations and that has withheld any amount under § 1.5000C–2 during any calendar month must deposit that amount by the 15th day of the month following the payment. To the extent provided in forms, instructions, or publications prescribed by the Internal Revenue Service (IRS), acquiring agencies must deposit all withheld amounts by *electronic funds transfer,* as that term is defined in § 31.6302–1(h)(4)(i) of this chapter.

(c) *Return requirements.* (1) *In general.* Except as provided in paragraph (c)(2) of this section, an acquiring agency that withholds an amount pursuant to section 5000C generally must file Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' and Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' each year, or other such forms as the IRS may prescribe, to report information related to amounts withheld under section 5000C. The acquiring agency must prepare a Form 1042–S for each contracting party reporting the amount withheld under section 5000C for the preceding calendar year. The Form 1042 must show the aggregate amounts withheld under section 5000C that were required to be reported on Forms 1042–S (including those amounts withheld under section 5000C for which a Form 1042–S is not required to be filed pursuant to paragraph (c)(2) of this section). The Form 1042 must also include the information required by the form and accompanying instructions. Further, any forms required under this paragraph (c) are due at the same time, at the same place, and eligible for the same extended due dates and may be amended in the same manner as Form 1042 and Form 1042–S (or such other forms as the IRS may prescribe related to chapter 3). The acquiring agency must furnish a copy of the Form 1042–S (or such other form as the IRS may prescribe for the same purpose) to the contracting party for whom the form is prepared on or before March 15 of the calendar year following the year in which the amount subject to reporting under section 5000C was paid. It must be filed with a transmittal form as provided in instructions to the Form 1042–S and to the transmittal form. Section 5000C Certificates or other statements or information as prescribed by § 1.5000C–2 that are provided to the acquiring agency are not required to be attached to the Form 1042 filed with the IRS. However, an acquiring agency that is required to file Form 1042 must retain a copy of Form 1042, Form 1042–S, the Section 5000C Certificates, or other statements or information prescribed by § 1.5000C–2 for at least three years from the original due date of Form 1042 or the date it was filed, whichever is later. An acquiring agency that is not required to file Form 1042 must retain any Section 5000C Certificates or other statements or information as prescribed by § 1.5000C–2 for at least three years from the date the Form 1042 would have been due had the acquiring agency had an obligation to file.

(2) *Classified contracts.* An acquiring agency is not required to report information otherwise required by this

section on Form 1042–S for payments made pursuant to classified contracts (as described in section 6050M(e)(3)), unless the acquiring agency determines that the information reported on the Form 1042–S does not compromise the safeguarding of classified information or national security.

(d) *Special arrangement for certain contracts.* In limited circumstances, the IRS may authorize the amount otherwise required to be withheld under section 5000C to be deposited in the time and manner mutually agreed upon by the acquiring agency and the foreign contracting party. In these circumstances, the IRS may in its sole discretion also modify any reporting or return requirements of the acquiring agency or the foreign contracting party.

§ 1.5000C–4 Requirement for the foreign contracting party to file a return and pay tax, and procedures for the contracting party to seek a refund.

(a) *In general.* For purposes of subtitle F of the Internal Revenue Code (''Procedure and Administration''), the tax imposed under section 5000C on foreign persons is treated as a tax imposed under subtitle A. Except as provided elsewhere in the regulations under section 5000C, forms, or accompanying instructions, the tax imposed on foreign contracting parties under section 5000C is administered in a manner similar to gross basis income taxes. This section provides procedures that a foreign contracting party must follow to satisfy its obligations to report and deposit tax due under § 1.5000C–1 as well as procedures for contracting parties to seek a refund of amounts overwithheld.

(b) *Tax obligation of foreign contracting party independent of withholding.* A foreign contracting party subject to tax under section 5000C and §§ 1.5000C–1 through 1.5000C–7 remains liable for the tax unless its tax obligation was fully satisfied by withholding by an acquiring agency in accordance with §§ 1.5000C–2 and 1.5000C–3.

(c) *Return of tax by the foreign contracting party.* If the tax liability under § 1.5000C–1 relating to a payment is not fully satisfied by withholding in accordance with §§ 1.5000C–2 and 1.5000C–3 (including as a result of the use of an estimated nonexempt amount or estimated total contract price in computing the contract ratio), a foreign contracting party subject to tax under § 1.5000C–1 during a calendar year must make a return of tax on, for example, Form 1120–F, ''U.S. Income Tax Return of a Foreign Corporation,'' or such other form as the Internal Revenue Service (IRS) may prescribe to report the amount of tax due under section 5000C (required return). A foreign contracting party with no other U.S. tax filing obligation other than with respect to its liability for the tax imposed under section 5000C must file its required return on or before the fifteenth day of the sixth month following the close of its taxable year. The required return must include the information required by the form and accompanying instructions. The required return must be filed at the place and time (including any extension of time to file) provided by the form and accompanying instructions. Penalties for failure to file contained in Subtitle F can apply to foreign contracting parties who fail to file the required return. A foreign contracting party must attach copies of all Forms 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' received from acquiring agencies (if any) to the required return.

(d) *Time and manner of paying tax.* A foreign contracting party must pay the tax imposed under section 5000C in the manner provided and in the time prescribed in the required return and accompanying instructions. In general, the foreign contracting party must pay the tax at the time that the required return is due, excluding extensions. To the extent provided in forms, instructions, or publications prescribed by the IRS, each foreign contracting party must deposit tax due under section 5000C by electronic funds transfer, as that term is defined in § 31.6302–1(h)(4)(i) of this chapter. A foreign contracting party that fails to pay tax in the time and manner prescribed in this section (or under forms, instructions, or publications prescribed by the IRS under this section) may be subject to penalties and interest under Subtitle F.

(e) *Refund requests when amount withheld exceeds tax liability.* After taking into account any offsets pursuant to § 1.5000C–2(e)(3), if the acquiring agency has overwithheld amounts under section 5000C and has made a deposit of the amounts under § 1.5000C–3(b), the contracting party may claim a refund of the amount overwithheld pursuant to the procedures described in chapter 65. The contracting party's claim for refund must meet the requirements of section 6402 and the regulations thereunder, as applicable, and must be filed before the expiration of the period of limitations on refund in section 6511 and the regulations thereunder. In general, the contracting party making a refund claim must file the required return to claim a refund, stating the grounds upon which the claim is based. A Section 5000C Certificate and a copy of the Form 1042–S received from the acquiring agency must be attached to the required return. For purposes of this section, an amount is overwithheld if the amount withheld from the payment pursuant to section 5000C and §§ 1.5000C–1 through 1.5000C–7 exceeds the contracting party's tax liability under § 1.5000C–1, regardless of whether the overwithholding was in error or appeared correct when it occurred. A U.S. person may seek a refund under this paragraph (e) even if it was treated as a foreign person under the rules in § 1.5000C–2 (for example, because it neither had a taxpayer identification number on file in the System for Award Management nor submitted Form W–9, ''Request for Taxpayer Identification Number (TIN) and Certification,'' to the acquiring agency).

§ 1.5000C–5 Anti-abuse rule.

If a foreign person engages in a transaction (or series of transactions) with a principal purpose of avoiding the tax imposed under section 5000C, the transaction (or series of transactions) may be disregarded or the arrangement may be recharacterized (including disregarding an intermediate entity), in accordance with its substance. If this section applies, the foreign person remains liable for any tax (including any tax obligation unsatisfied as a result of underwithholding) and the Internal Revenue Service retains all other rights and remedies under any applicable law available to collect any tax imposed on the foreign contracting party by section 5000C.

§ 1.5000C–6 Examples.

The rules of §§ 1.5000C–1 through 1.5000C–4 are illustrated by the following examples. For purposes of the examples: all contracts are executed with acquiring agencies on or after January 2, 2011, and are for the provision of either goods or services; none of the contracts are for emergency acquisitions described in § 1.5000C–1(d)(2); the acquiring agencies have no other withholding obligations under chapter 3 of the Code and have no other contracts subject to section 5000C; the foreign contracting parties do not have any U.S. source income or a U.S. tax return filing obligation other than a tax return filing obligation that arises based on the facts described in the particular example; and none of the contracts are classified contracts as described in section 6050M(e)(3).

Example 1. U.S. person not subject to tax; no withholding. (i) *Facts.* Company A Inc., a U.S. corporation and the contracting party,

enters into a contract with Agency L, the acquiring agency. Before making its first payment under the contract (for example, on the date of execution of the contract), pursuant to the first step in § 1.5000C–2(b) Agency L determines that the contract will be for services. Under the second step, Agency L reviews Company A Inc.'s record in the System for Award Management (SAM) and determines that Company A is a corporation and is considered to be a U.S. person because Agency L's records demonstrate that Company A Inc. is a business entity treated as a corporation for tax purposes that has a TIN that does not begin with ''98.''

(ii) *Analysis.* Company A Inc. is a U.S. person and thus is not subject to the tax under section 5000C. Moreover, because Company A Inc. is a corporation for tax purposes that has a TIN that does not begin with ''98,'' Agency L is able to determine that it has no obligation to withhold any amounts under section 5000C on the payment made to Company A Inc. For purposes of section 5000C, Company A Inc. could also establish that it is a U.S. person by providing a Form W–9, ''Request for Taxpayer Identification Number (TIN) and Certification,'' to Agency L. Company A Inc. does not need to file a Section 5000C Certificate to demonstrate its eligibility for an exemption from withholding.

Example 2. Foreign national entitled to the benefit of a nondiscrimination provision of a treaty; no withholding. (i) *Facts.* Company B, a foreign contracting party and a national of Country T, provides goods to Agency M, the acquiring agency. Company B determines that it is exempt from tax under section 5000C because it is entitled to the benefit of the nondiscrimination article of a qualified income tax treaty between the United States and Country T. Company B submits a Section 5000C Certificate to Agency M when the contract is executed. Company B uses the model Section 5000C Certificate and properly fills out Sections II and IV stating the name of the treaty, the specific article relied upon, and the basis on which it is entitled to the benefits of that article. Following the steps in § 1.5000C–2, Agency M determines that the nondiscrimination provision of the Country T-United States income tax treaty applies to exempt Company B from the tax imposed under section 5000C. Agency M makes one lump sum payment of $50 million to Company B pursuant to the contract.

(ii) *Analysis.* Company B has no liability for tax under section 5000C because it is entitled to the benefit of a nondiscrimination article of a qualified income tax treaty. Because Company B submitted a Section 5000C Certificate meeting the requirements in § 1.5000C–2 and Agency M does not have reason to know that the submitted information is incorrect or unreliable, Agency M is not required to withhold under section 5000C. Agency M must retain the Section 5000C Certificate for at least three years pursuant to § 1.5000C–3(c)(1).

Example 3. Foreign treaty beneficiary does not submit Section 5000C Certificate; withholding required. (i) *Facts.* The facts are the same as in *Example 2,* except that Company B does not submit a Section 5000C Certificate to Agency M before Agency M makes the $50 million payment.

(ii) *Analysis.* Company B is not subject to tax under section 5000C, but Agency M must nevertheless withhold on the payment made to Company B because Agency M did not receive a Section 5000C Certificate from Company B in the time and manner required pursuant to § 1.5000C–2(d). Agency M must withhold $1 million (2 percent of $50 million) on the payment, and deposit that amount under the rules in § 1.5000C–3 no later than the 15th day of the month following the month in which the payment was made. Agency M must also complete Forms 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' and 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' on or before the date specified on those forms and the accompanying instructions. Agency M must furnish copies of Form 1042–S to Company B. Agency M must retain a copy of the Form 1042 and the Form 1042–S for 3 years from the due date for the Form 1042 pursuant to § 1.5000C–3(c)(1). As Company B is not liable for the tax, it may later file a claim for refund pursuant to the procedures described in chapter 65.

Example 4. Foreign contracting party partially exempt from tax under section 5000C when goods are manufactured in different countries. (i) *Facts.* Company C, a foreign contracting party, provides goods to Agency N in 2015. The terms of the contract require that payment be made to Company C by Agency N in two $5 million installments in 2015. Company C has a TIN that begins with ''98'' and is not entitled to relief pursuant to an international agreement with the United States, such as relief pursuant to a nondiscrimination provision of a qualified income tax treaty. Some of the goods are manufactured in Country R, which is a party to an international procurement agreement with the United States, with the remainder being manufactured in Country S, a country that is not a party to an international procurement agreement with the United States. Company C uses a reasonable allocation method based on the information available to it at the time in accordance with § 1.5000C–1(e)(3) to estimate that $3 million is the nonexempt amount produced in Country S. Company C submits a valid and complete Section 5000C Certificate to Agency N in the time and manner required by §§ 1.5000C–1 through 1.5000C–7 that provides that the nonexempt amount is $3 million. In 2015, Agency N pays Company C in two installments pursuant to the terms of the contract.

(ii) *Analysis.* Using a reasonable allocation method to determine the estimated nonexempt amount, Company C determines that pursuant to section 5000C and §§ 1.5000C–1 through 1.5000C–7, tax of $30,000 (2 percent of the $5 million payment, multiplied by a fraction (the numerator of which is the estimated nonexempt amount, $3 million, and the denominator of which is the estimated total contract price, or $10 million)) is imposed on each payment made to Company C. Because Company C has timely submitted a Section 5000C Certificate explaining the basis for this allocation, Agency N withholds $30,000 on each payment made to Company C. Agency N must deposit each $30,000 withholding tax no later than the 15th day of the month following the month in which each payment is made. Agency N must also complete Forms 1042 and 1042–S and furnish copies of Form 1042–S to Company C. Provided that Agency N properly withholds on the nonexempt portion as required under section 5000C and §§ 1.5000C–1 through 1.5000C–7 and that Company C's estimate of the nonexempt amount is the actual nonexempt amount, Company C does not have an additional tax liability or a U.S. tax return filing obligation as a result of receiving the payment.

Example 5. Foreign contracting party liable for additional tax under Section 5000C not fully withheld upon due to errors on the Section 5000C Certificate. (i) *Facts.* The facts are the same as in *Example 4*, except that the Section 5000C Certificate submitted to Agency N by Company C erroneously provides that the estimated nonexempt amount is $1.5 million instead of $3 million. As a result, Agency N only withholds $15,000 (2 percent of the $5 million payment multiplied by a fraction (the numerator of which is the estimated nonexempt amount stated on the Section 5000C Certificate, $1.5 million, and the denominator of which is the estimated total contract price, or $10 million)) on each payment made to Company C. Agency N neither discovered nor had reason to know that the information on the Section 5000C Certificate was incorrect or unreliable. After both payments have been made and after the filing due date for Form 1042 for 2015, Company C determines that the estimated nonexempt amount should have been stated as $3 million on the Section 5000C Certificate.

(ii) *Analysis.* The tax imposed under section 5000C on Company C as a result of the receipt of specified Federal procurement payments is $60,000 and this amount has not been fully satisfied by withholding by Agency N. Accordingly, Company C must remit additional tax of $30,000 ($60,000 tax liability less $30,000 amounts already withheld by Agency N) and file its required return, a Form 1120–F, ''U.S. Income Tax Return of a Foreign Corporation,'' for 2015 to report this tax liability, as required by § 1.5000C–4. Company C must explain its corrected allocation method in its Form 1120–F. Company C must also attach a copy of the Form 1042–S it received from Agency N to Form 1120–F.

§ 1.5000C–7 Effective/applicability date.

Section 5000C applies to specified Federal procurement payments received pursuant to contracts entered into on and after January 2, 2011. Sections 1.5000C–1 through 1.5000C–7 apply on and after the date that is 90 days after the date they are published as final regulations in the **Federal Register**.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 5.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 6.** Section 301.6114–1 is amended by adding paragraph (c)(1)(ix) and revising paragraph (e) to read as follows:

§ 301.6114–1 Treaty-based return positions.

* * * * *

(c) * * *

(1) * * *

(ix) Notwithstanding paragraph (b)(1) of this section, that a nondiscrimination provision of an income tax treaty exempts a payment from tax under section 5000C, but only if the foreign person claiming such relief has provided a Section 5000C Certificate (or such other form as may be prescribed by the Commissioner pursuant to section 5000C) in accordance with section 5000C and the regulations thereunder.

* * * * *

(e) *Effective/applicability date*—(1) *In general.* This section is effective for taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988. However, if—

(i) A taxpayer has filed a return for such a taxable year, without complying with the reporting requirement of this section, before November 13, 1989, or

(ii) A taxpayer is not otherwise than by paragraph (a) of this section required to file a return for a taxable year before November 13, 1989. Such taxpayer must file (apart from any earlier filed return) the statement required by paragraph (d) of this section before June 12, 1990, by mailing the required statement to the Internal Revenue Service, P.O. Box 21086, Philadelphia, PA 19114. Any such statement filed apart from a return must be dated, signed and sworn to by the taxpayer under the penalties of perjury. In addition, with respect to any return due (without extensions) on or before March 10, 1990, the reporting required by paragraph (a) of this section must be made no later than June 12, 1990. If a taxpayer files or has filed a return on or before November 13, 1989, that provides substantially the same information required by paragraph (d) of this section, no additional submission will be required. Foreign insurers and reinsurers subject to reporting described in paragraph (c)(7)(ii) of this section must so report for calendar years 1988 and 1989 no later than August 15, 1990.

(2) *Section 5000C.* Paragraph (c)(1)(ix) of this section is effective on the date that is 90 days after the date these regulations are published as final regulations in the **Federal Register**. However, a foreign contracting party may rely on §§ 1.5000C–1 through 1.5000C–7 before that date.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 7.** The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 8.** In § 602.101, paragraph (b) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR Part or section where identified and described	Current OMB control No.
* * * * *	
1.5000C–2	1545–xxxx
1.5000C–3	1545–xxxx
1.5000C–4	1545–xxxx
* * * * *	

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2015–09383 Filed 4–20–15; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

[MSHA–2014–0029]

RIN 1219–AB85

Request for Information To Improve the Health and Safety of Miners and To Prevent Accidents in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for information; extension of comment period.

SUMMARY: In response to requests from interested parties, the Mine Safety and Health Administration (MSHA) is extending the comment period on the Agency's Request for Information To Improve the Health and Safety of Miners and To Prevent Accidents in Underground Coal Mines. This extension gives interested parties additional time to submit information to the Agency.

DATES: The comment period for the document published February 26, 2015 (80 FR 10436), has been extended. Comments must be received or postmarked by midnight Eastern Daylight Savings time on June 26, 2015.

ADDRESSES: Submit comments and informational materials, identified by ''RIN 1219–AB85'' or Docket Number ''MSHA–2014–0029'', by any of the following methods:

Federal E-Rulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments for Docket Number MSHA–2014–0029.

• *Electronic mail: zzMSHA-comments@dol.gov.* Include ''RIN 1219–AB85'' in the subject line of the message.

• *Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.

• *Hand Delivery/Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 21st floor.

Instructions: All submissions received must include the Agency name ''MSHA'' and Docket Number ''MSHA–2014–0029'' or ''RIN 1219–AB85.'' All comments received will be posted without change to *http://www.regulations.gov,* under Docket Number MSHA–2014–0029, and on *http://www.msha.gov/currentcomments.asp,* including any personal information provided.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov or http://www.msha.gov/currentcomments.asp.* To read background documents, go to *http://www.regulations.gov.* Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal Holidays. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On February 26, 2015 (80 FR 10436), MSHA published a Request for Information To Improve the Health and Safety of Miners and To Prevent Accidents in Underground Coal Mines. The comment period is scheduled to close on April 27, 2015. In response to requests, MSHA is extending the comment period to June 26, 2015, to allow additional time for

interested parties to coordinate responses.

Dated: April 16, 2015.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2015–09246 Filed 4–21–15; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2015–0032; FRL–9925–79]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 22, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* 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.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

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).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

1. *PP* 4F8294. (EPA–HQ–OPP–2015–0179). Cheminova, Inc., c/o Cheminova A/S, 1600 Wilson Blvd., Suite 700,

Arlington, VA 22209–2510, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, flutriafol, in or on hops, dried cones at 20 parts per million (ppm). The GC/MSD is used to measure and evaluate the chemical flutriafol. Contact: RD.

2. *PP* 4F8333. (EPA–HQ–OPP–2015–0180). Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409, requests to establish tolerances in 40 CFR 180.532 for residues of the fungicide cyprodinil in or on nut, tree, group 14–12, except almond, except pistachio, at 0.04 parts per million (ppm). The Syngenta Crop Protection Method AG–631B is used to measure and evaluate the chemical cyprodinil. Contact: RD.

Amended Tolerance Exemption

PP 4F8324. EPA–HQ–OPP–2014–0865. Cupron, Inc., 800 East Leigh St., Richmond, VA 23219, requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.1021 for residues of the antimicrobial, cuprous oxide, in or on meat, milk, poultry, eggs, fish, shellfish, and irrigated crops when embedded in polymer emitter heads used in irrigation systems for agricultural crops or residential food commodities for algicidal or root incursion prevention. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being sought. Contact: AD.

Authority: 21 U.S.C. 346a.

Dated: April 14, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2015–09209 Filed 4–21–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

[Docket No. FWS–R9–MB–2009–0045; FF09M21200–134–FXMB1232099BPP0]

RIN 1018–AW75

Migratory Bird Permits; Abatement Permit Regulations; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), published a proposed rule in the **Federal Register** on April 1, 2015, to propose permit regulations to govern the use of captive-bred, trained raptors to control or take birds or other wildlife to mitigate damage or other problems, including risks to human health and safety. In that proposed rule, we provided a partially incorrect address for the submission of hard-copy comments and some incorrect information regarding information collection requirements. With this document, we correct these errors.

DATES: There are two dates for submissions relevant to the proposed rule that published on April 1, 2015 (80 FR 17374). Electronic comments on this proposed rule via *http://www.regulations.gov* must be submitted by 11:59 p.m. Eastern time on June 30, 2015. Comments submitted by mail must be postmarked no later than June 30, 2015. Comments on the information collection must be submitted by May 22, 2015.

ADDRESSES: You may submit comments on the April 1, 2015, proposed rule by one of the following methods:

(1) Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R9–MB–2009–0045, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R9–MB–2009–0045; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will not accept emailed or faxed comments on the proposed rule. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide. See the Public Comments section of the proposed rule for more information.

Submit comments on the information collection requirements to the Desk Officer for the Department of the Interior at Office of Management and Budget (OMB–OIRA) at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail), or *Hope_Grey@fws.gov* (email).

FOR FURTHER INFORMATION CONTACT: George Allen at 703–358–1825.

SUPPLEMENTARY INFORMATION: In a proposed rule that published in the **Federal Register** on April 1, 2015, at 80 FR 17374, the **ADDRESSES** section provided some incorrect information for the submission of hard-copy comments. The corrected address appears above in **ADDRESSES**.

In addition, the section of the preamble with the subtitle *Paperwork Reduction Act,* beginning on page 17377, contained several errors. For the convenience of the reader, we are republishing that entire section here.

Paperwork Reduction Act of 1995 (PRA)

This proposed rule contains new information collection requirements for which Office of Management and Budget approval is required under the PRA (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

OMB has reviewed and approved the collections of information for (1) applications for abatement and depredation permits, (2) annual reporting for depredation permits, and (3) reporting of acquisition and disposition of migratory birds. These information collections are covered by existing OMB Control No. 1018–0022, which expires on May 31, 2017. OMB has also approved the recordkeeping and reporting associated with the depredation order for blackbirds, grackles, cowbirds, magpies, and crows and assigned OMB Control Number 1018–0146, which expires December 31, 2017.

We are requesting that OMB assign a new OMB control number for the proposed new requirements below. After we issue final regulations, we will incorporate the burden for the new information collection requirements into OMB Control Number 1018–0022 and discontinue the new number.

- Application—FWS Form 3–200–79. We are revising the application form to reflect the increase in the application fee from $100 to $150.
- Abatement permittees must provide each of their subpermittees with a legible copy of their permit and an original signed and dated letter designating the person as a subpermittee for part or all of the authorized activities. (§ 21.32(e)(2)(ii)).
- Subpermittees must report take under a depredation order to the permit holder. (§ 21.32(e)(3)(iii)(A)).
- Permittees must immediately report any unauthorized take of federally protected wildlife, disturbance of bald eagles or golden eagles, or harassment of endangered species. (§ 21.32(e)(3)(iii)(C)).

• Permittees must maintain complete and accurate records of the activities conducted under the abatement permit. (§§ 21.32(e)(2)(iv), 21.32(e)(8)(ii) and (iii), 21.32(e)(11), and 21.32(g)).

• Permittees must submit an annual report to their migratory bird permit issuing office. The report must include the information required on FWS Form 3–202–22–2133. (§ 21.32(e)(12)).

Title: Abatement Permit Reporting and Recordkeeping, 50 CFR 21.32.

OMB Control Number: 1018–XXXX.

Type of Request: Request for a new OMB control number.

Service Form Number: 3–200–79 and 3–202–22–2133.

Description of Respondents: Individuals.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Nonhour Burden Costs: $15,000 for application fees.

Activity	Number of responses	Completion time per response	Total annual burden hours
Application—FWS Form 3–200–79	100	2 hours	200
Designation Letter (§ 21.32(e)(2)(ii))	200	10 minutes	33
Report Take under Depredation Order (§ 21.32(e)(3)(iii)(A))	200	1 hour	200
Report Unauthorized Take of Federally Protected Wildlife, Disturbance of Bald Eagles or Golden Eagles, or Harassment of Endangered Species (§ 21.32(e)(3)(iii)(C)).	4	30 minutes	2
Recordkeeping (§§ 21.32(e)(2)(iv), 21.32(e)(8)(ii) and (iii), 21.32(e)(11), and 21.32(g))	100	5 hours	500
Annual Reports (§ 21.32(e)(12))	100	1 hour	100
Totals	704		1,035

You may review all documents submitted to OMB to support the proposed new information collection requirements online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden, including:

• Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

• The accuracy of our estimate of the burden for this collection of information;

• Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3830 (mail), or *Hope_Grey@fws.gov* (email).

Dated: April 13, 2015.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–09283 Filed 4–21–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 150211136–5136–01]

RIN 0648–XD769

Listing Endangered or Threatened Species; 90-Day Finding on a Petition To Delist the Snake River Fall-Run Chinook Salmon Evolutionarily Significant Unit

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

ACTION: 90-Day petition finding, request for information, and initiation of status review.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce a 90-day finding on a petition to delist the Snake River fall-run Chinook salmon (*Oncorhynchus tshawytscha*) (Snake River fall-run Chinook) Evolutionarily Significant Unit (ESU) under the Endangered Species Act (ESA). The Snake River fall-run Chinook ESU was listed as threatened under the ESA in 1992. We reviewed the status of the ESU in 2005 and again in 2011 and concluded that the ESU's classification as a threatened species remained appropriate. We find that the petition presents substantial scientific information indicating that the petitioned action may be warranted. We hereby initiate a status review of the Snake River fall-run Chinook ESU to determine whether the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to this species.

DATES: Comments must be received by June 22, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0039, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0039.*

2. Click the "Comment Now!" icon, complete the required fields.

3. Enter or attach your comments.

—OR—

• MAIL or Hand Delivery: Submit written comments to: Protected Resources Division, West Coast Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

Instructions

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Elizabeth Holmes Gaar, NMFS West Coast Region at (503) 230–5434; or

Dwayne Meadows, NMFS Office of Protected Resources at (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

The Snake River fall-run Chinook ESU was listed as threatened under the ESA in 1992 (57 FR 14658; April 22, 1992). Section 4(c)(2) of the ESA requires that we conduct a review of listed species at least once every 5 years (5-year review). On the basis of such 5-year reviews, we determine under section 4(c)(2)(B) whether a species should be delisted or reclassified from endangered to threatened or from threatened to endangered. We conducted 5-year reviews for the Snake River fall-run Chinook ESU in 2005 (70 FR 37160; June 28, 2005) and again in 2011 (76 FR 50448; August 15, 2011) and determined that the ESU should remain classified as ''threatened.''

On January 16, 2015, we received a petition from the Chinook Futures Coalition to delist the Snake River fall-run Chinook ESU under the ESA. Copies of the petition are available upon request (see **ADDRESSES**). Separately, on February 6, 2015, we published a notice of initiation of 5-year reviews for 32 species, including Snake River fall-run Chinook salmon (80 FR 6695; February 6, 2015).

Historically, the Snake River fall-run Chinook ESU consisted of three large populations: The extant Lower Mainstem Snake River population, and two currently extirpated populations (Marsing Reach and Salmon Falls) that spawned in the upper mainstem Snake River above the current Hells Canyon Dam complex. The listed Snake River fall-run Chinook salmon ESU consists of one population, the extant Lower Mainstem Snake population, which includes all natural-origin fall-run Chinook salmon originating from the mainstem Snake River below Hells Canyon Dam (the lowest of three impassable dams that form the Hells Canyon Complex), and from the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River subbasins. The ESU also includes four artificial propagation programs: The Lyons Ferry Hatchery Program, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery Program, and Oxbow Hatchery Program.

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to remove a species from the list of threatened or endangered species, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish the finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates that the petitioned action may be warranted (a ''positive 90-day finding''), we are required to promptly commence a review of the status of the species concerned, which includes conducting a comprehensive review of the best available scientific and commercial information. Within 12 months of receiving the petition, we must conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a significantly more thorough review of the available information, a ''may be warranted'' finding at the 90-day stage does not prejudge the outcome of the status review.

ESA-implementing regulations at 50 CFR 424.14(b) issued jointly by NMFS and the U.S. Fish and Wildlife Service (USFWS) (jointly ''the Services'') define ''substantial information'' in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. When evaluating whether substantial information is contained in a petition, we must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

To make a 90-day finding on a petition to list, delist or reclassify a species, we evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude that it supports the petitioner's assertions. Conclusive information indicating that the species may meet the ESA's requirements for delisting is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the lack of information itself suggests a particular extinction risk conclusion for the species at issue.

Many petitions identify risk classifications made by non-governmental organizations, such as the International Union for Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but such classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do ''not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act'' because NatureServe assessments ''have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide'' (*http://www.natureserve.org/prodServices/statusAssessment.jsp*). Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Under the ESA, a listing determination may address a species, which is defined to also include subspecies and, for any vertebrate species, any DPS that interbreeds when mature (16 U.S.C. 1532(16)). A joint

Services policy (DPS Policy) clarifies the agencies' interpretation of the phrase ''distinct population segment'' for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). For identifying stocks of Pacific salmon for listing under the ESA, we use our *Policy on Applying the Definition of Species under the ESA to Pacific Salmon* (ESU Policy) (56 FR 58612; November 20, 1991). Under this policy, populations of salmon that are substantially reproductively isolated from other conspecific populations and that represent an important component in the evolutionary legacy of the biological species are considered to be an ESU. In our listing determinations for Pacific salmon under the ESA, we have treated an ESU as constituting a DPS, and hence a ''species,'' under the ESA.

NMFS assesses viability for Pacific salmon ESUs based on a common set of biological principles described in NMFS' technical memorandum, *Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units* (McElhany *et al.* 2000). Viable salmonid populations (VSPs) are defined in terms of four population parameters: Abundance, population productivity or growth rate, population spatial structure, and diversity. Abundance and productivity need to be sufficient to provide for population-level persistence in the face of year-to-year variations in environmental influences. Spatial structure of populations should provide for resilience to the potential impact of catastrophic events, and diversity should provide for patterns of phenotypic, genotypic, and life history diversity that sustains natural production across a range of conditions, allowing for adaptation to changing environmental conditions.

Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following five ESA section 4(a)(1) factors: The present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

Under section 4(a)(1) of the ESA and our implementing regulations at 50 CFR 424.11(d), a species may be removed from the list if the Secretary of Commerce determines, based on the best scientific and commercial data available and after conducting a review of the species' status, that the species is no longer threatened or endangered because of one or a combination of the section 4(a)(1) factors. Pursuant to our regulations at 50 CFR 424.11(d), a species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) *Extinction.* Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) *Recovery.* The principal goal of the Services is to return listed species to a point at which protection under the ESA is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) *Original data for classification in error.* Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

Judicial decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination whether a petitioned action may be warranted. As a general matter, these decisions hold that a petition need not establish a ''strong likelihood'' or a ''high probability'' that a species is or is not either threatened or endangered to support a positive 90-day finding.

Application of the Hatchery Listing Policy

On June 28, 2005, we announced a final policy addressing the role of artificially propagated (hatchery produced) Pacific salmon and steelhead in listing determinations under the ESA (70 FR 37204; June 28, 2005) (Hatchery Listing Policy). The Hatchery Listing Policy's purpose is to provide direction to NMFS staff for considering hatchery-origin fish in making listing determinations for Pacific salmon and steelhead. Among other things, the Hatchery Listing Policy: (1) Establishes criteria for including hatchery stocks in ESUs and DPSs; (2) provides direction for considering hatchery fish in extinction risk assessments of ESUs and DPSs; and (3) provides that hatchery fish determined to be part of an ESU will be included in any listing of the ESU.

The Hatchery Listing Policy also provides that status determinations for Pacific salmon ESUs and steelhead DPSs will be based on the status of the entire ESU or DPS and that in assessing the status of an ESU/DPS, NMFS will apply the policy in support of the conservation of naturally-spawning salmon and the ecosystems upon which they depend, consistent with section 2(b) of the ESA. Finally, the Hatchery Listing Policy provides that hatchery fish will be included in assessing an ESU's or DPS's status in the context of their contributions to conserving natural self-sustaining populations.

Biology of Snake River Fall-Run Chinook Salmon

Snake River fall-run Chinook spend 1 to 4 years in the Pacific Ocean, depending on gender and age at the time of ocean entry. Most Snake River fall-run Chinook salmon return for reproduction to the lower Columbia River in August and September, and the adults enter the Snake River between early September and mid-October. There are presently five recognized major spawning areas for Snake River fall-run Chinook salmon: The Snake River upper reach (from the Hells Canyon Dam complex to the mouth of the Salmon River), the Snake River lower reach (from mouth of the Salmon River to Lower Granite dam Reservoir), and the lower Grande Ronde, lower Clearwater, and lower Tucannon Rivers. Adults spawn in nests (redds) from late October through early December. Emergence of young fall-run Chinook from redds typically occurs in the following April through early June. Juvenile Snake River fall-run Chinook salmon exhibit different early life history timing and growth traits in riverine habitat, depending on growth opportunity, which is often largely related to water temperature. Relatively warm temperatures produce juveniles that migrate seaward as subyearlings in May and June, whereas reaches with cooler temperatures produce juveniles that grow more slowly, over-winter and migrate seaward as yearlings.

Summary of Petition

The petition contains three parts. Part I asserts that hatchery fish must be counted when assessing the status of the ESU and must be considered in any

delisting decision where hatchery fish are part of the ESU, as is the case for Snake River fall-run Chinook salmon. The petitioner refers to NMFS' Hatchery Listing Policy and points out its requirement that status determinations for Pacific salmon ESUs will be based on the status of the entire ESU. The petitioner disagrees with NMFS' approach used in the most recent Snake River fall-run Chinook 5-year review (NMFS 2011) to base viability criteria on natural fish.

Part II of the petition asserts that Snake River fall-run Chinook meet the standards for delisting under the ESA and presents information on the ESU's recent status and trends. It asserts that Snake River fall-run Chinook have met the four VSP criteria, and consequently that the ESU's short-term extinction risk is zero and its long-term extinction risk is less than 1 percent. The petitioner asserts that the recovery standards articulated in the last 5-year review arbitrarily redefined the ESU to exclude hatchery fish. The petitioner also reviews the 5-year review's consideration of the VSP parameters of abundance, productivity, spatial structure, and diversity. The 5-year review's VSP criteria were recommended by the Interior Columbia River Technical Recovery Team (ICTRT 2007; Ford *et al.* 2011). The petitioner asserts that Snake River fall-run Chinook salmon have met the abundance and productivity criteria set forth in the 2011 5-year review, and the petitioner presents abundance and productivity data made available since the 2011 5-year review, for the years 2010 through 2014. The petitioner cites data sources for updated abundance and productivity from the Pacific Fishery Management Council (PFMC 2014), Arnsberg *et al.* (2013, 2014) and a powerpoint presentation given in 2013 by a scientist from NMFS' Northwest Fisheries Science Center (Cooney 2013).

The petitioner asserts that the Snake River fall-run Chinook salmon ESU also meets criteria from the 5-year review for spatial distribution and diversity. For spatial distribution, the Interior Columbia Technical Recovery Team recommended that for the Snake River fall-run Chinook ESU to be considered at low extinction risk, there should be another population, in addition to the extant Lower Mainstem Snake River population. We included that criterion in the 2011 5-year review. The petitioner points to redd count data in the Clearwater River from Arnsberg *et al.* (2014) and concludes that the spawning aggregation in the Clearwater River satisfies the spatial structure criterion for a second population of Snake River fall-run Chinook. The petitioner further asserts, however, that establishing another population of Snake River fall-run Chinook salmon to lower the risk of extinction is not relevant when all other delisting criteria have been met. The petitioner disagrees with NMFS' approach to diversity criteria, which evaluates diversity within the ESU. The petitioner asserts that Pacific salmon are diverse because they are composed of two or more ESUs, and that the only means for increasing diversity is to increase the abundance of spawners in an ESU. The petitioner points out that this increase in abundance has happened for the Snake River fall Chinook ESU.

Part III of the petition evaluates the statutory standards for delisting and asserts that the extinction risk of Snake River fall-run Chinook is at or approaching zero, and that the delisting standards are met individually and collectively. The petitioner also provides an evaluation of each of the five ESA section 4(a)(1) listing factors. The petitioner concludes that: (1) There is no destruction, modification, or curtailment of the Snake River fall-run Chinook habitat or range that justifies continued listing; (2) that there is no overutilization of Snake River fall-run Chinook; (3) predation and disease are not present factors, and predation is less of a factor today than when the species was listed; (4) existing regulatory mechanisms are adequate as evidenced by the demonstrated increasing numbers of Snake River fall-run Chinook; and (5) while drought might be a consideration for other natural or manmade factors, the operation of the Federal Columbia River Power System, the Hells Canyon Dam Complex, and Dworshak Dam ensures that sufficient waters will be available for Snake River fall-run Chinook in the future.

Petition Analysis and Finding

As described above, the standard for determining whether a petition includes substantial information is whether the amount of information presented provides a basis for us to find that it would lead a reasonable person to believe that the measure proposed in the petition may be warranted. We find the analysis of additional data presented and referenced in the petition regarding the abundance and productivity of Snake River fall-run Chinook since the last status review in 2011 meets this standard, and that it presents substantial scientific evidence indicating that the petitioned action may be warranted.

Information Solicited

As a result of this 90-day finding, we will commence a status review of the Snake River fall-run Chinook ESU to determine whether delisting the species is warranted. To ensure that our review of Snake River fall-run Chinook is informed by the best available scientific and commercial information, we are opening a 60-day public comment period to solicit information to support our 12-month finding on this petition. We note that on February 6, 2015, we announced the initiation of 5-year reviews of 32 species, including Snake River fall-run Chinook, and requested information that has become available since the species' statuses were last updated. In the case of Snake River fall-run Chinook, the last update was in 2011 (NMFS 2011). We will consider all information submitted through that solicitation, as well as information submitted in response to this finding and request for information, to inform our status review and 12-month finding. There is no need to resubmit information that has already been submitted in response to our 5-year review solicitation notice. We are opening a 60-day public comment period to solicit additional information beyond that provided for the 5-year review process in response to our finding on this petition.

Specifically, we request new information that has become available since the 2011 5-year status review of Snake River fall-run Chinook salmon regarding: (1) Population abundance; (2) population productivity; (3) changes in species distribution or population spatial structure; (4) patterns of phenotypic, genotypic, and life history diversity; (5) changes in habitat conditions and associated limiting factors and threats; (6) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating the effectiveness of such measures in addressing identified limiting factors or threats; (7) information on the adequacy of regulatory mechanisms to conserve the species in the event it were delisted; (8) data concerning the status and trends of identified limiting factors or threats; (9) information that may affect determinations regarding the composition of the ESU; (10) information on changes to hatchery programs that may affect determinations regarding the ESU membership or contribution to recovery of natural populations; (11) information on targeted harvest (commercial, tribal, and recreational) and bycatch of the species; and (12) other new information, data, or

corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information in the previous listing determination, and improved analytical methods for evaluating extinction risk.

We request that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

References Cited

The complete citations for the references used in this document can be obtained by contacting NMFS (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**) or on our Web page at: *http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/salmon_and_steelhead_listings/chinook/snake_river_fall/snake_river_fall_run_chinook.html.*

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 17, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2015–09358 Filed 4–21–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 80, No. 77

Wednesday, April 22, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 16, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if they are received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: FNS Generic Clearance for Pre-Testing, Pilot, and Field Testing Studies.

OMB Control Number: 0584–NEW.

Summary of Collection: The Food and Nutrition Service (FNS) is requesting approval from the Office of Management and Budget (OMB) to conduct pre-testing of surveys using a generic clearance that will allow FNS to conduct a variety of data-gathering activities aimed at improving the quality and usability of information collection instruments associated with research and analysis activities. The procedures utilized to this effect include but are not limited to experiments with levels of incentives for study participants, tests of various types of survey operations, focus groups, pilot testing, exploratory interviews, experiments with questionnaire design, and usability testing of electronic data collection instruments. The authorizing statutes for data collections submitted under this generic clearance are: The Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296, Sec 305), and Section 17 (7 U.S.C. 2026) (a)(1) of the Food and Nutrition Act of 2008.

Need and Use of the Information: The information collected will be used to pre-test, evaluate and improve the quality of surveys instruments and provide reassessments before they are conducted. This generic testing clearance is a helpful vehicle for evaluating questionnaires/assessments and various data collection procedures. It will allow FNS to take advantage of a variety of methods to identify questionnaire/assessment and procedural problems, suggest solutions, and measure the relative effectiveness of alternative solutions. The quality and timeliness of data collections will be improved by conducting pre-testing in advance of full surveys.

Description of Respondents: Individual or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 1,500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,500.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–09286 Filed 4–21–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2015–0011]

Codex Alimentarius Commission: Meeting of the Codex Alimentarius Commission

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) is sponsoring a public meeting on June 17, 2015. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 38th Session of the Codex Alimentarius Commission (CAC), taking place in Geneva, Switzerland, July 6–11, 2015. The Deputy Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 38th Session of the CAC and to address items on the agenda.

DATES: The public meeting is scheduled for Wednesday, June 17, 2015 from 1:00–4:00 p.m.

ADDRESSES: The public meeting will take place at The Jamie L. Whitten Building, United States Department of Agriculture (USDA), 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250. Documents related to the 38th Session of the CAC will be accessible via the Internet at the following address: *http://www.codexalimentarius.org/meetings-reports/en/.*

The U.S. Delegate to the 38th Session of the CAC invites U.S. interested parties to submit their comments electronically to the following email address: *Barbara.McNiff@fsis.usda.gov.*

Call in Number

If you wish to participate in the public meeting for the 38th Session of the CAC by conference call, please use the call in number and participant code listed below:

Call in Number: 1–888–844–9904.

The participant code will be posted on the Web page below: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/us-codex-alimentarius/public-meetings*.

Registration

Attendees may register to attend the public meeting by emailing *barbara.mcniff@fsis.usda.gov* by June 14, 2015. Early registration is encouraged because it will expedite entry into the building. The meeting will be held in a Federal building. Attendees should also bring photo identification and plan for adequate time to pass through security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone.

FOR FURTHER INFORMATION ABOUT THE 38TH SESSION OF THE CAC CONTACT: Barbara McNiff, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, Phone: (202) 690–4719 Fax: (202)720–3157, Email: *Barbara.Mcniff@fsis.usda.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Jasmine Curtis, U.S. Codex Office, 1400 Independence Avenue SW., Room 4865 Washington, DC 20250, Phone: (202)205–7760 Fax: (202) 720–3157, Email: *Jasmine.Curtis@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade; promotes coordination of all food standards work undertaken by international governmental and non-governmental organizations; determines priorities and initiates and guides the preparation of draft standards through and with the aid of appropriate organizations; finalizes standards elaborated and publishes them in a *Codex Alimentarius* (food code) either as regional or worldwide standards; and amends published standards, as appropriate, in the light of new developments.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 38th Session of CAC will be discussed during the public meeting:

- Adoption of the Agenda
- Report by the Chairperson on the 70th Session of the Executive Committee
- Reports of FAO/WHO Coordinating Committees
- Proposed amendments to the Procedural Manual/Comments
- Development of Codex Standards and related texts
  - (a) Final adoption (at Steps 8, 5/8 and 5a)/Comments
  - (b) Adoption at Step 5/Comments
  - (c) Revocation
  - (d) Proposals for New Work
  - (e) Proposals for Discontinuation of Work
  - (f) Amendments to Codex Standards and Related Texts
- Matters referred to the Commission by Codex Committees
  - (a) Codex Work Management and Functioning of the Executive Committee
  - (b) Revitalization of FAO/WHO Coordinating Committees
  - (c) Other matters
- Codex Strategic plan 2014–2019: General Implementation Status
- Financial and Budgetary Matters
  - (a) Codex
  - (b) FAO/WHO Scientific Support to Codex
  - Matter arising from FAO and WHO
  - (a) Scientific Advice to Codex and Member States
  - (b) Capacity Building Activities of FAO and WHO
  - (d) FAO/WHO Project and Trust Fund for Enhanced Participation in Codex
- Relations between the Codex Alimentarius Commission and other International Organizations
- Election of the Chairperson and Vice-Chairpersons and Members elected on Geographical basis and appointment of the Coordinators
- Designation of Countries responsible for Appointing the Chairpersons of Codex Committees and Schedule of Sessions 2016–2017
- Other Business

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the June 17, 2015 public meeting, draft U.S. positions on the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 38th Session of CAC (see **ADDRESSES**). Written comments should state that they relate to activities of the 38th session of the CAC.

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.

USDA Non-Discrimination 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.

How To File a Complaint of Discrimination

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

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).

Done at Washington, DC on April 17, 2015.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2015–09387 Filed 4–21–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

First Responder Network Authority Board Special Meeting

AGENCY: First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Public meeting notice.

SUMMARY: The Board of the First Responder Network Authority (FirstNet) will hold a Special Meeting via telephone conference (teleconference) on April 24, 2015.

DATES: The Special Meeting will be held on April 24, 2015, from 10:00 a.m. to 12:15 p.m. Eastern Daylight Time.

ADDRESSES: The Special Meeting will be conducted via teleconference. Members of the public may listen to the meeting by dialing toll-free 1–888–997–9859 and using passcode 3572169. Due to the limited number of ports, attendance via teleconference will be on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Uzoma Onyeije, Secretary, FirstNet, 12201 Sunrise Valley Drive Reston, VA 20192; telephone: (703) 648–4165; email: *uzoma.onyeije@firstnet.gov.* Please direct media inquiries to Ryan Oremland at (703) 648–4114.

SUPPLEMENTARY INFORMATION:

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112–96, 126 Stat. 156 (2012), created FirstNet as an independent authority within the National Telecommunications and Information Administration (NTIA). The Act directs FirstNet to ensure the building, operating and maintaining of a single nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. As provided in section 4.08 of the FirstNet Bylaws, the Board through this Notice provides at least two days notice of a Special Meeting of the Board to be held April 24, 2015, from 10:00 a.m. to 12:15 p.m. Eastern Daylight Time. The Board may, by a majority vote, close a portion of the Special Meeting as necessary to preserve the confidentiality of commercial or financial information that is privileged or confidential, to discuss personnel matters, or to discuss legal matters affecting FirstNet, including pending or potential litigation. See 47 U.S.C. 1424(e)(2).

Matters to Be Considered: FirstNet will post an agenda for the Special Meeting on its Web site at *www.firstnet.gov* prior to the meeting. The agenda topics are subject to change.

Time and Date: The Special Meeting will be held on April 24, 2015, from 10:00 a.m. to 12:15 p.m. Eastern Daylight Time. The times and dates are subject to change. Please refer to FirstNet's Web site at *www.firstnet.gov* for the most up-to-date information.

Other Information: The teleconference for the Special Meeting is open to the public. On the date and time of the Special Meeting, members of the public may call toll-free 1–888–997–9859 and use passcode 3572169 to listen to the meeting. To view the slide presentations, the public may visit *https://www.mymeetings.com/nc/join* and enter Conference number: PW3373297 and audience passcode: 3572169. As an alternative, members of the public may view the slide presentations by visiting: *https://www.mymeetings.com/nc/join.php?i=PW3373297&p=3572169&t=c.* If you experience technical difficulty, please contact Margaret Baldwin by telephone (703) 648–4161 or via email *margaret.baldwin@firstnet.gov.* Public access will be limited to listen-only. Due to the limited number of ports, attendance via teleconference will be on a first-come, first-served basis. The Special Meeting is accessible to people with disabilities. Individuals requiring accommodations are asked to notify Mr. Onyeije, by telephone at (703) 648–4165 or email at *uzoma.onyeije@firstnet.gov,* at least two (2) business days before the meeting.

Records: FirstNet maintains records of all Board proceedings. Minutes of the meetings will be available at *www.firstnet.gov.*

Dated: April 17, 2015.

Eli Veenendaal,

Attorney—Advisor, First Responder Network Authority.

[FR Doc. 2015–09376 Filed 4–21–15; 8:45 am]

BILLING CODE 3510–TL–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–815]

Light-Walled Rectangular Pipe and Tube From Turkey; Preliminary Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from ÇINAR Boru Profil Sanayi ve Ticaret A.Ş. (CINAR), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Turkey.[1] The period of review (POR) is May 1, 2013, through April 30, 2014. We preliminarily find that CINAR made sales at prices below normal value (NV) during the POR. We invite interested parties to comment on these preliminary results.

DATES: Effective date April 22, 2015.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the Order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 millimeters. The merchandise subject to the Order is classified in the Harmonized Tariff Schedule of the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 36462 (June 27, 2014). *See also Notice of Antidumping Duty Order: Light-Walled Rectangular Pipe and Tube From Turkey,* 73 FR 31065 (May 30, 2008) (the Order).

United States at subheadings 7306.61.50.00 and 7306.61.70.60.[2]

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). ACCESS is available to registered users at *https://access.trade.gov*[3] and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Methodology

The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price (EP) is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margin for the period May 1, 2013, through April 30, 2014:

Exporter or producer	Weighted-average dumping margin
ÇINAR Boru Profil Sanayi ve Ticaret A.Ş.	1.02 percent

[2] For a full description of the scope of the Order, see the memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Light-Walled Rectangular Pipe and Tube from Turkey: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2013–2014'' (Preliminary Decision Memorandum), which is dated concurrently with this notice and is hereby incorporated by reference. A list of the topics discussed in the Preliminary Decision Memorandum appears in the Appendix to this notice.

[3] On November 24, 2014, Enforcement and Compliance changed the name of Import Administrations's AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at: 79 FR 69046 (November 20, 2014).

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[4] Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit cases briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[5] 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.[6] Case and rebuttal briefs should be filed using ACCESS.[7] An electronically filed document must be received successfully in its entirety by ACCESS, by 5:00 p.m. Eastern Time on the day on which it is due.[8]

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. 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 and rebuttal briefs. If a request for a hearing is made, parties will be notified of the date and time of the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Department intends to issue the final results of this administrative review within 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[9] If CINAR's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). If the weighted-average dumping margin for CINAR is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate CINAR's entries without regard to antidumping duties in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.''[10] Where an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2).

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of light-walled rectangular pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for CINAR will be equal to the weighted-average dumping margin established in the final results of this administrative review except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters

[4] *See* 19 CFR 351.224(b).

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.309(c)(2) and (d)(2).

[7] *See* 19 CFR 351.303.

[8] *See* 19 CFR 351.303(b)(1).

[9] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[10] *Id.,* 77 FR at 8102.

will continue to be 27.04 percent *ad valorem,* the all-others rate established in the less-than-fair-value investigation.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(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.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: April 1, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

Summary
Background
Scope of the Order
Limited Home Market Reporting
Methodology
  Fair Value Comparisons
  Product Comparisons
  Determination of Comparison Method
  Results of Differential Pricing Analysis
  Date of Sale
  U.S. Price
  Normal Value
  Currency Conversion
Conclusion

[FR Doc. 2015–09386 Filed 4–21–15; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* the Order at 73 FR 31065.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–854]

Supercalendered Paper From Canada: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Joshua Morris or Shane Subler, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1779 or (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 2015, the Department of Commerce (the Department) initiated a countervailing duty investigation on supercalendered paper from Canada.[1] Currently, the preliminary determination is due no later than May 22, 2015.

Postponement of the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, if the petitioner makes a timely request for an extension in accordance with 19 CFR 351.205(e), section 703(c)(1)(A) of the Act allows the Department to postpone the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation.

On April 9, 2015, the petitioner[2] submitted a timely request pursuant to section 703(c)(l)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determination.[3] Therefore, in accordance with section 703(c)(l)(A) of the Act, we are fully postponing the due date for the preliminary determination to not later than 130 days after the day on which the investigation was initiated. As a result, the deadline for completion of the preliminary determination is now July 27, 2015.[4]

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(l).

[1] *See Supercalendered Paper from Canada: Initiation of Countervailing Duty Investigation,* 80 FR 15981 (March 26, 2015).

[2] The Coalition For Fair Paper Imports (the petitioner).

[3] *See* Letter from the petitioner, entitled ''Supercalendered Paper from Canada: Request For Postponement Of The Preliminary Determination,'' dated April 9, 2015.

[4] The actual deadline based on the postponement to 130 days is July 26, 2015, which is a Sunday. Department practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

Dated: April 15, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–09389 Filed 4–21–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD857

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Wharf Maintenance Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to construction activities as part of a wharf maintenance project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to the Navy to incidentally take marine mammals, by Level B Harassment only, during the specified activity.

DATES: Comments and information must be received no later than May 22, 2015.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.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. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted for public viewing on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* without change. All personal identifying

information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

National Environmental Policy Act (NEPA)

The Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the wharf maintenance project. NMFS has reviewed the EA and believes it appropriate to adopt the EA in order to assess the impacts to the human environment of issuance of an IHA to the Navy and subsequently sign our own Finding of No Significant Impact (FONSI). Information in the Navy's application, the Navy's EA, and this notice collectively provide the environmental information related to proposed issuance of this IHA for public review and comment. All documents are available at the aforementioned Web site. We will review all comments submitted in response to this notice as we complete the NEPA process, including a final decision of whether to adopt the Navy's EA and sign a FONSI, prior to a final decision on the incidental take authorization request.

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 by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of these prescriptions requires notice and opportunity for public comment.

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, section 3(18) of 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 November 4, 2014, we received a request from the Navy for authorization to take marine mammals incidental to pile driving and removal associated with maintenance of an explosives handling wharf (EHW–1) in the Hood Canal at Naval Base Kitsap in Bangor, WA (NBKB). The Navy submitted revised versions of the request on February 27 and March 17, 2015. The latter of these was deemed adequate and complete. The Navy proposes to replace four structurally unsound piles, between July 16, 2015, and January 15, 2016.

The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Species with the expected potential to be present during all or a portion of the in-water work window include the Steller sea lion (*Eumetopias jubatus monteriensis*), California sea lion (*Zalophus californianus*), harbor seal (*Phoca vitulina richardii*), killer whale (transient only; *Orcinus orca*), and harbor porpoise (*Phocoena phocoena vomerina*). These species may occur year-round in the Hood Canal, with the exception of the Steller sea lion, which is present only from fall to late spring (approximately late September to early May), and the California sea lion, which is only present from late summer to late spring (approximately late August to early June).

This would be the third such IHA for similar work on the same structure, if issued. The Navy previously received IHAs for a two-year maintenance project at EHW–1 conducted in 2011–12 and 2012–13 (76 FR 30130 and 77 FR 43049). Additional IHAs were issued to the Navy in recent years for marine construction projects on the NBKB waterfront, including the construction of a second explosives handling wharf (EHW–2) immediately adjacent to EHW–1. Three consecutive IHAs were issued for that project, in 2012–13 (77 FR 42279), 2013–14 (78 FR 43148), and 2014–15 (79 FR 43429). Additional projects include the Test Pile Project (TPP), conducted in 2011–12 in the proposed footprint of the EHW–2 to collect geotechnical data and test methodology in advance of the project (76 FR 38361) and a minor project to install a new mooring for an existing research barge, conducted in 2013–14 (78 FR 43165). In-water work associated with all projects was conducted only during the approved in-water work window (July 16-February 15). Monitoring reports for all of these projects are available on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* and provide environmental information related to proposed issuance of this IHA for public review and comment.

Description of the Specified Activity

Overview

NBKB provides berthing and support services to Navy submarines and other fleet assets. The Navy proposes to complete necessary maintenance at the EHW–1 facility at NBKB as part of ongoing maintenance conducted as necessary to maintain the structural

integrity of the wharf and ensure its continued functionality to support necessary operational requirements. The EHW–1 facility, constructed in 1977, requires ongoing maintenance due to the deterioration of the wharf's existing piling sub-structure. The proposed action includes the replacement of four existing 24-in hollow prestressed octagonal concrete piles with four new 30-in concrete filled steel pipe piles. Existing piles will be removed using a pneumatic hammer and a crane. Vibratory pile driving will be the primary method used to install new piles, though an impact hammer may be used if substrate conditions prevent the advancement of piles to the required depth or to verify the load-bearing capacity. Sound attenuation measures (*i.e.,* bubble curtain) would be used during all impact hammer operations.

Dates and Duration

The Navy's specified activity would occur only during July 16 through January 15, within the allowable season for in-water work at NBKB. This window is established by the Washington Department of Fish and Wildlife in coordination with NMFS and the U.S. Fish and Wildlife Service (USFWS) to protect juvenile salmon. A maximum of eight pile driving days would occur, but the eight days could occur on any day during the window. Vibratory driving, as compared with impact driving or pile removal via pneumatic chipping, is expected to occur on only four total days.

Impact pile driving during the first half of the in-water work window (July 16 to September 23) may only occur between two hours after sunrise and two hours before sunset to protect breeding marbled murrelets (*Brachyramphus marmoratus;* an Endangered Species Act [ESA]-listed bird under the jurisdiction of USFWS). Vibratory driving during the first half of the window, and all in-water work conducted between September 23 and January 15, may occur during daylight hours (sunrise to sunset). Other construction (not in-water) may occur between 7 a.m. and 10 p.m., year-round. Therefore, in-water work is restricted to daylight hours (at minimum) and there is at least a nine-hour break during the 24-hour cycle from all construction activity.

Specific Geographic Region

NBKB is located on the Hood Canal approximately 32 km west of Seattle, Washington (see Figures 2–1 through 2–3 in the Navy's application). The Hood Canal is a long, narrow fjord-like basin of the western Puget Sound. Throughout its 108-km length, the width of the canal varies from 1.6–3.2 km and exhibits strong depth/elevation gradients and irregular seafloor topography in many areas. Although no official boundaries exist along the waterway, the northeastern section extending from the mouth of the canal at Admiralty Inlet to the southern tip of Toandos Peninsula is referred to as northern Hood Canal. NBKB is located within this region. Please see Section 2 of the Navy's application for detailed information about the specific geographic region, including physical and oceanographic characteristics.

Detailed Description of Activities

Maintenance of necessary facilities for handling of explosive materials is part of the Navy's sea-based strategic deterrence mission, and the Navy has determined that EHW–1 structural integrity is compromised due to deterioration of the wharf's piling sub-structure. The EHW–1 consists of two 30-m access trestles and a main pier deck that measures approximately 215 m in length. The wharf is supported by both 16-in and 24-in hollow octagonal pre-cast concrete piles. Additionally, there are steel and timber fender piles on the outboard and inboard edges of the wharf (see Figures 1–1 through 1–4 in the Navy's application).

The Navy proposes to replace four structurally unsound 24-in hollow prestressed octagonal concrete piles, as well as performing additional repair and replacement work above water that would not be expected to result in effects to marine mammals. The piles would be replaced with four 30-in concrete filled steel piles. Piles to be removed would first be scored by a diver using a small pneumatic hammer and then removed by crane. Pile installation will utilize vibratory pile drivers to the greatest extent possible, and the Navy anticipates that most piles will be able to be vibratory driven to within several feet of the required depth. Pile drivability is, to a large degree, a function of soil conditions and the type of pile hammer. The soil conditions encountered during geotechnical explorations at NBKB indicate existing conditions generally consist of fill or sediment of very dense glacially overridden soils, and recent experience at other construction locations along the NBKB waterfront indicates that most piles should be able to be driven with a vibratory hammer to proper embedment depth. However, difficulties during pile driving may be encountered as a result of obstructions, such as rocks or boulders, which may exist throughout the project area. If difficult driving conditions occur, usage of an impact hammer would occur. Impact driving may also be used to verify load-bearing capacity, or proof, installed piles.

Description of Marine Mammals in the Area of the Specified Activity

There are eight marine mammal species with recorded occurrence in the Hood Canal during the past fifteen years, including five cetaceans and three pinnipeds. The harbor seal resides year-round in Hood Canal, while the Steller sea lion and California sea lion inhabit Hood Canal during portions of the year. Harbor porpoises may transit through the project area and occur regularly in Hood Canal, while transient killer whales could be present in the project area but do not have regular occurrence in the Hood Canal. The Dall's porpoise (*Phocoenoides dalli dalli*), humpback whale (*Megaptera novaeangliae*), and gray whale (*Eschrichtius robustus*) have been observed in Hood Canal, but their presence is sufficiently rare that we do not believe there is a reasonable likelihood of their occurrence in the project area during the proposed period of validity for this IHA. The latter three species are not carried forward for further analysis beyond this section.

We have reviewed the Navy's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of the Navy's application instead of reprinting the information here. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals/*) for generalized species accounts and to the Navy's Marine Resource Assessment for the Pacific Northwest, which documents and describes the marine resources that occur in Navy operating areas of the Pacific Northwest, including Puget Sound (DoN, 2006). The document is publicly available at: *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed March 25, 2015).

Table 1 lists the marine mammal species with expected potential for occurrence in the vicinity of NBKB during the project timeframe and summarizes key information regarding stock status and abundance. Taxonomically, we follow Committee on Taxonomy (2014). Please see NMFS' Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of these stocks' status and abundance. The harbor seal, California sea lion and harbor porpoise are addressed in the

Pacific SARs (*e.g.,* Carretta *et al.,* 2014, 2015), while the Steller sea lion and transient killer whale are treated in the Alaska SARs (*e.g.,* Allen and Angliss, 2014, 2015).

In the species accounts provided here, we offer a brief introduction to the species and relevant stock as well as available information regarding population trends and threats, and describe any information regarding local occurrence.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NBKB

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence in Hood Canal; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises) Family Delphinidae						
Killer whale	West coast transient [6]	-; N	243 (n/a; 2009)	2.4	0	Rare; year-round (but last observed in 2005).
Family Phocoenidae (porpoises)						
Harbor porpoise	Washington inland waters [7].	-; N	10,682 (0.38; 7,841; 2003).	unk	≥2.2	Possible regular presence; year-round.
Order Carnivora—Superfamily Pinnipedia Family Otariidae (eared seals and sea lions)						
California sea lion	U.S.	-; N	296,750 (n/a; 153,337; 2011).	9,200	389	Seasonal/common; Fall to late spring (Aug to Jun).
Steller sea lion	Eastern U.S.[5]	-; N	60,131–74,448 (n/a; 36,551; 2008–13) [8].	1,645 [9]	92.3	Seasonal/occasional; Fall to late spring (Sep to May).
Family Phocidae (earless seals)						
Harbor seal	Hood Canal [7]	-; N	3,555 (0.15; unk; 1999)	unk	0.2	Common; Year-round resident.

[1] 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; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. 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 species (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.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All values presented here are from the draft 2014 SARs (*www.nmfs.noaa.gov/pr/sars/draft.htm*).

[5] Abundance estimates (and resulting PBR values) for these stocks are new values presented in the draft 2014 SARs. This information was made available for public comment and is currently under review and therefore may be revised prior to finalizing the 2014 SARs. However, we consider this information to be the best available for use in this document.

[6] The abundance estimate for this stock includes only animals from the ''inner coast'' population occurring in inside waters of southeastern Alaska, British Columbia, and Washington—excluding animals from the ''outer coast'' subpopulation, including animals from California—and therefore should be considered a minimum count. For comparison, the previous abundance estimate for this stock, including counts of animals from California that are now considered outdated, was 354.

[7] Abundance estimates for these stocks are greater than eight years old and are therefore not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

[8] Best abundance is calculated as the product of pup counts and a factor based on the birth rate, sex and age structure, and growth rate of the population. A range is presented because the extrapolation factor varies depending on the vital rate parameter resulting in the growth rate (*i.e.,* high fecundity or low juvenile mortality).

[9] PBR is calculated for the U.S. portion of the stock only (excluding animals in British Columbia) and assumes that the stock is not within its OSP. If we assume that the stock is within its OSP, PBR for the U.S. portion increases to 2,193.

Although present in Washington inland waters in small numbers (Falcone *et al.,* 2005), primarily in the Strait of Juan de Fuca and San Juan Islands but also occasionally in Puget Sound, the humpback whale is not typically present in Hood Canal. Archived sighting records show no confirmed observations from 2001–11 (*www.orcanetwork.org;* accessed March 26, 2015), and no records are found in the literature. In January–February of 2012, and again in 2015, one individual was observed in Hood Canal repeatedly over a period of several weeks. No other sightings have been recorded.

Gray whales generally migrate southbound past Washington in late December and January, and transit past

Washington on the northbound return in March to May. Gray whales do not generally make use of Washington inland waters, but have been observed in certain portions of those waters in all months of the year, with most records occurring from March through June (Calambokidis *et al.,* 2010; *www.orcanetwork.org*) and associated with regular feeding areas. Usually fewer than twenty gray whales visit the inner marine waters of Washington and British Columbia beginning in about January, and six to ten of these are individual whales that return most years to feeding sites in northern Puget Sound. The remaining individuals occurring in any given year generally appear unfamiliar with feeding areas, often arrive emaciated, and commonly die of starvation (WDFW, 2012). Gray whales have been sighted in Hood Canal on six occasions since 1999 (including a stranded whale), with the most recent report in November 2010 (*www.orcanetwork.org*).

In Washington, Dall's porpoises are most abundant in offshore waters where they are year-round residents, although interannual distribution is highly variable (Green *et al.,* 1992). In inland waters, Dall's porpoises are most frequently observed in the Strait of Juan de Fuca and Haro Strait between San Juan Island and Vancouver Island (Nysewander *et al.,* 2005), but are seen occasionally in southern Puget Sound and may also occasionally occur in Hood Canal. Only a single Dall's porpoise has been observed at NBKB, in deeper water during a 2008 summer survey conducted by the Navy (Tannenbaum *et al.,* 2009). On the basis of this single observation, we previously assumed it appropriate to authorize incidental take of this species. However, there have been no subsequent observations of Dall's porpoises in Hood Canal during either dedicated vessel line-transect surveys or project-specific monitoring and we no longer believe that the species may be reasonably expected to be present in the action area.

Steller Sea Lion

Steller sea lions are distributed mainly around the coasts to the outer continental shelf along the North Pacific rim from northern Hokkaido, Japan through the Kuril Islands and Okhotsk Sea, Aleutian Islands and central Bering Sea, southern coast of Alaska and south to California (Loughlin *et al.,* 1984). Based on distribution, population response, and phenotypic and genotypic data, two separate stocks of Steller sea lions are recognized within U.S. waters, with the population divided into western and eastern distinct population segments (DPS) at 144°W (Cape Suckling, Alaska) (Loughlin, 1997). The eastern DPS extends from California to Alaska, including the Gulf of Alaska, and is the only stock that may occur in the Hood Canal.

According to NMFS' recent status review (NMFS, 2013), the best available information indicates that the overall abundance of eastern DPS Steller sea lions has increased for a sustained period of at least three decades while pup production has also increased significantly, especially since the mid-1990s. Johnson and Gelatt (2012) provided an analysis of growth trends of the entire eastern DPS from 1979–2010, indicating that the stock increased during this period at an annual rate of 4.2 percent (90% CI 3.7–4.6). Most of the overall increase occurred in the northern portion of the range (southeast Alaska and British Columbia), but pup counts in Oregon and California also increased significantly (*e.g.,* Merrick *et al.,* 1992; Sease *et al.,* 2001; Olesiuk and Trites, 2003; Fritz *et al.* 2008; Olesiuk, 2008; NMFS, 2008, 2013). In Washington, Pitcher *et al.* (2007) reported that Steller sea lions, presumably immature animals and non-breeding adults, regularly used four haul-outs, including two ''major'' haul-outs (>50 animals). The same study reported that the numbers of sea lions counted between 1989 and 2002 on Washington haul-outs increased significantly (average annual rate of 9.2 percent) (Pitcher *et al.,* 2007). Although the stock size has increased, its status relative to OSP size is unknown. However, the consistent long-term estimated annual rate of increase may indicate that the stock is reaching OSP size (Allen and Angliss, 2014).

The eastern stock breeds in rookeries located in southeast Alaska, British Columbia, Oregon, and California. There are no known breeding rookeries in Washington (Allen and Angliss, 2014) but eastern stock Steller sea lions are present year-round along the outer coast of Washington, including immature animals or non-breeding adults of both sexes. In 2011, the minimum count for Steller sea lions in Washington was 1,749 (Allen and Angliss, 2014), up from 516 in 2001 (Pitcher *et al.,* 2007). In Washington, Steller sea lions primarily occur at haul-out sites along the outer coast from the Columbia River to Cape Flattery and in inland waters sites along the Vancouver Island coastline of the Strait of Juan de Fuca (Jeffries *et al.,* 2000; Olesiuk and Trites, 2003; Olesiuk, 2008). Numbers vary seasonally in Washington waters with peak numbers present during the fall and winter months (Jeffries *et al.,* 2000). Beginning in 2008, Steller sea lions have been observed at NBKB hauled out on submarines at Delta Pier (located approximately 1.25 km south of the project site) during fall through spring months, with September 26 as the earliest documented arrival. When Steller sea lions are present, there are typically one to four individuals, with a maximum observed group size of eleven.

Harbor Seal

Harbor seals inhabit coastal and estuarine waters and shoreline areas of the northern hemisphere from temperate to polar regions. The eastern North Pacific subspecies is found from Baja California north to the Aleutian Islands and into the Bering Sea. Multiple lines of evidence support the existence of geographic structure among harbor seal populations from California to Alaska (*e.g.,* O'Corry-Crowe *et al.,* 2003; Temte, 1986; Calambokidis *et al.,* 1985; Kelly, 1981; Brown, 1988; Lamont, 1996; Burg, 1996). Harbor seals are generally non-migratory, and analysis of genetic information suggests that genetic differences increase with geographic distance (Westlake and O'Corry-Crowe, 2002). However, because stock boundaries are difficult to meaningfully draw from a biological perspective, three separate harbor seal stocks have been recognized for management purposes along the west coast of the continental U.S.: (1) Inland waters of Washington (including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.,* 2014). Multiple stocks are recognized in Alaska. Samples from Washington, Oregon, and California demonstrate a high level of genetic diversity and indicate that the harbor seals of Washington inland waters possess unique haplotypes not found in seals from the coasts of Washington, Oregon, and California (Lamont *et al.,* 1996).

Recent genetic evidence indicates that harbor seals of Washington inland waters have sufficient population structure to warrant division into multiple distinct stocks (Huber *et al.,* 2010, 2012). Based on studies of pupping phenology, mitochondrial DNA, and microsatellite variation, Carretta *et al.* (2014) divide the Washington inland waters stock into three new populations, and present these as stocks: (1) Southern Puget Sound (south of the Tacoma Narrows Bridge); (2) Washington northern inland waters (including Puget Sound north of the Tacoma Narrows Bridge, the San

Juan Islands, and the Strait of Juan de Fuca); and (3) Hood Canal. Only the Hood Canal stock of harbor seals is expected to occur in the action area.

The best available abundance estimate was derived from aerial surveys of harbor seals in Washington conducted during the pupping season in 1999, during which time the total numbers of hauled-out seals (including pups) were counted (711; Jeffries *et al.,* 2003). Radio-tagging studies conducted at six locations collected information on harbor seal haul-out patterns in 1991–92, resulting in a pooled correction factor (across three coastal and three inland sites) of 1.53 to account for animals in the water which are missed during the aerial surveys (Huber *et al.,* 2001), which, coupled with the aerial survey counts, previously provided the abundance estimate. More recent tagging information specifically conducted in Hood Canal suggests that harbor seals in Hood Canal haul out twenty percent of the time (London *et al.,* 2012). Therefore, the aerial surveys represented only twenty percent of the population, and the abundance estimate has been revised accordingly (see Table 1).

Harbor seal counts in Washington State increased at an annual rate of six percent from 1983–96, increasing to ten percent for the period 1991–96 (Jeffries *et al.,* 1997). The population is thought to be stable, and harbor seals in Washington inland waters have generally been considered to be within OSP size (Jeffries *et al.,* 2003).

Harbor seals are the most abundant marine mammal in Hood Canal, where they can occur anywhere year-round and are considered resident, and are the only pinniped that breeds in inland Washington waters (Jeffries *et al.,* 2003). They are year-round, non-migratory residents, pup (*i.e.,* give birth) in Hood Canal, and the population is considered closed, meaning that they do not have much movement outside of Hood Canal (London, 2006). Surveys in the Hood Canal from the mid-1970s to 2000 show a fairly stable population between 600–1,200 seals, and the abundance of harbor seals in Hood Canal has likely stabilized at its carrying capacity of approximately 1,000 seals (Jeffries *et al.,* 2003). Harbor seals have been consistently sighted during Navy surveys, found in all marine habitats including nearshore waters and deeper water, and have been observed hauled out on manmade objects such as buoys (Agness and Tannenbaum, 2009; Tannenbaum *et al.,* 2009, 2011). Harbor seals were commonly observed in the water during monitoring conducted for other projects at NBKB in 2011–13 (HDR, 2012a, 2012b; Hart Crowser, 2013).

The project area is not known as a regular pupping or haul-out site, as harbor seals in Hood Canal prefer river deltas and exposed tidal areas (London, 2006). The closest haul-out to the project area is approximately 16 km southwest of NBKB at Dosewallips River mouth, outside the potential area of effect for this project (see Figure 4–1 of the Navy's application). However, recent observations have shown that harbor seals frequently haul-out opportunistically along the NBKB waterfront (though not on many of the larger structures, which are inaccessible to harbor seals, or on docked submarines, which are favored by sea lions) and that pupping does occur along the NBKB waterfront. Pupping has been observed on the NBKB waterfront at Carderock Pier and Service Pier (both locations over a mile south of the project site), and a harbor seal neonate was observed on a small floating dock near the project site in 2013. Evidence of pupping has been observed in other locations, and Navy biologists now believe that pupping may occur regularly at the Service Pier. During most of the year, all age and sex classes (except neonates) occur in the project area throughout the period of construction activity. Despite evidence of pupping, harbor seal neonates would not generally be expected to be present during pile driving.

California Sea Lion

California sea lions range from the Gulf of California north to the Gulf of Alaska, with breeding areas located in the Gulf of California, western Baja California, and southern California. Five genetically distinct geographic populations have been identified: (1) Pacific temperate, (2) Pacific subtropical, and (3–5) southern, central, and northern Gulf of California (Schramm *et al.,* 2009). Rookeries for the Pacific temperate population are found within U.S. waters and just south of the U.S.-Mexico border, and animals belonging to this population may be found from the Gulf of Alaska to Mexican waters off Baja California. For management purposes, a stock of California sea lions comprising those animals at rookeries within the U.S. is defined (*i.e.,* the U.S. stock of California sea lions) (Carretta *et al.,* 2014). Pup production at the Coronado Islands rookery in Mexican waters is considered an insignificant contribution to the overall size of the Pacific temperate population (Lowry and Maravilla-Chavez, 2005).

Trends in pup counts from 1975 through 2008 have been assessed for four rookeries in southern California and for haul-outs in central and northern California. During this time period counts of pups increased at an annual rate of 5.4 percent, excluding six El Niño years when pup production declined dramatically before quickly rebounding (Carretta *et al.,* 2014). The maximum population growth rate was 9.2 percent when pup counts from the El Niño years were removed. There are indications that the California sea lion may have reached or is approaching carrying capacity, although more data are needed to confirm that leveling in growth persists (Carretta *et al.,* 2014).

Sea lion mortality has been linked to the algal-produced neurotoxin domoic acid (Scholin *et al.,* 2000). Future mortality may be expected to occur, due to the sporadic occurrence of such harmful algal blooms. There is currently an Unusual Mortality Event (UME) declaration in effect for California sea lions. Beginning in January 2013, elevated strandings of California sea lion pups have been observed in southern California, with live sea lion strandings nearly three times higher than the historical average. Findings to date indicate that a likely contributor to the large number of stranded, malnourished pups was a change in the availability of sea lion prey for nursing mothers, especially sardines. The causes and mechanisms of this UME remain under investigation (*www.nmfs.noaa.gov/pr/health/mmume/californiasealions2013.htm;* accessed March 28, 2015).

An estimated 3,000 to 5,000 California sea lions migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island during the non-breeding season from September to May (Jeffries *et al.,* 2000) and return south the following spring (Mate, 1975; Bonnell *et al.,* 1983). In past years, peak numbers of up to 1,000 California sea lions occur in Puget Sound (including Hood Canal) during this time period (Jeffries *et al.,* 2000). Given the overall population increase, it is likely that seasonal occurrence in Puget Sound has also increased.

California sea lions are present in Hood Canal during much of the year with the exception of mid-June through August, and occur regularly at NBKB, as observed during Navy waterfront surveys conducted from April 2008 through December 2013 (DoN, 2013). They are known to utilize a diversity of man-made structures for hauling out (Riedman, 1990) and, although there are no regular California sea lion haul-outs known within the Hood Canal (Jeffries

et al., 2000), they are frequently observed hauled out at several opportune areas at NBKB (*e.g.,* submarines, floating security fence, barges). All documented instances of California sea lions hauling out at NBKB have been on submarines docked at Delta Pier, where a maximum of 122 California sea lions have been observed at any one time (DoN, 2013), and on pontoons of the NBKB floating security fence.

Killer Whale

Killer whales are one of the most cosmopolitan marine mammals, found in all oceans with no apparent restrictions on temperature or depth, although they do occur at higher densities in colder, more productive waters at high latitudes and are more common in nearshore waters (Leatherwood and Dahlheim, 1978; Forney and Wade, 2006). Killer whales are found throughout the North Pacific, including the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California. On the basis of differences in morphology, ecology, genetics, and behavior, populations of killer whales have largely been classified as ''resident'', ''transient'', or ''offshore'' (*e.g.,* Dahlheim *et al.,* 2008). Several studies have also provided evidence that these ecotypes are genetically distinct, and that further genetic differentiation is present between subpopulations of the resident and transient ecotypes (*e.g.,* Barrett-Lennard, 2000). The taxonomy of killer whales is unresolved, with expert opinion generally following one of two lines: Killer whales are either (1) a single highly variable species, with locally differentiated ecotypes representing recently evolved and relatively ephemeral forms not deserving species status, or (2) multiple species, supported by the congruence of several lines of evidence for the distinctness of sympatrically occurring forms (Krahn *et al.,* 2004). Resident and transient whales are currently considered to be unnamed subspecies (Committee on Taxonomy, 2014).

The resident and transient populations have been divided further into different subpopulations on the basis of genetic analyses, distribution, and other factors. Recognized stocks in the North Pacific include Alaska residents; northern residents; southern residents; Gulf of Alaska, Aleutian Islands, and Bering Sea transients; and west coast transients, along with a single offshore stock. See Allen and Angliss (2014) for more detail about these stocks. West coast transient killer whales, which occur from California through southeastern Alaska, are the only type expected to potentially occur in the project area.

It is thought that the stock grew rapidly from the mid-1970s to mid-1990s as a result of a combination of high birth rate, survival, as well as greater immigration of animals into the nearshore study area (DFO, 2009). The rapid growth of the population during this period coincided with a dramatic increase in the abundance of the whales' primary prey, harbor seals, in nearshore waters. Population growth began slowing in the mid-1990s and has continued to slow in recent years (DFO, 2009). Population trends and status of this stock relative to its OSP level are currently unknown. Analyses in DFO (2009) estimated a rate of increase of about six percent per year from 1975 to 2006, but this included recruitment of non-calf whales into the population.

Transient occurrence in inland waters appears to peak during August and September, which is the peak time for harbor seal pupping, weaning, and post-weaning (Baird and Dill, 1995). The number of transient killer whales in Washington waters at any one time is probably fewer than twenty individuals (Wiles, 2004). In 2003 and 2005, small groups of transient killer whales (eleven and six individuals, respectively) were present in Hood Canal for significant periods of time (59 and 172 days, respectively) between the months of January and July. While present, the whales preyed on harbor seals in the subtidal zone of the nearshore marine and inland marine deeper water habitats (London, 2006).

Harbor Porpoise

Harbor porpoises are found primarily in inshore and relatively shallow coastal waters (< 100 m) from Point Barrow (Alaska) to Point Conception (California). Various genetic analyses and investigation of pollutant loads indicate a low mixing rate for harbor porpoises along the west coast of North America and likely fine-scale geographic structure along an almost continuous distribution from California to Alaska (*e.g.,* Calambokidis and Barlow, 1991; Osmek *et al.,* 1994; Chivers *et al.,* 2002, 2007). However, stock boundaries are difficult to draw because any rigid line is generally arbitrary from a biological perspective. On the basis of genetic data and density discontinuities identified from aerial surveys, eight stocks have been identified in the eastern North Pacific, including northern Oregon/Washington coastal and inland Washington stocks (Carretta *et al.,* 2013a). The Washington inland waters stock includes individuals found east of Cape Flattery and is the only stock that may occur in the project area.

Although long-term harbor porpoise sightings in southern Puget Sound declined from the 1940s through the 1990s, sightings and strandings have increased in Puget Sound and northern Hood Canal in recent years and harbor porpoise are now considered to regularly occur year-round in these waters (Carretta *et al.,* 2014). Reasons for the apparent decline, as well as the apparent rebound, are unknown. Recent observations may represent a return to historical conditions, when harbor porpoises were considered one of the most common cetaceans in Puget Sound (Scheffer and Slipp, 1948). The status of harbor porpoises in Washington inland waters relative to OSP is not known (Carretta *et al.,* 2014).

In 2006, a UME was declared for harbor porpoises throughout Oregon and Washington, and a total of 114 strandings were reported in 2006–07. The cause of the UME has not been determined and several factors, including contaminants, genetics, and environmental conditions, are still being investigated (Carretta *et al.,* 2014).

Prior to recent construction projects conducted by the Navy at NBKB, harbor porpoises were considered to have only occasional occurrence in the project area. A single harbor porpoise had been sighted in deeper water at NBKB during 2010 field observations (Tannenbaum *et al.,* 2011). However, while implementing monitoring plans for work conducted from July–October, 2011, the Navy recorded multiple sightings of harbor porpoise in the deeper waters of the project area (HDR, 2012). Following these sightings, the Navy conducted dedicated line transect surveys, recording multiple additional sightings of harbor porpoises, and have revised local density estimates accordingly.

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals. This discussion also includes reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the

specific manner in which this activity will be carried out or the mitigation that will be implemented, and how either of those will shape the anticipated impacts from this specific activity. 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. In the following discussion, we provide general background information on sound and marine mammal hearing before considering potential effects to marine mammals from sound produced by vibratory and impact pile driving.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- Biological: Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- Anthropogenic: Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Underwater ambient noise was measured at approximately 113 dB rms between 50 Hz and 20 kHz during the recent TPP project, approximately 1.85 mi from the project area (Illingworth & Rodkin, 2012). In 2009, the average broadband ambient underwater noise levels were measured at 114 dB between

100 Hz and 20 kHz (Slater, 2009). Peak spectral noise from industrial activity was noted below the 300 Hz frequency, with maximum levels of 110 dB noted in the 125 Hz band. In the 300 Hz to 5 kHz range, average levels ranged between 83 and 99 dB. Wind-driven wave noise dominated the background noise environment at approximately 5 kHz and above, and ambient noise levels flattened above 10 kHz. Known sound levels and frequency ranges associated with anthropogenic sources similar to those that would be used for this project are summarized in Table 2.

Details of the source types are described in the following text.

TABLE 2—REPRESENTATIVE SOUND LEVELS OF ANTHROPOGENIC SOURCES

Sound source	Frequency range (Hz)	Underwater sound level	Reference
Small vessels	250–1,000	151 dB rms at 1 m	Richardson *et al.,* 1995.
Tug docking gravel barge	200–1,000	149 dB rms at 100 m	Blackwell and Greene, 2002.
Vibratory driving of 72-in steel pipe pile	10–1,500	180 dB rms at 10 m	Reyff, 2007.
Impact driving of 36-in steel pipe pile	10–1,500	195 dB rms at 10 m	Laughlin, 2007.
Impact driving of 66-in cast-in-steel-shell (CISS) pile.	10–1,500	195 dB rms at 10 m	Reviewed in Hastings and Popper, 2005.

In-water construction activities associated with the project would include impact pile driving and vibratory pile driving. The sounds produced by these activities fall into one of two general sound types: pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986; Harris, 1998; NIOSH, 1998; ISO, 2003; ANSI, 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals, and exposure to sound can have deleterious effects. To appropriately assess these potential effects, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on measured or estimated hearing ranges on the basis of available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007). The functional groups and the associated frequencies are indicated below (note that these frequency ranges do not necessarily correspond to the range of best hearing, which varies by species):

- Low-frequency cetaceans (mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 30 kHz (extended from 22 kHz; Watkins, 1986; Au *et al.,* 2006; Lucifredi and Stein, 2007; Ketten and Mountain, 2009; Tubelli *et al.,* 2012);
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus;* now considered to include two members of the genus *Lagenorhynchus* on the basis of recent echolocation data and genetic data [May-Collado and Agnarsson, 2006; Kyhn *et al.* 2009, 2010; Tougaard *et al.* 2010]): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in water: functional hearing is estimated to occur between approximately 75 Hz to 100 kHz for Phocidae (true seals) and between 100 Hz and 40 kHz for Otariidae (eared seals), with the greatest sensitivity between approximately 700 Hz and 20 kHz. The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth *et al.,* 2013).

There are five marine mammal species (two cetacean and three pinniped [two otariid and one phocid] species) with expected potential to co-occur with Navy construction activities. Please refer to Table 1. Of the two cetacean species that may be present, the killer whale is classified as a mid-frequency cetacean and the harbor porpoise is classified as a high-frequency cetacean.

Acoustic Effects, Underwater

Potential Effects of Pile Driving Sound—The effects of sounds from pile driving might result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (*e.g.,* sand) would absorb or attenuate the sound more readily than hard substrates (*e.g.,* rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.,* 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals. Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Marine mammals depend on acoustic cues for vital biological functions, (*e.g.,* orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction. However, this depends on the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated sound exposure that leads to TTS could cause PTS. PTS constitutes injury, but TTS does not (Southall *et al.,* 2007). The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa^2-s (*i.e.,* 186 dB sound exposure level [SEL] or approximately 221–226 dB p-p [peak]) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin (*Tursiops truncatus*) and beluga whale (*Delphinapterus leucas*). There is no published TTS information for other species of cetaceans. However, preliminary evidence from a harbor porpoise exposed to pulsed sound suggests that its TTS threshold may have been lower (Lucke *et al.,* 2009). As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to pile driving pulses stronger than 180 dB re 1 μPa rms.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to a sound source might incur TTS, there has been further speculation about the possibility that some individuals might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.,* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-

weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa²-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Measured source levels from impact pile driving can be as high as 214 dB rms. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.,* 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.,* 2002). Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa²-s) in the aforementioned experiment (Finneran *et al.,* 2002). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity sound levels for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds that could cause TTS or the onset of PTS.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source 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. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Behavioral responses to sound are highly variable and context-specific and reactions, if any, depend on species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Thorson and Reyff, 2006; see also Gordon *et al.,* 2004; Wartzok *et al.,* 2003; Nowacek *et al.,* 2007). Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): 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 sound sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

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 could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, sound could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals

whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were man-made, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, 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 sound. It may also affect communication signals when they occur near the sound 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).

Masking has the potential to impact species at the population or community levels as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand, 2009). All anthropogenic sound sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient sound levels, thus intensifying masking.

The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is likely to be negligible. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Acoustic Effects, Airborne

Marine mammals that occur in the project area could be exposed to airborne sounds associated with pile driving that have the potential to cause harassment, depending on their distance from pile driving activities. Airborne pile driving sound would have less impact on cetaceans than pinnipeds because sound from atmospheric sources does not transmit well underwater (Richardson *et al.,* 1995); thus, airborne sound would only be an issue for pinnipeds either hauled-out or looking with heads above water in the project area. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon their habitat and move further from the source. Studies by Blackwell *et al.* (2004) and Moulton *et al.* (2005) indicate a tolerance or lack of response to unweighted airborne sounds as high as 112 dB peak and 96 dB rms.

Anticipated Effects on Habitat

The proposed activities at NBKB would not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish and salmonids. There are no rookeries or major haul-out sites within 16 km or ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.,* fish) near NBKB and minor impacts to the immediate substrate during installation and removal of piles during the wharf maintenance project.

Pile Driving Effects on Potential Prey

Construction activities would produce both pulsed (*i.e.,* impact pile driving) and continuous (*i.e.,* vibratory pile driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the wharf maintenance project. However, adverse impacts may occur to a few species of rockfish and salmon which may still be present in the project area despite operating in a reduced work window in an attempt to avoid important fish spawning time periods. Impacts to these species could result from potential impacts to their eggs and larvae.

Pile Driving Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in the Hood Canal. Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish

avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the Hood Canal and nearby vicinity.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) 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.

Measurements from similar pile driving events, including from previously monitored construction activity on the NBKB waterfront, were coupled with practical spreading loss to estimate zones of influence (ZOI; see ''Estimated Take by Incidental Harassment''). These values were then used to develop mitigation measures for EHW–1 pile driving activities. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. While the ZOIs vary between the different diameter piles and types of installation methods, the Navy is proposing to establish mitigation zones for the maximum ZOI for all pile driving conducted in support of the wharf maintenance project. In addition to the measures described later in this section, the Navy would conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Monitoring and Shutdown for Pile Driving

The following measures would apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the 180/190 dB rms acoustic injury criteria. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals. Modeled distances for shutdown zones are shown in Table 4. The Navy would implement a minimum shutdown zone of 29 m radius for cetaceans and 10 m radius for pinnipeds around all pile driving activity. However, no cetaceans have been observed within the floating port security barrier, which is approximately 500 m from the wharf.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for pulsed and non-pulsed continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see ''Proposed Monitoring and Reporting''). Nominal radial distances for disturbance zones are shown in Table 4. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (*e.g.,* what may be reasonably observed by visual observers stationed within the water front restricted area [WRA]) will be monitored.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. The received level may be estimated on the basis of past or subsequent acoustic monitoring. It may then be determined whether the animal was exposed to sound levels constituting incidental harassment in post-processing of observational data, and a precise accounting of observed incidents of harassment created. Therefore, although the predicted distances to behavioral harassment thresholds are useful for estimating harassment for purposes of authorizing levels of incidental take, actual take may be determined in part through the use of empirical data. That information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Marine Mammal Monitoring Plan (available at *www.nmfs.noaa.gov/pr/permits/incidental/* and as Appendix C of the Navy's application), developed by the Navy with our approval, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- 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;

• Advanced education in biological science or related field (undergraduate degree or higher required);

• Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• 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 in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

• 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.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Sound Attenuation Devices

Sound levels can be greatly reduced during impact pile driving using sound attenuation devices. There are several types of sound attenuation devices including bubble curtains, cofferdams, and isolation casings (also called temporary noise attenuation piles [TNAP]), and cushion blocks. The Navy proposes to use bubble curtains, which create a column of air bubbles rising around a pile from the substrate to the water surface. The air bubbles absorb and scatter sound waves emanating from the pile, thereby reducing the sound energy. Bubble curtains may be confined or unconfined. An unconfined bubble curtain may consist of a ring seated on the substrate and emitting air bubbles from the bottom. An unconfined bubble curtain may also consist of a stacked system, that is, a series of multiple rings placed at the bottom and at various elevations around the pile. Stacked systems may be more effective than non-stacked systems in areas with high current and deep water (Oestman *et al.,* 2009).

A confined bubble curtain contains the air bubbles within a flexible or rigid sleeve made from plastic, cloth, or pipe. Confined bubble curtains generally offer higher attenuation levels than unconfined curtains because they may physically block sound waves and they prevent air bubbles from migrating away from the pile. For this reason, the confined bubble curtain is commonly used in areas with high current velocity (Oestman *et al.,* 2009).

Both environmental conditions and the characteristics of the sound attenuation device may influence the effectiveness of the device. According to Oestman *et al.* (2009):

• In general, confined bubble curtains attain better sound attenuation levels in areas of high current than unconfined bubble curtains. If an unconfined device is used, high current velocity may sweep bubbles away from the pile, resulting in reduced levels of sound attenuation.

• Softer substrates may allow for a better seal for the device, preventing leakage of air bubbles and escape of sound waves. This increases the effectiveness of the device. Softer substrates also provide additional attenuation of sound traveling through the substrate.

• Flat bottom topography provides a better seal, enhancing effectiveness of the sound attenuation device, whereas sloped or undulating terrain reduces or eliminates its effectiveness.

• Air bubbles must be close to the pile; otherwise, sound may propagate into the water, reducing the effectiveness of the device.

• Harder substrates may transmit ground-borne sound and propagate it into the water column.

The literature presents a wide array of observed attenuation results for bubble curtains (*e.g.,* Oestman *et al.,* 2009; Coleman, 2011; see Appendix B of the Navy's application). The variability in attenuation levels is due to variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. As a general rule, reductions of greater than 10 dB cannot be reliably predicted. The TPP reported a range of measured values for realized attenuation mostly within 6 to 12 dB (Illingworth & Rodkin, 2012). For 36-in piles the average peak and rms reduction with use of the bubble curtain was 8 dB, where the averages of all bubble-on and bubble-off data were compared. For 48-in piles, the average SPL reduction with use of a bubble curtain was 6 dB for average peak values and 5 dB for rms values.

To avoid loss of attenuation from design and implementation errors, the Navy has required specific bubble curtain design specifications, including testing requirements for air pressure and flow prior to initial impact hammer use, and a requirement for placement on the substrate. We considered TPP measurements (approximately 7 dB overall) and other monitored projects (typically at least 8 dB realized attenuation), and consider 8 dB as potentially a reasonable estimate of average SPL (rms) reduction, assuming appropriate deployment and no problems with the equipment.

Bubble curtains shall be used during all impact pile driving. The device will distribute air bubbles around one hundred percent of the piling perimeter for the full depth of the water column, and the lowest bubble ring shall be in contact with the mudline for the full circumference of the ring. Testing of the device by comparing attenuated and unattenuated strikes is not possible because of requirements in place to protect marbled murrelets (an ESA-listed bird species under the jurisdiction of the USFWS). However, in order to avoid loss of attenuation from design and implementation errors in the absence of such testing, a performance test of the device shall be conducted prior to initial use. The performance test shall confirm the calculated pressures and flow rates at each manifold ring. In addition, the contractor shall also train personnel in the proper balancing of air flow to the bubblers and shall submit an inspection/performance report to the Navy within 72 hours following the performance test.

Timing Restrictions

In Hood Canal, designated timing restrictions exist for pile driving activities to avoid in-water work when salmonids and other spawning forage fish are likely to be present. The in-water work window is July 16-January 15. Until September 23, impact pile driving will only occur starting two hours after sunrise and ending two hours before sunset due to marbled murrelet nesting season. After September 23, in-water construction activities will occur during daylight hours (sunrise to sunset).

Soft Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a thirty-second waiting period. This procedure is repeated two additional times.

However, implementation of soft start for vibratory pile driving during previous pile driving work for the EHW–2 project at NBKB has led to equipment failure and serious human safety concerns. Project staff have reported that, during power down from the soft start, the energy from the hammer is transferred to the crane boom and block via the load fall cables and rigging resulting in unexpected damage to both the crane block and crane boom. This differs from what occurs when the hammer is powered down after a pile is driven to refusal in that the rigging and load fall cables are able to be slacked prior to powering down the hammer, and the vibrations are transferred into the substrate via the pile rather than into the equipment via the rigging. One dangerous incident of equipment failure has already occurred, with a portion of the equipment shearing from the crane and falling to the deck. Subsequently, the crane manufacturer has inspected the crane booms and discovered structural fatigue in the boom lacing and main structural components, which will ultimately result in a collapse of the crane boom. All cranes were new at the beginning of the job. In addition, the vibratory hammer manufacturer has attempted to install dampers to mitigate the problem, without success. In consultation with the Navy and experts in the field of marine construction, it was determined that the likely cause of the issue was that larger vibratory hammers (*e.g.,* APE Model 600) are not designed to handle the additional vibration resulting from the soft start procedure. Large hammers were required due to the design specifications of the EHW–2, but are not expected to be necessary for the EHW–1 maintenance work. Use of smaller variable moment style vibratory hammers has not resulted in similar issues to date.

Therefore, vibratory soft start will be required as previously described. However, if a variable moment hammer proves infeasible for use with this project, or if unsafe working conditions during soft starts are reported by the contractor and verified by an independent safety inspection, the Navy may discontinue use of the vibratory soft start measure.

For impact driving, soft start will be required, and contractors will provide an initial set of strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. The reduced energy of an individual hammer cannot be quantified because of variation in individual drivers. The actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' Soft start for impact driving will be required at the beginning of each day's pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

We have carefully evaluated the Navy's proposed mitigation measures and considered their effectiveness in past implementation to preliminarily determine whether they are likely to effect the least practicable 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: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe 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 number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary 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 Navy's proposed measures, including information from monitoring of the Navy's implementation of the mitigation measures as prescribed under previous IHAs for this and other projects in the Hood Canal, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal 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 IHA 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 incidental take authorizations 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.

Any monitoring requirement we prescribe should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within defined zones of effect (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to stimuli that we associate with specific adverse effects, such as behavioral harassment or hearing threshold shifts;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in incidental take and how anticipated adverse effects on individuals may impact the population, stock, or species (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; or

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

The Navy submitted a marine mammal monitoring plan as part of their IHA application, and can be found on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/.* Similar plans have been successfully implemented by the Navy under previous IHAs issued for work conducted at NBKB and the plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Marine Mammal Monitoring Plan would implement the following procedures for pile driving:

- A dedicated monitoring coordinator will be on-site during all construction days. The monitoring coordinator will oversee marine mammal observers. The monitoring coordinator will serve as the liaison between the marine mammal monitoring staff and the construction contractor to assist in the distribution of information.
- MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible. A minimum of three MMOs will be on duty during all pile driving activity, with two of these monitoring the shutdown zones.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report would be submitted within ninety calendar days of the completion of the in-water work window. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any problems encountered in deploying sound attenuating devices, any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within thirty days following resolution of comments on the draft report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of 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].''

All anticipated takes would be by Level B harassment resulting from vibratory and impact pile driving and involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or

lethal takes such that take by Level A harassment, serious injury, or mortality is considered discountable. However, it is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound.

This practice potentially overestimates the numbers of marine mammals taken. For example, during the past fifteen years, killer whales have been observed within the project area twice. On the basis of that information, an estimated amount of potential takes for killer whales is presented here. However, while a pod of killer whales could potentially visit again during the project timeframe, and thus be taken, it is more likely that they will not. Although incidental take of killer whales has been authorized under past IHAs for activities at NBKB on the basis of past observations of these species, no such takes have been recorded and no individuals of these species have been observed. Similarly, estimated actual take levels (observed takes extrapolated to the remainder of unobserved but ensonified area) were significantly less than authorized levels of take for the remaining species. In addition, it is often difficult to distinguish between the individuals harassed and incidences of harassment. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals, although harbor seals are year-round residents of Hood Canal and sea lions are known to haul-out on submarines and other man-made objects at the NBKB waterfront (although typically at a distance of a mile or greater from the project site). Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The Navy has requested authorization for the incidental taking of small numbers of Steller sea lions, California sea lions, harbor seals, transient killer whales, and harbor porpoises in the Hood Canal that may result from pile driving during construction activities associated with the wharf maintenance project described previously in this document. In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidences of take.

Sound Thresholds

We use generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur. To date, no studies have been conducted that explicitly examine impacts to marine mammals from pile driving sounds or from which empirical sound thresholds have been established. These thresholds should be considered guidelines for estimating when harassment may occur (*i.e.,* when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions. NMFS is currently revising these acoustic guidelines; for more information on that process, please visit *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.* Vibratory pile driving produces non-pulsed noise and impact pile driving produces impulsive noise.

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Definition	Threshold
Level A harassment (underwater)	Injury (PTS—any level above that which is known to cause TTS).	180 dB (cetaceans)/190 dB (pinnipeds) (rms).
Level B harassment (underwater)	Behavioral disruption	160 dB (impulsive source)/120 dB (continuous source) (rms).
Level B harassment (airborne)*	Behavioral disruption	90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted).

* NMFS has not established any formal criteria for harassment resulting from exposure to airborne sound. However, these thresholds represent the best available information regarding the effects of pinniped exposure to such sound and NMFS' practice is to associate exposure at these levels with Level B harassment.

Distance to Sound Thresholds

Underwater Sound Propagation Formula—Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log_{10}(R_1/R_2)$, where
R_1 = the distance of the modeled SPL from the driven pile, and
R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions, such as Hood Canal, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

Underwater Sound—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A large quantity of literature regarding SPLs recorded from pile driving projects is available for consideration. In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from pile driving at NBKB, studies with similar properties to the specified activity were evaluated, including measurements conducted for driving of steel piles at NBKB as part of the TPP (Illingworth & Rodkin, 2012). Please see Appendix B of the Navy's application for a detailed description of the information considered in determining reasonable proxy source level values. The Navy used representative source levels (for installation of 30-in steel pipe pile) of 195 dB rms for impact driving and 166 dB rms for vibratory driving. For impact driving, 8 dB effective attenuation was assumed due to use of a bubble curtain and was therefore subtracted from the source level.

We assume here that consideration of vibratory pile driving, and that vibratory driving could occur on any of the eight days, is conservative in relation to pile removal via pneumatic chipping. Acoustic measurements for pneumatic chipping were previously performed during maintenance work at EHW–1 in 2012. The average value measured at 10 m was 141 dB rms (RMDT, 2013). Therefore, we do not explicitly consider pile removal (via pneumatic chipping) separately from pile installation activity.

TABLE 4—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL SOUND THRESHOLDS DURING PILE INSTALLATION

Threshold	Distance	Area
Impact driving, pinniped injury (190 dB).	6 m	113 m^2
Impact driving, cetacean injury (180 dB).	29 m	2,630 m^2
Impact driving, disturbance (160 dB).	631 m ..	0.9 km^2
Vibratory driving, pinniped injury (190 dB).	n/a	—
Vibratory driving, cetacean injury (180 dB).	n/a	—
Vibratory driving, disturbance (120 dB).	6.3 km	32.4 km^2

Hood Canal does not represent open water, or free field, conditions. Therefore, sounds would attenuate as they encounter land masses or bends in the canal. As a result, the calculated distance and areas of impact for the 120-dB threshold cannot actually be attained at the project area. See Figure 6–1 of the Navy's application for a depiction of the size of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

Airborne Sound—Pile driving can generate airborne sound that could potentially result in disturbance to marine mammals (specifically, pinnipeds) which are hauled out or at the water's surface. As a result, the Navy analyzed the potential for pinnipeds hauled out or swimming at the surface near NBKB to be exposed to airborne SPLs that could result in Level B behavioral harassment. A spherical spreading loss model (*i.e.,* 6 dB reduction in sound level for each doubling of distance from the source), in which there is a perfectly unobstructed (free-field) environment not limited by depth or water surface, is appropriate for use with airborne sound and was used to estimate the distance to the airborne thresholds.

As was discussed for underwater sound from pile driving, the intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to determine reasonable airborne SPLs and their associated effects on marine mammals that are likely to result from pile driving at NBKB, studies with similar properties to the proposed action, as described previously, were evaluated. The Navy used representative source levels of 112 dB L_{max} (unweighted) for impact driving (for 36-in steel pipe piles) and 95 dB L_{max} (unweighted) for vibratory driving (for 30-in steel pipe piles). Please see Appendix B of the Navy's application for details of the information considered. These values give a maximum disturbance zone (radial distance) of 189 m for harbor seals and 60 m for sea lions (see Table 6–6 in the Navy's application).

However, no incidents of incidental take resulting solely from airborne sound are likely, as distances to the harassment thresholds would not reach areas where pinnipeds may haul out. Harbor seals can haul out at a variety of natural or manmade locations, but the closest known harbor seal haul-out is at the Dosewallips River mouth (London, 2006) and Navy waterfront surveys and boat surveys have found it rare for harbor seals to haul out along the NBKB waterfront (Agness and Tannenbaum, 2009; Tannenbaum *et al.,* 2009, 2011; DoN, 2013). Individual seals have been observed hauled out on pontoons of the floating security fence within the restricted areas of NBKB, but this area is not within the airborne disturbance ZOI. Nearby piers are elevated well above the surface of the water and are inaccessible to pinnipeds, and seals have not been observed hauled out on the adjacent shoreline. Sea lions typically haul out on submarines docked at Delta Pier, approximately one mile from the project site.

We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with heads above water. However, these animals would previously have been 'taken' as a result of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple incidents of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for

pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Occurrence

The Navy has developed, with input from regional marine mammal experts, estimates of marine mammal densities in Washington inland waters for the Navy Marine Species Density Database (NMSDD). A technical report (Hanser *et al.,* 2014) describes methodologies and available information used to derive these densities, which are generally considered the best available information for Washington inland waters, except where specific local abundance information is available. With the exception of the harbor porpoise density (derived from vessel-based surveys conducted in Hood Canal), we do not believe the NMSDD density values are appropriate for use here, for the following reasons: (1) Local abundance information exists for sea lions, which regularly haul out at the NBKB waterfront; (2) harbor seal density for Hood Canal has recently been revised as described below; and (3) density values are not appropriate for rarely occurring species, such as transient killer whales in Hood Canal. Please see Appendix A of the Navy's application for more information about survey effort at NBKB.

For all species, the most appropriate information available was used to estimate the number of potential incidences of take. For harbor seals, this involved published literature describing harbor seal research conducted in Washington and Oregon, including counts and research specific to Hood Canal (Huber *et al.,* 2001; Jeffries *et al.,* 2003; London *et al.,* 2012). Killer whales are known from two periods of occurrence (2003 and 2005) and are not known to preferentially use any specific portion of the Hood Canal. Therefore, potential occurrence was assumed as likely maximum group size (Houghton *et al.,* in prep.) in concert with a nominal number of days present, in order to provide for small possibility that killer whales could be present. The best information available for the remaining species in Hood Canal came from surveys conducted by the Navy at the NBKB waterfront or in the vicinity of the project area (see Appendix A of the Navy's application).

Due to their occurrence in deeper waters of Hood Canal, this analysis assumes that harbor porpoise are uniformly distributed in the project area. However, it should be noted that there have been no observations of cetaceans within the floating security barriers at NBKB; these barriers thus appear to effectively prevent cetaceans from approaching the shutdown zones. Although the Navy will implement a precautionary shutdown zone for cetaceans, anecdotal evidence suggests that cetaceans are not at risk of Level A harassment at NBKB even from louder activities (*e.g.,* impact pile driving). As described previously, any potential occurrence of killer whales would be a rare event likely consisting of a single group of whales. Harbor seals likely occur in greater numbers of along the NBKB waterfront than in deeper waters of Hood Canal, but are observed throughout the action area and through use of a density value here we assume that they are uniformly distributed (likely overestimating occurrence in the larger Level B harassment zone for vibratory driving). The remaining species that occur in the project area, Steller sea lion and California sea lion, do not appear to utilize most of Hood Canal. The sea lions appear to be attracted to the man-made haul-out opportunities along the NBKB waterfront while dispersing for foraging opportunities elsewhere in Hood Canal. California sea lions were not reported during aerial surveys of Hood Canal (Jeffries *et al.,* 2000), and Steller sea lions have been documented almost solely at the NBKB waterfront.

Description of Take Calculation

The take calculations presented here rely on the best data currently available for marine mammal populations in the Hood Canal. The formula was developed for calculating take due to pile driving activity and applied to each group-specific sound impact threshold. The formula is founded on the following assumptions:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period;
- There were will be eight total days of activity and the largest ZOI equals 32.4 km^2;
- Exposure modeling assumes that one impact pile driver and three vibratory pile drivers are operating concurrently; and,
- Exposures to sound levels above the relevant thresholds equate to take, as defined by the MMPA.

The calculation for marine mammal takes is estimated by:

Exposure estimate = (n * ZOI) * days of total activity

Where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure, and is rounded to the nearest whole number before multiplying by days of total activity. Where simple abundance is used, this value replaces the product of n * ZOI.

The ZOI impact area is the estimated range of impact to the sound criteria. The relevant distances specified in Table 4 were used to calculate ZOIs around each pile. The ZOI impact area took into consideration the possible affected area of the Hood Canal from the pile driving site furthest from shore with attenuation due to land shadowing from bends in the canal. Because of the close proximity of some of the piles to the shore, the narrowness of the canal at the project area, and the maximum fetch, the ZOIs for each threshold are not necessarily spherical and may be truncated.

While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. Also of note is the fact that the effectiveness of mitigation measures in reducing takes is typically not quantified in the take estimation process. In addition, equating exposure with response (*i.e.,* a behavioral response meeting the definition of take under the MMPA) is a simplistic and conservative assumption. For these reasons, these take estimates are likely to be conservative. See Table 5 for total estimated incidents of take.

California Sea Lion—California sea lions occur regularly in the vicinity of the project site, with the exception of approximately mid-June through mid-August, as determined by Navy waterfront surveys conducted from April 2008 through December 2013. The first California sea lion was observed at NBKB in August 2009, and their occurrence has been increasing since that time (DoN, 2013). With regard to the range of this species in Hood Canal and the project area, we assume on the basis of waterfront observations (Agness and Tannenbaum, 2009; Tannenbaum *et al.,* 2009, 2011; HDR 2012a, 2012b; Hart Crowser, 2013) that the opportunity to haul out on submarines docked at Delta Pier is a primary attractant for California sea lions in Hood Canal, as they are not typically observed elsewhere in Hood Canal. Abundance is calculated as the monthly average of the maximum number observed in a given month, as

opposed to the overall average. That is, the maximum number of animals observed on any one day in a given month was averaged for 2008–13, providing a monthly average of the maximum daily number observed. The largest monthly average (71 animals) was recorded in November, as was the largest single daily count (122 animals). We conservatively assume that a maximum of 71 California sea lions could be in the vicinity of the action area and potentially subject to incidental harassment on each of the maximum eight days of pile driving activity.

Steller Sea Lion—Steller sea lions were first documented at the NBKB waterfront in November 2008, while hauled out on submarines at Delta Pier, and have been periodically observed from October to April since that time, as determined by Navy waterfront surveys conducted from April 2008 through December 2013. Steller sea lions are occasionally observed in early May or late September, but have never been observed from approximately mid-May through mid-September. We assume, on the basis of waterfront observations (Agness and Tannenbaum, 2009; Tannenbaum *et al.,* 2009, 2011; HDR 2012a, 2012b; Hart Crowser, 2013), that Steller sea lions use available haul-outs and foraging habitat similarly to California sea lions. On occasions when Steller sea lions are observed, they typically occur in mixed groups with California sea lions also present, allowing observers to confirm their identifications based on discrepancies in size and other physical characteristics.

Abundance is calculated in the same manner described for California sea lions. That is, the maximum number of animals observed on any one day in a given month was averaged for 2008–13, providing a monthly average of the maximum daily number observed. The largest monthly average (six animals) was recorded in November, as was the largest single daily count (eleven animals). We conservatively assume that a maximum of six Steller sea lions could be in the vicinity of the action area and potentially subject to incidental harassment on each of the maximum eight days of pile driving activity.

Harbor Seal—The harbor seal density used here is revised from that in the NMSDD (Hanser *et al.,* 2014), on the basis of information regarding harbor seal haul-out behavior specific to Hood Canal (London *et al.,* 2012). Jeffries *et al.* (2003) conducted aerial surveys of harbor seals in 1999 for the Washington Department of Fish and Wildlife, dividing the survey areas into seven strata (including five in inland waters and two in coastal waters). Survey effort in the Hood Canal stratum yielded a count of 711 harbor seals hauled out. In order to produce a total abundance estimate, a correction factor based on the proportion of time seals spend on land versus in the water over the course of a day must then be applied to account for animals in the water and not observed during survey counts. Previous density estimates used a correction factor of 1.53 (Huber *et al.,* 2001) to derive a total Hood Canal population of 1,088 seals. That factor was based on data from tags (VHF transmitters) applied to harbor seals at six areas (Grays Harbor, Tillamook Bay, Umpqua River, Gertrude Island, Protection/Smith Islands, and Boundary Bay, BC) within two different harbor seal stocks (the coastal stock and the Washington inland waters stock) over four survey years. Although the sampling areas included both coastal and inland waters, with pooled correction factors of 1.50 and 1.57, respectively, Huber *et al.* (2001) found no significant difference in the proportion of seals ashore among the six sites and no interannual variation at one site studied across years. The Hood Canal population is part of the inland waters stock, and while not specifically sampled, Jeffries *et al.* (2003) found the VHF data to be broadly applicable to the entire Washington harbor seal population. However, London *et al.* (2012) provide more recent data that is specific to Hood Canal. This more recent tagging data indicates that harbor seals in Hood Canal haul out only twenty percent of the time; therefore, the 1999 aerial surveys are considered to represent only twenty percent of the population, and the 1999 population estimate was updated to approximately 3,555 animals. This abundance, considered with the area of Hood Canal (358 km^2), gives an abundance estimate of 9.9 animals/km^2.

At any given time, some animals will be hauled out and some will be in the water and, to determine an instantaneous in-water density estimate, a secondary correction may be applied to account for harbor seals that are hauled out at any given moment. The London *et al.* (2012) data indicate that eighty percent of the population might be in the water at a given time; therefore a corrected density was derived from the number of harbor seals that are present in the water at any one time (eighty percent of 3,555, or approximately 2,844 individuals), divided by the area of the Hood Canal, yielding an estimate of 7.93 animals/km^2.

We recognize that over the course of the day, while the proportion of animals in the water may not vary significantly, different individuals may enter and exit the water (*i.e.,* it is probable that greater than eighty percent of seals will enter the water at some point during the day). Therefore, an instantaneous estimate of animals in the water at a given time may not produce an accurate assessment of the number of individuals that enter the water over the daily duration of the activity. However, no data exist regarding fine-scale harbor seal movements within the project area on time durations of less than a day, thus precluding an assessment of ingress or egress of different animals through the action area. As such, it is impossible, given available data, to determine exactly what number of individuals above eighty percent may potentially be exposed to underwater sound. Therefore, we are left to make a decision, on the basis of limited available information, regarding which of these two scenarios (*i.e.,* one hundred percent versus eighty percent of harbor seals are in the water and exposed to sound) produces a more accurate estimate of the potential incidents of take.

First, we understand that hauled-out harbor seals are necessarily at haul-outs. No significant harbor seal haul-outs are located within or near the action area. Harbor seals observed in the vicinity of the NBKB shoreline are rarely hauled-out (for example, in formal surveys during 2007–08, approximately 86 percent of observed seals were swimming), and when hauled-out, they do so opportunistically (*i.e.,* on floating booms rather than established haul-outs). Harbor seals are typically unsuited for using manmade haul-outs at NBKB, which are used by the larger sea lions. Primary harbor seal haul-outs in Hood Canal are generally located at significant distance (20 km or more) from the action area in Dabob Bay or further south (see Figure 4–1 in the Navy's application), meaning that animals casually entering the water from haul-outs or flushing due to some disturbance at those locations would not be exposed to underwater sound from the project; rather, only those animals embarking on foraging trips and entering the action area may be exposed.

Second, we know that harbor seals in Hood Canal are not likely to have a uniform distribution as is assumed through use of a density estimate, but are likely to be relatively concentrated near areas of interest such as the haul-outs found in Dabob Bay or foraging areas. The majority of the action area consists of the Level B harassment zone

in deeper waters of Hood Canal; past observations from surveys and required monitoring have confirmed that harbor seals are less abundant in these waters.

Third, a typical pile driving day (in terms of the actual time spent driving) is somewhat shorter than may be assumed (*i.e.,* 8–15 hours) as a representative pile driving day based on daylight hours. Construction scheduling and notional production rates in concert with typical delays mean that hammers are active for only some fraction of time on pile driving ''days''. During recent years of construction at NBKB, pile driving occurred for an approximate average of seven hours per pile driving day.

What we know tells us that (1) the turnover of harbor seals (in and out of the water) is occurring primarily outside the action area and would not be expected to result in a greater number of individuals entering the action area within a given day and being harassed than is assumed; (2) there are likely to be significantly fewer harbor seals in the majority of the action area than would be indicated by the uncorrected density; and (3) pile driving actually occurs over a limited timeframe on any given day (*i.e.,* less total time per day than would be assumed based on daylight hours and non-continuously), reducing the amount of time over which new individuals might enter the action area within a given day. These factors lead us to believe that the corrected density is likely to more closely approximate the number of seals that may be found in the action area than does the uncorrected density, and there are no existing data that would indicate that the proportion of individuals entering the water within the predicted area of effect during pile driving would be dramatically larger than eighty percent. Therefore, using one hundred percent of the population to estimate density would likely result in an overestimate of potential take. Moreover, because the Navy is typically unable to determine from field observations whether the same or different individuals are being exposed, each observation is recorded as a new take, although an individual theoretically would only be considered as taken once in a given day.

Finally, we note that during the course of previous IHAs issued for Navy activity at NBKB, the total estimate of actual incidents of take (observed takes and observations extrapolated to unobserved area) has been substantially less than the estimated numbers of take. This is almost certainly negatively biased, but the disparity does provide confirmation that we are not significantly underestimating takes.

Killer Whales—Transient killer whales are uncommon visitors to Hood Canal, and may be present anytime during the year. Transient pods (six to eleven individuals per event) were observed in Hood Canal for lengthy periods of time (59–172 days) in 2003 (January–March) and 2005 (February–June), feeding on harbor seals (London, 2006). These whales used the entire expanse of Hood Canal for feeding. The NMSDD used monthly unique sightings data collected over the period 2004–2010 and an average group size of 5.16 (Houghton *et al.,* in prep.) to calculate densities on a seasonal basis for each of five geographic strata (Hanser *et al.,* 2014).

While transient killer whales are rare in the Hood Canal, it is possible that a pod of animals could be present. In the event that this occurred in a similar manner to prior occurrences (*e.g.,* 59–172 days) and incidental take were not authorized appropriately, there could be significant project delays. In estimating potential incidences of take here, we make three assumptions: (1) Transient killer whales have a reasonable likelihood of occurrence in the project area; (2) if whales were present, they would occur in a pod of six animals (the minimum pod size seen in the 2003/2005 events but equivalent to the average pod size reported by Houghton *et al.* [in prep.]); and (3) the pod would be present and affected by project activities (*i.e.,* within the larger vibratory Level B harassment zone) for two of the maximum eight days. We believe that it is unlikely the whales would remain in the area for a longer period in the presence of a harassing stimulus (*i.e.,* pile driving). In the absence of any overriding contextual element (*e.g.,* NBKB is not important as a breeding area, and provides no unusual concentration of prey), it is reasonable to assume that whales would leave the area if exposed to potentially harassing levels of sound on each day that they were present. In summary, we assume here that, if killer whales occurred in the project area, a pod of six whales would be present—and could potentially be harassed—for two days.

Harbor Porpoise—During vessel-based line transect surveys on non-construction days during the TPP, harbor porpoises were frequently sighted within several kilometers of the base, mostly to the north or south of the project area, but occasionally directly across from the NBKB waterfront on the far side of Toandos Peninsula. Harbor porpoise presence in the immediate vicinity of the base (*i.e.,* within one kilometer) remained low. These data were used to generate a density for Hood Canal. Based on guidance from other line transect surveys conducted for harbor porpoises using similar monitoring parameters (*e.g.,* boat speed, number of observers) (Barlow, 1988; Calambokidis *et al.,* 1993; Carretta *et al.,* 2001), the Navy determined the effective strip width for the surveys to be one kilometer, or a perpendicular distance of 500 m from the transect to the left or right of the vessel. The effective strip width was set at the distance at which the detection probability for harbor porpoises was equivalent to one, which assumes that all individuals on a transect are detected. Only sightings occurring within the effective strip width were used in the density calculation. By multiplying the trackline length of the surveys by the effective strip width, the total area surveyed during the surveys was 471.2 km^2. Thirty-eight individual harbor porpoises were sighted within this area, resulting in a density of 0.0806 animals/km^2. To account for availability bias, or the animals which are unavailable to be detected because they are submerged, the Navy utilized a g(0) value of 0.54, derived from other similar line transect surveys (Barlow, 1988; Calambokidis *et al.,* 1993; Carretta *et al.,* 2001). This resulted in a corrected density of 0.149 animals/km^2.

TABLE 5—NUMBER OF POTENTIAL INCIDENTAL TAKES OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES

Species	Density	Underwater		Percentage of stock abundance
		Level A	Level B (120 dB) [1 2]	
California sea lion	71 [3]	0	568	0.2
Steller sea lion	6 [3]	0	48	0.1
Harbor seal	7.93	0	2,056	57

TABLE 5—NUMBER OF POTENTIAL INCIDENTAL TAKES OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES—Continued

Species	Density	Underwater		Percentage of stock abundance
		Level A	Level B (120 dB) [1 2]	
Killer whale (transient)	n/a	0	12	4.9 [4]
Harbor porpoise	0.149	0	40	0.4

[1] The 160-dB acoustic harassment zone associated with impact pile driving would always be subsumed by the 120-dB harassment zone produced by vibratory driving. Therefore, takes are not calculated separately for the two zones.

[2] For species with associated density, density was multiplied by largest ZOI (*i.e.,* 32.4 km). The resulting value was rounded to the nearest whole number and multiplied by the days of activity. For species with abundance only, that value was multiplied directly by the days of activity. We assume for reasons described earlier that no takes would result from airborne noise.

[3] Figures presented are abundance numbers, not density, and are calculated as the average of average daily maximum numbers per month, and presented for the month with the highest value. Abundance numbers are rounded to the nearest whole number for take estimation.

[4] We assumed that a single pod of six killer whales could be present for as many as two days of the duration, and that harbor porpoise have the likely potential to be affected by project activities for as many as four days of the duration.

Analyses and Preliminary Determinations

Negligible Impact Analysis

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.'' 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, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Pile driving activities associated with the wharf maintenance project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening, which is likely to occur because (1) harbor seals, which are frequently observed along the NBKB waterfront, are present within the WRA; (2) sea lions, which are less frequently observed, transit the WRA en route to haul-outs to the south at Delta Pier; or (3) cetaceans or pinnipeds transit the larger Level B harassment zone outside of the WRA.

No injury, serious injury, or mortality is anticipated given the methods of installation and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and duration and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation, and this activity does not have significant potential to cause injury to marine mammals due to the relatively low source levels produced (less than 180 dB rms) and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. The entire duration of the specified activity would be eight days; given the intensity of potential effects as described below, we do not expect that such a short duration could produce a greater than negligible impact on the affected stocks.

When impact driving is necessary, required measures (use of a sound attenuation system, which reduces overall source levels as well as dampening the sharp, potentially injurious peaks, and implementation of shutdown zones) significantly reduce any possibility of injury. Given sufficient ''notice'' through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious. The likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for Hood Canal further enables the implementation of shutdowns to avoid injury, serious injury, or mortality.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from past projects at NBKB, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. In response to vibratory driving, harbor seals (which may be somewhat habituated to human activity along the NBKB waterfront) have been observed to orient towards and sometimes move towards the sound. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

For pinnipeds, no rookeries are present in the project area, there are no haul-outs other than those provided opportunistically by man-made objects, and the project area is not known to provide foraging habitat of any special importance (other than is afforded by the known migration of salmonids generally along the Hood Canal shoreline). No cetaceans are expected within the WRA. The pile driving activities analyzed here are similar to other nearby construction activities within the Hood Canal, including recent

projects conducted by the Navy at the same location as well as work conducted in 2005 for the Hood Canal Bridge (SR–104) by the Washington State Department of Transportation, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidences of Level B harassment consist of, at worst, temporary (maximum of eight days) modifications in behavior; (3) the absence of any major rookeries and only a few isolated and opportunistic haul-out areas near or adjacent to the project site; (4) the absence of cetaceans within the WRA and generally sporadic occurrence outside the WRA; (5) the absence of any other known areas or features of special significance for foraging or reproduction within the project area; and (6) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, none of these stocks are listed under the ESA or designated as depleted under the MMPA. All of the stocks for which take is authorized are thought to be increasing or to be within OSP size. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, including those conducted at the same time of year and in the same location, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. 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, we preliminarily find that the total marine mammal take from Navy's wharf maintenance activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The numbers of animals authorized to be taken for all stocks (other than harbor seals) would be considered small relative to the relevant stocks or populations (ranging from 0.1 to 4.9 percent) even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For pinnipeds occurring at the NBKB waterfront, there will almost certainly be some overlap in individuals present day-to-day. Further, for the pinniped species, these takes could potentially occur only within some small portion of the overall regional stock. For example, of the estimated 296,750 California sea lions, only certain adult and subadult males—believed to number approximately 3,000–5,000 by Jeffries *et al.* (2000)—travel north during the non-breeding season. That number has almost certainly increased with the population of California sea lions—the 2000 SAR for California sea lions reported an estimated population size of 204,000–214,000 animals—but likely remains a relatively small portion of the overall population.

For harbor seals, takes are likely to occur only within some portion of the population, rather than to animals from the Hood Canal stock as a whole. As described previously (see ''Description of Marine Mammals in the Area of the Specified Activity''), established harbor seal haul-outs are located at such a distance from the project site that we would not expect the majority of individual animals comprising the total stock to occur within the affected area, especially over such a short duration (eight days maximum). Therefore, we expect that the proposed authorized take level represents repeated exposures of a much smaller number of individuals in relation to the total stock size. Further, animals that are resident to Hood Canal, to which any incidental take would accrue, represent only seven percent of the best estimate of the larger Washington inland waters harbor seal abundance.

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 mitigation and monitoring measures, we preliminarily find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

The Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the wharf maintenance project. NMFS has reviewed the EA and believes it appropriate to adopt the EA in order to assess the impacts to the human environment of issuance of an IHA to the Navy and subsequently sign our own Finding of No Significant Impact (FONSI). Information in the Navy's application, the Navy's EA, and this notice collectively provide the environmental information related to proposed issuance of this IHA for public review and comment. The EA is available for review at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* We will review all comments submitted in response to this notice as we complete the NEPA process, including a final decision of whether to adopt the Navy's EA and sign a FONSI, prior to a final decision on the incidental take authorization request.

Proposed Authorization

As a result of these preliminary determinations, we propose to issue an IHA to the Navy for conducting the described wharf maintenance activities in the Hood Canal, from July 16, 2015 through January 15, 2016, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid from July 16, 2015 through January 15, 2016.

2. This IHA is valid only for pile driving and removal activities associated with maintenance of Explosive Handling Wharf #1 (EHW–1) in the Hood Canal, Washington.

3. General Conditions

(a) A copy of this IHA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking are the harbor seal (*Phoca vitulina*),

California sea lion (*Zalophus californianus*), killer whale (transient only; *Orcinus orca*), Steller sea lion (*Eumetopias jubatus*), and the harbor porpoise (*Phocoena phocoena*).

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 1 (attached) for numbers of take authorized.

(d) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) The Navy shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

4. Mitigation Measures

In order to ensure the least practicable impact on the species listed in condition 3(b), the holder of this Authorization is required to implement the following mitigation measures:

(a) During impact pile driving, the Navy shall implement a minimum shutdown zone of 10 m radius around the pile, to be effective for all species of pinniped, and a minimum shutdown zone of 29 m radius around the pile, to be effective for all species of cetacean. If a marine mammal comes within the relevant zone, such operations shall cease.

(b) During vibratory pile driving and removal, the Navy shall implement a minimum shutdown zone of 10 m radius around the pile for marine mammals. If a marine mammal comes within this zone, such operations shall cease.

(c) The Navy shall establish monitoring locations as described in the Marine Mammal Monitoring Plan (Monitoring Plan; attached). For all pile driving and removal activities, a minimum of three observers shall be on duty, in addition to a monitoring coordinator. Two of the observers' primary responsibility shall be to monitor the shutdown zones, while the additional observer shall be positioned for optimal monitoring of the surrounding waters within the Waterfront Restricted Area (WRA). These observers shall record all observations of marine mammals, regardless of distance from the pile being driven, as well as behavior and potential behavioral reactions of the animals.

(d) Monitoring shall take place from fifteen minutes prior to initiation of pile driving activity through thirty minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for fifteen minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility (*i.e.,* the entire shutdown zone and surrounding waters within the WRA must be visible to the naked eye).

(e) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted (*i.e.,* implementation of shutdown at one pile driving location may not necessarily trigger shutdown at other locations when pile driving is occurring concurrently). If pile driving is halted or delayed at a specific location due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal.

(f) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable (*i.e.,* provides the most unobstructed view of the monitoring zones and are at the highest elevation possible) to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator.

(g) Approved sound attenuation devices shall be used during impact pile driving operations. The Navy shall implement the necessary contractual requirements to ensure that such devices are capable of achieving optimal performance, and that deployment of the device is implemented properly such that no reduction in performance may be attributable to faulty deployment.

(h) The Navy shall use soft start techniques recommended by NMFS for vibratory and impact pile driving. Soft start for vibratory drivers requires contractors to initiate sound for fifteen seconds at reduced energy followed by a thirty-second waiting period. This procedure is repeated two additional times. Soft start for impact drivers requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's pile driving and at any time following cessation of pile driving for a period of thirty minutes or longer. Soft start for impact drivers must be implemented at any time following cessation of impact driving for a period of thirty minutes or longer. The Navy may discontinue use of vibratory soft starts if unsafe working conditions believed to result from implementation of the measure are reported by the contractor, verified by an independent safety inspection, and reported to NMFS.

(i) Pile driving shall only be conducted during daylight hours and when the entire shutdown zone is visible.

5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving activity. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) The Navy shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction related tasks while conducting monitoring.

(b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan.

6. Reporting

The holder of this Authorization is required to:

(a) Submit a draft report on all marine mammal monitoring conducted under the IHA within ninety calendar days of the end of the in-water work period. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see attached).

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA (as determined by the lead observer), such as an injury (Level A harassment), serious injury, or

mortality, Navy shall immediately cease the specified activities and report the incident to the Office of Protected Resources (301–427–8425), NMFS, and the West Coast Regional Stranding Coordinator (206–526–6550), NMFS. The report must include the following information:

A. Time and date of the incident;

B. Description of the incident;

C. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

D. Description of all marine mammal observations in the 24 hours preceding the incident;

E. Species identification or description of the animal(s) involved;

F. Fate of the animal(s); and

G. 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 will work with Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Navy may not resume their activities until notified by NMFS.

i. In the event that Navy discovers an injured or dead marine mammal, and the lead observer 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), Navy shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident and makes a final determination on the cause of the reported injury or death. NMFS will work with Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

ii. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Navy shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. The cause of injury or death may be subject to review and a final determination by NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analysis, the draft authorization, and any other aspect of this Notice of Proposed IHA for Navy's wharf maintenance activities. Please include with your comments any supporting data or literature citations to help inform our final decision on Navy's request for an MMPA authorization.

Dated: April 16, 2015.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–09253 Filed 4–21–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee; Public Meeting

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a meeting of the Marine Protected Areas Federal Advisory Committee (Committee) in Tacoma, Washington.

DATES: The meeting will be held Tuesday, June 2, 2015, from 9 a.m. to 5 p.m.; Wednesday, June 3, 2015, from 8:30 a.m. to 5 p.m.; and Thursday, June 4, 2015, from 8 a.m. to 1 p.m. These times and the agenda topics described below are subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held at the Hotel Murano, 1320 Broadway Plaza, Tacoma, WA 98402.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, Acting Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–7265, Fax: 301–713–3110); email: *lauren.wenzel@noaa.gov;* or visit the National MPA Center Web site at *http://marineprotectedareas.noaa.gov/*).

SUPPLEMENTARY INFORMATION: The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158, on marine protected areas (MPAs). The meeting is open to the public, and public comment will be accepted from 4:30 p.m. to 5 p.m. on Tuesday, June 2, 2015. In general, each individual or group will be limited to a total time of five (5) minutes. If members of the public wish to submit written statements, they should be submitted to the Designated Federal Official by May 29, 2015.

Matters to be Considered: The focus of the Committee's meeting will be the development of workplans by the Subcommittees (MPA Connectivity and External Financing for MPAs) to address the Committee's charge and begin discussion of issues; provide an opportunity for updates and input on Subcommittee and Working Group workplans from all Committee members; and gain a perspective on tribal marine resource management, and on MPA management issues in the Pacific Northwest. The agenda is subject to change. The latest version will be posted at *http://marineprotectedareas.noaa.gov/.*

Dated: April 9, 2015.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2015–09313 Filed 4–21–15; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Observer Programs' Information That Can Be Gathered Only Through Questions.

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 June 22, 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 Jane DiCosimo, (301) 427–8109.or *Jane.Dicosimo@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) deploys fishery observers on United States (U.S.) commercial fishing vessels and to fish processing plants in order to collect biological and economic data. NMFS has at least one observer program in each of its five Regions. These observer programs provide the most reliable and effective method for obtaining information that is critical for the conservation and management of living marine resources. Observer programs primarily obtain information through direct observations by employees or agents of NMFS; and such observations are not subject to the Paperwork Reduction Act (PRA). However, observer programs also collect the following information that requires clearance under the PRA: (1) Standardized questions of fishing vessel captains/crew or fish processing plant managers/staff, which include gear and performance questions, safety questions, and trip costs, crew size and other economic questions; (2) questions asked by observer program staff/contractors to plan observer deployments; (3) forms that are completed by observers and that fishing vessel captains are asked to review and sign; (4) questionnaires to evaluate observer performance; and (5) a form to certify that a fisherman is the permit holder when requesting observer data from the observer on the vessel. NMFS seeks to renew OMB PRA clearance for these information collections.

The information collected will be used to: (1) Monitor catch and bycatch in federally managed commercial fisheries; (2) understand the population status and trends of fish stocks and protected species, as well as the interactions between them; (3) determine the quantity and distribution of net benefits derived from living marine resources; (4) predict the biological, ecological, and economic impacts of existing management action and proposed management options; and (5) ensure that the observer programs can safely and efficiently collect the information required for the previous four uses. In particular, these biological and economic data collection programs contribute to legally mandated analyses required under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), Executive Order 12866 (E.O. 12866), as well as a variety of state statutes. The confidentiality of the data will be protected as required by the MSA, Section 402(b).

II. Method of Collection

The information will be collected by (1) NMFS observers while they are deployed on a vessel to observe a particular fishing trip; questions will be asked in-person to the captain, crew and/or owner (if on board the vessel) during the course of the observed trip; (2) via mail through follow up surveys of economic information not available during the trip; (3) via telephone or mail survey by the observer program staff or contractor planning to deploy observers; or (4) via feedback questionnaires mailed to the vessel owners or captains to evaluate observer performance.

III. Data

OMB Control Number: 0648–0593.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20,643.

Estimated Time per Response: 51 minutes. Information will be collected for observed fishing trips and deployments to fish processing plants; therefore, there will be multiple responses for some respondents, but counted as one response per trip or plant visit.

Estimated Total Annual Burden Hours: 26,172.

Estimated Total Annual Cost to Public: $1,160.

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: April 3, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–09250 Filed 4–21–15; 8:45 am]

BILLING CODE 3510–22–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: Atlantic Highly Migratory Species Vessel and Gear Marking.

OMB Control Number: 0648–0373.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 6,857.

Average Hours Per Response: Vessel marking, 45 minutes; gear marking, 15 minutes.

Burden Hours: 6,976.

Needs and Uses: This request is for an extension of a current information collection. These requirements apply to vessel owners in the Atlantic HMS Fishery.

Under current regulations at 50 CFR 635.6, fishing vessels permitted for Atlantic Highly Migratory Species must display their official vessel numbers on their vessels. Flotation devices and high-flyers attached to certain fishing gears must also be marked with the vessel's number to identify the vessel to which the gear belongs. These requirements are necessary for identification, law enforcement, and monitoring purposes.

Specifically, all vessel owners that hold a valid HMS permit under 50 CFR 635.4, other than an HMS Angling permit, are required to display their vessel identification number. Numbers must be permanently affixed to, or painted on, the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft. In block Arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background. At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) in length; at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) in length or less.

Furthermore, the owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses handline, buoy gear, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline, buoy gear, or harpoon, and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

Affected Public: Business or other for-profit organizations; individuals or households.

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.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–09249 Filed 4–21–15; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, April 24, 2015.

PLACE: Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2015–09455 Filed 4–20–15; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0035]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records, DWHS P51, entitled ''WHS DefenseReady'' to its inventory of record systems subject to the Privacy Act of 1974, as amended.

The system will provide human resource information and system support for the OSD/WHS civilian and military workforce; and track the status of personnel actions, benefit queries, in-processing, out-processing, and military billets. This system will also manage civilian honorary and military award records along with tracking for the purpose of validation and analysis throughout the lifecycle. Records may also be used as a management tool for statistical analysis, reporting, evaluating program effectiveness, and conducting research.

DATES: Comments will be accepted on or before May 22, 2015. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 9, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 17, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P51

SYSTEM NAME:

WHS DefenseReady

SYSTEM LOCATION:

Washington Headquarters Services (WHS), Enterprise Information Technology Services Directorate, 1155 Defense Pentagon, Washington, DC 20301–1132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD Military personnel, civilian employees, and applicants of the Office of the Secretary of Defense (OSD) serviced by WHS Human Resources Directorate.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, home address, mailing address, hire date, disability, citizenship, main and alternate phone number, personal and work email address, component, and organizational unit.

MILITARY:

Date of orders, Social Security Number (SSN), rank, date of rank, service skill, projected rotation date, date arrived to current duty station, unit, company, Service branch, projected arrival, projected departure, target departure date, effective date of separation, decorations and medals.

CIVILIANS:

The DoD ID number, Senior Executive Service onboarding package to Director of Administration (DA) date, DA approval date, request to Office of Personnel Management (OPM) date, pay plan, grade, step, job title, benefits actions, award data, outgoing and incoming notification date, target departure date, letter of resignation date, effective date of separation, outgoing and incoming Request for Personnel Action number, position description number, drug test requested date, and drug test completed date.

POLITICAL APPOINTEES (SENATE CONFIRMED):

Political appointment type, SSN, Senate confirmed, intent to nominate date, nomination date, hearing scheduled date, senate confirmation date, Presidential Commission signed date, appointment date, target arrival date, arrival date, incoming RPA number, request received in Executive and Political Personnel (EPP) date, request to White House Liaison Office (WHLO) date, and WHLO approved date.

APPLICANTS:

Projected arrival, applicant number, applicant source, applicant status, rejection reason, and Request for Personnel Action to fill the position.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 113, Secretary of Defense; 10 U.S.C. 1125, Recognition for Accomplishment: Award of trophies; DoD Directive 5110.04, Washington Headquarters Services (WHS); DoD 1348.33–M, Manual of Military Decorations and Award; Administrative Instruction (AI) 29, Incentive and Honorary Awards Programs; AI 56, Management of Information Technology (IT) Enterprise Resources and Services for OSD, Washington Headquarters Services (WHS), and Pentagon Force Protection Agency (PFPA); and E.O. 9397 (SSN), as amended.

PURPOSE:

To provide human resource information and system support for the OSD/WHS civilian and military workforce; and to track the status of personnel actions, benefit queries, in-processing, out-processing, and military billets. This system will also manage civilian honorary and military award records along with tracking for the purpose of validation and analysis throughout the lifecycle. Records may also be used as a management tool for statistical analysis, reporting, evaluating program effectiveness, and conducting research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

LAW ENFORCEMENT ROUTINE USE:

If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

DISCLOSURE WHEN REQUESTING INFORMATION ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DoD Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

DISCLOSURE OF REQUESTED INFORMATION ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

CONGRESSIONAL INQUIRIES DISCLOSURE ROUTINE USE:

Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT ROUTINE USE:

A record from a system of records subject to the Privacy Act and maintained by a DoD Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR LITIGATION ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

DISCLOSURE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO THE MERIT SYSTEMS PROTECTION BOARD ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

DATA BREACH REMEDIATION PURPOSES ROUTINE USE:

A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx*.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by full name and SSN or DoD ID number.

SAFEGUARDS:

Records are maintained in a controlled area accessible only to authorized personnel. Entry is restricted to personnel with a valid requirement and authorization to enter. Physical access is restricted by the use of locks, guards, and administrative procedures. Access to personally identifiable information is encrypted, role based and restricted to those who require the records in the performance of their official duties. Access is further restricted by the use of role-based access and Common Access Cards (CAC). All individuals granted access to this system must receive annual Information Assurance and Privacy Act training. Periodic security audits, regular monitoring of user's security practices and methods are applied to ensure only authorized personnel have access to records.

RETENTION AND DISPOSAL:

TEMPORARY: Records are maintained for 5 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, WHS DefenseReady, Washington Headquarters Services, Human Resources Directorate, 4800 Mark Center Drive, Alexandria, VA 22350–3200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to WHS DefenseReady Program Manager, Transparency and Tools Division, Washington Headquarters Services, Human Resources Directorate, 4800 Mark Center Drive, Alexandria, VA 22350–3200.

Signed, written requests should include individual's full name, office name where they were assigned or affiliated.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should include the full name, the SSN or DoD ID number, and the name and number of this system of records notice.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense (OSD) rules for accessing records, for contesting contents, and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Defense Enrollment Eligibility Reporting Systems (DEERS), Defense Civilian Personnel Data System (DCPDS), Identity Synchronization Service (IdSS), Military Personnel System (MILPERS), and Fourth Estate Manpower Tracking System (FMTS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2015–09314 Filed 4–21–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0015]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Magnet Schools Assistance Program—Government Performance and Results Act (GPRA) Table Form

AGENCY: Department of Education (ED), Office of Innovation and Improvement (OII).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 22, 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–2015–ICCD–0015 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 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Justis Tuia, 202–453–6655.

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: Magnet Schools Assistance Program—Government Performance and Results Act (GPRA) Table Form.

OMB Control Number: 1855–0025.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 153.

Total Estimated Number of Annual Burden Hours: 77.

Abstract: The collection of this information is part of the government-wide effort to improve the performance and accountability of all federal programs, under the Government Performance and Results Act (GPRA) passed in 1993. Under GPRA, a process for using performance indicators to set program performance goals and to measure and report program results was established. To implement GPRA, ED developed GPRA measures at every program level to quantify and report program progress required by the Elementary and Secondary Education Act of 1965, as amended, Title V, Part C. The GPRA program level measures for the Magnet Schools Assistance Program (MSAP) are reported in the Annual Performance Report (APR). The APR is required under EDGAR §§ 74.51, 75.118, 75.590, and 80.40. The annual report provides data on the status of the funded project that corresponds to the scope and objectives established in the approved application and any amendments. Under EDGAR 75.118, the report must provide the most current performance and financial information; to ensure that accurate and reliable GPRA measure data are reported to Congress on program implementation and performance outcomes, the MSAP APR collects the raw data from grantees in a consistent format to calculate these data in the aggregate.

Dated: April 16, 2015.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–09276 Filed 4–21–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Monday, May 18, 2015 1:00 p.m.–4:00 p.m.

Tuesday, May 19, 2015 8:30 a.m.–4:00 p.m.

ADDRESSES: The Inn at Ellis Square, 201 West Bay Street, Savannah, GA 31401.

FOR FURTHER INFORMATION CONTACT: de'Lisa Carrico, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–8607.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, May 18, 2015

1:00 p.m. Opening and Agenda Review
1:25 p.m. Work Plan Update
1:35 p.m. Combined Committees Session

Order of committees:

- Strategic & Legacy Management
- Administrative & Outreach
- Facilities Disposition & Site Remediation
- Waste Management
- Nuclear Materials

3:35 p.m. Public Comments Session
4:00 p.m. Adjourn

Tuesday, May 19, 2015

8:30 a.m. Opening, Pledge, Approval of Minutes, Chair Update, and Agenda Review
9:00 a.m. Agency Updates
10:15 a.m. Public Comment
10:30 a.m. Nuclear Materials Committee Report
11:15 a.m. Break
11:30 a.m. Administrative & Outreach Committee Report
11:35 a.m. Public Comment
11:50 a.m. Lunch Break
1:15 p.m. Facilities Disposition & Site Remediation Committee Report
2:35 p.m. Waste Management Committee Report
3:20 p.m. Break
3:35 p.m. Strategic & Legacy Management Committee Report
3:40 p.m. Public Comment
4:00 p.m. Adjourn

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact de'Lisa Carrico at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact de'Lisa Carrico's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the

address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC, on April 16, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–09347 Filed 4–21–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2014–BT–NOA–0016]

Physical Characterization of Grid-Connected Commercial and Residential Buildings End-Use Equipment and Appliances

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

ACTION: Notice of final document.

SUMMARY: The U.S. Department of Energy (DOE) is announcing the final publication of a document entitled *A Framework for Characterizing Connected Buildings Equipment.* A copy of the Framework document is available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2014-BT-NOA-0016-0047.*

ADDRESSES: The docket, which includes **Federal Register** notices, public comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index.

The docket for this document can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-NOA-0016.* The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Hagerman, U.S. Department of Energy, Building Technologies Office (EE–5B), 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: (202) 586–4549. Email: *joseph.hagerman@ee.doe.gov.*

For legal issues, please contact Kavita Vaidyanathan; U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., GC–33, Washington, DC 20585; (202) 586–0669; *Kavita.Vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On June 5, 2014, the U.S. Department of Energy (DOE) published a request for comment and notice of a public meeting in the **Federal Register** (79 FR 32542) regarding a draft framework for the physical characterization of grid-connected commercial and residential buildings end-use equipment and appliances. The public meeting was held on July 11, 2014 in Washington, DC, where the structure and content for the draft Framework Document were presented and discussed. At that meeting, DOE announced that it would make the Framework Document available for public comment. On August 14, 2014, DOE announced the availability of this Framework Document in the **Federal Register** (79 FR 47633).

That Document, which proposed a draft plan for development of characterization protocols for connected buildings end-use appliances and equipment, received public comment and DOE subsequently revised the document in response to comments. A copy of the final Framework Document is available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2014-BT-NOA-0016-0047.*

Issued in Washington, DC, on April 9, 2015.

Kathleen B. Hogan,

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

[FR Doc. 2015–09348 Filed 4–21–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–150–000]

Columbia Gas Transmission, LLC; Notice of Application

Take notice that on April 2, 2015, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, Texas 77056 filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) requesting authorization to modify its existing Line WB2VA (WB2VA Integrity Project). Specifically, Columbia proposes to (i) replace an existing dual 20-inch diameter pipeline beneath the South Fork of Shenandoah River with a single 24-inch diameter pipeline, and (ii) replace various appurtenant facilities and short segments of pipeline on Line WB2VA, all located in Hardy County, West Virginia, and Shenandoah, Page, Rockingham, and Greene Counties, Virginia. Columbia estimates the cost of the WB2VA Integrity Project to be $33,968,871, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Tyler R. Brown, Senior Counsel, Columbia Gas Transmission, LLC, 5151 San Felipe, Suite 2500, Houston, Texas 77056, by telephone at (713) 386–3797, or by email at *tbrown@nisource.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice, the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made in the proceeding with the Commission and

must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: May 6, 2015.

Dated: April 15, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–09220 Filed 4–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD15–22–000]

East Valley Water District; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On April 2, 2015, East Valley Water District filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Plant 134 Hydroelectric Project would have an installed capacity of 242 kilowatts (kW), and would be located at East Valley Water District's existing Water Treatment Plant 134. The project would be located in the city of Highland in San Bernardino County, California.

Applicant Contact: Mr. Eliseo Ochoa, 31111 Greenspot Road, Highland, CA 92346, Phone No. (909) 888–8986.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed 870-square-foot powerhouse; (2) an 18-inch-diameter intake pipe branching off the 300-foot-long, 24-inch-diameter pipeline coming from the existing Inflow Control Structure; (3) two pump-as-turbine units connected to two generators with installed capacities of 56 kW and 186 kW, for a total installed capacity of 242 kW; (4) an 18-inch-diameter discharge pipe returning water to a 24-inch-diameter, 130-foot-long pipeline to the existing Filtration Plant; and (5) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 1,035 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	*Description*	*Satisfies (Y/N)*
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the

filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*e.g.,* CD15–22) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

Dated: April 15, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–09224 Filed 4–21–15; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2014).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2179–043—California; Project No. 2467–020—California]

Merced Irrigation District, Pacific Gas and Electric Company; Notice of Availability of the Draft Environmental Impact Statement for the Merced River and Merced Falls Hydroelectric Projects and Intention To Hold Public Meetings

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR Part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects has reviewed the applications for license for the Merced River Hydroelectric Project (FERC No. 2179), and the Merced Falls Hydroelectric Project (FERC No. 2467) and prepared a draft multi-project environmental impact statement (EIS) for the projects.

Both projects are located on the Merced River. The Merced River Project consists of the New Exchequer and McSwain developments, which are located at river miles (RM) 62.5 and 56.3, respectively, about 23 miles northeast of the city of Merced in Mariposa County, California. The Merced River Project occupies 3,154.9 acres of federal land administered by the U.S. Department of the Interior, Bureau of Land Management (BLM). The Merced Falls Project is located at RM 55 on the border of Merced and Mariposa Counties, California. The Merced Falls Project occupies 1.0 acre of federal land administered by BLM.

The draft EIS contains staff's analysis of the applicants' proposals and the alternatives for relicensing the Merced River and Merced Falls Projects. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff.

A copy of the draft EIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed by Friday, May 29, 2015, and should reference Project Nos. 2179–043 and 2467–020. The Commission strongly encourages electronic filing. Please file comments using the Commission's efiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above. You do not need intervenor status to have your comments considered.

In addition to or in lieu of sending written comments, you are invited to attend public meetings that will be held to receive comments on the draft EIS. The agency scoping meeting will focus on resource agency and non-governmental organization input, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings. The time and locations of the meetings are as follows:

Agency Meeting

Date: Thursday, April 30, 2015.
Time: 10:00 a.m.
Place: El Capitan Lodge at the Merced County Fairgrounds.
Address: 900 Martin Luther King Jr. Way, Merced, CA 95341.

Public Meeting

Date: Thursday, April 30, 2015.
Time: 6:00 p.m.
Place: San Joaquin Hall at the Merced County Fairgrounds.
Address: 900 Martin Luther King Jr. Way, Merced, CA 95341.

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meetings will be recorded by a court reporter, and all statements (verbal and written) will become part of

the Commission's public record for the project. These meetings are posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

For further information, please contact Matt Buhyoff at (202) 502–6824 or at *matt.buhyoff@ferc.gov.*

Dated: April 15, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–09222 Filed 4–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–152–000]

Gulf South Pipeline Company, LP; Notice of Request Under Blanket Authorization

Take notice that on April 3, 2015, Gulf South Pipeline Company, LP (Gulf South) filed in Docket No. CP15–152–000, a Prior Notice request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), and Gulf South's blanket certificate issued in Docket No. CP82–430–000. Gulf South seeks authorization to increase its maximum storage capacity in the Petal Salt Dome Cavern 12A, located in Forest County in the State of Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Specifically, Gulf South proposes to increase the total certificated storage capacity of the cavern from 9.26 Billion cubic feet (Bcf) to 9.75 Bcf. Gulf South proposes the increase because the cavern size was determined to be slightly larger than originally anticipated based upon temperature survey data obtained after cavern dewatering operations were completed. No construction of facilities is required for the proposal.

Any questions regarding this application should be directed to Kyle Stephens, Vice President, Regulatory Affairs, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, TX 77046 by telephone at (713) 479–8033, by FAX at (713) 479–1745 or by email at *kyle.stephens@bwpmlp.com*.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such motions or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission encourages electronic submission of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 15, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–09221 Filed 4–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC15–78–000]

AEP Generation Resources Inc.; Notice of Request for Waiver

Take notice that on April 10, 2015, AEP Generation Resources Inc. submitted a request for a waiver of the reporting requirements for Federal Energy Regulatory Commission (FERC) Form 1 and Form 3–Q for calendar year 2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 1, 2015.

Dated: April 15, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–09223 Filed 4–21–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[9926–61–Region 9]

McClellan Air Force Base Superfund Site; Proposed Notice of Administrative Order on Consent

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for Public Comment.

SUMMARY: Notice is hereby given that a proposed administrative order on consent concerning portions of the McClellan Air Force Base Superfund Site (''Site'') in McClellan, California has been negotiated by the Agency and the Respondent, McClellan Business Park, LLC, a Delaware limited liability company. The proposed administrative order on consent concerns cleanup of portions of the Site pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604, 9606 and 9622 (''CERCLA''). Pursuant to a Federal Facilities Agreement (''FFA''), the U.S. Air Force is performing the CERCLA response actions for the Site; however, the FFA was amended to suspend the obligations of the Air Force to conduct the response actions undertaken by the Respondent.

For 30 calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed administrative order on consent. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before May 22, 2015.

Availability: The proposed administrative order on consent may be obtained from Bob Fitzgerald, Project Manager, at (415) 947–4171. Comments regarding the proposed administrative order on consent should be addressed to Thelma Estrada (ORC–3) at United States EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference ''FOSET #3 Privatization, McClellan Superfund Site,'' and ''Docket No. 2014–09''.

FOR FURTHER INFORMATION CONTACT: Thelma Estrada, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; Email: *estrada.thelma@epa.gov;* phone: (415) 972–3866.

SUPPLEMENTARY INFORMATION: The Air Force has prepared a Finding of Suitability for Early Transfer (''FOSET''), which has been subject to a public comment period. The Air Force submitted the FOSET to the Environmental Protection Agency (''EPA''), Region 9, and the State of California for their approval and upon approval of the FOSET, the Air Force will transfer portions of the Site to the County of Sacramento, which will then transfer those portions to the Respondent. The Air Force and the County of Sacramento have entered into an Environmental Services Cooperative Agreement, which requires the County of Sacramento to perform certain CERCLA response actions on the transferred portions of the Site, using funds supplied by the Air Force. The County of Sacramento has contracted with Respondent to conduct those CERCLA response actions. The proposed administrative order on consent would require the Respondent to prepare and perform removal actions and one or more remedial designs and remedial actions for certain contaminants present on the transferred portions of the Site, under the oversight of EPA and the State of California. The administrative order on consent also commits the Respondent to reimburse direct and indirect future response costs incurred by EPA in connection with actions conducted under CERCLA at the transferred portions of the Site.

Dated: March 23, 2015.

Enrique Manzanilla,

Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 2015–09260 Filed 4–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0059; FRL—9925–58–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Natural Gas Transmission and Storage (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''NESHAP for Natural Gas Transmission and Storage (40 CFR part 63, subpart HHH) (Renewal)'' (EPA ICR No. 1789.09, OMB Control No. 2060–0418) 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 April 30, 2015. Public comments were previously requested via the **Federal Register** (79 FR 30117) on May 27, 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 May 22, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0059, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@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 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 *http://www.epa.gov/dockets*.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Natural Gas Transmission and Storage (40 CFR part 63, subpart HHH) applies to existing facilities and new facilities that are major sources of hazardous air pollutants (HAP) and that either transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company). New respondents include those that commenced construction, or reconstruction after the date of proposal of the initial rule and of the 2012 rule amendments. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP standards.

Form Numbers: None.

Respondents/affected entities: Natural gas transport and storage facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HHH).

Estimated number of respondents: 37 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 2,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $205,000 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 391 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This is due to a correction in burden estimates and the consolidation of 2060–0670 with this ICR, as well as the rounding of estimates.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–09357 Filed 4–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2015–0183; FRL–9926–36]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA) to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN); an application for a test marketing exemption (TME), both pending and/or expired; and a periodic status report on any new chemicals under EPA review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document covers the period from March 1, 2015 to March 31, 2015.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before May 22, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0183, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *Rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at

http://www.epa.gov/dockets/comments.html.

II. What action is the Agency taking?

This document provides receipt and status reports, which cover the period from March 1, 2015 to March 31, 2015, and consists of the PMNs and TMEs both pending and/or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. What is the Agency's authority for taking this action?

Section 5 of TSCA requires that EPA periodical publish in the **Federal Register** receipt and status reports, which cover the following EPA activities required by provisions of TSCA section 5.

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals.

IV. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—51 PMNS RECEIVED FROM 03/01/2015 TO 03/31/2015

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–15–0292.	02/17/2015	05/18/2015	CBI	(S) Reactive polymer for use in coatings.	(G) Acrylic polymer
P–15–0322.	03/01/2015	05/30/2015	CBI	(G) Adhesive	(G) Poly[oxy(alkanediyl)],.alpha.,.alpha.',.alpha.''-1,2,3-propanetriyltris[.omega.-(2-hydroxy-3-mercaptopropoxy)-
P–15–0323.	03/02/2015	05/31/2015	Allnex USA Inc.	(S) Main or co-binder in litho ink formulation.	(G) Alkanoic acid, polymer with substituted carbomonocycle, substituted heteromonocycle, alkyl ester, alkyl peroxide-initiated
P–15–0324.	03/02/2015	05/31/2015	CBI	(G) Additive in oil	(G) Magnesium alkaryl sulfonate
P–15–0325.	03/02/2015	05/31/2015	Firmenich Incorporated.	(G) As part of a fragrance formula.	(S) (4E)-Methyl-5-(4-methylphenyl)-4-pentanal
P–15–0326.	03/02/2015	05/31/2015	CBI	(G) Specialty gas, Foam additive, Transfer fluid.	(G) Hydrofluorocarbon
P–15–0327.	03/03/2015	06/01/2015	CBI	(G) Additive	(G) Acryl based copolymer
P–15–0328.	03/03/2015	06/01/2015	CBI	(G) Cement additive.	(G) Aluminum calcium oxide salt
P–15–0329.	03/03/2015	06/01/2015	CBI	(S) Additive	(S) Urea, *N,N'*-1,6-hexanediylbis[*N'*-[(1*S*)-1-phenylethyl]-
P–15–0331.	03/04/2015	06/02/2015	CBI	(S) Ingredient in cured coating for led chips.	(G) Diphenylcyclic siloxane
P–15–0330.	03/04/2015	06/02/2015	CBI	(S) Ingredient in cured coating for led chips.	(G) Diphenylcyclic siloxane
P–15–0332.	03/04/2015	06/02/2015	CBI	(G) Site-limited intermediate.	(G) Linear siloxane
P–15–0333.	03/04/2015	06/02/2015	CBI	(G) Site-limited intermediate.	(G) Distillation bottoms
P–15–0336.	03/06/2015	06/04/2015	Nalco Champion, An Ecolab Company (950119).	(S) Conductive surface coating for proppant used in hydraulic fracturing.	(G) Polyethylenaminepolyalkylamide
P–15–0337.	03/09/2015	06/07/2015	CBI	(G) To be used as an end cap on a polyurethane prepolymer.	(G) Amino functional silane

TABLE I—51 PMNS RECEIVED FROM 03/01/2015 TO 03/31/2015—Continued

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–15–0338.	03/09/2015	06/07/2015	CBI	(S) Industrial lubricant.	(S) Decanedioic acid, 1,10-diisotridecyl ester
P–15–0339.	03/09/2015	06/07/2015	CBI	(G) Paint additive	(G) Substituted carbomonocycle bis-, polymer with carbon dioxide, haloalkyl heteromonocycle, disubstituted alkanes, and [(alkylidene)bis(substituted alkylene carbomonocycle)]bis[heteromonocycle]
P–15–0341.	03/11/2015	06/09/2015	H.B. Fuller Company.	(S) Binder ingredient in grout formulations.	(G) Propenoic acid alkyl ester(s), telomer with alkanethiol, 2-methyl-2-propenoic acid and 2-hydroxyethyl 2-propenoate
P–15–0342.	03/12/2015	06/10/2015	CBI	(G) Adhesive for electrical industry use.	(G) Carboxylated Styrene butadiene Polymer
P–15–0344.	03/13/2015	06/11/2015	CBI	(G) Lubricant additive.	(G) 2,5-Furandione, polymer with 1-dodecene,alkyl esters
P–15–0345.	03/13/2015	06/11/2015	CBI	(G) Additive	(G) Acryl based copolymer
P–15–0346.	03/13/2015	06/11/2015	CBI	(G) Adhesive component.	(G) Polyurethane adduct
P–15–0348.	03/16/2015	06/14/2015	CBI	(G) Physicochemical property modifier.	(G) Salt of a methacrylic acid derivative—acrylic acid copolymer
P–15–0349.	03/16/2015	06/14/2015	CBI	(G) Use in Ultraviolet/Electron beam (UV/EB) adhesives and coatings.	(G) Carbonic acid, diethyl ester, polymer with 1,6-hexanediol, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane 2-hydroxyethyl acrylate-blocked
P–15–0352.	03/18/2015	06/16/2015	Carbon3D, Inc.	(G) Oligomeric component of 3D printer resin formulations.	(G) Urethane oligomer
P–15–0353.	03/19/2015	06/17/2015	CBI	(G) Lubricant additive.	(G) Chlorinated complex ester
P–15–0354.	03/19/2015	06/17/2015	CBI	(G) Lubricant	(G) Perfluoropolyether-block-Polytetrafluoroethylene
P–15–0354.	03/19/2015	06/17/2015	CBI	(G) Anti-stick additive.	(G) Perfluoropolyether-block-Polytetrafluoroethylene
P–15–0355.	03/20/2015	06/18/2015	CBI	(S) Industrial Coating crosslinker.	(S) Hexane, 1,6-diisocyanato-, homopolymer, di-Et malonate-blocked
P–15–0356.	03/20/2015	06/18/2015	CBI	(G) Additive in polymer formulation for electronics.	(S) Oxirane, 2,2′-[[1-[4-[1-methyl-1-[4-(2-oxiranylmethoxy)phenyl]ethyl]phenyl]ethylidene]bis(4,1-phenyleneoxymethylene)]bis-
P–15–0356.	03/20/2015	06/18/2015	CBI	(G) Additive in polymer formulation for electronics.	(S) 2-Propanol, 1,3-bis[4-[1-[4-[1-methyl-1-[4-(2-oxiranylmethoxy)phenyl]ethyl]phenyl]-1-[4-(2-oxiranylmethoxy)phenyl]ethyl]phenoxy]-
P–15–0357.	03/20/2015	06/18/2015	CBI	(G) Raw material for thermal paper manufacture.	(G) Benzenesulfonamide, phenyl substituted carbonyl
P–15–0358.	03/22/2015	06/20/2015	CBI	(S) Acrylic resin used in the manufacture of inks and coatings.	(G) Hexamethylene diisocyanate with caprolactone acrylate
P–15–0359.	03/23/2015	06/21/2015	CBI	(S) A hardener for epoxy systems for use in architectural coatings.	(S) Formaldehyde, polymer with *N*-(3-aminopropyl)-1,3-propanediamine
P–15–0361.	03/24/2015	06/22/2015	CBI	(G) Additive, open, non-dispersive use.	(G) Alkyl and aralkyl and trimethoxysilylethylene modified polysiloxane
P–15–0362.	03/25/2015	06/23/2015	CBI	(G) Printing ink	(G) Polyamid resin
P–15–0363.	03/23/2015	06/21/2015	CBI	(G) Monomer	(G) Aliphatic acrylate
P–15–0364.	03/25/2015	06/23/2015	DIC International (USA) LLC.	(G) Colorant for industrial coatings and plastics.	(G) Copper, [29*H*,31*H*-phthalocyaninato(2-)-.kappa.n29,.kappa.n30,.kappa.n31,.kappa.n32]-, (sp-4-1)- and metal, [substituted 29h,31h-phthalocyanine-.kappa.n29,.kappa.n30,.kappa.n31,lkappa.n32]-

TABLE I—51 PMNS RECEIVED FROM 03/01/2015 TO 03/31/2015—Continued

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–15–0365.	03/25/2015	06/23/2015	CBI	(G) Component of pesticide formulation.	(G) Alkyl alkenoic acid polymers with alkyl acrylate, alkyl methacrylate, polyether methacrylate alkyl ethers and substituted heteromonocycle, compounds with substituted alkyl alkanol
P–15–0366.	03/26/2015	06/24/2015	CBI	(G) Automotive coatings.	(G) Alkylmethacrylate, polymer with cycloalkylmethacrylate, alkenylbenzene, branched alkylmethacrylate, hydroxyalkylmethacrylate, alkanediolmonomethacrylate, and alkenoic acid, t-butyl alkaneperoxoic acid ester and alkyl peroxide-initiated
P–15–0367.	03/26/2015	06/24/2015	CBI	(S) Curing agent for epoxy resin.	(G) Cycloalkanediamine, polymer with 2,2'-[methylenebis(phenyleneoxymethylene)]bis[oxirane]
P–15–0368.	03/26/2015	06/24/2015	Industrial Speciality Chemicals.	(G) This material will be used in conjunction with current chemistries for wastewater treatment..	(G) Starch (trialkylammonio) ether, halide; (haloalkyl)trialkylammonium halide; alkane bis(trialkylammonium) halide
P–15–0369.	03/26/2015	06/24/2015	Clean Chemistry	(S) Water clarifying agent, odor control agent, bleaching agent, and general oxidant for water treatment.	(G) Organic peroxide
P–15–0369.	03/26/2015	06/24/2015	Clean Chemistry	(G) Destructive use in fuel production.	(G) Organic peroxide
P–15–0370.	03/27/2015	06/25/2015	CBI	(G) Printing additive.	(G) Alcohols, polymers with dicarboxylic acid, alcohols, alkenedioic acid, dicarboxylic acids, alkanoic acid esters
P–15–0372.	03/27/2015	06/25/2015	CBI	(G) Surfactant	(G) 1,3-Propanediamine, *N*1-alky,-, carboxymethyl derivs
P–15–0373.	03/31/2015	06/29/2015	Allnex USA Inc.	(S) Coatings for automobile headlights, polycarbonate glazing, and films.	(G) Substituted carbopolycycle, polymer with disubstituted alkane substituted alkyl methacrylate-blocked
P–15–0374.	03/31/2015	06/29/2015	CBI	(G) Polymer for optical application.	(G) Methacrylic copolymer with cyclic structure unit
P–15–0375.	03/31/2015	06/29/2015	CBI	(G) Lubricant additive.	(G) 2,5-Furandione, polymer with 1-dodecene,alkyl esters
P–15–0376.	03/31/2015	06/29/2015	CBI	(G) Oil additive	(G) Alkenes, reaction products with alkyl carbonate, phenol and sulfur, calcium salts

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II—1 TME RECEIVED FROM 03/01/2015 TO 03/31/215

Case No.	Received date	Projected notice end date	Manufacter importer	Use	Chemical
T–15–0008	03/20/2015	05/04/2015	CBI	(G) Intermediate	(G) Alkyl substituted cresol

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III.—25 NOCS RECEIVED FROM 03/01/2015 TO 03/31/2015

Case No.	Received date	Commencement notice end date	Chemical
P–14–0792	03/03/2015	02/05/2015	(G) 1,2,3-Propanetriol, homopolymer, alkanoate and glycerides, alkanoate, mono-, di-and tri-
P–14–0718	03/03/2015	02/09/2015	(G) Polyol
P–13–0326	03/13/2015	02/17/2015	(G) Castor oil, dehydrated, polymer with alkyl diamine, dihydroxyalkyl carboxylic acid, aromatic azinetriamine, methylenebis[isocyanatocycloalkane]-, compounds with trialkylamine
P–13–0332	03/13/2015	02/17/2015	(G) Propenoic acid ester, polymer with *N*-(dimethyloxoalkyl)alkylamide, alkyl propenoate and alkyl alkyl propenoate
P–13–0522	03/13/2015	02/17/2015	(G) Alkanedioic acid, polymer with aminoalkanol, alkanediol, alkyl-(hydroxyalkyl)alkanediol, 1,x-alkanediol, hydroxy-(hydroxyalkyl)alkanoic acid, methylenebis[isocyanatocycloalkane] and alkene carboxylic acid, compound with alkylmorpholine
P–13–0831	03/13/2015	02/17/2015	(G) Dicarboxylic acid, polymer with *N*-(dialkyl-oxoalkyl)-alkennamide, alkanediol, alkanediol, hydroxy-(hydroxyalkyl)-alkyl carboxylic acid, isocyanato-(isocyanatoalkyl)-trimethylcycloalkane, methylenebis[isocyanatocycloalkane] and alkyl alkyl-alkenoate, compounds with dialkylalkylamine
P–14–0686	03/13/2015	02/17/2015	(G) Alkenoic acid, polymer with alkyl 2-alkenoate, *N*-(1,1-dialkyl-3-oxoalkyl)-2-alkenamide and alkyl 2-alkyl-2-alkenoate
P–14–0685	03/16/2015	02/20/2015	(G) Alkenoic acid, polymer with alkyl 2-alkyl-2-alkenoate, alkyl 2-alkenoate, *N*-(1,1-dialkyl-3-oxoalkyl)-2-alkenamide and alkyl 2-alkyl-2-alkenenoate
P–15–0102	03/03/2015	02/23/2015	(G) Alkali titanosilicate salt
P–15–0087	03/25/2015	02/25/2015	(G) Substituted heteromonocyclic carboxylic acid salt
P–12–0318	03/03/2015	02/28/2015	(G) Cycloalkylmethamine, amino alkyl, polymer with hydroxypoly(oxyalkanediyl), hydroxypoly[oxy(alkyl-1,2-alkanediyl)] and alkyl bisisocyanatocycloalkane, alc.-blocked
P–13–0305	03/10/2015	03/03/2015	(G) Fluorinated ester
P–09–0199	03/18/2015	03/03/2015	(S) Carbon nanotube, multi-wall*
P–14–0701	03/06/2015	03/05/2015	(G) Functionalized fatty acid, polymer with maleic anhydride, me methacrylate, 4-oxopentanoic acid and styrene, compound with triethylamine.
P–15–0075	03/09/2015	03/05/2015	(G) Siliicone acrylic/methacrylic polymer
P–15–0122	03/17/2015	03/10/2015	(G) Bicycloamine
P–15–0061	03/20/2015	03/10/2015	(G) Imidazolium,polymer with cyclic anhydride and alkenoic acid, alkali salt
P–14–0452	03/19/2015	03/12/2015	(G) Substituted naphthalene polymer glycidyl ether
P–13–0653	03/17/2015	03/16/2015	(G) Fatty acid polymer with aliphatic alcohol and aromatic diacid
P–15–0063	03/20/2015	03/16/2015	(G) Perfluoropolyether modified silane
P–14–0559	03/25/2015	03/20/2015	(S) 1,6,10-Dodecatriene, 7,11-dimethyl-3-methylene-, (6e)-, hydrogenated*
P–15–0137	03/27/2015	03/26/2015	(G) Fatty acids, polymers with substituted carbomonocycle, substituted heteromonocycle, and alkylamine, substituted alkanoic acid (salts)
P–14–0007	03/06/2015	04/02/2014	(G) Fatty acids, esters with polyol
P–06–0620	03/06/2015	11/08/2006	(S) Fatty acids, C_{8-10}, tetraesters with bis[2,2-bis(hydroxymethyl)butyl] adipate*

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit III to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: April 15, 2015.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2015–09204 Filed 4–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0099; FRL–9925–66–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Ferroalloys Production Area Sources (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''NESHAP for Ferroalloys Production Area Sources (40 CFR part 63, subpart YYYYYY) (Renewal)'' (EPA ICR No. 2303.04, OMB Control No. 2060–0625) 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 April 30, 2015. Public comments were previously requested via the **Federal Register** (79 FR 30117) on May 27, 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 May 22, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0099, to (1) EPA online using *www.regulations.gov* (our

preferred method), by email to *docket.oeca@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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@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 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 *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart YYYYYY. Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Form Numbers: None.

Respondents/affected entities: Owners and operators of area source ferroalloys production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YYYYYY).

Estimated number of respondents: 10 (total).

Frequency of response: Initially and annually.

Total estimated burden: 350 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $35,000 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a slight increase of five hours in the total estimated respondent burden compared with the ICR current approved by OMB. This is due to the rounding of estimates.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–09361 Filed 4–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2006–0037; FRL–9925–28–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Exchange Network Grants Progress Reports (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Exchange Network Grants Progress Reports (Renewal)'' (EPA ICR No. 2207.06, OMB Control No. 2025–0006) 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 April 30, 2015. Public comments were previously requested via the **Federal Register** (80 FR 2099) on January 15, 2015 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 May 22, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OEI–2006–0037, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.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: Michael Kaufman, Information Exchange and Services Division, Office of Information Collection (2823T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–4499; fax number: 202–566–1684; email address: *Kaufman.michael@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 *http://www.epa.gov/dockets.*

Abstract: This notice announces the collection of information related to the U.S. EPA National Environmental Information Exchange Network (NEIEN) Grant Program. EPA proposes to collect information from the NEIEN grantees on assistance agreements EPA has awarded. Specifically, for each project, EPA proposes to have grantees submit semi-annual reports on the progress and current status of each goal and output, completion dates for outputs, and any problems encountered. This information will help EPA ensure projects are on schedule to meet their goals and produce high quality environmental outputs. New award recipients will complete one Quality Assurance Reporting Form for each award. This form provides a simple means for grant recipients to describe how quality will be addressed throughout their projects. Additionally, the Quality Assurance Reporting Form is derived from guidelines provided in the NEIEN 2011 Grant Solicitation Notice.

Form Numbers: EPA Form 5300–26 (Semi-Annual Progress Report Form) and EPA Form 5300–27 (Quality Assurance Reporting Form).

Respondents/affected entities: State, tribal, and territorial environmental government offices.

Respondent's obligation to respond: Mandatory (2 CFR part 200 and 2 CFR part 1500).

Estimated number of respondents: 200 (total).

Frequency of response: Twice per year for the Semi-Annual Progress Report Form; one time per grant for the Quality Assurance Reporting Form.

Total estimated burden: 340 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $17,979 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 5 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a decrease in the number of grants that are awarded annually.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–09238 Filed 4–21–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0441 and 3060–0297]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 22, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0441.

Title: Section 90.621, Selection and Assignment of Frequencies and Section 90.693, Grandfathering Provisions for Incumbent Licensees.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 36 respondents; 36 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i) and 309(j).

Total Annual Burden: 54 hours.

Total Annual Cost: $4,500.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 90.621(b)(4) allows stations to be licensed at distances less than those prescribed in the Short-Spacing Separation Table where applicants ''secure a waiver.'' Applicants seeking a waiver in these circumstances are still required to submit with their application an interference analysis, based upon any of the generally-accepted terrain-based propagation models, demonstrating that co-channel stations would receive the same or greater interference protection than provided in the Short-Spacing Separation Table.

Section 90.621(b)(5) permits stations to be located closer than the required separation, so long as the applicant provides letters of concurrence indicating that the applicant and each co-channel licensee within the specified separation agree to accept any interference resulting from the reduced separation between systems. Applicants are still required to file such concurrence letters with the Commission. Additionally, the Commission did not eliminate filings required by provisions such as international agreements, its environmental (National Environmental Protection Act (NEPA)) rules, its antenna structure registration rules, or quiet zone notification/filing procedures.

Section 90.693 requires that 800 MHz incumbent Specialized Mobile Radio (SMR) service licensees ''notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria.'' It has been standard practice for incumbents to notify the Commission of all changes and additional stations constructed in cases where such stations are in fact located less than the required 70 mile distance separation, and are therefore technically ''short-spaced,'' but are in fact fully compliant with the parameters of the Commission's Short-Spacing Separation Table.

The Commission uses this information to determine whether to grant licenses to applicants making ''minor modifications'' to their systems which do not satisfy mileage separation requirements pursuant to the Short-Spacing Separation Table.

OMB Control Number: 3060–0297.

Title: Section 80.503, Cooperative Use of Facilities.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time per Response: 16 hours.

Frequency of Response: Occasion reporting requirement and Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151–

155, 301–609 of the Communications Act of 1934, as amended; and 3 UST 3450, 3 UST 4726, 12 UST 2377.

Total Annual Burden: 1,600 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 80.503 requires that a licensee of a private coast station or marine utility station on shore may install ship radio stations on board United States commercial transport vessels of other persons. In each case these persons must enter into a written agreement verifying that the ship station licensee has the sole right of control of the ship stations, that the vessel operators must use the ship stations subject to the orders and instructions of the coast station or marine utility station on shore, and that the ship station licensee will have sufficient control of the ship station to enable it to carry out its responsibilities under the ship station license. A copy of the contract/written agreement must be kept with the station records and made available for inspection by Commission representatives.

The information is used by FCC personnel during inspection and investigations to insure compliance with applicable rules. If this information was not available, enforcement efforts could be hindered; frequency congestion in certain bands could increase; and the financial viability of some public coast radiotelephone stations could be threatened.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of Secretary, Office of the Managing Director.

[FR Doc. 2015–09306 Filed 4–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0120 and 3060–1146]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before May 22, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0120.

Type of Review: Extension of a currently approved collection.

Title: Broadcast EEO Program Model Report, FCC Form 396–A.

Form Number: FCC Form 396–A.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 5,000 respondents; 5,000 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Total Annual Burden: 5,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The Broadcast Equal Employment Opportunity (EEO) Model Program Report, FCC Form 396–A, is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction permit or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station.

OMB Control Number: 3060–1146.

Title: Implementation of the Twenty-first Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10–210.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit Institutions; State, local or tribal governments.

Number of Respondents and Responses: 56 respondents; 2,493 responses.

Estimated Time per Response: 0.5 to 20 hours.

Frequency of Response: Annual, monthly, quarterly, and semi-annually reporting requirements; Record keeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory

authority for this information collection is contained in Sections 1, 4(i), 4(j), and 719 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 620.

Total Annual Burden: 5,850 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information (PII), which is covered under the FCC's system of records notice (SORN), FCC/CGB–3, ''National Deaf-Blind Equipment distribution Program.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–3 ''National Deaf-Blind Equipment Distribution Program,'' in the **Federal Register** on January 19, 2012 (77 FR 2721) which became effective on February 28, 2012. Also, the Commission is in the process of preparing the new privacy impact assessment (PIA) related to the PII covered by these information collections, as required by OMB's Memorandum M–03–22 (September 26, 2003) and by the Privacy Act, 5 U.S.C. 552a.

Privacy Impact Assessment: Yes. The Commission is in the process of preparing the new privacy impact assessment (PIA) related to the PII covered by these information collections, as required by OMB's Memorandum M–03–22 (September 26, 2003) and by the Privacy Act, 5 U.S.C. 552a.

Needs and Uses: On April 6, 2011, in document FCC 11–56, the Commission released a Report and Order adopting final rules to implement section 719 of the Communications Act of 1934 (the Act), as amended, which was added to the Act by the ''Twenty-First Century Communications and Video Accessibility Act of 2010'' (CVAA). See Public Law 111–260, § 105. Section 719 of the Act authorizes up to $10 million annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) to support eligible programs that distribute equipment designed to make telecommunications service, Internet access service, and advanced communications accessible by low-income individuals who are deaf-blind. Specifically, the rules adopted in document FCC 11–56 established the National Deaf-Blind Equipment Distribution Program (NDBEDP) as a pilot program. The rules adopted in document FCC 11–56 have the following information collection requirements:

(a) State equipment distribution programs, other public programs, and private entities may submit applications for NDBEDP certification to the Commission. For each state, the Commission certifies a single program as the sole authorized entity to participate in the NDBEDP and receive reimbursement from the TRS Fund.

(b) Each program certified under the NDBEDP must submit certain program-related data electronically to the Commission, as instructed by the NDBEDP Administrator, every six months, commencing with the start of the pilot program.

(c) Each program certified under the NDBEDP must retain all records associated with the distribution of equipment and provision of related services under the NDBEDP for two years following the termination of the pilot program.

(d) Each program certified under the NDBEDP must obtain verification that NDBEDP applicants meet the definition of an individual who is deaf-blind.

(e) Each program certified under the NDBEDP must obtain verification that NDBEDP applicants meet the income eligibility requirements.

(f) Programs certified under the NDBEDP are reimbursed for the cost of equipment that has been distributed to eligible individuals and authorized related services, up to the state's funding allotment under this program. Within 30 days after the end of each six-month period of the Fund Year, each program certified under the NDBEDP pilot must submit documentation that supports its claim for reimbursement of the reasonable costs of equipment and related services.

On March 20, 2012 in document DA 12–430, the Commission released an Order to conditionally waive the requirement in section (f), above, for NDBEDP certified programs to submit reimbursement claims at the end of each six-month period of the TRS Fund Year to permit certified programs to submit reimbursement claims as frequently as monthly. Each certified program that wishes to take advantage of this waiver to elect a monthly or quarterly reimbursement schedule, must notify the TRS Fund Administrator of its election at the start of each Fund Year, and must maintain that schedule for the duration of the Year.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–09307 Filed 4–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0228]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 22, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0228.

Title: Section 80.59, Compulsory Ship Inspections and Ship Inspection

Certificates, FCC Forms 806, 824, 827 and 829.

Form Numbers: FCC Forms 806, 824, 827 and 829.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 1,310 respondents; 1,310 responses.

Estimated Time per Response: 0.084 hours (5 minutes)–4 hours per response.

Frequency of Response: On occasion, annual and every five year reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4, 303, 309, 332 and 362 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,445 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The requirements contained in 47 CFR 80.59 of the Commission's rules are necessary to implement the provisions of Section 362(b) of the Communications Act of 934, as amended, which require the Commission to inspect the radio installation of large cargo ships and certain passenger ships at least once a year to ensure that the radio installation is in compliance with the requirements of the Communications Act.

Further, section 80.59(d) states that the Commission may, upon a finding that the public interest would be served, grant a waiver of the annual inspection required by section 362(b) of the Communications Act of 1934, for a period of not more than 90 days for the sole purpose of enabling the United States vessel to complete its voyage and proceed to a port in the United States where an inspection can be held. An information application must be submitted by the ship's owner, operator or authorized agent. The application must be submitted to the Commission's District Director or Resident Agent in charge of the FCC office nearest the port of arrival at least three days before the ship's arrival. The application must provide specific information that is in rule section 80.59.

Additionally, the Communications Act requires the inspection of small passenger ships at least once every five years.

The Safety Convention (to which the United States is a signatory) also requires an annual inspection.

The Commission allows FCC-licensed technicians to conduct these inspections. FCC-licensed technicians certify that the ship has passed an inspection and issue a safety certificate. These safety certificates, FCC Forms 806, 824, 827 and 829 indicate that the vessel complies with the Communications Act of 1934, as amended and the Safety Convention. These technicians are required to provide a summary of the results of the inspection in the ship's log that the inspection was satisfactory.

Inspection certificates issued in accordance with the Safety Convention must be posted in a prominent and accessible place on the ship (third party disclosure requirement).

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of Secretary, Office of the Managing Director.

[FR Doc. 2015–09304 Filed 4–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1171]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before May 22, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1171.

Title: Commercial Advertisement Loudness Mitigation (''CALM'') Act; 73.682(e) and 76.607(a).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,937 respondents and 4,868 responses.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Estimated Time per Response: 0.25–80 hours.

Total Annual Burden: 6,036 hours.

Total Annual Cost to Respondents: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i) and (j), 303(r) and 621.

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission will use this information to determine compliance with the CALM Act. The CALM Act mandates that the Commission make the Advanced Television Systems Committee (''ATSC'') A/85 Recommended Practice mandatory for all commercial TV stations and cable/MVPDs.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–09310 Filed 4–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0817]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before May 22, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0817.

Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3 respondents; 6 responses.

Estimated Time per Response: 2–50 hours.

Frequency of Response: On occasion; reporting requirements and third party disclosure.

Obligation to Respond: Required to retain or obtain benefits. Statutory authority for this information collection is in 47 U.S.C. 151, 152, 154, 161, 201–205, 208, 251, 260 and 271–276.

Total Annual Burden: 156 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. However, applicants may request confidential treatment of information they assert is confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission has eliminated certain reporting requirements because the Bell Operating Companies (BOCs) are no longer required to file semi-annual reports with the Commission addressing Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA) services. BOCs are required to post their CEI plans and amendments on their publicly accessible Internet sites. The requirement extends to all CEI plans for intraLATA information services, telemessaging, or alarm monitoring services, and for new or amended payphone services. If the BOC receives a good faith request for a plan from someone who does not have Internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection. The CEI plans will be used to ensure that BOCs comply with Commission policies and regulations safeguarding against potential anticompetitive behavior by the BOCs in the provision of information services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–09308 Filed 4–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0931]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 22, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0931.

Title: Section 80.103, Digital Selective Calling (DSC) Operating Procedures—Maritime Mobile Identity (MMSI).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities and Federal Government.

Number of Respondents and Responses: 40,000 respondents; 40,000 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this Information collection is in 47 U.S.C. 154, 303, 307(e), 309 and 332 of the Communications Act of 1934, as amended. The reporting requirement is contained in international agreements and ITU–R M.541.9.

Total Annual Burden: 10,000 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: Yes. The FCC maintains a system of records notice (SORN), FCC/WTB–1, ''Wireless Services Licensing Records'' that covers the collection, purpose(s), storage, safeguards, and disposal of the PII that marine VHF radio licensees maintain under 47 CFR 80.103.

Nature and Extent of Confidentiality: There is a need for confidentiality with respect to all owners of Marine VHF radios with Digital Selective Calling (DSC) capability in this collection. The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act of 1974. FRN numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 of the Commission's rules will not be available for public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, ''Wireless Services Licensing Records'', and these and all other records may be disclosed pursuant to the Routine Uses as stated in the SORN.

Needs and Uses: The information collected is necessary to require owners of marine VHF radios with Digital Selective Calling (DSC) capability to register information such as the name, address, type of vessel with a private entity issuing marine mobile service identities (MMSI). The information would be used by search and rescue personnel to identify vessels in distress and to select the proper rescue units and search methods.

The requirement to collect this information is contained in international agreements with the U.S. Coast Guard and private sector entities that issue MMSI's.

The information is used by private entities to maintain a database used to provide information about the vessel owner in distress using marine VHF radios with DSC capability. If the data were not collected, the U.S. Coast Guard would not have access to this information which would increase the time and effort needed to complete a search and rescue operation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of Secretary, Office of the Managing Director.

[FR Doc. 2015–09305 Filed 4–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012154–004.

Title: APL/Hamburg Süd Space Charter Agreement.

Parties: APL Co. Pte, Ltd. and American President Lines, Ltd. (acting as one party); and Hamburg Süd KG.

Filing Party: Eric C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW.; Suite 900, Washington, DC 20004.

Synopsis: The amendment updates the provisions for early termination and extends the agreement until March 31, 2016.

Agreement No.: 012228–001.

Title: COSCON/''K'' Line/WHL/WHS Space Charter and Sailing Agreement.

Parties: COSCO Container Lines Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Wan Hai Lines Ltd.; and Wan Hai Lines (Singapore) PTE Ltd.

Filing Party: Eric. C. Jeffrey, Esq; Nixon Peabody LLP; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment adds Wan Hai Lines Ltd. as a party to the agreement, changes the name of the agreement, and updates and restates the agreement.

Agreement No.: 012319–001.

Title: MOL/WWL Line Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd. and Wallenius Wilhemsen Logistics AS.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004.

Synopsis: The Amendment would clarify the geographic scope of the Agreement.

Agreement No.: 012321–001.

Title: MOL/''K'' Line Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd. and Kawasaki Kisen Kaisha, Ltd.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004.

Synopsis: The Amendment would clarify the geographic scope of the Agreement.

Agreement No.: 012324–001.

Title: NMCC/Grimaldi Space Charter Agreement.

Parties: Grimaldi Deep Sea S.p.A; Grimaldi Euromed S.p.A.; Nissan Motor Car Carrier Co., Ltd.; World Logistics Service (U.S.A.), Inc.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004.

Synopsis: The Amendment would clarify the geographic scope of the Agreement.

By Order of the Federal Maritime Commission.

Dated: April 17, 2015.

Karen V. Gregory,

Secretary.

[FR Doc. 2015–09369 Filed 4–21–15; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841, *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 18, 2015.

A. Federal Reserve Bank of Kansas City (*Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:*

1. *Docking Bancshares, Inc.,* Arkansas City, Kansas; to acquire 100 percent of the voting shares of Relianz Bancshares, Inc., and thereby indirectly acquire voting shares of RelianzBank, both in Wichita, Kansas.

Board of Governors of the Federal Reserve System, April 17, 2015.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2015–09341 Filed 4–21–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 7, 2015.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Basswood Capital Management, LLC, New York, New York; funds for which Basswood Partners, LLC serves as General Partner and for which Basswood Capital Management, LLC serves as Investment Manager (Basswood Opportunity Partners, LP; Basswood Financial Fund, LP; Basswood Financial Long Only Fund, LP); a fund for which Basswood Enhanced Long Short GP, LLC serves as General Partner and for which Basswood Capital Management, LLC serves as Investment Manager (Basswood Enhanced Long Short Fund, LP); funds for which Basswood Capital Management, LLC serves as Investment Manager (Basswood Opportunity Fund, Inc.; Basswood Financial Fund, Inc.; BCM Select Equity I Master, Ltd.); Basswood Capital Management, LLC, as investment adviser to a managed account; Matthew Lindenbaum; Bennett Lindenbaum; Nathan Lindenbaum and Shai Tambor as Trustees for Abigail Tambor 2012 Children's Trust; Nathan Lindenbaum; Yitzchak Jacobwitz, I. Marc Guttmann and David J. Katz as Trustees for Nathan J Lindenbaum 1995 Children Trust; Nathan Lindenbaum and Shari Lindenbaum as Members of Naftali Asher Investments LLC; Nathan Lindenbaum and Shai Tambor as Trustees for Victoria Feder & Benjamin Feder 2012 Children's Trust; Ray Lindenbaum as Trustee for Victoria & Ben Feder's 1996 Children's Trust; Marcel Lindenbaum; and Nathan Lindenbaum as Trustee for Shari A. Lindenbaum 1994 Children's Trust,* all of New York, New York; to collectively acquire voting shares of Bridge Bancorp, Inc., and thereby indirectly acquire voting shares of The Bridgehampton National Bank, both in Bridgehampton, New York.

Board of Governors of the Federal Reserve System, April 17, 2015.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2015–09340 Filed 4–21–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[Docket No. 9358]

ECM BioFilms, Inc., et al. Oral Argument Before the Commission

AGENCY: Federal Trade Commission.

ACTION: Oral argument; open meeting.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') will meet on Thursday, May 14, 2015, in Room 532 of the FTC Building for an Oral Argument In the Matter of ECM BioFilms, Inc., et al. The public is invited to attend and observe the open portion of the meeting, which is scheduled to begin at 1:00 p.m. The remainder of the meeting will be closed to the public.

DATES: Oral argument is scheduled for May 14, 2015 at 1:00 p.m.

ADDRESSES: Federal Trade Commission Building, 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Donald S. Clark, Secretary, Office of the

Secretary, 600 Pennsylvania Avenue NW., Washington, DC 20580, 202–326–2515.

SUPPLEMENTARY INFORMATION:

Open Meeting

(1) Oral Argument In the Matter of ECM BioFilms, Inc., et al., Docket No. 9358.

Closed Meeting

(2) Executive Session to follow Oral Argument in ECM BioFilms, Inc., et al., Docket No. 9358.

Record of Commission's Vote

On April 15, 2015, Commissioners Ramirez, Brill, Ohlhausen, Wright, and McSweeny were recorded as voting in the affirmative to close Matter number (2), and to withhold from this meeting notice such information as is exempt from disclosure under 5 U.S.C. 552b(c)(10).

Commission's Explanation of Closing

The Commission has determined that Matter number (2) may be closed under 5 U.S.C. 552b(c)(10), and that the public interest does not require the matter to be open.

General Counsel Certification

The General Counsel has certified that Matter number (2) may properly be closed, citing the following relevant provision: 5 U.S.C. 552b(c)(10).

Expected Attendees

Expected to attend the closed meeting are the Commissioners themselves, an advisor to one of the Commissioners, and such other Commission staff as may be appropriate.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–09392 Filed 4–21–15; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement; Notice of Consultation

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of Tribal Consultation.

SUMMARY: The Department of Health and Human Services, Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE) will host a Tribal Consultation to consult on the implementation of Section 302 of Public Law 113–183, the Preventing Sex Trafficking and Strengthening Families Act of 2014 (Act).

DATES: May 20, 2015

ADDRESSES: 901 D Street SW., Room 4 E 8, the Aerospace Building, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Paige Hausburg, Tribal Coordinator, OCSE, at (202) 401–5635, by email at *Paige.Hausburg@acf.hhs.gov,* or by mail at 370 L'Enfant Promenade SW., 4th Floor East, Washington, DC 20447.

SUPPLEMENTARY INFORMATION: On September 29, 2014, the President signed Public Law 113–183, the Preventing Sex Trafficking and Strengthening Families Act of 2014 (Act). Section 302 of the Act, which authorizes direct access to the Federal Parent Locator Service (FPLS), is below.

Section 302. Child Support Enforcement Programs for Indian Tribes

a. Tribal Access to the FPLS. The law amends section 453(c)(1) of the Act to add an agent or attorney of an ''Indian tribe or tribal organization [as defined in subsections (e) and (l) of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)]'' as an additional authorized person that the FPLS may provide information for the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations.

b. Waiver Authority for Indian Tribes or Tribal Organizations Operating Child Support Enforcement Programs. The law amends section 1115(b) of the Act to provide that an Indian tribe or tribal organization operating a IV–D program shall be considered a state for purposes of authority to conduct an experimental, pilot, or demonstration project. The Secretary may waive compliance with any requirements or regulations to the extent and for the period the Secretary finds necessary for an Indian tribe or tribal organization to carry out such project. Costs of the project that would not otherwise be included as expenditures of a program shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under a tribal plan or plans approved under such section or for the administration of such tribal plan or plans as may be appropriate. A start-up program is not eligible for this program.

On October 16, 2014, OCSE hosted a Tribal IV–D Directors call to discuss Section 302. During that call, OCSE described FPLS access to the National Directory of New Hires (NDNH), Federal Case Registry (FCR), External locates, Multistate Financial Institution Data Match (MSFIDM) and Insurance Match (IM).

On January 14, 2015, OCSE sent an email message to the Tribal IV–D Director's listserv to inform directors that OCSE was conducting an analysis of tribal access to key FPLS functions including the NDNH, FCR, External locates, Department of Defense (DOD) Entitlements, and Employer Search, using the federal Child Support portal. OCSE can provide access to these functions via the internet without tribal cases being registered on the FCR or debtors being submitted for MSFIDM and IM.

During consultation OCSE wants to discuss and gather information about the implications and responsibilities of FPLS access.

Discussion Topics

- What FPLS access means
- Requirements and design
- Discussion about the legislative requirements for fees
  - Required by statute to charge a fee for FPLS data
  - Standard fee methodology that is designed to distribute costs to all users
  - Start-up fee to cover additional administrative and development costs
  - How fees will be paid
- Security agreements
  - Security posture, security controls, and how the FPLS data is protected
  - Required physical security
  - Required security agreements
- Training for access
  - OCSE training
  - Best method/frequency for training
- Phased access of FPLS
  - Locates, FCR Query, DOD Entitlements, and Employer Search
  - Tribal cases on the FCR
  - MSFIDM and IM—to take advantage of these remedies cases must be on the debtor file
- Conversations with Tribal IV–D Directors
  - Number and Frequency of meetings
- Project Plan
  - Requirements/analysis/design by August 2015
  - Development and testing by January 2016
  - Implementation and Training January–February 2016

Testimonies should be submitted no later than May 15, 2015, to: Vicki Turetsky, Commissioner, Office of Child Support Enforcement, 370 L'Enfant Promenade SW., Washington, DC 20447.

Testimonies may also be submitted to this email address: *Paige.Hausburg@acf.hhs.gov.* Registration to attend the consultation can be done using this link: *http://events.constantcontact.com/register/event?llr=vt7m85dab&oeidk=a07eau2syfc09b2fe8f.*

Please register by May 18, 2015, so that OCSE can include everyone registered in the building access system to assure their entry. OCSE is located in a federal building and the security protocol requires government identification.

OCSE understands that resources are limited and travel may not be possible for some tribal leaders. In order to engage as many tribal leaders as possible, individuals who are unable to travel to Washington, DC, can connect to the meeting via a conference call. The call-in number is 1–866–642–2926, participant passcode is 1436048. The URL for the webinar is: *http://hhs.adobeconnect.com/drotribal/.* To join by phone, please register using the link above.

Dated: April 16, 2015.

Donna Bonar,

Deputy Commissioner, Office of Child Support Enforcement.

[FR Doc. 2015–09351 Filed 4–21–15; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0432]

Clinical Trial Endpoints for the Approval of Non-Small Cell Lung Cancer Drugs and Biologics; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''Clinical Trial Endpoints for the Approval of Non-Small Cell Lung Cancer Drugs and Biologics.'' This guidance provides recommendations to applicants on endpoints for cancer clinical trials submitted to FDA to support effectiveness claims in new drug applications, biologics license applications, or supplemental applications for the treatment of non-small cell lung cancer. This guidance focuses on endpoints specifically for lung cancer trials to support drug approval or labeling claims. This guidance should speed the development and improve the quality of protocols submitted to FDA to support anticancer effectiveness claims. This guidance finalizes the draft guidance issued on June 17, 2011.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Rajeshwari Sridhara, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 3512, Silver Spring, MD 20993–0002, 301–796–1759; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Clinical Trial Endpoints for the Approval of Non-Small Cell Lung Cancer Drugs and Biologics.'' FDA is developing guidance on oncology endpoints through a process that includes public workshops of oncology experts and discussions before FDA's Oncologic Drugs Advisory Committee. This guidance provides background information and general principles. The endpoints discussed in this guidance are for drugs to treat patients with existing non-small cell lung cancer. This guidance does not address endpoints for drugs to prevent or decrease the incidence of cancer.

This guidance finalizes the draft guidance for industry entitled ''Clinical Trial Endpoints for the Approval of Non-Small Cell Lung Cancer Drugs and Biologics'' issued June 17, 2011 (76 FR 35450). Comments received from industry, professional societies, and consumer groups on the draft guidance have been taken into consideration by FDA in finalizing this guidance and some of the changes are summarized here. Sections II.A. and III. have been clarified based on the comments received and FDA's current thinking and practice regarding the magnitude of treatment effect based on progression-free survival. Appendices C and D have also been clarified based on the comments received and FDA's view on primary and sensitivity analyses of progression-free survival. The language in the guidance has been simplified to be concise.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on clinical trial endpoints for the approval of non-small cell lung cancer drugs and biologics. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312, 314, and 601 have been approved under OMB control numbers 0910–0014, 0910–0001, and 0910–0338, respectively.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see ADDRESSES). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/*

GuidanceCompliance RegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm, or *http://www.regulations.gov.*

Dated: April 16, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–09303 Filed 4–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–M–1452, FDA–2014–M–1596, FDA–2014–M–1597, FDA–2014–M–1599, FDA–2014–M–1735, FDA–2014–M–1736, FDA–2014–M–2042, FDA–2014–M–2246, FDA–2014–M–2248, and FDA–2014–M–2376]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the Agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1650, Silver Spring, MD 20993–0002, 301–796–6570.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with sections 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from October 1, 2014, through December 31, 2014. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM OCTOBER 1, 2014, THROUGH DECEMBER 31, 2014

PMA No., Docket No.	Applicant	Trade name	Approval date
P040037/S060, FDA–2014–M–1452	W.L. Gore & Associates, Inc.	GORE VIABAHN Endoprosthesis, GORE VIABAHN Endoprosthesis with Heparin.	September 19, 2014.
P070015/S122, FDA–2014–M–1596	Abbott Vascular, Inc	XIENCE V® and XIENCE nano® Everolimus Eluting Coronary Stent System.	October 3, 2014.
P110019/S066, FDA–2014–M–1596	Abbott Vascular, Inc	XIENCE PRIME® and XIENCE PRIME LL Everlimus Eluting Coronary Stent System.	October 3, 2014.
P130024, FDA–2014–M–1597	Lutonix, Inc	Lutonix 035 Drug Coated Balloon PTA Catheter.	October 9, 2014.
P110023/S007, FDA–2014–M–1599	ev3, Inc	EverFlex™ Self-Expanding Peripheral Stent System.	October 10, 2014.
P120005/S018, FDA–2014–M–1735	Dexcom, Inc	Dexcom G4™ PLATINUM Continuous Glucose Monitoring System.	October 21, 2014.
P130026, FDA–2014–M–1736	St. Jude Medical	TactiCath Quartz® Catheter and TactiSysQuartz® Equipment.	October 24, 2014.
P120011, FDA–2014–M–2042	Ideal Implant, Inc	IDEAL IMPLANT® Saline-filled Breast Implant	November 14, 2014.
P130007, FDA–2014–M–2246	Animas Corp	Animas Vibe System	November 25, 2014.
P140020, FDA–2014–M–2248	Myriad Genetic Laboratories, Inc.	BRACAnalysis CDx™	December 19, 2014.
P020012/S009, FDA–2014–M–2376	Suneva Medical, Inc	Bellafill	December 23, 2014.

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApprovalsandClearances/PMAApprovals/default.htm.*

Dated: April 16, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–09298 Filed 4–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–0131]

Determination of Regulatory Review Period for Purposes of Patent Extension; COMETRIQ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for COMETRIQ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product COMETRIQ (cabozanitinib (S)-maleate). COMETRIQ is indicated for the treatment of patients with progressive, metastatic medullary thyroid cancer. Subsequent to this approval, the USPTO received a patent term restoration application for COMETRIQ (U.S. Patent No. 7,579,473) from Exelixis, Incorporated, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 27, 2014, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of COMETRIQ represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for COMETRIQ is 2,698 days. Of this time, 2,513 days occurred during the testing phase of the regulatory review period, while 185 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* July 13, 2005. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 13, 2005.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* May 29, 2012. FDA has verified the applicant's claim that the new drug application (NDA) for COMETRIQ (NDA 203756) was submitted on May 29, 2012.

3. *The date the application was approved:* November 29, 2012. FDA has verified the applicant's claim that NDA 203756 was approved on November 29, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 688 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 22, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 19, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 16, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–09302 Filed 4–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–P–1896]

Determination That OXYTOCIN in 5% Dextrose Injection Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that OXYTOCIN 5 United States Pharmacopeia (USP) Units in Dextrose 5% (oxytocin), injectable, injection, 5 USP Units in 500 milliliters (mL), (1 USP Unit/100 mL); OXYTOCIN 10 USP Units in Dextrose 5% (oxytocin), injectable, injection, 10 USP Units in 500 mL, (2 USP Units/100 mL); OXYTOCIN 10 USP Units in Dextrose 5% (oxytocin), injectable, injection, 10 USP Units in 1000 mL, (1 USP Unit/100 mL); and OXYTOCIN 20 USP Units in Dextrose 5% (oxytocin), injectable, injection, 20 USP Units in 1000 mL, (2 USP Units/100 mL), (hereinafter ''these oxytocin drug products'') were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve an abbreviated new drug application (ANDA) for these oxytocin drug products, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Robin Fastenau, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 240–402–4510.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

These oxytocin drug products are the subject of NDA 019–185, held by Abbott Laboratories, and initially approved on March 29, 1985. These oxytocin drug products are indicated for the initiation or improvement of uterine contractions. In a December 26, 1995, letter, Abbott Laboratories notified FDA that these oxytocin drug products were being discontinued and requested withdrawal of NDA 019–185. In the **Federal Register** of March 27, 1996 (61 FR 13506), FDA announced that it was withdrawing approval of NDA 019–185, effective April 26, 1996. FDA has moved these oxytocin drug products to the ''Discontinued Drug Product List'' section of the Orange Book.

TechReg Services, Inc. (TechReg), submitted a citizen petition dated November 12, 2014 (Docket No. FDA–2014–P–1896), under 21 CFR 10.30, requesting that the Agency determine whether Oxytocin in Dextrose 5%, injection, available as strengths 5, 10, and 20 units under Abbott NDA 019–185, were withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not specify the concentrations of the three strengths associated with NDA 019–185, we have considered whether any of these oxytocin drug products approved under NDA 019–185 were withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records, and based on the information we have at this time, FDA has determined under § 314.161 that these oxytocin drug products were not withdrawn for reasons of safety or effectiveness. TechReg has identified no data or other information suggesting that these oxytocin drug products were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of these oxytocin drug products from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that these oxytocin drug products were withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list these oxytocin drug products in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to these oxytocin drug products may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. FDA has determined that labeling for these oxytocin drug products should be revised to meet current standards and will advise ANDA applicants how to submit such labeling.

Dated: April 16, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–09299 Filed 4–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–1163]

Providing Regulatory Submissions in Electronic and Non-Electronic Format—Promotional Labeling and Advertising Materials for Human Prescription Drugs, Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic and Non-Electronic Format—Promotional Labeling and Advertising Materials for Human Prescription Drugs.'' This draft guidance explains how manufacturers, packers, and distributors (firms) that may either be the applicant or acting on

behalf of the applicant, should make submissions pertaining to promotional materials for human prescription drugs and biologic products (''drugs'') to the Office of Prescription Drug Promotion (OPDP) in the Center for Drug Evaluation and Research (CDER) and the Advertising and Promotional Labeling Branch (APLB) in the Center for Biologics Evaluation and Research (CBER). This draft guidance describes the various types of submissions of promotional materials and general considerations for submissions. In addition, this draft guidance discusses the specific aspects of submission of promotional materials using module 1 of the electronic Common Technical Document (eCTD) using version 3.3 or higher of the *us-regional-backbone* file. This guidance does not address the more general requirements for a valid electronic submission using eCTD or the specifications for module 1 of the eCTD. This guidance contains both binding and nonbinding provisions.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by July 21, 2015. Submit either electronic or written comments on the proposed collection of information by June 22, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communications, Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg., 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Regarding human prescription drugs: Marci Kiester, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3368, Silver Spring, MD 20993–0002, 301–796–1200.

Regarding prescription human biological products: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic and Non-Electronic Format—Promotional Labeling and Advertising Materials for Human Prescription Drugs.'' This draft guidance is intended to be used in conjunction with the draft guidance for industry ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications'' [1] (eCTD Revised Draft Guidance) and in conjunction with the specification to industry ''The eCTD Backbone Files Specification for Module 1 Version 2.3.'' [2]

This draft guidance describes various types of regulatory submissions of promotional materials that firms submit to CDER and CBER and general considerations for such submissions. For example, the draft guidance describes the various types of voluntary submissions (*e.g.,* launch and non-launch voluntary submissions of draft promotional materials for advisory comments) and required submissions of promotional labeling and advertising materials (*e.g.,* fulfillment of the regulatory requirements for postmarketing submissions of promotional materials and submission of promotional materials for accelerated approval products). In addition, this draft guidance discusses specific aspects of the content and format for submitting promotional materials in paper hard copy and electronic format, including how to submit promotional materials electronically in module 1 of the eCTD using version 3.3 or higher of the *us-regional-backbone* file. This draft guidance provides recommendations for what to include with each type of submission and the number of copies to include if it is a paper submission. This draft guidance provides recommendations for presentation considerations such as appearance, layout, format, and visible impression of promotional materials submitted for all promotional submission types.

This draft guidance also provides instructions on how to submit promotional labeling and advertising materials to FDA electronically in eCTD format. It explains that for submissions of promotional materials that fall within the ambit of section 745A(a) of the FD&C Act, as amended by section 1136 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), such submissions must be made in the electronic format specified by FDA in this guidance and the eCTD Revised Draft Guidance, beginning no earlier than 24 months after this guidance is finalized. Specifically, (1) postmarketing submissions of promotional materials using Form FDA 2253 (required by 21 CFR 314.81(b)(3)(i) and 21 CFR 601.12(f)(4), and (2) submissions of promotional materials for accelerated approval products (required by FD&C Act section 506(c)(2)(B) (21 U.S.C. 356(c)(2)(B)), and §§ 314.550 and 601.45) and other products where such submissions are required for approval, fall within the scope of section 745A(a) and are, therefore, subject to the mandatory electronic submission requirement. When the mandatory electronic submission requirement takes effect for these types of submissions, they will only be accepted by CDER in eCTD format using version 3.3 or higher of the *us-regional-backbone* file. CBER will be able to accept eCTD submissions using previous versions of the *us-regional-backbone* file until 24 months after publication of the final version of this guidance. The draft guidance also provides that, while only promotional submissions that fall under section 745A(a) will be required to be submitted electronically no sooner than 24 months after this guidance is finalized, firms may choose—and are strongly encouraged—to submit electronically the other types of promotional submissions discussed in this guidance.

This draft guidance is being issued under section 745A(a) of the FD&C Act, which explicitly authorizes FDA to implement the statutory electronic submission requirement for certain types of submissions by specifying the format for such submissions in guidance. Accordingly, to the extent that the draft guidance provides such requirements under section 745A(a), it

[1] The draft guidance for industry is available on the FDA eCTD Web page at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM333969.pdf.*

[2] The specification for industry is available on the FDA eCTD Module 1 Web page at *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/ucm253101.htm.*

is not subject to the usual restrictions in FDA's good guidance practices regulation (21 CFR 10.115). However, to the extent that the draft guidance includes provisions regarding submission of promotional materials that do not pertain to the electronic format requirements for submissions under section 745A(a), it will represent the Agency's current thinking on the submission of promotional materials and will not create or confer any rights for or on any person or bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: *Providing Regulatory Submissions in Electronic and Non-Electronic Format—Promotional Labeling and Advertising Materials for Human Prescription Drugs.*

Description of Respondents: Respondents to this collection of information are firms who make regulatory submissions pertaining to promotional materials for human prescription drug and biologic products to OPDP and APLB.

Burden Estimate: The draft guidance pertains to regulatory submissions of promotional materials. The draft guidance describes the types of submissions of promotional materials, general considerations for submissions, and certain considerations for how to submit promotional materials electronically and in hard copy.

The draft guidance includes recommendations for when sponsors make submissions to OPDP or APLB. These recommendations include the types of documents that generally should be included (*e.g.,* correspondence describing the type of submission) for promotional labeling submitted for advisory comments, resubmissions, general correspondence, amendments, withdrawal requests, responses to untitled letters or warning letters, responses to information requests, reference documents, and complaints.

For promotional labeling submitted for advisory comments, including resubmissions, a submission generally includes correspondence stating that it is a request for advisory comments, a clean version of the draft promotional materials, an annotated copy of the promotional materials, and the most current FDA-approved prescribing information (PI); if applicable, a submission also includes the FDA-approved patient labeling or Medication Guide with annotations cross-referenced to the proposed promotional materials and annotated references to support product and disease or epidemiology claims not contained in the PI cross-referenced to the promotional material. Amendments should be submitted if the previous submission to FDA is missing one or more promotional materials. Amendments should include correspondence stating it is an amendment and include the accompanying materials that were previously missing, an annotated copy of the promotional materials that were omitted from a previous submission to FDA, the FDA-approved patient labeling or Medication Guide with annotations cross-referenced to the proposed promotional materials, and annotated references to support product and disease or epidemiology claims not contained in the PI cross-referenced to the promotional material.

General correspondence submissions and submissions requesting to withdraw a previous submission to FDA include correspondence stating the purpose of the submission.

Responses to untitled or warning letter submissions include correspondence stating that it is a response to an untitled or warning letter, and include the firm's initial or subsequent responses and the corrective piece(s), if applicable.

Responses to information request submissions include the firm's response to the questions and issues raised in FDA's letter of inquiry, including any materials that FDA has requested.

Reference document submissions include correspondence stating that it is a reference document submission and the specific information regarding what is in the submission along with the annotated references, annotated promotional materials, and/or annotated labeling.

Promotional labeling submitted for advisory comments, including resubmissions and amendments; general correspondence; requests to withdraw a previous submission; responses to untitled or warning letters; responses to information requests; and reference documents can be submitted in paper or electronic form, and the burden estimates for these submissions in table 1 apply to both paper and electronic form.

Complaints include correspondence stating that it is a complaint and supporting information or documentation, if available. Complaints are not accepted in electronic form and should be submitted as paper hard copies. The burden estimate for complaints in table 1 thus applies to paper hard copies only.

The draft guidance also describes the number of paper hard copies that should be sent to OPDP and APLB for each submission type (if applicable).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Type of submission	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
Promotional labeling submitted for advisory comments, including resubmissions and amendments	199	2.5	499	50	24,950
General correspondence submitted to FDA	200	2.5	500	2	1,000
Requests to withdraw a previous submission to FDA	6	1	6	2	12
Responses to untitled or warning letters	26	2	52	12	624
Responses to information requests	4	1.5	6	12	72
Reference documents	7	1	7	12	84
Complaints submitted to OPDP	60	1	60	12	720
Total					27,462

This draft guidance also refers to previously approved collections of information found in FDA regulations and collections of information that are currently under OMB review. The collections of information in 21 CFR 202.1, including requests for advisory comments, resubmissions, and amendments for advertisements, have been approved under OMB control number 0910–0686; the collections of information in 21 CFR 601.45 (presubmission of promotional materials for accelerated approval products under part 601) have been approved under OMB control number 0910–0338; the collections of information for FDA Form 2253 and the presubmission of promotional materials for accelerated approval products under part 314 have been approved under OMB control number 0910–0001. FDA has also published in the **Federal Register** a 60-day notice soliciting public comments on the collections of information that result from the submission of television advertisements under section 503C of the FD&C Act (21 U.S.C. 353c) (77 FR 14811, March 13, 2012). These burden estimates do not change as a result of this guidance. This is because new burdens for establishing the means for submitting materials in electronic form to comply with this guidance would be negated by the savings in burden from not having to print out the materials and mail them to FDA.

Some firms may incur costs associated with upgrading technology or changing the method of submitting information to FDA, and these have been described in the **Federal Register** notice for the revised draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the Electronic Common Technical Document Specifications'' (79 FR 43494, July 25, 2014).

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *http://www.regulations.gov.*

Dated: April 16, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–09297 Filed 4–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0093]

Interim Assessment of the Program for Enhanced Review Transparency and Communication; Public Meeting and Establishment of Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting and establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a docket to obtain comments on the interim assessment of the Program for Enhanced Review Transparency and Communication for New Molecular Entity (NME) New Drug Applications (NDAs) and Original Biologics License Applications (BLAs) (the Program). FDA is also announcing a public meeting where the interim assessment will be discussed and public stakeholders may present their views on the Program to date.

The Program is part of the FDA performance commitments under the fifth authorization of the Prescription Drug User Fee Act (PDUFA), which enables FDA to collect user fees for the review of human drug and biologics applications for fiscal years (FYs) 2013–2017. The Program is described in detail in section II.B entitled ''PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2013 through 2017.'' The Program is being evaluated by an independent contractor with expertise in assessing the quality and efficiency of pharmaceutical and biopharmaceutical development and regulatory review programs. As part of FDA's performance commitments, FDA is providing a period for public comment on the interim assessment of the Program.

DATES: See Section III, ''How to Participate in the Public Meeting'' in the **SUPPLEMENTARY INFORMATION** section of this document for dates and times of the public meeting, closing dates for advance registration, requesting special accommodations due to disability, and information on deadlines for submitting either electronic or written comments to FDA's Division of Dockets Management.

ADDRESSES: See Section III, ''How to Participate in the Public Meeting'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993, 301–796–5003, FAX: 301–847–8443, *Graham.Thompson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The timely review of the safety and efficacy of new drugs and biologics is central to FDA's mission to protect and promote the public health. Since the implementation of PDUFA I in 1993, FDA has used PDUFA resources to significantly reduce the time it takes to evaluate new drugs without compromising FDA's rigorous standards for drug safety and efficacy. In return for these additional resources, FDA agreed to certain review performance goals, such as completing reviews of NDAs and BLAs and taking regulatory actions on them within predictable timeframes. These changes revolutionized the review process and enabled FDA to improve the efficiency of the application review process for new drugs and biologics without compromising the Agency's high standards for demonstration of safety, efficacy, and quality of new drugs and biologics prior to approval.

PDUFA provides FDA with a source of stable, consistent funding that has made possible our efforts to focus on promoting innovative therapies and helping to bring to market critical products for patients. The PDUFA program has been reauthorized every 5 years, with the most recent reauthorization occurring in 2012 for FYs 2013–2017 (PDUFA V).[1]

PDUFA V introduced a new review program for NME NDAs and original BLAs to enhance review transparency and communication between FDA and applicants on these complex applications. FDA committed to engaging an independent contractor to evaluate the Program. The PDUFA V performance commitments call for an interim assessment of the Program to be published by March 31, 2015, for public comment. The interim assessment can be accessed at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM436448.pdf.*

II. PDUFA V NME NDA and Original BLA Review Program

FDA's review performance goals for priority and standard applications, 6 and 10 months respectively, have been in place since the late 1990s. Since that time, additional requirements in the review process and scientific advances in product development have made those goals increasingly challenging to meet, particularly for more complex applications like NME NDAs and original BLAs. FDA further recognizes that increasing communication between the Agency and applicants during FDA's review has the potential to increase efficiency in the review process.

To promote greater transparency and improve communication between the FDA review team and the applicant, FDA implemented a new review model for NME NDAs and original BLAs in PDUFA V. The Program provides opportunities for increased communication between FDA and applicants, including mid-cycle and late-cycle meetings. To accommodate the increased interaction during regulatory review and to address the need for additional time to review these complex applications, FDA's review clock begins after the 60-day administrative filing review period for applications reviewed under the Program.

The goal of the Program is to improve the efficiency and effectiveness of the first-cycle review process by increasing communications during application review. This will provide sponsors with the opportunity to clarify previous submissions and provide additional data and analyses that are readily available, potentially avoiding the need for an additional review cycle when concerns can be promptly resolved but without compromising FDA' standards for approval.

To understand the Program's effect on the review of these applications, the Program is being evaluated by an independent contractor. In addition to publishing an interim assessment and opening a docket for public comments, a public meeting will be held on May 20, 2015, where the interim assessment will be discussed and public stakeholders may present their views on the Program to date. The final assessment of the Program will be published for public comment by December 31, 2016, and will be followed by a public meeting by March 30, 2017.

III. How To Participate in the Public Meeting

FDA is holding the public meeting on May 20, 2015, from 10 a.m. to 1 p.m. Due to limited space and time, we encourage all persons who wish to attend the meeting to register in advance. There is no fee to register for the public meeting, and registration will be on a first-come, first-served basis.

Table 1 of this document provides information on participation in the public meeting.

TABLE 1—INFORMATION ON PARTICIPATING IN THE MEETING AND ON SUBMITTING COMMENTS TO THE DOCKET [1]

	Dates	Electronic addresses	Addresses	Other information
Attend public meeting.	May 20, 2015, from 10 a.m. to 1 p.m.	Please preregister at *https://www.nmepdufa.eventbrite.com.*	FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, Section A of the Great Room (Rm. 1503) Silver Spring, MD 20993.	Participants must enter through Building 1 and undergo security screening. For more information on parking and security procedures, please visit *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*
Preregister	Register by May 13, 2015.	Individuals who wish to participate in person are asked to preregister at *https://www.nmepdufa.eventbrite.com.*	We encourage the use of electronic registration, if possible.[1]	There is no registration fee for the public meeting.

[1] This document is available on the Internet at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM270412.pdf.*

TABLE 1—INFORMATION ON PARTICIPATING IN THE MEETING AND ON SUBMITTING COMMENTS TO THE DOCKET [1]—Continued

	Dates	Electronic addresses	Addresses	Other information
View Web cast	May 20, 2015, from 10 a.m. to 1 p.m.	Individuals who are unable to attend the meeting in person, can register to view a live Web cast. You will be asked to indicate in your registration whether you plan to attend in person or via the Web cast.	.....	The Web cast will have closed captioning.
Request special accommodations due to disability.	Request at least 7 days before the meeting.	Graham Thompson, email: *Graham.Thompson@fda.hhs.gov*.	See **FOR FURTHER INFORMATION CONTACT**.	
Submit electronic or written comments.	Submit comments by June 30, 2015.	Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.	Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.	Identify your comments with the docket number listed in brackets in the heading of this document. We encourage you to submit electronic comments by using the Federal eRulemaking Portal.

[1] You may also register via email, mail, or fax. Please include your name, title, firm name, address, and phone and fax numbers in your registration information and send to: Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993, 301–796–5003, FAX: 301–847–8443, *Graham.Thompson@fda.hhs.gov.*

IV. Comments and Transcripts

Regardless of attendance at the public meeting, interested persons may submit to FDA's Division of Dockets Management (see Addresses in table 1) either electronic or written comments on the interim assessment of the Program for Enhanced Review Transparency and Communication for NME NDAs and Original BLAs. You only need to send one set of comments. Identify the comments with the docket number provided in brackets in the heading of this document.

With respect to transcripts, please be advised that as soon as a transcript is available, it will be accessible at *www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm327030.htm.*

Dated: April 16, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–09300 Filed 4–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Ebola Virus Disease Therapeutics

ACTION: Notice of Declaration Under the Public Readiness and Emergency Preparedness Act.

SUMMARY: The Secretary is issuing a Declaration pursuant to section 319F–3 of the Public Health Service Act (42 U.S.C. 247d–6d) to provide liability protection for activities related to Ebola Virus Disease Therapeutics consistent with the terms of the Declaration.

DATES: The Declaration is effective as of February 27, 2015.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, MD, MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Public Readiness and Emergency Preparedness Act (''PREP Act'') authorizes the Secretary of Health and Human Services (''the Secretary'') to issue a Declaration to provide liability immunity to certain individuals and entities (''Covered Persons'') against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (''Covered Countermeasures''), except for claims that meet the PREP Act's definition of willful misconduct. Using this authority, the Secretary is issuing a Declaration to provide liability immunity to Covered Persons for activities related to the Covered Countermeasures, Ebola Virus Disease Therapeutics as listed in Section VI of the Declaration, consistent with the terms of this Declaration.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (''PHS'') Act, adding section 319F–3, which addresses liability immunity, and section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively.

The Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, was enacted on March 13, 2013. Among other things, PAHPRA added sections 564A and 564B to the Federal Food, Drug, and Cosmetic (FD&C) Act to provide new emergency authorities for dispensing approved products in emergencies and products held for emergency use.

PAHPRA accordingly amended the definitions of ''Covered Countermeasures'' and ''qualified pandemic and epidemic products'' in section 319F–3 of the Public Health Service Act (the PREP Act provisions), so that products made available under these new FD&C Act authorities could be covered under PREP Act Declarations. PAHPRA also extended the definition of qualified pandemic and epidemic products that may be covered under a PREP Act Declaration to include products or technologies intended to enhance the use or effect of a drug, biological product, or device used against the pandemic or epidemic or against adverse events from these products.

The Ebola virus causes an acute, serious illness that is often fatal. Since March 2014, West Africa has been experiencing the largest and most complex Ebola outbreak since the Ebola

virus was first discovered in 1976, affecting populations in multiple West African Countries and travelers from West Africa to the United States and other countries. The World Health Organization has declared the Ebola Virus Disease Outbreak as a Public Health Emergency of International Concern (PHEIC) under the framework of the International Health Regulations (2005).

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Section I, Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

Before issuing a Declaration under the PREP Act, the Secretary is required to determine that a disease or other health condition or threat to health constitutes a public health emergency or that there is a credible risk that the disease, condition, or threat may in the future constitute such an emergency. This determination is separate and apart from a Declaration issued by the Secretary under section 319 of the PHS Act that a disease or disorder presents a public health emergency or that a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists, or other declarations or determinations made under other authorities of the Secretary. Accordingly, in Section I, the Secretary determines that there is a credible risk that the spread of Ebola virus and the resulting disease may in the future constitute a public health emergency.

Section II, Factors Considered

In deciding whether and under what circumstances to issue a Declaration with respect to a Covered Countermeasure, the Secretary must consider the desirability of encouraging the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the countermeasure. In Section II, the Secretary states that she has considered these factors.

Section III, Recommended Activities

The Secretary must recommend the activities for which the PREP Act's liability immunity is in effect. These activities may include, under conditions as the Secretary may specify, the manufacture, testing, development, distribution, administration, or use of one or more Covered Countermeasures (''Recommended Activities''). In Section III, the Secretary recommends activities for which the immunity is in effect under the conditions stated in the Declaration, including the condition that the activities relate to clinical trials permitted to proceed after review by the Food and Drug Administration (FDA) that administer or use the Covered Countermeasure under an investigational new drug application (IND) and that are directly supported by the United States. The Secretary specifies that the term ''directly supported'' in this Declaration means that the United States has provided some form of tangible support such as supplies, funds, products, technical assistance, or staffing. This condition is intended to afford liability immunity only to activities related to clinical trials using the Covered Countermeasure currently being conducted in the United States and West Africa that are directly supported by the United States.

Section IV, Liability Immunity

The Secretary must also state that liability protections available under the PREP Act are in effect with respect to the Recommended Activities. These liability protections provide that, ''[s]ubject to other provisions of [the PREP Act], a covered person shall be immune from suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a covered countermeasure if a declaration . . . has been issued with respect to such countermeasure.'' In Section IV, the Secretary states that liability protections are in effect with respect to the Recommended Activities.

Section V, Covered Persons

The PREP Act's liability immunity applies to ''Covered Persons'' with respect to administration or use of a Covered Countermeasure. The term ''Covered Persons'' has a specific meaning and is defined in the PREP Act to include manufacturers, distributors, program planners, and qualified persons, and their officials, agents, and employees, and the United States. The PREP Act further defines the terms ''manufacturer,'' ''distributor,'' ''program planner,'' and ''qualified person'' as described below.

A manufacturer includes a contractor or subcontractor of a manufacturer; a supplier or licenser of any product, intellectual property, service, research tool or component or other article used in the design, development, clinical testing, investigation or manufacturing of a Covered Countermeasure; and any or all of the parents, subsidiaries, affiliates, successors, and assigns of a manufacturer.

A distributor means a person or entity engaged in the distribution of drug, biologics, or devices, including but not limited to: Manufacturers; repackers; common carriers; contract carriers; air carriers; own-label distributors; private-label distributors; jobbers; brokers; warehouses and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies.

A program planner means a State or local government, including an Indian Tribe; a person employed by the State or local government; or other person who supervises or administers a program with respect to the administration, dispensing, distribution, provision, or use of a Covered Countermeasure, including a person who establishes requirements, provides policy guidance, or supplies technical or scientific advice or assistance or provides a facility to administer or use a Covered Countermeasure in accordance with the Secretary's Declaration. Under this definition, a private sector employer or community group or other ''person'' can be a program planner when it carries out the described activities.

A qualified person means a licensed health professional or other individual who is authorized to prescribe, administer, or dispense Covered Countermeasures under the law of the State in which the countermeasure was prescribed, administered, or dispensed; or a person within a category of persons identified as qualified in the Secretary's Declaration. Under this definition, the Secretary can describe in the Declaration other qualified persons, such as volunteers, who are Covered Persons. Section V describes other qualified persons covered by this Declaration.

The PREP Act also defines the word ''person'' as used in the Act: A person includes an individual, partnership, corporation, association, entity, or public or private corporation, including a Federal, State, or local government agency or department. Section V describes Covered Persons under the Declaration, including Qualified Persons.

Section VI, Covered Countermeasures

As noted above, section III describes the Secretary's Recommended Activities for which liability immunity is in effect. Section VI identifies the countermeasures for which the Secretary has recommended such activities. The PREP Act states that a ''Covered Countermeasure'' must be: A ''qualified pandemic or epidemic

product,'' or a ''security countermeasure,'' as described immediately below; or a drug, biological product or device authorized for emergency use in accordance with sections 564, 564A, or 564B of the FD&C Act.

A qualified pandemic or epidemic product means a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act that is: (i) Manufactured, used, designed, developed, modified, licensed or procured to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic or limit the harm such a pandemic or epidemic might otherwise cause; (ii) manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a serious or life-threatening disease or condition caused by such a drug, biological product, or device; (iii) or a product or technology intended to enhance the use or effect of such a drug, biological product, or device.

A security countermeasure is a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act that: (i)(a) The Secretary determines to be a priority to diagnose, mitigate, prevent, or treat harm from any biological, chemical, radiological, or nuclear agent identified as a material threat by the Secretary of Homeland Security, or (b) to diagnose, mitigate, prevent, or treat harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent; and (ii) is determined by the Secretary of Health and Human Services to be a necessary countermeasure to protect public health.

To be a Covered Countermeasure, qualified pandemic or epidemic products or security countermeasures also must be approved or cleared under the FD&C Act; licensed under the PHS Act; or authorized for emergency use under sections 564, 564A, or 564B of the FD&C Act.

A qualified pandemic or epidemic product also may be a Covered Countermeasure when it is exempted under the FD&C Act for use as an investigational drug or device that is the object of research for possible use for diagnosis, mitigation, prevention, treatment, or cure, or to limit harm of a pandemic or epidemic or serious or life-threatening condition caused by such a drug or device. A security countermeasure also may be a Covered Countermeasure if it may reasonably be determined to qualify for approval or licensing within ten years after the Department's determination that procurement of the countermeasure is appropriate.

Section VI lists the Ebola Virus Disease Therapeutics that are Covered Countermeasures. Section VI also refers to the statutory definitions of Covered Countermeasures to make clear that these statutory definitions limit the scope of Covered Countermeasures. Specifically, the Declaration notes that Covered Countermeasures must be ''qualified pandemic or epidemic products, or security countermeasures, or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.''

Section VII, Limitations on Distribution

The Secretary may specify that liability immunity is in effect only to Covered Countermeasures obtained through a particular means of distribution. The Declaration states that liability immunity is afforded to Covered Persons for Recommended Activities related to clinical trials that are permitted to proceed after FDA review, that administer or use the Covered Countermeasure under an IND, and that are directly supported by the United States, as described in Section III of this Declaration, through present or future Federal contracts, cooperative agreements, grants, other transactions, interagency agreements, or memoranda of understanding or other Federal agreements or arrangements.

This limitation is intended to afford liability immunity to activities that are related to clinical trials permitted to proceed after FDA review that administer or use the Covered Countermeasure under an IND and that are directly supported by the United States. As stated in Section III of the Declaration, the term ''directly support'' means that the United States has provided some form of tangible support such as supplies, funds, products, technical assistance, or staffing. As of the date of this Declaration, those activities primarily are those with a direct connection to the conduct of clinical trials in the United States and West Africa, but this Declaration also would apply to use in qualifying clinical trials outside those areas.

For governmental program planners only, liability immunity is afforded only to the extent they obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles.

This last limitation on distribution is intended to deter program planners that are government entities from seizing privately held stockpiles of Covered Countermeasures. It does not apply to any other Covered Persons, including other program planners who are not government entities.

Section VIII, Category of Disease, Health Condition, or Threat

The Secretary must identify, for each Covered Countermeasure, the categories of diseases, health conditions, or threats to health for which the Secretary recommends the administration or use of the countermeasure. In Section VIII, the Secretary states that the disease threat for which she recommends administration or use of the Covered Countermeasures is Ebola virus disease.

Section IX, Administration of Covered Countermeasures

The PREP Act does not explicitly define the term ''administration'' but does assign the Secretary the responsibility to provide relevant conditions in the Declaration. In Section IX, the Secretary defines ''Administration of a Covered Countermeasure:''

Administration of a Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution, and dispensing of the countermeasures to recipients; management and operation of countermeasure programs; or management and operation of locations for purpose of distributing and dispensing countermeasures.

The definition of ''administration'' extends only to physical provision of a countermeasure to a recipient, such as vaccination or handing drugs to patients, and to activities related to management and operation of programs and locations for providing countermeasures to recipients, such as decisions and actions involving security and queuing, but only insofar as those activities directly relate to the countermeasure activities. Claims for which Covered Persons are provided immunity under the Act are losses caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a Covered Countermeasure consistent with the terms of a Declaration issued under the Act. Under the Secretary's definition, these liability claims are precluded if the claims allege an injury caused by

physical provision of a countermeasure to a recipient, or if the claims are directly due to conditions of delivery, distribution, dispensing, or management and operation of countermeasure programs at distribution and dispensing sites.

Thus, it is the Secretary's interpretation that, when a Declaration is in effect, the Act precludes, for example, liability claims alleging negligence by a manufacturer in creating a therapeutic, or negligence by a health care provider in prescribing the wrong dose, absent willful misconduct. Likewise, the Act precludes a liability claim relating to the management and operation of a countermeasure distribution program or site, such as a slip-and-fall injury or vehicle collision by a recipient receiving a countermeasure at a retail store serving as an administration or dispensing location that alleges, for example, lax security or chaotic crowd control. However, a liability claim alleging an injury occurring at the site that was not directly related to the countermeasure activities is not covered, such as a slip and fall with no direct connection to the countermeasure's administration or use. In each case, whether immunity is applicable will depend on the particular facts and circumstances.

Section X, Population

The Secretary must identify, for each Covered Countermeasure specified in a Declaration, the population or populations of individuals for which liability immunity is in effect with respect to administration or use of the countermeasure. This section explains which individuals should use the countermeasure or to whom the countermeasure should be administered—in short, those who should be vaccinated or take a drug or other countermeasure. Section X provides that the population includes ''any individual who uses or who is administered a Covered Countermeasure in accordance with the Declaration.''

In addition, the PREP Act specifies that liability immunity is afforded: (1) To manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; and (2) to program planners and qualified persons when the countermeasure is either used by or administered to this population or the program planner or qualified person reasonably could have believed the recipient was in this population. Section X includes these statutory conditions in the Declaration for clarity.

Section XI, Geographic Area

The Secretary must identify, for each Covered Countermeasure specified in the Declaration, the geographic area or areas for which liability immunity is in effect with respect to administration or use of the countermeasure, including, as appropriate, whether the Declaration applies only to individuals physically present in the area or, in addition, applies to individuals who have a described connection to the area. Section XI provides that liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation. This could include claims related to administration or use in West Africa. It is possible that claims may arise in regard to administration or use of the Covered Countermeasures outside the U.S. that may be resolved under U.S. law.

In addition, the PREP Act specifies that liability immunity is afforded: (1) To manufacturers and distributors without regard to whether the countermeasure is used by or administered to individuals in the geographic areas; and (2) to program planners and qualified persons when the countermeasure is either used or administered in the geographic areas or the program planner or qualified person reasonably could have believed the countermeasure was used or administered in the areas. Section XI includes these statutory conditions in the Declaration for clarity.

Section XII, Effective Time Period

The Secretary must identify, for each Covered Countermeasure, the period or periods during which liability immunity is in effect, designated by dates, milestones, or other description of events, including factors specified in the PREP Act. Section XII identifies the effective time period. The effective time period commences at the start of clinical trials permitted to proceed after FDA review that administer or use the Covered Countermeasure under an IND and that are directly supported by the United States, as described in Section III of the Declaration. Liability immunity is afforded to claims arising from such administration or use of the Covered Countermeasures after that date that have a causal relationship with any of the Recommended Activities stated in this Declaration.

Section XIII, Additional Time Period of Coverage

The Secretary must specify a date after the ending date of the effective period of the Declaration that is reasonable for manufacturers to arrange for disposition of the Covered Countermeasure, including return of the product to the manufacturer, and for other Covered Persons to take appropriate actions to limit administration or use of the Covered Countermeasure. In addition, the PREP Act specifies that for Covered Countermeasures that are subject to a Declaration at the time they are obtained for the Strategic National Stockpile under 42 U.S.C. 247d–6b(a), the effective period of the Declaration extends through the time the countermeasure is used or administered pursuant to a distribution or release from the Stockpile. Liability immunity under the provisions of the PREP Act and the conditions of the Declaration continues during these additional time periods. Thus, liability immunity is afforded during the ''Effective Time Period,'' described under XII of the Declaration, plus the ''Additional Time Period''' described under section XIII of the Declaration.

Section XIII provides for twelve (12) months as the additional time period of coverage after expiration of the Declaration. Section XIII also explains the extended coverage that applies to any products obtained for the Strategic National Stockpile during the effective period of the Declaration.

Section XIV, Countermeasures Injury Compensation Program

Section 319F–4 of the PREP Act authorizes a Countermeasures Injury Compensation Program (CICP) to provide benefits to eligible individuals who sustain a serious physical injury or die as a direct result of the administration or use of a Covered Countermeasure. Compensation under the CICP for an injury directly caused by a Covered Countermeasure is based on the requirements set forth in this Declaration, the administrative rules for the Program, and the statute. To show direct causation between a Covered Countermeasure and a serious physical injury, the statute requires ''compelling, reliable, valid, medical and scientific evidence.'' The administrative rules for the Program further explain the necessary requirements for eligibility under the CICP. Please note that, by statute, requirements for compensation under the CICP may not always align with the requirements for liability immunity provided under the PREP Act. Section XIV, ''Countermeasures Injury Compensation Program'' explains the types of injury and standard of evidence needed to be considered for compensation under the CICP.

Further, the administrative rules for the CICP specify if countermeasures are administered or used outside the United States, only otherwise eligible individuals at American embassies, military installations abroad (such as military bases, ships, and camps) or at North Atlantic Treaty Organization (NATO) installations (subject to the NATO Status of Forces Agreement) where American servicemen and servicewomen are stationed may be considered for CICP benefits. Other individuals outside the United States may not be eligible for CICP benefits.

Section XV, Amendments

The Secretary may amend any portion of a Declaration through publication in the **Federal Register**.

Declaration, Public Readiness and Emergency Preparedness Act Coverage for Ebola Virus Disease Therapeutics

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that the spread of Ebola virus and the resulting disease or conditions may in the future constitute a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend the manufacture, testing, development, distribution, administration, and use of the Covered Countermeasures under the conditions stated in this Declaration, including the condition that the activities relate to clinical trials permitted to proceed after review by the Food and Drug Administration (FDA) that administer or use the Covered Countermeasure under an investigational new drug application (IND) and that are directly supported by the United States. The term ''directly supported'' in this Declaration means that the United States has provided some form of tangible support such as supplies, funds, products, technical assistance, or staffing.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the PREP Act and conditions stated in this Declaration is in effect for the Recommended Activities described in section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2),(3),(4),(6),(8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are ''manufacturers,'' ''distributors,'' ''program planners,'' ''qualified persons,'' and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States. In addition, I have determined that the following additional persons are qualified persons: Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity to carry out clinical trials permitted to proceed after FDA review that administer or use the Covered Countermeasure under an IND and that are directly supported by the United States, as described in Section III of this Declaration.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are the following Ebola Virus Disease Therapeutics: ZMapp monoclonal antibody therapeutic.

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to clinical trials permitted to proceed after FDA review that administer or use the Covered Countermeasure under an IND and that are directly supported by the United States, as described in Section III of this Declaration, through present or future Federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other Federal agreements or arrangements.

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is Ebola virus disease.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population, or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered

Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in any designated geographic area; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in any designated geographic area, or the program planner or qualified person reasonably could have believed the recipient was in that geographic area.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures begins on the effective date and extends for twelve (12) months from that date.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional twelve (12) months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the Strategic National Stockpile (''SNS'') during the effective period of this Declaration are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C 247d–6e

The PREP Act authorizes a Countermeasures Injury Compensation Program (''CICP'') to provide benefits to certain individuals or estates of individuals who sustain a covered serious physical injury as the direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration (''HRSA''), within the Department of Health and Human Services. Information about the CICP is available at the toll free number 1–855–266–2427 or *http://www.hrsa.gov/cicp/.*

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

Any amendments to this Declaration will be published in the **Federal Register**.

Authority: 42 U.S.C. 247d–6d.

Dated: April 9, 2015.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2015–09412 Filed 4–21–15; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Availability of the Department of Health and Human Services FY 2014 Service Contract Inventory

AGENCY: Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition, Department of Health and Human Services.

ACTION: Notice of Public Availability of FY 2014 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Public Law 111–117), Department of Health and Human Services (HHS) is publishing this notice to advise the public of the availability of its FY 2014 Service Contract Inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2014. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 and December 19, 2011 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* HHS has posted its inventory and a summary of the inventory on the HHS homepage at the following link: *http://www.hhs.gov/grants/servicecontracts/.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Lori Sakalos, Director in the HHS/Office of the Secretary, Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Office of Acquisition Policy at 202–690–6361 or *Lori.Sakalos@hhs.gov.*

Dated: April 16, 2015.

Angela Billups

Associate Deputy Assistant Secretary for Acquisition, Senior Procurement Executive, Assistant Secretary for Financial Resources, Office of the Secretary.

[FR Doc. 2015–09415 Filed 4–21–15; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI EDRN Review I.

Date: June 9, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Rockville, MD 20850, 240–276–6456 *tangd@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; NCI Subcommittee F-Institutional Training and Education.

Date: June 9, 2015.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W606, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Timothy C. Meeker, Ph.D., MD, Scientific Review Officer, Resource and Training Review Branch, Division of

Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W606, Rockville, MD 20850, 240–276–6464, *meekert@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Exploratory/Development Research Grant Program Omnibus SEP–6.

Date: June 9–10, 2015.

Time: 4:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dona Love, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Rockville, MD 20850, 240–276–5264, *donalove@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI EDRN Review II.

Date: June 9–10, 2015.

Time: 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Rockville, MD 20850, 240–276–6456, *tangd@mail.nih.gov*.

Name of Committee: National Cancer Institute special Emphasis Panel; Exploratory/Development Research Grant Program Omnibus SEP–3.

Date: June 29–30, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Viatcheslav A. Soldatenkov, Ph.D., MD, Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Rockville, MD 20850, 240–276–6378, *soldatenkovv@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Omnibus SEP–13 Review.

Date: July 9, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: David G. Ransom, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W124, Rockville, MD 20850, 240–276–6351, *david.ransom@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Omnibus SEP–11 Review.

Date: July 15, 2015.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W122, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W122, Rockville, MD 20850, 240–276–6349, *ahmads@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus Drug Development SEP–9.

Date: July 21, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, MD, Ph.D., Scientific Review Officer, Resource and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20850, 240–276–6464, *meekert@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Omnibus SEP–17 Review.

Date: July 21, 2015.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W610, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Caterina Bianco, MD, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W610, Rockville, MD 20850, 240–276–6459, *biancoc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 16, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–09236 Filed 4–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA RM13–006: Pioneer Awards.

Date: May 6–8, 2015.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arnold Revzin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory Neuroscience.

Date: May 7–8, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20895, (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 16, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–09237 Filed 4–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-day Comment Request; STAR METRICS® (Science and Technology for America's Reinvestment: Measuring the Effects of Research on Innovation, Competitiveness and Science) (OD)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 5, 2015, page 6522 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of Extramural Research (OER), National Institutes of Health (NIH), may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Dr. William Duval, Office of Planning, Analysis and Communication, OER, NIH, 6705 Rockledge Drive, Suite 5166, Bethesda, MD 20892, or call non-toll-free number (301) 435–8683, or Email your request, including your address to: *William.Duval@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: STAR METRICS® (Science and Technology for America's Reinvestment: Measuring the Effects of Research on Innovation, Competitiveness and Science)—0925–0616—REVISION—Office of Extramural Research (OER), National Institutes of Health (NIH).

Need and Use of Information Collection: The aim of STAR METRICS® is twofold. The goal of STAR METRICS® is to continue to provide mechanisms that will allow participating universities and federal agencies with a reliable and consistent means to account for the number of scientists and staff that are on research institution payrolls, supported by federal funds. In subsequent generations of the program, it is hoped that STAR METRICS® will allow for measurement of science impact on economic outcomes (such as job creation), on knowledge generation (such as citations and patents) as well as on social and health outcomes. We have completed the initial data input and this request will finalize the quarterly data input process.

OMB approval is requested for 1 year. The annualized cost to respondents is estimated to be $50,000. The total estimated annualized burden hours are 1,000.

ESTIMATED ANNUALIZED BURDEN HOURS

Instrument	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Ongoing quarterly data input	100	4	2.5	1,000

Dated: April 15, 2015.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2015–09366 Filed 4–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Clinical and Pediatric Loan Repayment Review.

Date: May 18, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate the mail-in review of Clinical and Pediatric Loan Repayment Applications.

Place: NIAAA, NIH 5635 Fishers Lane, Room 2019, Rockville, MD 20852.

Contact Person: Katrina Foster, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane, Room 2019, Rockville, MD 20852, (301) 443–4032, *katrina@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Neurobiology of Adolescent Drinking in Adulthood (NADIA) Consortium Review.

Date: May 27, 2015.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, NIH, 5635 Fishers Lane, Terrace Level Conference Room 508–509, Rockville, MD 20852.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane, Room 2081, Rockville, MD 20852, (301) 443–0800, *bbuzas@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience Review Subcommittee.

Date: June 8, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, NIH, 5635 Fishers Lane, Terrace Level Conference Room 508–509, Rockville, MD 20852.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, National Institute

on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane, Room 2081, Rockville, MD 20852, (301) 443–0800, *bbuzas@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Biomedical Research Review Subcommittee.

Date: June 16, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Neuroscience Building, 6001 Executive Boulevard, B1/B2 Executive Room, Rockville, MD 20852.

Contact Person: Philippe Marmillot, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane, Room 2017, Rockville, MD 20852, (301) 443–2861, *marmillotp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 92.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Supports Awards, National Institutes of Health, HHS)

Dated: April 16, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–09235 Filed 4–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Generic Clearance To Conduct Voluntary Customer/Partner Surveys (NLM)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Library of Medicine (NLM), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: David Sharlip, Office of Administrative and Management Analysis Services, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll-free number (301) 402–9680, or Email your request, including your address to: *sharlipd@mail.nih.gov* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Generic Clearance to Conduct Voluntary Customer/Partner Surveys (NLM), 0925–0476, Expiration Date 07/31/2015, EXTENSION, National Library of Medicine (NLM), National Institutes of Health (NIH).

Need and Use of Information Collection: In 1994, the NLM was designated a ''Federal Reinvention Laboratory'' with a major objective of improving its methods of delivering information to the public. At a minimum, necessary elements in improving the delivery of information include: (1) Development of easy-to-use access and delivery mechanisms that promote the public's understanding of health information, drawing on research in lay terminology, graphical and multimedia presentations; (2) assisting those providing health information to the public to make effective use of electronic services through Internet connections, training, and other means, with an emphasis on those serving minority groups, low income populations, and seniors; (3) promoting integrations of NLM services with other electronic services covering regional, state, or local health information; and (4) conducting and supporting research, development, and evaluation of the public's health information needs, information seeking behavior and learning styles, information systems that meet the public's needs, and the impact of access to information.

NLM has become an international leader in health informatics research and development, especially in consumer health informatics. As a result, NLM needs to remain contemporary in consumer health informatics research by utilizing research methods that yield a better understanding of the predictors of consumer satisfaction. Without ongoing insights into the predictors of consumer satisfaction, NLM will lack the research findings to make evidence-based changes in the content, design and editorial management of its consumer Web sites and will not optimally serve the public.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 750.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Total burden hours
General Public	1,000	1	20/60	333
Health Professionals	500	1	15/60	125
Librarians	500	1	20/60	167
Health Educators	500	1	15/60	125

Dated: April 16, 2015.

David Sharlip,

Project Clearance Liaison, NLM, NIH.

[FR Doc. 2015–09362 Filed 4–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request: National Children's Study (NCS) Data Archive and Repository (NICHD)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Jack Moye, 6100 Executive Boulevard, Rockville Pike, MD 20891 or call 301–594–8624 or Email your request, including your address to: *moyej@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: National Children's Study (NCS) Data Archive and Repository, 0925–NEW, National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH).

Need and Use of Information Collection: The primary use of this data archive and repository is to facilitate, document, track, monitor, and evaluate the access of NCS Vanguard Study data previously collected. There are two planned levels of data access associated with NCS Vanguard Study data: (1) Through a de-identified dataset containing key variables. Access requirements for the de-identified dataset would be modest, requiring that the investigators, promise not to attempt to re-identify participants, agree to cite the NCS as the source of the data, and submit a copy of any paper submitted or published using the data; (2) through a secure, virtual data enclave wherein users could access and analyze data, provided that they describe their research plan, submit IRB approval documentation, complete a Data User Agreement (DUA) DUA, and agree to submit a copy of any paper submitted or published using the data. In the planned virtual data enclave, the investigator cannot download any participant-level data for use outside of the protected analytic environment. Upon approval of the research project the data files specified in the DUA would be placed in the investigator's project space within the data enclave by the enclave staff. Final analytic results would be screened by the enclave staff for identifiable information prior to release back to the investigator.

There is no plan to publish the data collected under this request. These data are for internal monitoring purposes to assess the enclave resource requirements.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 154.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents	Frequency of response	Average time per response (in hours)	Total annual burden hour
De-identified data access	300	1	10/60	50
Enclave data access	100	1	1	100
Additional data access	50	1	5/60	4

Dated: April 10, 2015.

Sarah L. Glavin,

Project Clearance Officer, Eunice Kennedy Shriver National Institute of Child Health and Human Development, Deputy Director, Office of Science Policy, Analysis, and Communications, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health.

[FR Doc. 2015–09359 Filed 4–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning April 1, 2015, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing

public and U.S. Customs and Border Protection personnel.

DATES: *Effective Date:* April 1, 2015.

FOR FURTHER INFORMATION CONTACT: Michael P. Dean, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4882.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2015–05, the IRS determined the rates of interest for the calendar quarter beginning April 1, 2015, and ending on June 30, 2015. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus one percentage point (1%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). These interest rates are subject to change for the calendar quarter beginning July 1, 2015, and ending September 30, 2015.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	063015	3	3	2

Dated: April 17, 2015.

R. Gil Kerlikowske,

Commissioner.

[FR Doc. 2015–09345 Filed 4–21–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4213–DR; Docket ID FEMA–2015–0002]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4213–DR), dated April 8, 2015, and related determinations.

DATES: *Effective Date:* April 8, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 8, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Connecticut resulting from a severe winter storm and snowstorm during the period of January 26–28, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert L. Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Connecticut have been designated as adversely affected by this major disaster:

New London, Tolland, and Windham Counties for Public Assistance.

New London, Tolland, and Windham Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period.

All areas within the State of Connecticut are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–09420 Filed 4–21–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2015–0007; OMB No. 1660–NEW]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Ready PSA Campaign Creative Testing Research.

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before May 22, 2015.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via

electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472–3100, facsimile number (202) 212–4701, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Ready PSA Campaign Creative Testing Research.

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 008–0–21, Recruitment Screener; FEMA Form 008–0–22, Focus Group Discussion Guide.

Abstract: FEMA proposes conducting qualitative research in the form of focus groups in order to test creative concepts developed for FEMA's national Ready public service advertising campaign, which aims to educate and empower Americans to prepare for and respond to emergencies. The research will help determine the clarity, relevance, and motivating appeal of the concepts prior to final production of the advertising.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50.

Estimated Total Annual Burden Hours: 58 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $1,813.08. There are no annual costs to respondents' operations and maintenance costs for technical services. There are no annual start-up or capital costs. The cost to the Federal Government is $53,383.12.

Dated: April 13, 2015.

Janice Waller,

Acting Director, Records Management Division, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2015–09247 Filed 4–21–15; 8:45 am]

BILLING CODE 9116–69–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4214–DR; Docket ID FEMA–2015–0002]

Massachusetts; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA–4214–DR), dated April 13, 2015, and related determinations.

DATES: *Effective Date:* April 13, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 13, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Massachusetts resulting from a severe winter storm, snowstorm, and flooding during the period of January 26–28, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark H. Landry, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this major disaster:

Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester Counties for Public Assistance.

Barnstable, Bristol, Dukes, Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period.

All areas within the Commonwealth of Massachusetts are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–09384 Filed 4–21–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 30-Day notice of information collection for review; Form No. I–333;

obligor change of address; OMB Control No. 1653–0042.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on February 11, 2015, Vol. 80 No. 02825 allowing for a 60 day comment period. USICE did not receive a comment in connection with the 60-day notice. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially with regard to the estimated public burden and associated response time, must be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be submitted to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security via email at *oira_submission@omb.eop.gov* or faxed to (202) 395–5806. All submissions received must include the agency name, OMB Control Number [1653–0042].

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved information collection.

(2) *Title of the Form/Collection:* Obligor Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form I–333); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households Business or other non-profit. The data collected on this form is used by ICE to ensure accuracy in correspondence between ICE and the obligor. The form serves the purpose of standardizing obligor notification of any changes in their address, and will facilitate communication with the obligor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual burden hours.

Dated: April 17, 2015.

Scott Elmore,

Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2015–09311 Filed 4–21–15; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK942000.L14100000.BJ0000. LXSS001L0079.14X]

Notice of Filing of Plat of Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: The plat of survey of the following described lands is scheduled to be officially filed in the Bureau of Land Management Alaska State Office, Anchorage, Alaska, 30 days from the date of publication.

Survey Desription: The plat represents the survey of U.S. Survey No. 14187, Alaska, located approximately 72 miles northeast of Bethel, within unsurveyed T. 13 N., R. 59 W., Seward Meridian, Alaska.

ADDRESSES: Bureau of Land Management Alaska State Office, 222 W. 7th Avenue, Stop 13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Michael H. Schoder, Chief Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management Alaska State Office, 222 W. 7th Avenue, Stop 13, Anchorage, Alaska 99513–7599; telephone 907–271–5481; fax: 907–271–4549; email: *mschoder@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven 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 survey plat will be available for inspection in the Public Information Center, Bureau of Land Management Alaska State Office, 222 West 7th Avenue, Anchorage, Alaska 99513–7599; 907–271–5960. Copies may be obtained from this office for a minimum recovery fee.

If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed.

A person or party who wishes to protest against this survey must file a written response with the Alaska State Director, Bureau of Land Management, stating that they wish to protest.

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.

A statement of reasons for a protest may be filed with the notice of protest to the State Director; the statement of reasons must be filed with the State Director within thirty days after a protest is filed.

Authority: 43 U.S.C. 3§ 53.

Dated: April 16, 2015.

Michael H. Schoder,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2015–09309 Filed 4–21–15; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15X L1109AF LLUT980300 L11500000.PH0000 24–1A]

Utah Resource Advisory Council/ Recreation Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC)/Recreation Resource Advisory Council (RecRAC) will meet as indicated below.

DATES: The BLM-Utah RAC/RecRAC will meet June 23, 2015, from 8:30 a.m.–5 p.m., and June 24, 2015, from 8:30 a.m.–Noon.

ADDRESSES: The RAC/RecRAC will meet at the BLM-Utah State Office, Monument Conference Room (5th Floor), 440 West 200 South, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: If you cannot attend the meeting but wish to listen via teleconference, orally present material during the teleconference, or submit written material for the RAC/RecRAC, please notify Sherry Foot, Special Programs Coordinator, Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4195; or, *sfoot@blm.gov* no later than Wednesday, June 17, 2015.

SUPPLEMENTARY INFORMATION: Planned agenda topics include the introduction of new members; an overview of BLM-Utah issues; and planning effort updates. The RecRAC will listen to a presentation on the BLM's Draft Connecting with Utah Communities [Recreation] Strategy; a review of the Federal Lands Recreation Enhancement Act; and presentations regarding proposed fees from the BLM and the U.S. Forest Service.

A half-hour public comment period will take place on June 23, from 3:00–3:30 p.m. The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the above individual. The FIRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

Authority: 43 CFR 1784.4–1.

Lance C. Porter,

Acting Associate State Director.

[FR Doc. 2015–09312 Filed 4–21–15; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–883]

Certain Opaque Polymers; Commission Decision Affirming Grant of Default and Sanctions; Finding a Violation of Section 337; Issuing Remedial Orders and Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission affirmed, with modification, an initial determination (''ID'') (Order No. 27) by the presiding Administrative Law Judge (''ALJ'') granting a motion for default and sanctions. The Commission has found a violation of section 337 in this investigation and has issued a limited exclusion order prohibiting importation of certain opaque polymers manufactured using the Complainants' misappropriated trade secrets. The Commission has also issued a cease and desist order directed to one respondent. The Commission has affirmed the assessment and calculation of sanctions including joint and several liability as to U.S. counsel, but has reversed the ID to the extent that it imposed joint and several liability on Turkish counsel. The Commission has thereby terminated the investigation with a finding of violation of section 337.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 21, 2013, based on a complaint filed by the Dow Chemical Company of Midland, Michigan, and by Rohm and Haas Company and Rohm and Haas Chemicals LLC, both of Philadelphia, Pennsylvania (collectively, ''Dow''). 78 FR 37571 (June 21, 2013). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by reason of the importation into the United States, the sale for importation, and the sale within the United States after importation of certain opaque polymers that infringe certain claims of four United States patents. The notice of investigation named five respondents, three of whom remain in this investigation: Organik Kimya San. ve Tic. A.Ş of Istanbul, Turkey; Organik Kimya Netherlands B.V. of Rotterdam-Botlek, Netherlands; and Organik Kimya US, Inc., of Burlington, Massachusetts (collectively, ''Organik Kimya''). 78 FR at 37571; Notice (Dec. 1, 2014) (termination as to two of the five originally-named respondents). The complaint and notice of investigation were amended to add allegations of misappropriation of trade secrets. 78 FR 71643 (Nov. 29, 2013). The allegations of patent infringement have been withdrawn from the investigation. *See* Notice (Dec. 13, 2013) (withdrawal of two asserted patents); Notice (Dec. 1, 2014) (withdrawal of the remaining two asserted patents). The only remaining issues are Dow's claims based on trade secret misappropriation and sanctions for discovery abuse.

On May 19, 2014, Dow filed a motion for default and other sanctions against Organik Kimya for discovery abuse. On May 21, 2014, Organik Kimya filed a motion to terminate based upon a consent order stipulation. On July 8–9, 2014, the ALJ conducted a hearing on the pending motions. On October 20, 2014, the ALJ issued an ID (Order No. 27) (''the sanctions ID'') finding Organik Kimya in default, under Commission Rule 210.42(c), and ordering monetary sanctions jointly and severally against Organik Kimya and its counsel. Organik Kimya is represented by Finnegan, Henderson, Farabow, Garrett & Dunner, LLP (''Finnegan''), a law firm in

Washington, DC, and by Ömür Yarsuvat, an attorney in Istanbul, Turkey. The ALJ denied Organik Kimya's motion to terminate the investigation based upon a consent order stipulation.

On October 28, 2014, Organik Kimya filed a petition for review of the sanctions ID. The same day, Finnegan and Yarsuvat filed separate motions before the Commission to intervene in the investigation for the purpose of contesting joint liability for the monetary sanction. Finnegan and Yarsuvat also filed provisional petitions for review of the sanctions ID. On November 10, 2014, Finnegan filed a motion for leave to file a reply in support of its motion to intervene, which Dow opposed.

On December 16, 2014, the Commission granted the motions to intervene and determined to review the sanctions ID. The Commission notice granting review solicited further briefing on two questions concerning sanctions and on remedy, the public interest, and bonding.

On December 30, 2014, the parties—Dow, Organik Kimya, Finnegan, and Yarsuvat—filed opening briefs in response to the Commission notice. (Organik Kimya filed two briefs.) On January 7, 2015, the parties filed replies. (Dow filed two replies.)

Having examined the record of this investigation, including the ALJ's sanctions ID, as well as the petitions to the Commission and their replies, and the briefs to the Commission and their replies, the Commission has determined to affirm the ID's finding of Organik Kimya in default. *See* 19 U.S.C. 1337(h); 19 CFR 210.16-.17, 210.33. The Commission has determined that the appropriate remedy is the issuance of a limited exclusion order prohibiting, for twenty-five years, the entry of opaque polymers manufactured using any of the misappropriated trade secrets identified in Dow's Disclosure of Misappropriated Trade Secrets (Jan. 29, 2014) (listing trade secrets A–ZZ). The Commission has also determined to issue a cease and desist order prohibiting Organik Kimya U.S., Inc. from, *inter alia,* importing or selling opaque polymers manufactured using any of the aforementioned misappropriated trade secrets. The Commission has also determined that the public interest factors enumerated in section 337(d) and (f), 19 U.S.C. 1337(d) & (f), do not preclude the issuance of the limited exclusion order or the cease and desist order. The Commission has determined that no bonding is required during the period of Presidential review, 19 U.S.C. 1337(j).

The Commission has further determined to affirm the ALJ's assessment and calculation of attorneys' fees and costs against Organik Kimya. The Commission has determined to affirm, with modification, the ALJ's determination that Finnegan be held jointly and severally liable with Organik Kimya for those sanctions. The Commission has determined to reverse the sanctions ID to the extent that it imposed joint and several liability on Mr. Yarsuvat. The Commission's reasoning in support of these determinations is provided in an accompanying Commission opinion. The investigation is terminated.

Commissioner Schmidtlein dissents, for the reasons to be set forth in her separate opinion, as to the Commission's determination on sanctions for Organik Kimya's counsel. She otherwise joins the Commission's determination as to Organik Kimya's default, the Commission remedial orders to be issued, and the liability of Organik Kimya for fees and costs.

The Commission's limited exclusion order and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 17, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–09444 Filed 4–21–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–887]

Certain Crawler Cranes and Components Thereof; Commission's Final Determination; Issuance of a Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has (1) issued a limited exclusion order prohibiting importation of certain crawler cranes and components thereof and (2) issued a cease and desist order directed to the domestic respondent.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 17, 2013, based on a complaint filed by Manitowoc Cranes, LLC of Manitowoc, Wisconsin (''Manitowoc''). 78 FR 42800–01 (July 17, 2013). The complaint alleges violations of subsection (a)(1)(B) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'') in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain crawler cranes and components thereof, by reason of infringement of U.S. Patent Nos. 7,546,928 (''the '928 patent'') and 7,967,158 (''the '158 patent''), and that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337. The complaint further alleges violations of subsection (a)(1)(A) of section 337 by reason of trade secret misappropriation, the threat or effect of which is to destroy or substantially injure an industry in the United States or to prevent the establishment of such an industry. The Commission's notice of investigation named Sany Heavy Industry Co., Ltd. of Changsha, China, and Sany America, Inc. of Peachtree City, Georgia (collectively, ''Sany'') as respondents. The Office of Unfair Import Investigations (''OUII'') was also named as a party.

On July 11, 2014, the ALJ issued his final initial determination (''ID'') finding a violation of section 337 with respect to claims 1, 2, 5, 8, and 23–26 of the '928 patent and misappropriation of

Trade Secret Nos. 1, 6, 14, and 15. The ALJ further found no violation of section 337 with respect to claims 6, 10, and 11 of the '928 patent, claim 1 of the '158 patent, and Trade Secret Nos. 3 and 4.

On July 28, 2014, OUII, Manitowoc, and Sany each filed a petition for review. On August 5, 2014, the parties replied to the respective petitions for review.

On September 19, 2014, the Commission determined to review the final ID and solicited briefing from the parties on questions concerning violation, remedy, bonding, and the public interest. 79 *Fed. Reg.* 57566–68. Specifically, the Commission determined to review the ALJ's findings with respect to: (1) Importation of the accused products; (2) infringement of the asserted patents; (3) estoppel; (4) the technical prong of the domestic industry requirement; and (5) the asserted trade secrets. The parties provided initial submissions to the Commission's questions on October 1, 2014, and responsive submissions on October 8, 2014.

On December 3, 2014, the Commission determined to request additional briefing. Notice (December 3, 2014). On December 12, 2014, the parties filed initial submissions in response to the Commission's notice and filed response submissions on December 19, 2014.

After considering the final ID, written submissions, and the record in this investigation, the Commission has determined to affirm-in-part and reverse-in-part the final ID and to terminate the investigation with a finding of violation of section 337. Specifically, the Commission: (1) Finds the asserted method claims of the '928 patent are not infringed; (2) finds the asserted method claim of the '158 patent is not infringed; (3) finds that claims 23–26 of the '928 patent are infringed by at least one product; (4) takes no position on the ALJ's estoppel findings; (5) finds that the domestic industry requirement has been met; and (6) finds Trade Secret Nos. 1, 3, 4, 6, 14, and 15 are protectable and have been misappropriated. The Commission has issued its opinion setting forth the reasons for its determination. Commissioner Kieff concurs in the outcome and has filed an opinion concurring in result and dissenting in part.

Having found a violation of section 337 in this investigation, the Commission has determined that the appropriate form of relief is: (1) A limited exclusion order prohibiting the unlicensed entry of certain crawler cranes and components thereof that (a) infringe one or more of claims 23–26 of the '928 patent and are manufactured by, or on behalf of, or are imported by or on behalf of the Respondents or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns; and/or (b) are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, using any of Trade Secret Nos. 1, 3, 4, 6, 14, and 15, for a period of ten (10) years; and (2) a cease and desist order prohibiting the domestic respondent from conducting any of the following activities in the United States: Importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States, agents or distributors for, certain crawler cranes and components therefore manufactured using any of Trade Secret Nos. 1, 3, 4, 6, 14, and 15.

The Commission has also determined that the public interest factors enumerated in section 337(d) and (f) (19 U.S.C. 1337(d) and (f)) do not preclude issuance of the limited exclusion order or a cease and desist order. Finally, the Commission has determined that a bond during the period of presidential review (19 U.S.C. 1337(j)) shall be in the amount of 100 percent (100%) of the entered value of the imported articles that are subject to the limited exclusion order or cease and desist order. The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 16, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–09280 Filed 4–21–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research And Production Act Of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on March 25, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. (''NCOIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Harry Raduege (individual member), Arlington, VA; Tata Power SED, Andheri, Mumbai, INDIA; and Vikram Chauhan (individual member), Great Falls, VA, have been added as parties to this venture.

In addition, NJVC, LLC, Vienna, VA, Saab AB, Ostersund, SWEDEN; and The MITRE Corporation, McLean, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on January 27, 2015. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 2015 (80 FR 10716).

Patricia A. Brink,

Director of Civil Enforcement Antitrust Division.

[FR Doc. 2015–09322 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on High Efficiency Dilute Gasoline Engine III

Notice is hereby given that, on March 19, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on High-Efficiency Dilute Gasoline Engine III (''HEDGE III'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Borgwarner, Inc., Auburn Hills, MI; Caterpillar, Inc., Peoria, IL; Chrysler Group, LLC, Auburn Hills, MI; Continental Automotive GMBH, Regensburg, GERMANY; Cummins, Inc., Columbus, IN; Delphi Corporation, Auburn Hills, MI; Denso International America, Inc., Southfield, MI; Diamond Electric, Dundee, MI; Eaton Corporation, Southfield, MI; Federal Mogul, Plymouth, MI; Ford Motor Company, Dearborn, MI; GM Global Technology Operations, LLC, Detroit, MI; Hitachi America, Ltd., Farmington Hills, MI; Honda R&D, Tochigi, JAPAN; Honeywell International, Inc., Torrance, CA; Hyundai Motor Company, Seoul, KOREA; IHI Corporation, Yokohama, JAPAN; Jaguar Land Rover, Coventry, UNITED KINGDOM; Lubrizol Corporation, Wickliffe, OH; NGK Spark Plug Company, Nagoya, JAPAN; Peugeot Citroen Automobiles, Velizy-Villacoublay, Cedex, FRANCE; Renault, Boulogne Billancourt, FRANCE; Sejong Industrial Co., Ltd., Kyounggi-do, KOREA; Tenneco Automotive Operating Co., Inc., Grass Lake, MI; Toyota Motor Corporation, Shizuoka, JAPAN; Volkswagen Group of America, Inc., Herndon, VA; and Woodward, Inc., Fort Collins, CO.

The general area of HEDGE III's planned activity is to develop the most cost-effective solutions for future gasoline engine applications. The emissions goals include the most stringent regulations in each of the three developed markets, Asia, Europe, and North America. HEDGE III will target the LEV III standards and extensively investigate cold-start technologies and monitor PM/PN emissions on a regular basis. The efficiency goals include both practical thermal efficiency targets, in terms of BSFC goals on specific platforms, as well as overall thermal efficiency goals to achieve a ''best in class'' efficiency level.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–09321 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research And Production Act of 1993—Cooperative Research Group on Advanced Engine Fluids

Notice is hereby given that, on March 20, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Advanced Engine Fluids (''AEF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Caterpillar Inc., Lafayette, IN; Cummins Inc., Columbus, IN; ExxonMobil Research and Engineering Co., Paulsboro, NJ; Infineum USA L.P., Linden, NJ; Sasol Technology (PTY) Ltd., Rosebank, SOUTH AFRICA; Total Marketing Services, Puteaux, FRANCE; and Toyota Motor Corp., Shizuoka, JAPAN. The general area of AEF's planned activity is to develop a fundamental understanding of the interaction between fuel and lubricant properties and engine operation, particularly for advanced engine technologies that are moving toward production. The focus of the program will be to develop and apply advanced analytical methods to investigate the detailed chemical and physical interactions between the combustion system and the fuels and lubricants. Initial projects focus on four distinct areas: (1) Investigation of the fundamental processes causing LSPI and potential mitigation strategies through controls and hardware optimization; (2) investigation of fuel octane, physical properties, and chemistry on knock resistance and engine efficiency; (3) evaluation of the impact of dual-fuel combustion strategies on lubricating oil performance and chemistry; and (4) evaluation of alternative fuel chemistry and properties on engine efficiency and performance.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–09319 Filed 4–21–15; 8:45 am]

BILLING CODEP

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Opendaylight Project, Inc.

Notice is hereby given that, on March 25, 2015 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OpenDaylight Project, Inc. (''OpenDaylight'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, IIX Inc., Palo Alto, CA; Spirent Communications Inc., Sunnyvale, CA; and CA Inc., Portsmouth, NH, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenDaylight intends to file additional written notifications disclosing all changes in membership.

On May 23, 2013, OpenDaylight filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 1, 2013 (78 FR 39326).

The last notification was filed with the Department on December 24, 2014. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on February 6, 2015 (80 FR 6768).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–09317 Filed 4–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Unither Manufacturing, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before May 22, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before May 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on July 10, 2014, Unither Manufacturing LLC, 331 Clay Road, Rochester, New York 14623 applied to be registered as an importer of methylphenidate (1724), a basic class of controlled substance listed in schedule II.

The company plans to import the listed substance as a raw material for updated testing purposes for EU customer requirements.

The company plans to import the listed controlled substance in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09337 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Sigma-Aldrich International GMBH, Sigma Aldrich Co., LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before May 22, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before May 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importer, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on February 5, 2015, Sigma-Aldrich International GMBH, Sigma Aldrich Co. LLC, 3500 Dekalb Street, St. Louis, Missouri 63118 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Mephedrone (4-Methyl-N-methylcathinone) (1248).	I
N-Ethylamphetamine (1475)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Alpha-ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
N-Benzylpiperazine (7493)	I
MDPV (3,4-Methylenedioxypyrovalerone) (7535).	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II

Controlled substance	Schedule
Nabilone (7379)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium, powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for sale to research facilities for drug testing and analysis.

In reference to drug codes 7360 and 7370, the company plans to import a synthetic cannabidiol and a synthetic tetrahydrocannabinol. No other activity for this drug code is authorized for this registration.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09344 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: PHARMACORE

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before May 22, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before May 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for any hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispenser, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix of subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on August 29, 2014, Pharmacore, 4180 Mendenhall Oaks Parkway, High Point, North Carolina 27265 applied to be registered as an importer of poppy straw concentrate (9670), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to manufacture bulk controlled substance intermediates for sale to its customers.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09332 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Cedarburg Pharmaceuticals, Inc.

ACTION: Notice of registration.

SUMMARY: Cedarburg Pharmaceuticals, Inc. applied to be registered as a manufacturer of certain basic classes of controlled substances. The DEA grants Cedarburg Pharmaceuticals, Inc. registration as a manufacturer of the controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated June 10, 2014, and published in the **Federal Register** on June 17, 2014, 79 FR 34553, Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted to this notice.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cedarburg Pharmaceuticals, Inc. to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed:

Controlled substance	Schedule
4-Anilino-N-phenethyl-4-piperidine (ANPP) (8333)	II
Remifentanil (9739)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Regarding the drug code (8333), the company plans to manufacture this listed controlled substance for commercial sale.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09350 Filed 4–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Meridian Medical Technologies

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before May 22, 2015. Such persons may also file a written request for a hearing on

the application pursuant to 21 CFR 1301.43 on or before May 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on January 8, 2015, Meridian Medical Technologies, 2555 Hermelin Drive, St. Louis, Missouri 63144 applied to be registered as an importer of morphine (9300), a basic class of controlled substance listed in schedule II.

The company manufactures a product containing morphine in the United States. The company exports this product to customers around the world. The company has been asked to ensure that its product, which is sold to European customers, meets the standards established by the European Pharmacopeia, administered by the Directorate for the Quality of Medicines (EDQM). In order to ensure that its product will meet European specifications, the company seeks to import morphine supplied by EDQM for use as reference standards.

This is the sole purpose for which the company will be authorized by the DEA to import morphine.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09343 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Pharmacore, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before June 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on February 4, 2015, Pharmacore, Inc., 4180 Mendenhall Oaks Parkway, High Point, North Carolina 27265, applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Oxymorphine (9652)	II
Noroxymorphone (9668)	II

The company plans to manufacture the listed controlled substance as an active pharmaceutical ingredient (API) for clinical trials.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09334 Filed 4–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Actavis Laboratories FL, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before May 22, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before May 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on November 19, 2014, Actavis Laboratories FL, Inc., 4955 Orange Drive, Davie, Florida 33314 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for clinical trials, research and analytical purposes.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09339 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Stepan Company

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before June 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on February 10, 2015, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Cocaine (9041)	II
Ecgonine (9180)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customer.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09327 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Noramco, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before June 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on January 29, 2015, Noramco, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4417 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Morphine-N-oxide (9307)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Tapentadol (9780)	II

The company plans to manufacture the above-listed controlled substances in bulk for distribution to its customers.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09331 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Cambrex Charles City

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before June 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on May 15, 2014, Cambrex Charles City, 1205 11th Street, Charles City, Iowa 50616 applied to be registered as a bulk manufacturer the following basic classes of controlled substances:

Controlled substance	Schedule
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Poppy Straw Concentrate (9670)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers, for dosage form development, for clinical trials, and for use in stability qualification studies.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09325 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Rhodes Technologies

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before May 22, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before May 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and request for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on March 10, 2015, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled Substance	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances in order to bulk manufacture controlled substances in Active Pharmaceutical Ingredient (API) form. The company distributes the manufactured APIs in bulk to its customers.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09338 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Almac Clinical Services Inc. (ACSI)

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before May 22, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before May 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on March

5, 2015, Almac Clinical Services Inc., (ACSI), 25 Fretz Road, Souderton, Pennsylvania 18964 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Oxycodone (9143)	II
Hydromorphone (9150)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances in dosage form to conduct clinical trials.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09333 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Sigma Aldrich Research Biochemicals, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before June 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on January 2, 2015, Sigma Aldrich Research Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760–2447 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Mephedrone (4-Methyl-N-methylcathinone) (1248).	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
N-Benzylpiperazine (7493)	I
MDPV (3,4-Methylenedioxypyrovalerone) (7535).	I
Methylone (3,4-Methylenedioxy-N-methylcathinone). (7540)	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture reference standards.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09328 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Cayman Chemicals Company

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before June 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on July 24, 2014, Cayman Chemical Company, 1180

East Ellsworth Road, Ann Arbor, Michigan 48108 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
3-Fluoro-N-methylcathinone (3-FMC) (1233).	I
Cathinone (1235)	I
Methcathinone (1237)	I
4-Fluoro-N-methylcathinone (4-FMC) (1238).	I
Pentedrone (α-methylaminovalerophenone) (1246).	I
Mephedrone (4-Methyl-N-methylcathinone) (1248).	I
4-Methyl-N-ethylcathinone (4-MEC) (1249).	I
Naphyrone (1258)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Gamma Hydroxybutyric Acid (2010).	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole) (6250).	I
SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole) (7008).	I
5-Flouro-UR-144 and XLR11 [1-(5-Fluoro-pentyl) 1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl) methanone (7011).	I
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide) (7012).	I
JWH-019 (1-Hexyl-3-(1-naphthoyl) indole) (7019).	I
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide) (7035).	I
APINACA and AKB48 N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide (7048).	I
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole) (7081).	I
SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole (7104).	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl) indole) (7118).	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole) (7122).	I
UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropy-l)methanone (7144).	I
JWH-073 (1-Butyl-3-(1-naphthoyl)indole (7173).	I
JWH-200(1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl) indole) (7200).	I
AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole) (7201).	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole) (7203).	I
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate) (7222).	I
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate) (7225).	I
Alpha-ethyltryptamine (7249)	I
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol (7297).	I
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol) (7298).	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine) (2C-T-7) (7348).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine. (2C-T-2) (7385)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole (7398).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
5-Methoxy-N-N-dimethyltryptamine (7431).	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
N-Benzylpiperazine (7493)	I
4-Methyl-alphapyrrolidinopropiophenone (4-MePPP) (7498).	I
2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D) (7508).	I
2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E) (7509).	I
2-(2,5-Dimethoxyphenyl) ethanamine (2C-H) (7517).	I
2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C-I) (7518).	I
2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C) (7519).	I
2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N) (7521).	I
2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P) (7524).	I
2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C-T-4) (7532).	I
MDPV (3,4-Methylenedioxypyrovalerone) (7535).	I
Methylone (3,4-Methylenedioxy-N-methylcathinone) (7540).	I
Butylone (7541)	I
Pentylone (7542)	I
alpha-pyrrolidinopentiophenone (α-PVP) (7545).	I
alpha-pyrrolidinobutiophenone (α-PBP) (7546).	I
AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole) (7694).	I
Desomorphine (9055)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Pentobarbital (2270)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Meperidine (9230)	II
Meperidine intermediate-B (9233)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Sufentanil (9740)	II

The company plans to manufacture reference standards for distribution to their research and forensics customers.

In reference to drug codes 7360 Marihuana, and 7370 (THC), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09329 Filed 4–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: National Center for Natural Products Research (NIDA MPROJECT), Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before June 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix of subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on December 2, 2014, National Center for Natural Products Research (NIDA MProject), Inc., University of Mississippi, 135 Coy Waller Complex, University, Mississippi 38677–1848 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The company plans to cultivate marihuana in support of the National Institute on Drug Abuse for research approved by the Department of Health and Human Services.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09323 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Johnson Matthey, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before May 22, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before May 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and request for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417, (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on September 3, 2014, Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Coca Leaves (9040)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Noroxymorphone (9668)	II
Poppy Straw Concentrate (9670)	II
Fentanyl (9801)	II

The company plans to import thebaine derivatives and fentanyl as reference standards.

The company plans to import the remaining listed controlled substances as raw materials, to be used in the manufacture of bulk controlled substances, for distribution to its customers.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09335 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application; Johnson Matthey Pharmaceutical Materials, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before June 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of

manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on December 23, 2014, Johnson Matthey Pharmaceutical Materials, Inc., Pharmaceutical Service, 25 Patton Road, Devens, Massachusetts 01434 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Hydrocodone (9193)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II

The company plans to utilize this facility to manufacture small quantities of the listed controlled substances in bulk and to conduct analytical testing in support of the company's primary manufacturing facility in West Deptford, New Jersey. The controlled substances manufactured in bulk at this facility will be distributed to its company's customers.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09330 Filed 4–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: AMRI Rensselaer, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before June 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix of subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on June 10, 2013, AMRI Rensselaer, Inc., 33 Riverside Avenue, Rensselaer, New York 12144 applied to be registered as a bulk manufacturer of the following basic classes controlled substances:

Controlled substance	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Meperidine (9230)	II
Fentanyl (9801)	II

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers.

In reference to drug code 7360 (marihuana), and 7370 (THC), the company plans to bulk manufacture these drugs as synthetic. No other activity for this drug code is authorized for this registration.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09324 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Cody Laboratories, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before June 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on July 3, 2014, Cody Laboratories, Inc., Steve Hartman—Vice President of Compliance, 601 Yellowstone Avenue, Cody, Wyoming 82414 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
4-Anilino-N-phenethyl-4-piperidine (ANPP) (8333).	II
Phenylacetone (8501)	II

Controlled substance	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09326 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Stepan Company

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before May 22, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before May 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and request for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on February 9, 2015, Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607 applied to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to manufacture bulk controlled substances for distribution to its customers.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09342 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Siegfried USA, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before May 22, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before May 22, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on November 17, 2014, Siegfried USA, LLC, 33 Industrial Park Road, Pennsville, New Jersey 08070 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances to bulk manufacture API's for distribution to its customer.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09336 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Actavis Pharma, Inc.

ACTION: Notice of registration.

SUMMARY: Actavis Pharma, Inc. applied to be registered as an importer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Actavis Pharma, Inc., registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated May 28, 2014, and published in the **Federal Register** on June 4, 2014, FR 79 32315, Actavis Pharma, Inc., 2455 Wardlow Road, Corona, California

92880–2882 applied to be registered as an importer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Actavis Pharma, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above-named company is granted registration as an importer of the basic classes of controlled substances:

Controlled substance	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II

The company plans to import the listed controlled substances for analytical testing and clinical trials.

The import of the above listed basic classes of controlled substances will be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

Dated: April 14, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–09349 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–09P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on March 24, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bill & Melinda Gates Foundation, Seattle, WA; Microsoft, Redmond, WA; PARCC, Inc., Washington, DC; State of Michigan Department of Education, Lansing, MI; and University of Wisconsin, Madison, WI, have been added as parties to this venture.

Also, Jenzabar, Cambridge, MA; SungKyunKwan University, Gyeonggi-do, REPUBLIC OF KOREA; and McGraw-Hill CTB, Nashville, TN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on December 8, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 5, 2015 (80 FR 259).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–09316 Filed 4–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On April 16, 2015, the Department of Justice filed a Complaint and simultaneously lodged a proposed Consent Decree with the United States District Court for the Eastern District of Pennsylvania in the lawsuit entitled *United States, et al,* v. *Allan Myers, Inc., et al,* Civil Action No. 15–1992.

This action involves the claim of the United States for civil penalties and injunctive relief brought pursuant to Section 309(b) and (d) of the Clean Water Act (''CWA''), 33 U.S.C. 1319(b) and (d), against Defendants for violations of the CWA at fourteen locations in Pennsylvania, Maryland, and Virginia, including: the discharge of pollutants in storm water without a permit in violation of CWA Section 301, 33 U.S.C. 1311; failure to timely submit the information required to obtain coverage under an applicable permit for the discharge of storm water associated with its construction activities in violation of CWA Section 308, 33 U.S.C. 1318; and for failure to comply with the conditions of permits (including various state general permits) issued pursuant to CWA Section 402, 33 U.S.C. 1342. The Consent Decree obligates the Defendants to pay a $455,000 civil penalty and requires the Defendants to implement a company-wide Stormwater Compliance Program that includes strict training, management, and reporting requirements to improve future compliance.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Allan Myers, Inc., et al,* Civil Action No. 15–1992, D.J. Ref. No. 90–5–1–1–09042. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree and Stipulated Judgment and Permanent Injunction may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Consent Decree and Stipulated Judgment and Permanent Injunction upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $13.75 (25 cents per page

reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–09239 Filed 4–21–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Advisory Committee on Increasing Competitive Integrated Employment for Individuals With Disabilities; Notice of Meeting

The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the Committee) was mandated by section 609 of the Rehabilitation Act of 1973, as amended by section 461 of the Workforce Innovation and Opportunity Act (WIOA). The Secretary of Labor established the Committee on September 15, 2014 in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. The purpose of the Committee is to study and prepare findings, conclusions and recommendations for Congress and the Secretary of Labor on (1) ways to increase employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive, integrated employment; (2) the use of the certificate program carried out under section 14(c) of the Fair Labor Standards Act (FLSA) of 1938 (29 U.S.C. 214(c)); and (3) ways to improve oversight of the use of such certificates.

The Committee is required to meet no less than eight times. It is also required to submit an interim report to the Secretary of Labor; the Senate Committee on Health, Education, Labor and Pensions; and the House Committee on Education and the Workforce within one year of the Committee's establishment. A final report must be submitted to the same entities no later than two years from the Committee establishment date. The Committee terminates one day after the submission of the final report.

The next meeting of the Committee will be open to the public and take place by Webinar on Monday, May 11, 2015 and Tuesday, May 12, 2015. The meeting will take place each day from 1:00 p.m. to 5:00 p.m., Eastern Daylight Time (EDT).

On May 11th and 12th, the Committee will hear expert testimony on a number of topics, including, but not limited to: Section 503 of the Rehabilitation Act, as amended, by representatives from the U.S. Department of Labor's (DOL) Office of Federal Contract Compliance Programs; and services for jobseekers with significant disabilities under WIOA by representatives from the U.S. Department of Education's Rehabilitation Services Administration and DOL's Employment and Training Administration. In addition, the Committee's four subcommittees will report to the whole Committee on their efforts to date and will discuss next steps in their work. The four subcommittees are: The Transition to Careers Subcommittee, the Complexity and Needs in Delivering Competitive Integrated Employment Subcommittee, the Marketplace Dynamics Subcommittee, and the Building State and Local Capacity Subcommittee. The full Committee will deliberate on the subcommittee reports and presentations.

Members of the public wishing to participate in the Webinar must register in advance of the meeting, by Monday, May 4th, using the following link—*http://bit.ly/ACICIEID.* This link will register members of the public for both days of the May meeting.

Members of the public who wish to address the committee during the public comment period of the meeting on Monday, May 11th from 3:00 p.m. to 4:00 p.m. (EDT), should send their name, their organization's name (if applicable) and any additional materials (such as a copy of the proposed testimony) to *IntegratedCompetitiveEmployment@dol.gov* or call David Berthiaume at DOL's Office of Disability Employment Policy at (202) 693–7887 by Monday, May 4th. Please ensure that any attachments are in an accessible format or the submission will be returned. Also, note that public comments will be limited to 3 minutes in length. Due to time constraints, we will be able to accommodate up to 15 requests to address the committee. If more than 15 requests are received, we will select a representative sample to speak and the remainder will be permitted to file written statements. Individuals with disabilities who need accommodations should also contact Mr. Berthiaume at the email address or phone number above.

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before May 4, 2015 to Mr. Berthiaume, Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, U.S. Department of Labor, Suite S–1303, 200 Constitution Avenue NW., Washington, DC 20210. Statements also may be submitted as email attachments to *IntegratedCompetitiveEmployment@dol.gov.* Please ensure that any written submission is in an accessible format or the submission will be returned. Further, it is requested that statements not be included in the body of an email. Statements deemed relevant by the Committee and received on or before May 4, 2015 will be included in the record of the meeting. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Signed at Washington, DC, this day 16 of April, 2015,

Jennifer Sheehy,

Acting Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 2015–09254 Filed 4–21–15; 8:45 am]

BILLING CODE 4510–23–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 15–0008–CRB–SATR (2015–19)]

Determination of Royalty Rates for Secondary Transmissions of Broadcasts by Satellite Carriers and Distributors: Withdrawal

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of commencement of proceeding and solicitation of petitions to participate; withdrawal.

SUMMARY: The announcement of the commencement of a proceeding published on March 30, 2015, 80 FR 16702 is withdrawn.

DATES: *Effective Date:* The commencement announcement published on March 30, 2015, is withdrawn April 22, 2015.

ADDRESSES: This notice is also posted on the agency's Web site (*www.loc.gov/crb*).

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle, Attorney Advisor, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Royalty Judges have decided to withdraw the commencement of a proceeding based on a reconsideration of the congressional intent behind the enactment of the STELA Reauthorization Act of 2014 Public Law

113–200. The provisions of the reauthorization act extend the satellite carrier statutory license under section 119 of the Copyright Act (Act) to December 31, 2019. *See* 17 U.S.C. 119(h). Despite some conflicting statutory language in the new law, the Judges conclude that the rates in effect on December 31, 2014, which were established by a voluntary agreement among certain satellite carriers and copyright owners and which are codified at 37 CFR 386.2(b), continue in effect, subject only to the annual royalty fee adjustment provision found at 17 U.S.C. 119(c)(2). *See* section 119 (c)(1)(E) of the Copyright Act. 17 U.S.C. 119(c)(1)(e) (2014).[1] A proceeding to determine rates for the statutory license is not necessary.

Dated: April 16, 2015.

Suzanne M. Barnett,

Chief Copyright Royalty Judges.

[FR Doc. 2015–09281 Filed 4–21–15; 8:45 am]

BILLING CODE 1410–72–P

[1] In a subsequent notice, the Judges will announce the adjusted satellite rate for 2015.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–035]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Second notice of Selective Service Record Request information collection open for comments.

SUMMARY: NARA is giving public notice that we have submitted to OMB for approval the information collection described in this notice. We invite people to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Please submit written comments to OMB at the address below on or before May 22, 2015.

ADDRESSES: Send comments by mail to Mr. Nicholas A. Fraser, Desk Officer for NARA; Office of Management and Budget; New Executive Office Building; Washington, DC 20503, by fax to 202–395–5167, or by email to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm, by phone at 301–837–1694, or by fax at 301–713–7409, for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites members of the public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on February 4, 2015 (80 FR 6139). We received no comments. We have therefore submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Selective Service System Record Request.

OMB number: 3095–0071.

Agency form numbers: NA Form 13172.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 1,500.

Estimated time per response: 2 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 50.

Abstract: The National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers the Selective Service System (SSS) records. SSS records contain both classification records and registration cards of registrants born before January 1, 1960. When registrants or other authorized individuals request information from, or copies of, SSS records, they must provide on forms or letters certain information about the registrant and the nature of the request. Requestors use NA Form 13172, Selective Service System Record Request, to obtain information from SSS records stored at NARA facilities.

Dated: April 10, 2015.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2015–09421 Filed 4–21–15; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–036]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by May 22, 2015. Once NARA completes appraisal of the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the

name of the agency which submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Management Services (ACNR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media-neutral unless otherwise specified. An item in a schedule is media-neutral when an agency may apply the disposition instructions to records regardless of the medium in which it has created or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media-neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No agencies may destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after a thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records or that the schedule has agency-wide applicability (in the case of schedules that cover records that may be accumulated throughout an agency), provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction), and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2013–0003, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to facilitate drug pricing.

2. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2014–0001, 2 items, 2 temporary items). Records related to corrective actions for payment errors and vulnerabilities.

3. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2014–0002, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to track financial relationships of physicians and teaching hospitals.

4. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2014–0003, 12 items, 10 temporary items). Records related to health care exchange enrollment and verification processes. Proposed for permanent retention are significant reports.

5. Department of Homeland Security, Agency-wide (DAA–0563–2013–0007, 14 items, 13 temporary items). Training records of the department and its component agencies to include course materials, student materials, summary reports, and examinations, excluding training conducted by the Federal Law Enforcement Training Center. Proposed for permanent retention are significant training materials unique to an individual component or program.

6. Department of Justice, Federal Bureau of Investigation (DAA–0065–2014–0002, 8 items, 6 temporary items). Master files of an electronic information system used to disseminate the director's daily briefing including user access permissions, rules of behavior, audit logs, electronic annotations, and convenience copies. Proposed for permanent retention are the daily briefing and electronic annotations of the director and senior staff.

7. Department of Justice, Foreign Claims Settlement Commission (DAA–0299–2015–0001, 1 item, 1 temporary item). Background files for general program reference.

8. Department of Veterans Affairs, Veterans Health Administration (DAA–0015–2015–0002, 8 items, 5 temporary items). Records of a research program including guidance documents and reference files. Proposed for permanent retention are congressional relations files, briefing records, and official determinations of compliance.

9. Commodity Futures Trading Commission, Agency-wide (DAA–0180–2012–0002, 6 items, 4 temporary items). Records include management studies, policy documents, and manuals relating to agency daily functions. Also included are routine program files. Proposed for permanent retention are records of significant policy-making groups and substantive program files.

10. Commodity Futures Trading Commission, Office of Proceedings (DAA–0180–2015–0001, 3 items, 3 temporary items). Records include wage garnishment case files, case file tracking records, and reparations complaint files.

11. Consumer Financial Protection Bureau, Office of Supervision and Examination (DAA–0587–2013–0011, 9 items, 5 temporary items). Records include administrative reports, research files, and training materials. Also included are inputs, outputs, and master files of an electronic information system containing examination records and reports. Proposed for permanent retention are historic examination reports, as well as external reports and policy documents.

12. Consumer Financial Protection Bureau, Division of External Affairs (DAA–0587–2015–0001, 13 items, 7 temporary items). Records include press clippings, constituent mail, routine congressional correspondence, correspondence tracking system records, and news media correspondence. Proposed for permanent retention are significant congressional correspondence, testimonies, and press releases.

13. Court Services and Offenders Supervision Agency for the District of Columbia, Office of Research and Evaluation (DAA–0562–2013–0009, 1 item, 1 temporary item). Master files of an electronic information system used to track employee workload and performance metrics.

14. Marine Mammal Commission, Agency-wide (N1–592–12–1, 46 items, 24 temporary items). Routine administrative records including working papers, general correspondence, background materials,

reports, and content on the commission Web site. Proposed for permanent retention are records associated with the executive director, program correspondence files, annual reports, congressional testimony and legislation records, policy files, energy and species program files, fisheries subject files, and master files of an electronic information system containing Federally-funded research and data collection records.

15. Office of Personnel Management, Healthcare and Insurance Program (DAA–0478–2015–0001, 1 item, 1 temporary item). Records relating to health plan benefit reviews including requests for reviews, claim and medical histories files, and final determination letters.

Dated: April 15, 2015.

Paul M. Wester, Jr.

Chief Records Officer for the U.S. Government.

[FR Doc. 2015–09423 Filed 4–21–15; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance for this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than three years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by June 22, 2015, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: DUE Project Data Form.

OMB Control No.: 3145–0201.

Expiration Date of Approval: September 30, 2015.

Abstract: The Division of Undergraduate Education (DUE) Project Data Form is a component of all grant proposals submitted to NSF's Division of Undergraduate Education. This form collects information needed to direct proposals to appropriate reviewers and to report the estimated collective impact of proposed projects on institutions, students, and faculty members. Requested information includes the discipline of the proposed project, collaborating organizations involved in the project, the academic level on which the project focuses (*e.g.,* lower-level undergraduate courses, upper-level undergraduate courses), characteristics of the organization submitting the proposal, special audiences (if any) that the project would target (*e.g.,* women, minorities, persons with disabilities), strategic foci (if any) of the project (*e.g.,* research on teaching and learning, international activities, integration of research and education), and the number of students and faculty at different educational levels who would benefit from the project.

Respondents: Investigators who submit proposals to NSF's Division of Undergraduate Education.

Estimated Number of Annual Respondents: 2,700.

Burden on the Public: 20 minutes (per response) for an annual total of 900 hours.

Dated: April 17, 2015.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2015–09364 Filed 4–21–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL WOMEN'S BUSINESS COUNCIL

Quarterly Public Meeting

AGENCY: National Women's Business Council.

ACTION: Notice of open public meeting.

DATES: The meeting will be held on Tuesday, June 23, 2015 from 9:45 a.m. to 11:15 a.m. CST.

ADDRESSES: The meeting will be held at The Neal Kocurek Memorial Austin Convention Center, located at 500 E Cesar Chavez Street in Austin, Texas.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the National Women's Business Council. The National Women's Business Council is tasked with providing policy recommendations on issues of importance to women business owners to the President, Congress, and the SBA Administrator.

This meeting is the 3rd quarterly meeting of the Council for Fiscal Year 2015. The meeting will include: Remarks from the Council Chair, Carla Harris, and report outs from each of the NWBC committees—the Group of Six, Communications and Engagement, and Research and Policy. Updates will be shared on the current research projects, including: Women's participation in accelerators and incubators (qualitative), women's participation in corporate supplier diversity programs (qualitative), undercapitalization as a contributing factor to failure (quantitative), women's use of social networks (quantitative), and an impact study of the Women Business Center program. The Council will also announce the FY2015 research portfolio. Time will be reserved at the end for audience participants to address Council Members directly with questions, comments, or feedback. Following this meeting, NWBC partner organization Women's Business National Enterprise Council (WBENC) will kick off their National Conference and Business Fair.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. To RSVP and confirm

attendance, the general public should email *nwbcouncil@nwbc.gov* with subject line—''RSVP for Austin.'' Participants will receive confirmation information with the logistical details closer to the date of the meeting. Anyone wishing to make a presentation to the NWBC at this meeting must either email their interest to *chair@nwbc.gov* or call the main office number at 202–205–3850. For more information, please visit the National Women's Business Council Web site at *www.nwbc.gov.*

Miguel J. L'Heureux,

SBA Committee Management Officer.

[FR Doc. 2015–09293 Filed 4–21–15; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74739; File No. SR–BYX–2015–07]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To Amend Rules 11.9, 11.12, and 11.13 of BATS Y-Exchange, Inc.

April 16, 2015.

I. Introduction

On January 30, 2015, BATS Y-Exchange, Inc. (''BYX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rules 11.9, 11.12, and 11.13. The proposed rule change was published for comment in the **Federal Register** on February 18, 2015.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange conducted a comprehensive review of its system functionality.[4] The proposal adds additional clarity and specificity regarding the current functionality of the Exchange's System,[5] including the operation of its order types and order instructions. The Exchange proposes no substantive modifications to the System.

The changes include: (i) Making clear that orders with a Time-in-Force (''TIF'') of Immediate-or-Cancel (''IOC'') can be routed away from the Exchange; (ii) specifying the methodology used by the Exchange to determine whether BATS Post Only Orders [6] will remove liquidity from the BATS Book; [7] (iii) adding additional detail to and re-structuring the description of Pegged Orders; (iv) adding additional detail to the description of Mid-Point Peg Orders; (v) adding additional detail to the description of Discretionary Orders; (vi) amending Rule 11.12, Priority of Orders, and Rule 11.13, Order Execution, to provide additional specificity and enhance the structure of Exchange rules describing the process for ranking, executing and routing orders; (vii) adding additional detail to the description of orders subject to Re-Route functionality; and (viii) making a series of conforming changes to Rules 11.9, 11.12 and 11.13 to update cross-references.

Rule 11.9. The Exchange proposes revisions to Rule 11.9 to provide greater detail as to the existing functionality of certain order types and modifiers.[8] Among other things, the Exchange proposes to make clear that orders with an IOC TIF are routable but do not post to the Exchange's book,[9] whereas orders with a Fill-or-Kill (''FOK'') TIF are not routable.[10] The Exchange also proposes to clarify the Exchange's methodology for determining whether BATS Post Only orders will remove liquidity from the Exchange's order book upon entry.[11] In addition, the Exchange proposes to reformat the rule describing the Primary Pegged and Market Pegged orders,[12] and to make clear that Mid-Point Peg Orders are not eligible to execute when the NBBO is crossed but Users may elect whether such orders will be eligible to execute when the NBBO is locked.[13] Further, the Exchange proposes to add additional detail to the rule describing Discretionary Orders so that it specifies: (i) That Discretionary Orders may be fully non-displayed, with a non-displayed ranked price (and discretionary price); (ii) how resting Discretionary Orders interact with incoming contra-side orders, including how the order type, TIF and price of the incoming order affects whether the resting Discretionary Order removes liquidity against the incoming order or the incoming order removes liquidity against the resting Discretionary Order; and (iii) that Discretionary Orders are routed away from the Exchange at their full discretionary price.[14]

Rule 11.12. The Exchange proposes several modifications to Rule 11.12 that are intended to clarify existing functionality relating to order priority. Some of these modifications would revise the structure of Rule 11.12 or add cross references to other rules.[15] In addition, the Exchange proposes to revise Rule 11.12(a)(2) to refer to ranking, rather than executing, equally-priced trading interest because, according to the Exchange, the rule is intended to describe the manner in which resting orders are ranked and maintained.[16] The Exchange also proposes to revise the reference to Pegged Orders in the priority hierarchy set forth in Rule 11.12(a)(2) to make clear that the reference is specifically to non-displayed Pegged Orders.[17] The Exchange notes that the purpose of this revision is to distinguish non-displayed Pegged Orders from Primary Pegged

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74250 (February 11, 2015), 80 FR 8734 (''Notice'').

[4] On June 5, 2014, Chair Mary Jo White asked all national securities exchanges to conduct a comprehensive review of each order type offered to members and how it operates in practice. *See* Mary Jo White, Chair, Commission, Speech at the Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference, (June 5, 2014) (*available at http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VD2HW610w6Y*).

[5] Exchange Rule 1.5(aa) defines ''System'' 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.''

[6] *See* Rule 11.9(c)(6).

[7] As defined in Rule 1.5(e).

[8] For additional detail regarding the specific proposed revisions for each order type and modifier, *see* Notice, *supra* note 3 at 8734–36, and proposed Rule 11.9.

[9] *See* proposed Rule 11.9(b)(1). In connection with this proposed change the Exchange also proposes to specify that the cancellation of an unfilled balance of an order is one possible outcome after an order has been routed away. *See* proposed Rule 11.13(b)(2). This is what would occur with the unfilled balance of a routed IOC order. *See* Notice, *supra* note 3 at 8734.

[10] *See* proposed Rule 11.9(b)(6).

[11] *See* proposed Rule 11.9(c)(6). Due to the Exchange's inverted fee structure, incoming BATS Post Only Orders always execute upon entry (and hence remove liquidity) when marketable against resting contra-side liquidity because it is always economically advantageous for them to do so. The Exchange nevertheless maintains this order type so that the post-only functionality remains available in the event the Exchange's fee structure changes, and proposes the clarifying changes reflected in proposed Rule 11.9(c)(6) so as to reflect the actual functionality of the System, which still performs the economic best interest specified in the rule despite the outcome being pre-determined by the Exchange's fee structure. *See* Notice, *supra* note 3 at 8735.

[12] *See* proposed Rule 11.9(c)(8).

[13] *See* proposed Rule 11.9(c)(9).

[14] *See* proposed Rule 11.9(c)(10). In addition, the Exchange proposes to update cross references to rules that would be re-numbered as a result of the proposal. *See* proposed Rules 11.9(c), 11.9(d) and 11.9(g).

[15] *See* Notice, *supra* note 3 at 8736–37. *See also* proposed Rule 11.12(a).

[16] *See* Notice, *supra* note 3 at 8737. *See also* proposed Rule 11.12(a)(2).

[17] *See* Notice, *supra* note 3 at 8737. *See also* proposed Rule 11.12(a)(2)(C).

Orders that, if displayed, are ranked with other displayed orders.[18] Further, the Exchange proposes to adopt new Rule 11.12(a)(3), which would codify existing match trade prevention rules that optionally prevent the execution of orders from the same User.[19] Lastly, the Exchange proposes to renumber current Rules 11.12(a)(3) and (a)(4) as Rules 11.12(a)(4) and (a)(5), respectively, and to revise them to clarify that time priority in particular can be retained or lost in certain circumstances, as opposed to both price and time priority.[20]

Rule 11.13. The Exchange proposes several revisions to Rule 11.13, which currently governs the execution and routing logic on the Exchange. The Exchange proposes to restructure and reformat the rule in certain ways, including by more clearly delineating between execution (to be contained in new paragraph (a)) [21] and routing (to be contained in new paragraph (b)), adding sub-headings and descriptive titles, adding a cross reference to the Exchange's rules related to the Limit Up-Limit Down Plan, and revising existing cross references in the rule.[22] In addition, the Exchange proposes to add Rules 11.13(a)(4)(C) and (D), which would replace and amend existing text set forth in Rule 11.13(a)(1) and are intended to provide further clarity regarding how incoming orders are handled in certain situations when there is undisplayed locking interest on the Exchange.[23]

The Exchange also proposes revisions to Rule 11.13 as it relates to the Exchange's routing process, including its re-route functionality. In particular, the Exchange proposes to add language to the rule's description of the Aggressive Re-Route instruction (to be renumbered as Rule 11.13(b)(4)(A)) that states that any routable non-displayed limit order posted to the BATS Book that is crossed by another accessible Trading Center will be automatically routed to that Trading Center.[24] The Exchange also proposes to adopt new Rule 11.13(b)(4)(C), which would specify when an order with a Super Aggressive Re-Route instruction will remove liquidity against an incoming order.[25] Further, the Exchange proposes to revise Rule 11.13(b) (to be renumbered as Rule 11.13(b)(5)) to make clear that orders that have been routed pursuant to Rule 11.12(a) are not ranked and maintained by the BATS Book, and therefore are not available to execute against incoming orders pursuant to new Rule 11.13(a).[26]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[28] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change will provide additional clarity and specificity regarding the functionality of the System, thus promoting just and equitable principals of trade and promoting a fair and open market. In addition, the Exchange believes the proposed rule change will contribute to the protection of investors and the public interest by making the Exchange's rules easier to understand.

The Exchange states that the proposed rule changes add clarity and transparency to the Exchange's rulebook regarding existing Exchange functionality.[29] For example, among other things, the Exchange's proposal would amend Rule 11.9 to clarify that IOC orders are routable and FOK orders are not routable, specify the methodology used by the Exchange to determine whether BATS Post Only Orders will remove liquidity from the BATS Book, and add additional detail describing the operation of Mid-Point Peg Orders and Discretionary Orders. The Exchange also has proposed to amend Rules 11.12 and 11.13 to provide additional transparency as to, but not substantively modify, the Exchange's process for ranking, executing and routing orders, including orders subject to the Exchange's re-route functionality.

The Commission believes that these proposed changes should provide greater specificity, clarity and transparency with respect to certain order type and modifier functionality available on the Exchange, as well as the Exchange's methodologies for ranking, executing and routing orders. Therefore, the proposal should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–BYX–2015–07) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09268 Filed 4–21–15; 8:45 am]

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[18] *See* Notice, *supra* note 3 at 8737.

[19] *See* Notice, *supra* note 3 at 8737. *See also* proposed Rule 11.12(a)(3). The Exchange notes that proposed Rule 11.12(a)(3) is based on EDGX Rule 11.9(a)(3). *See* Notice, *supra* note 3 at 8737.

[20] *See* Notice, *supra* note 3 at 8737. *See also* proposed Rules 11.12(a)(4) and (a)(5). In addition, the Exchange proposes to renumber current Rules 11.12(a)(5) and (a)(6) as Rules 11.12(a)(6) and (a)(7), respectively.

[21] The Exchange proposes to move language contained within Rule 11.13 to the beginning of new paragraph (a) such that the language is more generally applicable to the rules governing execution. Specifically, the Exchange proposes to relocate language stating that any order falling within the parameters of the paragraph shall be referred to as ''executable'' and that an order will be cancelled back to the User if, based on market conditions, User instructions, applicable Exchange Rules and/or the Act and the rules and regulations thereunder, such order is not executable, cannot be routed to another Trading Center pursuant to Rule 11.13(b) (as proposed to be re-numbered) or cannot be posted to the BATS Book. *See* Notice, *supra* note 3 at 8737. *See also* proposed Rule 11.13(a).

[22] *See* Notice, *supra* note 3 at 8737. *See also* proposed Rule 11.13.

[23] *See* Notice, *supra* note 3 at 8738. *See also* proposed Rules 11.13(a)(4)(C) and (D).

[24] *See* Notice, *supra* note 3 at 8738–40. *See also* proposed Rule 11.13(b)(4)(A).

[25] *See* Notice, *supra* note 3 at 8738–40. *See also* proposed Rule 11.13(b)(4)(C).

[26] *See* Notice, *supra* note 3 at 8738. *See also* proposed Rule 11.13(b)(5). For additional detail regarding the Exchange's proposed rule changes, including examples of the operation of functionality addressed by this rule filing, *see* Notice, *supra* note 3 at 8734–40.

[27] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* Notice, *supra* note 3 at 8726.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74746; File No. SR–Phlx–2014–66]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Amendment No. 2 and Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 2, To Adopt New Exchange Rule 1081, Solicitation Mechanism, To Introduce a New Electronic Solicitation Mechanism

April 16, 2015.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on April 9, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 2 to the proposed rule change as described in Items II and III below, which Items have been substantially prepared by the Exchange.[3] Amendment No. 2 replaces the original filing in its entirety.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and to designate a longer period within which to issue an order approving or disapproving the proposed rule change, as modified by Amendment No. 2.

On October 14, 2014, the Exchange filed with the Commission, pursuant to Section 19(b)(1) of the Act [5] and Rule 19b–4 thereunder,[6] a proposed rule change to adopt new Exchange Rule 1081, Solicitation Mechanism, to introduce a new electronic solicitation mechanism pursuant to which a member would be able to electronically submit all-or-none orders of 500 contracts or more (or, in the case of mini options, 5,000 contracts or more) that the member represents as agent against contra orders that the member solicited. The proposed rule change was published for comment in the **Federal Register** on October 31, 2014.[7] On December 8, 2014, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to January 29, 2015.[8] On January 28, 2015, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [9] to determine whether to approve or disapprove the proposed rule change.[10] The Commission received one comment letter regarding the proposal,[11] as well as a response to the comment letter from the Exchange.[12]

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Exchange Rule 1081, Solicitation Mechanism, to introduce a new electronic solicitation mechanism pursuant to which a member can electronically submit all-or-none orders of 500 contracts or more (or, in the case of mini options, 5,000 contracts or more) the member represents as agent against contra orders the member solicited. The Exchange is also proposing a corresponding amendment to the definition of ''professional'' in Rule 1,000(b)(14) and a clarification to Rule 1080, Phlx XL and Phlx XL II. The proposed rule change was filed on October 14, 2014.[13] Amendment No. 2 amends and replaces the original filing in its entirety.[14]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to introduce an electronic solicitation mechanism. Currently, under Phlx Rule 1080(c)(ii)(C)(2), Order Entry Firms [15] must expose orders they represent as agent for at least one second before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders.[16] The proposed rule change would provide an alternative, enabling a member to electronically execute orders it represents on behalf of a public customer, broker-dealer, or any other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed Amendment No. 1 on April 1, 2015. Amendment No. 1 was withdrawn on April 8, 2015.

[4] *See infra* note 7. *See also infra* note 14 for the Exchange's description of the changes in Amendment No. 2.

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] *See* Securities Exchange Act Release No. 73441 (October 27, 2014), 79 FR 64862 (''Notice'').

[8] *See* Securities Exchange Act Release No. 73791 (December 8, 2014), 79 FR 73924 (December 12, 2014).

[9] 15 U.S.C. 78s(b)(2)(B).

[10] *See* Securities Exchange Act Release No. 74167 (January 28, 2015), 80 FR 5865 (February 3, 2015) (''Order Instituting Proceedings'').

[11] *See* Letter from Michael J. Simon, Secretary and General Counsel, International Securities Exchange LLC, dated February 25, 2015.

[12] *See* Letter from Carla Behnfeldt, Associate General Counsel, Nasdaq, dated March 11, 2015.

[13] *See* Securities Exchange Act Release No. 73441 (October 27, 2014), 79 FR 64862 (October 31, 2014). The Exchange filed Amendment No. 1 on April 1, 2015. Amendment No. 1 was withdrawn on April 8, 2015.

[14] The amendment makes certain changes to Exchange Rule 1080(n) regarding the PIXL auction process, clarifies that the trading system does not currently accept all-or-none Complex Orders, provides that the side of the Agency Order will be disseminated at the commencement of an auction, clarifies the treatment of responsive all-or-none interest in the auction, adds examples and makes certain other technical and clarifying changes.

[15] Rule 1080(c)(ii)(A)(1) defines ''Order Entry Firm'' as a member organization of the Exchange that is able to route orders to AUTOM. (AUTOM is the Exchange's electronic quoting and trading system, which has been denoted in Exchange rules as XL II, XL and AUTOM.)

[16] Section (c), Solicited Orders, of Exchange Rule 1064, Crossing, Facilitation and Solicited Orders, governs execution of solicited orders by open outcry, on the Exchange trading floor, and is unaffected by proposed Rule 1081. Additionally, many aspects of the functionality of the proposed solicitation mechanism are similar to those provided for in Rule 1080(n), PIXL, and certain of the rules proposed herein consequently track the existing PIXL rules. The Exchange adopted PIXL in October 2010 as a price-improvement mechanism that is a component of the Exchange's fully automated options trading system, Phlx XL, now known as XL II. Like the solicitation mechanism, PIXL is a mechanism whereby an initiating member submits a two-sided (buy and sell) order into an auction process soliciting price improvement. *See* Securities Exchange Act Release Nos. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (order approving SR–Phlx–2010–108, for purposes of this proposed rule change, the ''PIXL Filing'') and 69845 (June 25, 2013), 78 FR 39429 (July 1, 2013) (SR–Phlx–2013–46 and, for purposes of this proposed rule change, the ''Complex PIXL Filing'') (Order Granting Approval To Proposed Rule Change, as Modified by Amendment No. 1, Regarding Complex Order PIXL).

entity (an ''Agency Order'') [17] against solicited limit orders of a public customer, broker-dealer, or any other entity (a ''Solicited Order'') through a solicitation mechanism designed for this purpose.[18]

The new mechanism is a process by which a member (the ''Initiating Member'') can electronically submit all-or-none orders [19] of 500 contracts or more (or, in the case of mini options,[20] 5,000 contracts or more) that it represents as agent against contra orders that it has solicited, and initiate an auction (the ''Solicitation Auction'').[21] As explained below, at the end of the Solicitation Auction, allocation will occur with all contracts of the Agency Order trading at an improved price against non-solicited contra-side interest or at the stop price, defined below, against the Solicited Order. The solicitation mechanism would accommodate both simple orders and Complex Orders.[22] Prior to the first time a member enters an Agency Order into the solicitation mechanism on behalf of a customer, the member would be required to deliver to the customer a written notification informing the customer that its Agency Orders may be executed using the Phlx's solicitation mechanism. Such written notification would be required to disclose the terms and conditions contained in Rule 1081 and to be in a form approved by the Exchange.[23]

Solicitation Auction Eligibility Requirements

All options traded on the Exchange, including mini options, are eligible for the Solicitation Auction. Proposed Rule 1081(i) describes the circumstances under which an Initiating Member may initiate a Solicitation Auction.

Proposed Rule 1081(i)(A) provides that the Agency Order and the Solicited Order must each be limit orders for at least 500 contracts (or, in the case of mini options, at least 5,000 contracts) and be designated as all-or-none. The orders must match in size, and their limit prices must match or cross in price.[24] If the orders cross in price, the price at which the Agency Order and the Solicited Order may be considered for submission pursuant to Rules 1081(i)(B) and (C) shall be the limit price of the Solicited Order.[25] The orders may not be stop or stop limit orders, must be marked with a time in force of day, good till cancelled or immediate or cancel, and will not be routed regardless of routing strategy indicated on the order.[26]

Pursuant to Rule 1081(i)(B) the Initiating Member must stop the entire Agency Order at a price (the ''stop price'') that is equal to or better than the National Best Bid/Offer (''NBBO'') on both sides of the market, provided that such price must be at least $0.01 better than any public customer non-contingent limit order on the Phlx order book and must be equal to the Agency Order's limit price or provide the Agency Order with a better price than its limit price. Stop prices may be submitted in $0.01 increments, regardless of the applicable Minimum Price Variation (the ''MPV''). Contingent orders [27] (including all-or-none, stop or stop-limit orders) on the book will not be considered when checking the acceptability of the stop price. Contingent orders are not represented as part of the Exchange Best Bid/Offer since they may only be executed if specific conditions are met. Given these orders are not represented as part of the Exchange Best Bid/Offer, they are not included in the NBBO and thus not considered when checking the acceptability of the stop price.[28]

Orders which are submitted which do not comply with the eligibility requirements set forth in proposed Rule 1081(i)(A) through (C) will be rejected upon receipt and ineligible to initiate a Solicitation Auction.[29] In addition, Agency Orders submitted at or before the opening of trading are not eligible to initiate a Solicitation Auction and will be rejected.[30] Orders submitted during a specified period of time, as determined by the Exchange and communicated to Exchange membership on the Exchange's Web site, prior to the end of the trading session in the affected series [31] (including, in the case of Complex Orders, in any series which is a component of the Complex Order) are

[17] Rule 1080(b)(i)(A) provides in part that ''[f]or purposes of Exchange options trading, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.'' However, that provision did not contemplate, and is not applicable to, the capitalized and defined term ''Agency Order'' as used in proposed Rule 1081.

[18] To be clear, participants must ensure that their records adequately demonstrate the solicitation of an order that is entered into the mechanism for execution against an Agency Order as a Solicited Order prior to entry of such order into this mechanism.

[19] Exchange Rule 1066(c)(4) defines an ''all-or-none'' order as a market or limit order which is to be executed in its entirety or not at all.

[20] A given Solicitation Auction may be for options contracts exclusively or for mini options contracts exclusively, but cannot be used for a combination of both options contracts and mini options contracts together.

[21] Similar electronic functionality is offered today by competing exchanges. *See* Chicago Board Options Exchange (''CBOE'') Rule 6.74B, Solicitation Auction Mechanism (the ''CBOE Mechanism''), and International Securities Exchange (''ISE'') Rule 716(e), Solicited Order Mechanism (the ''ISE Mechanism'').

[22] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. A Complex Order may also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). Complex Orders on Phlx are discussed in Commentary .07 to Rule 1080.

[23] *See* Rule 1081(i)(H). The rule would require delivery of this disclosure only prior to the first submission of an Agency Order on behalf of a customer rather than prior to the submission of each and every Agency Order on behalf of such customer.

[24] In the case of Complex Orders, the underlying components of both Complex Orders must also match. Additionally, all the option legs of each Complex Order must consist entirely of options or entirely of mini options.

[25] For example, assume an Agency Order to buy 1000 contracts for $2.00 and a Solicited Order to sell 1,000 contracts at $1.90 are entered into the solicitation mechanism. Since the limits of these orders cross in price, the Agency Order and Solicited Order are considered to be submitted into the mechanism with a stop price equal to the Solicited Order price of $1.90.

[26] Whether an order is marked with a time in force of day as opposed to, for example, good till cancelled or immediate or cancel is irrelevant to the manner in which they will be treated once they are entered into the solicitation mechanism.

[27] A contingent order is a limit or market order to buy or sell that is contingent upon a condition being satisfied. PIXL also does not consider contingent orders on the book when checking the acceptability of the stop price.

[28] Rule 1081(i)(B) does not apply if the Agency Order is a Complex Order (a ''Complex Agency Order''). Rather, Rule 1081(i)(C) applies to Complex Agency Orders and requires them to be of a conforming ratio, as defined in Commentary .07(a)(ix) to Rule 1080. A Complex Agency Order which is not of a conforming ratio will be rejected. (PIXL operates in the same manner. *See* Rule 1080(n)(i)(C).) Rule 1081(i)(C) requires all component option legs of the order to be for at least 500 contracts (or, in the case of mini options, at least 5,000 contracts). It also provides that the Initiating Member must stop the entire Complex Agency Order at a price that is better by at least $0.01 than the best net price (debit or credit) (i) available on the Complex Order book regardless of the Complex Order book size; and (ii) achievable from the best Phlx bids and offers for the individual options (an ''improved net price'') regardless of size, provided in either case that such price is equal to or better than the Complex Agency Order's limit price. Stop prices for Complex Agency Orders may be submitted in $0.01 increments, regardless of MPV, and contingent orders on the book will not be considered when checking the acceptability of the stop price. *See* proposed Rule 1081(i)(C).

[29] *See* Rule 1081(i)(D).

[30] *See* Rule 1081(i)(E).

[31] The term ''series'' of options means all option contracts of the same class having the same expiration date and exercise price. A ''class'' of options means all option contracts of the same ''type'' of option covering the same underlying stock. A ''type'' of option means the classification of an option contract as a put or a call. *See* Rule 1000, Applicability, Definitions and References.

not eligible to initiate a Solicitation Auction and will be rejected.[32] Agency Orders which are not Complex Orders received while another electronic auction (including any Solicitation Auction, PIXL auction, or any other kind of auction) involving the same option series is in progress are not eligible to initiate a Solicitation Auction and will be rejected.[33] Similarly, a Complex Agency Order received while another auction in the same Complex Order strategy is in progress is not eligible to initiate a Solicitation Auction and will be rejected.[34]

Finally a solicited order for the account of any Exchange specialist, streaming quote trader (''SQT''), remote streaming quote trader (''RSQT'') or non-streaming registered options trader (''ROT'') assigned in the affected series may not be a Solicited Order.[35]

Consistent with the explanation the Exchange made in the PIXL Filing, the Exchange believes that in order to maintain fair and orderly markets, a market maker assigned in an option should not be solicited for participation in a Solicitation Auction by an Initiating Member. The Exchange believes that market makers interested in participating in transactions on the Exchange should do so by way of his/her quotations, and should *respond* to Solicitation Auction notifications rather than create them by having an Initiating Member submitting Solicited Orders on the market maker's behalf.

Solicitation Auction Process

Pursuant to Rule 1081(ii)(A)(1), to begin the process the Initiating Member must mark the Agency Order and the Solicited Order for Solicitation Auction processing, and specify the stop price at which it seeks to cross the Agency Order with the Solicited Order. The system will determine the stop price based upon the submitted limit prices if such prices do not match as discussed above. Once the Initiating Member has submitted an Agency Order and Solicited Order for processing pursuant to this subparagraph, such Agency Order and Solicited Order may not be modified or cancelled.[36]

Crossing Two Public Customer Orders Without a Solicitation Auction

As noted above, the proposed rule change would enable a member to electronically execute an Agency Order, which is an order it represents on behalf of a public customer, broker-dealer, or any other entity, against a Solicited Order, which is a solicited limit order of a public customer, broker-dealer, or any other entity through the solicitation mechanism.

However, pursuant to Rule 1081(v), if a member enters an Agency Order for the account of a public customer paired with a Solicited Order for the account of public customer and if the paired orders adhere to the eligibility requirements of Rule 1081(i), such paired orders will be automatically executed without a Solicitation Auction.[37] The execution price for such paired public customer orders (except if they are Complex Orders) must be expressed in the minimum quoting increment applicable to the affected series.[38] Such an execution may not trade through the NBBO or at the same price as any resting public customer order. If all-or-none orders are on the order book in the affected series, the public customer-to-public customer order may not be executed at a price at which the all-or-none order would be eligible to trade based on its limit price and size.[39]

In the case of a Complex Order, a public customer-to-public customer cross may only occur at a price which improves the calculated Phlx Best Bid/Offer or ''cPBBO'' and improves upon the net limit price of any Complex Orders (excluding all-or-none) on the Complex Order book in the same strategy.[40] If all-or-none Complex Orders[41] are on the Complex Order

[32] *See* Rule 1081(i)(F).

[33] A similar restriction applies with respect to PIXL auctions. *See* PIXL Rule 1080(n)(ii) which provides that ''[o]nly one Auction may be conducted at a time in any given series or strategy.'' The Exchange is proposing to revise this provision to make clear that only one electronic auction of any kind may be conducted at a time in any given series or strategy. The Exchange is proposing to further amend the PIXL rule by adding Rule 1080(n)(i)(H) to provide that PIXL Orders that are received while another electronic auction involving the same option series or the same Complex Order strategy is in progress are not eligible to initiate a PIXL Auction and will be rejected.

[34] However, a simple Agency Order in one series that is submitted while an electronic auction is already in process with respect to a Complex Agency Order that includes the same series will *not* be rejected. Instead, a Solicitation Auction will be initiated for that incoming Agency Order offering each unique strategy or individual series the same opportunity to initiate an auction. This behavior is consistent with the handling of overlapping PIXL and Complex PIXL auctions. *See* PIXL Rule 1080(n)(ii). Any Legging Orders will automatically be removed from the order book upon receipt of an Agency or Complex Agency Order which consists of a component in which there is a Legging Order (whether a buy order or a sell order) that initiates a Solicitation Auction. *See* Rule 1080.07(f)(iii)(C)(4)(vi). Complex Orders submitted during normal trading hours in a strategy which has not yet opened under Commentary .07 of Exchange Rule 1080 will cause the strategy to immediately open and a Solicitation Auction may be initiated. *See* Rule 1081(i)(E). In addition, neither a Solicitation Auction for a simple Agency Order or Complex Agency Order may be initiated prior to the regular opening of the individual option in the case of a simple Agency Order, or the regular opening of all individual components in the case of a Complex Agency Order.

[35] *See* Rule 1081(i)(G). An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A). A RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member affiliated with a Remote Streaming Quote Trader Organization (''RSQTO'') with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may not submit option quotations in eligible options to which such RSQT is assigned to the extent that the RSQT is also approved as a Remote Specialist in the same options. An RSQT may only trade in a market making capacity in classes of options in which he is assigned or approved as a Remote Specialist. An RSQTO is a member organization in good standing that satisfies the SQTO readiness requirements in Rule 507(a).

[36] For clarity, Rule 1080(ii)(A)(l) does not apply to Complex Agency Orders. Rather, in a parallel provision, proposed Rule 1081(ii)(A)(2) provides that to initiate a Solicitation Auction in the case of a Complex Agency Order and Complex Solicited Order (a ''Complex Solicitation Auction''), the Initiating Member must mark the orders for Solicitation Auction processing, and specify the price (''stop price'') at which it seeks to cross the Complex Agency Order with the Complex Solicited Order. The system will determine the stop price based upon the submitted limit prices if such prices do not match as discussed above. Once the Initiating Member has submitted the orders for processing pursuant to this subparagraph, they may not be modified or cancelled.

[37] The eligibility requirements require the orders to each be limit orders for at least 500 contracts (or, in the case of mini options, at least 5000 contracts) and be designated as all-or-none. The orders must match in size, and the limit prices must match or cross in price. The orders may not be stop or stop limit orders, must be marked with a time in force of day, good till cancelled or immediate or cancel. In the case of Complex Orders, the orders must be of a conforming ratio, and all component option legs of the order must be for at least 500 contracts (or, in the case of mini options, at least 5000 contracts). *See* Rule 1081(i). The Exchange also accommodates the crossing of two public customer orders in PIXL. *See* Rule 1080(n).

[38] The execution price for a Complex Order may be in $.01 increments.

[39] All-or-none orders can only be submitted for non-broker dealer customers. As stated above, all-or-none orders are not considered when checking the acceptability of the stop price of an Agency Order.

[40] The term ''cPBBO'' means the best net debit or credit price for a Complex Order Strategy based on the PBBO for the individual options components of such Complex Order Strategy, and, where the underlying security is a component of the Complex Order, the National Best Bid and/or Offer for the underlying security. *See* Rule 1080.07(a)(iv).

[41] The Exchange's trading system is capable of accepting all-or-none Complex Orders which are not, however, affirmatively permitted to be submitted under Exchange rules. Rule 1080.07(b)(v) provides in part that ''Complex Orders may be submitted as: All-or-none orders—to be executed in

Continued

book in the same strategy, the public customer-to-public customer Complex Order may not be executed at a price at which the all-or-none Complex Order would be eligible to trade based on its limit price and size.

The Exchange believes that permitting such executions will benefit public customers on both sides of the crossing transaction by providing speedy and efficient executions to public customer orders in this circumstance while maintaining the priority of public customer interest on the book. The proposed handling of a public customer Agency Order paired with a public customer Solicited Order is similar to the handling of a public customer PIXL Order paired with a public customer Initiating Order which is submitted into the PIXL mechanism.[42]

Solicitation Auction Notification

Pursuant to proposed Rule 1081(ii)(A)(3), when the Exchange receives an order for Solicitation Auction processing, a Request for Response with the option details (meaning, the security, strike price, and expiration date), size, side and stop price of the Agency Order and the Solicitation Auction start time is then sent over the PHLX Orders data feed[43] and Specialized Quote Feed (''SQF'').[44] The Exchange believes that providing option details, size, side and stop price is sufficient information for participants to determine whether to submit responses to the Solicitation Auction.[45]

Solicitation Auction

The Solicitation Auction process is described in proposed Rules 1081(ii)(A)(4)–(10). Following the issuance of the Request for Response, the Solicitation Auction will last for a period of 500 milliseconds[46] unless it is concluded as the result of any of the circumstances described below.[47]

Any person or entity may submit Responses to the Request for Response, provided such Response is properly marked specifying the price, size and side of the market at which it would be willing to participate in the execution of the Agency Order.[48] The Exchange believes that permitting any person or entity to submit Responses to the Request for Response should attract Responses from all sources, maximizing the potential for liquidity in the Solicitation Auction and thus affording the Agency Order the best opportunity for price improvement. Responses will not be visible to Solicitation Auction participants, and will not be disseminated to the Options Price Reporting Authority (''OPRA''). A Response may be for any size up to the size of the Agency Order.[49] The minimum price increment for Responses will be $0.01. A Response must be equal to or better than the NBBO on both sides of the market at the time of receipt of the Response. A Response with a price that is outside the NBBO at the time of receipt will be rejected.[50] Multiple Responses from the same member may be submitted at different prices during the Solicitation Auction. Responses may be modified or cancelled during the Solicitation Auction. The acceptance and handling of Responses to a Solicitation Auction is the same as the acceptance and handling of Responses today for a PIXL Auction.[51]

Conclusion of the Solicitation Auction

Rules 1081(ii)(B)(1)–(4) describe a number of circumstances that will cause the Solicitation Auction to conclude. Generally, it will conclude at the end of the Solicitation Auction period, except that it may conclude earlier: (i) Any time the Phlx Best Bid/Offer (''PBBO'') on the same side of the market as the Agency Order crosses the stop price (since further price improvement will be unlikely and any Responses offering improvement are likely to be cancelled),[52] or (ii) any time there is a

its entirety or not at all.'' *See* Securities Exchange Act Release No. 72351 (June 9, 2014), 79 FR 33977 (June 13, 2014) (SR–Phlx–2014–39). Nevertheless, all-or-none Complex Orders may not be submitted at this time. To make this clear, the Exchange proposes to add a sentence at the end of Rule 1080.07(b)(v) stating that ''[n]otwithstanding the above, the trading system does not currently accept all-or-none Complex Orders.'' The Exchange anticipates that it will file a proposed rule change to provide for the handling and execution of all-or-none Complex Orders and thereafter permit the trading system to accept them. The Exchange therefore intends to delete this new sentence if the Exchange submits and the Commission approves a proposed rule change that provides for all-or-none orders to be submitted through the trading system. The instant proposed rule change describes how the solicitation mechanism will deal with all-or-none Complex Orders once they are permitted under Exchange rules. Complex Agency Orders and Complex Solicited Orders provided for herein are not Complex Orders that will require filing of a proposed rule change in order to be submitted into the system. Complex Agency Orders and Complex Solicited Orders, while all-or-none in character, are unique to the solicitation mechanism and are explicitly provided for herein.

[42] *See* Rule 1080(n)(vi).

[43] The PHLX Orders data feed is designed to provide the real-time status of simple and Complex Orders on the Phlx order book directly to subscribers. This includes new orders and changes to orders resting on the Phlx book for all Phlx listed options. PHLX Orders also includes opening imbalance information, PIXL information and Complex Order Live Auction (''COLA'') data.

[44] SQF is an interface that allows specialists and market makers to connect and send quotes into Phlx XL and assists them in responding to auctions and providing liquidity to the market.

[45] In the case of a Complex Agency Order, the Request for Response will include the strategy, side, size, and stop price of the Agency Order as well as the Solicitation Auction start time.

[46] In April/May 2014, to determine whether the proposed Solicitation Auction timer would provide sufficient time to respond to a Request for Response, the Exchange polled all Phlx market makers, 20 of which responded. Of those that responded to the survey, 15 are currently responding to auctions on Phlx or intend to do so. 100% of those respondents indicated that their firm could respond to auctions with a duration of at least 50 milliseconds. Thus, the Exchange believes that the proposed Solicitation Auction duration of 500 milliseconds would provide a meaningful opportunity for participants on Phlx to respond to a Solicitation Auction, whether initiated by an Agency Order or a Complex Agency Order, while at the same time facilitating the prompt execution of orders. The Exchange notes that both ISE and Miami International Securities Exchange LLC (''MIAX'') rules provide for a 500 millisecond response time. *See* ISE Rule 716, Supplementary Material .04 and MIAX Rule 515A(b)(2)(i)(C).

[47] Rule 1080(c)(ii)(C)(2), which states that Order Entry Firms must expose orders they represent as agent for at least one second before such orders may be automatically executed against solicited orders, is being amended to clarify that it does not apply to Rule 1081, Solicitation Mechanism. *See also* Rule 1081(ii)(A)(4).

[48] In the case of a Complex Agency Order, the Response must also specify the price, size and side of the market at which the person submitting the Response would be willing to participate in the execution of the Complex Agency Order.

[49] Responses may not be submitted with an all-or-none contingency. All-or-none (as a Response) is not available for any type of auction in the Phlx market because all-or-none orders may be submitted *only* for Customer accounts under Exchange rules, and Customers typically do not respond to auctions in any event. (Note, however, that all-or-none *orders* entered and present in the system at the end of the Solicitation Auction will be considered for execution, as discussed below.)

[50] Similarly, in the case of Complex Order Responses, the Response must be equal to or better than the cPBBO on both sides, as defined in Commentary .07(a)(iv) of Rule 1080 at the time of receipt of the Complex Order Response but need not improve upon the limit of orders on the CBOOK since the CBOOK is not displayed on OPRA and may not be known to the responding participant. If a Complex Order Response was received which was equal to or crossed the limit of orders on the CBOOK, such Responses will only be executed at a price which improves the resting order's limit price by at least $0.01. *See* proposed rule 1081(ii)(H). A Complex Order Response submitted with a price that is outside the cPBBO at the time of receipt will be rejected. *See* proposed Rule 1081(ii)(A)(9).

[51] *See* Exchange Rule 1080(n).

[52] In the case of a Complex Solicitation Auction, it would end any time the cPBBO or the Complex Order book, excluding all-or-none Complex Orders, on the same side of the market as the Complex Agency Order, crosses the stop price. *See* Rule 1081(ii)(B)(3). The Exchange believes that when either the cPBBO or Complex Order interest, excluding all-or-none, is present on the Exchange on the same side as the Complex Agency Order and crosses the stop price that further price improvement will be unlikely and Responses offering improvement are likely to be cancelled. The Exchange also believes that an all-or-none Complex Order crossing the stop price should not end the Complex Solicitation Auction since the order is contingent and may not actually be tradable based on its size contingency. The Exchange believes continuing to run the Complex Solicitation Auction for the duration of the auction timer

trading halt on the Exchange in the affected series (or, in the case of a Complex Solicitation Auction, any time there is a trading halt on the Exchange in any component of a Complex Agency Order).[53]

Pursuant to proposed Rule 1081(ii)(C), if the Solicitation Auction concludes before the expiration of the Solicitation Auction period as the result of the PBBO, cPBBO or Complex Order book (excluding all-or-none Complex Orders) crossing the stop price as described in Rules 1081(ii)(B)(2) and 1081(ii)(B)(3), the entire Agency Order will be executed using the allocation algorithm set forth in Rule 1081(ii)(E). The algorithm is described below under the heading ''Order Allocation''.

Also pursuant to proposed Rule 1081(ii)(C), if the Solicitation Auction concludes before the expiration of the Solicitation Auction period as the result of a trading halt, the entire Agency Order or Complex Agency Order will be executed solely against the Solicited Order or Complex Solicited Order at the stop price and any unexecuted Responses will be cancelled.[54] Responses and other interest present in the system will not be considered for trade against the Agency Order in the case of a trading halt. The Exchange believes this is appropriate since the participants representing tradable interest in the Solicitation Auction have not 'stopped' the Agency Order in its entirety and would have no means after the auction executions occur to offset the trading risk they would incur because the market is halted if they were permitted to execute against the Agency Order in this instance. However, the Solicited Order 'stopped' the Agency Order when the order was submitted into the Solicitation Auction and will therefore execute against the Agency Order if the Solicitation Auction concludes before the expiration of the Solicitation Auction period as the result of a trading halt.

Furthermore, when Agency and Solicited Orders are submitted into the Solicitation Auction, the stop price must be equal to or improve the NBBO and be at least $0.01 better than any public customer non-contingent limit orders on the Phlx order book. The Exchange believes that public customer interest submitted to Phlx after submission of the Agency and Solicited Orders but prior to the trading halt should not prevent the Agency Order from being executed at the stop price since such public customer interest was not present at the time the Agency Order was 'stopped' by the Solicited Order.

Entry of an unrelated market or marketable limit order on the opposite side of the market from the Agency Order received during the Solicitation Auction will *not* cause the Solicitation Auction to end early. Rather, the unrelated order will execute against interest outside the Solicitation Auction (if marketable against the PBBO) or will post to the book and then route if eligible for routing (in the case of an order marketable against the NBBO but not against the PBBO), pursuant to Rule 1081(ii)(D). If contracts remain from such unrelated order at the time the Solicitation Auction ends, the total unexecuted volume of such unrelated interest will be considered for participation in the order allocation process, regardless of the number of contracts in relation to the Solicitation Auction size, described in Rule 1081(ii)(E).[55] The handling of unrelated opposite side interest which is received during the Solicitation Auction is the same as the handling of unrelated opposite side interest which is received during a PIXL Auction.[56] Participants submitting such unrelated interest may not be aware that an auction is in progress and should therefore be able to access firm quotes that comprise the NBBO without delay. Considering such unrelated interest which remains unexecuted upon receipt for participation in the order allocation process described in Rule 1081(ii)(E) will increase the number of contracts against which an Agency Order could be executed, and should therefore create more opportunities for the Agency Order to be executed at better prices.

Order Allocation

The allocation of orders executed upon the conclusion of a Solicitation Auction will depend upon whether the Solicitation Auction has yielded sufficient improving interest to improve the price of the entire Agency Order. As noted above, all contracts of the Agency Order will trade at an improved price against non-solicited contra-side interest or, in the event of insufficient improving interest to improve the price of the entire Agency Order, at the stop price against the Solicited Order.

Consideration of All-or-None Interest. The treatment of all-or-none interest in assessing the presence of sufficient improving interest differs between simple Solicitation Auctions and Complex Solicitation Auctions. In all Solicitation Auctions, whether simple or complex, the system will not consider an all-or-none order when determining if there is sufficient size to execute the Agency Order (or Complex Agency Order) at a price(s) better than the stop price if the all-or-or none contingency cannot be satisfied by an execution. However, all-or-none interest of a size which could potentially be executed consistent with its all-or-none contingency *is* considered when determining whether there is sufficient size to execute simple Agency Orders at price(s) better than the stop price. By contrast, pursuant to proposed Rule 1081(ii)(E)(5), when determining if there is sufficient size to execute Complex Agency Orders at a price(s) better than the stop price, *no* all-or-none interest of *any* size will be considered. This difference in behavior is due to a system limitation relating to all-or-none Complex Orders.[57] The Exchange believes this behavior is not impactful since all-or-none Complex Orders are

benefits the Agency Order in allowing for interest to continue to be collected which may offer price improvement over the stop price. This behavior is consistent with Solicitation Auctions involving simple orders. Simple Solicitation Auctions conclude early when the PBBO on the same side of the market as the Agency Order crosses the stop price. All-or-none orders are not part of the PBBO as they are contingent and not displayed on OPRA.

[53] Trading on the Exchange in any option contract is halted whenever trading in the underlying security has been paused or halted by the primary listing market. *See* Exchange Rule 1047(e). *See also* Securities Exchange Act Release No. 62269 (June 10, 2010), 75 FR 34491 (June 17, 2010) (SR–Phlx–2010–82). Any executions that occur during any latency between the pause or halt in the underlying security and the processing of the halt on the Exchange are nullified pursuant to Exchange Rule 1092(c)(iv)(B).

[54] The Exchange's PIXL auction features similar functionality. Pursuant to Exchange Rule 1080(n)(ii)(C), in the case of a trading halt on the Exchange in the affected series, a PIXL Order will be executed solely against the Initiating Order at the stop price and any unexecuted PAN responses will be cancelled.

[55] Similarly, pursuant to Rule 1081(ii)(D), in the case of a Complex Solicitation Auction, an unrelated market or marketable limit Complex Order on the opposite side of the market from the Complex Agency Order as well as orders for the individual components of the unrelated Complex Order received during the Complex Solicitation Auction will not cause the Complex Solicitation Auction to end early and will execute against interest outside of the Complex Solicitation Auction. If contracts remain from such unrelated Complex Order at the time the Complex Solicitation Auction ends, the total unexecuted volume of such unrelated interest will be considered for participation in the order allocation process, regardless of the number of contracts in relation to the Complex Solicitation Auction size, described in Rule 1081(ii)(E).

[56] *See* Exchange Rule 1080(n)(ii)(D).

[57] All-or-none simple orders reside with simple orders on the book. By contrast, all-or-none Complex Orders reside in a separate book, in a different part of the trading system. Thus aggregation of all-or-none Complex Orders with other Complex Orders in order to determine the presence of sufficient improving interest is a more difficult process than aggregation of all-or-none simple orders with other simple orders.

rare [58] and if sufficient size exists to execute the entire Complex Agency Order at an improved price, the all-or-none Complex Order will be considered for trade and executed if possible as explained below.

Assessing Sufficiency of Improving Interest in a Simple Solicitation Auction. Assume an Agency Order to buy 1000 contracts stopped by a Solicited Order at $2.00 is entered when the PBBO is $1.90–$2.10. Assume that during the Solicitation Auction, Responses are received to sell 700 contracts at $1.97 and sell 150 contracts at $1.99. In addition, assume an order to sell 300 contracts at $1.98 with an all-or-none contingency is received. At the end of the Solicitation Auction, the system *will* consider the all-or-none order when determining if there is sufficient size to execute the Agency Order at a price(s) better than the stop price since the all-or-none contingency can be satisfied by an execution.[59] In this example, at the end of the Solicitation Auction, the Agency Order will execute against improving interest with 700 contracts executing at $1.97 and 300 contracts (representing the all-or-none order) executing at $1.98.

Assessing Sufficiency of Improving Interest in a Complex Solicitation Auction. Assume a Complex Agency Order to buy 1000 contracts stopped by a Complex Solicited Order at $2.00 is entered when the cPBBO is $1.90–$2.10. Assume that during the Solicitation Auction a Response is received to sell 900 contracts at $1.98 and an all-or-none Complex Order is received to sell 100 contracts at $1.99. At the end of the Solicitation Auction involving a Complex Order, the system does *not* consider all-or-none interest in determining whether it can execute the Complex Agency Order at a better price than the stop price.[60] In this case, excluding the all-or-none Complex Order, only 900 contracts are available to sell at a better price than the stop price. Therefore the Complex Agency Order would trade against the Solicited Order at the $2.00 stop price.

In both simple Solicitation Auctions and Complex Solicitation Auctions, once a determination is made that sufficient improving interest exists, all-or-none interest will be executed pursuant to normal priority rules, except that it will not be executed if the all-or-none contingency cannot be satisfied. If an execution which can adhere to the all-or-none contingency is not possible, such all-or-none interest will be ignored and will remain on the order book.

Solicitation Auction with Sufficient Improving Interest. Pursuant to the Rule 1081(ii)(E)(1) algorithm, if there is sufficient size (considering all resting orders, quotes and Responses) to execute the entire Agency Order at a price or prices better than the stop price, the Agency Order will be executed against such better priced interest with public customers having priority at each price level. After public customer interest at a particular price level has been satisfied, including all-or-none orders with a size which can be satisfied, remaining contracts will be allocated among all Exchange quotes, orders and Responses in accordance with Exchange Rules 1014(g)(vii)(B)(1)(b) and (d), and the Solicited Order will be cancelled.[61]

Example of Solicitation Auction with Sufficient Improving Interest. To illustrate a case where a Solicitation Auction yields enough improving interest to better the stop price and the application of the Rule 1081(ii)(E)(1) algorithm, assume the NBBO is $0.95–$1.03, and a buy side Agency Order for 1000 contracts is submitted with a contra-side Solicited Order to stop the Agency Order at $1.00. During the Solicitation Auction, assume a market maker (''MM1'') Response is submitted to sell 800 contracts at $0.97, a broker-dealer Response is submitted to sell 100 contracts at $0.99, and a public customer sends in an order, outside of the Solicitation Auction, to sell 100 contracts at $0.99. Upon receipt of the public customer order, the NBBO changes to $0.95–$0.99. In addition, assume two market makers send in quotes of $0.95–$0.99 during the Solicitation Auction. Market Maker 2 (''MM2'') quotes $0.95–$0.99 with 100 contracts and Market Maker 3 (''MM3'') quotes $0.95–$0.99 with 50 contracts. At the end of the Solicitation Auction, since there is enough interest to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed against the better priced interest as follows:

—the Agency Order trades 800 contracts at $0.97 against MM1 Response;
—the Agency Order trades 100 contracts at $0.99 against public customer;
—the Agency Order trades 67 contracts at $0.99 against MM2 quote (pro-rata allocation); and
—the Agency Order trades 33 contracts at $0.99 against MM3 quote (pro-rata allocation).

The broker-dealer does not trade any contracts since broker-dealer orders execute only after all public customer

[58] The Exchange reviewed six months of data which showed that all-or-none Complex Orders represented only 0.12% of all Complex Orders.

[59] Consider a similar scenario whereby the Responses received were to sell 700 contracts at $1.97 and sell 300 contracts at $1.99 and an all-or-none order to sell 500 contracts at $1.98 was received. In this scenario, the system will not consider the all-or-none order when determining if there is sufficient size to execute the Agency Order at a price(s) better than the stop price since the all-or-or none contingency cannot be satisfied by an execution. However, excluding the all-or-none order, the Agency Order can still be satisfied at a price(s) better than the stop price. In this scenario, at the end of the Solicitation Auction, the Agency Order will execute against improving interest with 700 contracts executing at $1.97 and 300 contracts executing at $1.99. The 500 contract all-or-none order does not execute because the all-or-none contingency cannot be satisfied.

[60] If however, the example is changed and Responses are received to sell 900 contracts at $1.98 and sell 100 contracts at $1.99 and an order to sell 100 contracts at $1.98 all-or-none is received, at the end of the Solicitation Auction, there is enough interest which is not all-or-none to satisfy the Complex Agency Order at a better price than the $2.00 stop price. Therefore the Agency Order would be executed against the 900 lot at $1.98 and the remaining 100 contracts executed against the all-or-none Complex Order at $1.98.

[61] Similarly, pursuant to Rule 1081(ii)(E)(3), in the case of a Complex Solicitation Auction, if there is sufficient size (considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against better priced Complex Orders, Responses, as well as quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction. (The cPBBO is not considered in determining whether there is sufficient improving size because the market and/or size of the individual components can change between the calculation of sufficient size and the actual execution.) Such interest will be allocated at a given price in the following order: (i) To public customer Complex Orders and Responses in time priority; (ii) to SQT, RSQT, and non-SQT ROT Complex Orders and Responses on a size pro-rata basis; (iii) to non-market maker off-floor broker-dealer Complex Orders and Responses on a size pro-rata basis, and (iv) to quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction with public customer interest being satisfied first in time priority, then to SQT, RSQT, and non-SQT ROT interest satisfied on a size pro-rata basis, and lastly to non-market maker off-floor broker-dealers on a size pro-rata basis. This allocation methodology is consistent with the allocation methodology utilized for a Complex Order executed in PIXL. In addition, providing public customer's with priority over SQT, RSQT, and non-SQT ROTs, who in turn have priority over non-market maker off-floor broker-dealers is the same priority scheme used for regular orders. *See* Exchange Rule 1014(g).

When determining if there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price, if the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, Complex Orders and Responses which are marked ''short'' will not be considered because of the possibility that a short sale price restriction may apply during the interval between assessing for adequate size and the execution of the Complex Agency Order. However, if there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price irrespective of any covered securities for which the price test is triggered that may be present, then all Complex Orders and Responses which are marked ''short'' will be considered for allocation in accordance with Rule 1081(ii)(J)(3).

and market maker interest is satisfied. The unexecuted Solicited Order and broker-dealer Response are cancelled back to the sending participants.[62]

Solicitation Auction with Insufficient Improving Interest. Pursuant to proposed Rule 1081(ii)(E)(2), if there is not sufficient size (considering all resting orders, quotes and Responses) to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed against the Solicited Order at the stop price provided such price is better than the limit of any public customer order (excluding all-or-none) on the limit order book, on either the same side as or the opposite side of the Agency Order, and equal to or better than the contra-side PBBO.[63] Otherwise, both the Agency Order and Solicited Order will be cancelled without a trade occurring. This proposed behavior ensures non-contingent public customer orders on the limit order book maintain priority. While the Exchange recognizes that at least one other solicitation mechanism offered by another exchange considers public customer orders on the limit order book at the stop price when determining if there is sufficient improving interest to satisfy the Agency Order, the proposed solicitation mechanism offered on Phlx will not consider such interest.[64] The Exchange believes that requiring the stop price to be at least $0.01 better than any public customer interest on the limit order book ensures public customer priority of existing interest and in turn provides the Solicited Order participant certainty that if an execution occurs at the stop price, such execution will represent the Solicited Order and not interest which arrived after the Solicited Order participant stopped the Agency Order for its entire size.

Example of Solicitation Auction with Insufficient Improving Interest. To illustrate a case where the Solicitation Auction has not yielded sufficient interest to improve the price for the entire Agency Order, assume the NBBO is $0.97–$1.03, and a buy side Agency Order for 1000 contracts is submitted with a contra-side Solicited Order to stop the Agency Order at $1.00. During the Solicitation Auction, assume a Response is submitted to sell 100 contracts at $0.97 and another to sell 100 contracts at $0.99. At the end of the Solicitation Auction period, since there is not enough interest to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed at $1.00 against the Solicited Order. The unexecuted Responses are then cancelled back to the sending participant.[65]

Proposed Rule 1081(ii)(E)(6) provides that a single quote, order or Response shall not be allocated a number of contracts that is greater than its size.

Finally, Rule 1081(ii)(E)(7) provides that a Complex Agency Order consisting of a stock/ETF component will not execute against interest comprising the cPBBO at the end of the Complex Solicitation Auction.[66] Legging of a stock/ETF component would introduce the risk of a participant not receiving an execution on all components of the Complex Order and is therefore not considered as a means of executing a Complex Order which includes a stock/ETF component. The Exchange believes that introducing the risk of inability to fully execute a complex strategy is counterproductive to, and inconsistent with, the effort to allow Complex Orders in the solicitation mechanism.

Miscellaneous Provisions

Proposed Rules 1081(ii)(F) through (I) address the handling of the Agency Order and other orders, quotes and Responses when certain conditions are present. Pursuant to Rule 1081(ii)(F), if the market moves following the receipt of a Response, such that there are Responses that cross the then-existing NBBO (provided such NBBO is not crossed) at the time of the conclusion of the Solicitation Auction, such Responses will be executed, if possible, at their limit price(s).[67] Although Exchange Rule 1084, Order Protection, generally prohibits trade-throughs, an exception to the prohibition exists pursuant to Rule 1084(b)(x) when the transaction that constituted the trade-through was the execution of an order that was stopped at a price that did not trade-through at the time of the stop.

Since Responses may be cancelled at any time prior to the conclusion of the Solicitation Auction, the Exchange believes that this behavior is, at best, highly unlikely as participants will cancel Responses when better priced

[62] To illustrate a Complex Solicitation Auction with enough improving interest and the operation of Rule 1081(ii)(E)(3), assume that a Complex Order to buy one of option A and sell one of option B, 1000 times, with a cPBBO of $0.40 bid, $0.70 offer, is submitted with a stop price of $0.65. Assume that during the Solicitation Auction, the following Responses and order interest are received: A market maker (''MM1'') responds to sell the strategy 100 times at a price of $0.55; MM1 responds to sell the strategy 100 times at a price of $0.60; a broker-dealer responds to sell the strategy 400 times at a price of $0.60; a public customer Complex Order to sell the strategy 300 times at a price of $0.60; and another market maker (''MM2'') responds to sell the strategy 200 times at $0.60.

After all these Responses and orders are received, option A of the simple market moves causing the cPBBO to become offered 200 times at $0.60. Option A is quoted in the simple market as $1.00–$1.10 and Option B is quoted in the simple market as $0.50–$0.60. At the end of the Solicitation Auction, the Complex Agency Order will be executed as follows: The Complex Agency Order trades 100 contracts at $0.55 against MM1; the Complex Agency Order trades 300 contracts at $0.60 against public customer; the Complex Agency Order trades 100 contracts at $0.60 against MM1; the Complex Agency Order trades 200 contracts at $0.60 against MM2; the Complex Agency Order trades 300 contracts at $0.60 against the broker-dealer; and the Solicited Order and the residual unexecuted contracts of the broker-dealer Response are cancelled.

[63] Rule 1081(ii)(E)(2) does not apply to Complex Solicitation Auctions. Rather, a parallel provision, Rule 1081(ii)(E)(4), provides that in a Complex Solicitation Auction, if there is not sufficient size (considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against the Solicited Order at the stop price, provided such stop price is better than the limit of any public customer Complex Order (excluding all-or-none) on the Complex Order book, better than the cPBBO when a public customer order (excluding all or none) is resting on the book in any component of the Complex Agency Order, and equal to or better than the cPBBO on the opposite side of the Complex Agency Order. This proposed behavior ensures non-contingent public customers on the limit order book maintain priority. Otherwise, both the Complex Agency Order and the Solicited Order will be cancelled with no trade occurring.

[64] *See* ISE Rule 716(e)(2) which provides in part that in the case of insufficient improving interest ''[i]f there are Priority Customer Orders on the Exchange on the opposite side of the Agency Order at the proposed execution price and there is sufficient size to execute the entire size of the Agency Order, the Agency Order will be executed against the bid or offer, and the solicited order will be cancelled.''

[65] To illustrate a Complex Solicitation Auction that yields insufficient improving interest and the operation of Rule 1081(ii)(E)(4), assume a Complex Order to buy one of option A and sell one of option B, 1000 times, with a cPBBO of $0.40 bid, $0.70 offer, is submitted with a stop price of $0.65. Assume that during the Complex Solicitation Auction, the following Responses and order interest are received: A market maker (''MM1'') responds to sell the strategy 100 times at a price of $0.55; MM1 responds to sell the strategy 100 times at a price of $0.60; a broker-dealer responds to sell the strategy 300 times at a price of $0.60; and another market maker (''MM2'') responds to sell the strategy 200 times at $0.60.

At the end of the Complex Solicitation Auction, since there is not sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order executes at the stop price of $0.65 against the Solicited Order. All unexecuted Responses are cancelled back to the sending participants.

[66] This provision parallels PIXL Rule 1080(n)(ii)(E)(2)(g) and is being proposed for the same reasons explained in the Complex PIXL Filing. This limitation is also consistent with the handling of Complex Orders that include a stock/ETF component and are entered into the Phlx XL system. Commentary .07(a)(i) to Rule 1080 states, for example, that stock-option orders can only be executed against other stock-option orders and cannot be executed by the System against orders for the individual components.

[67] Similarly, in the case of a Complex Solicitation Auction, if there are Responses that cross the then-existing cPBBO at the time of conclusion of the Complex Solicitation Auction, such Responses will be executed, if possible, at their limit prices. This provision parallels PIXL Rule 1080(n)(ii)(F).

interest that they could trade against is present in the marketplace. This behavior is consistent with the current handling of PAN Responses in a PIXL Auction.

Rule 1081(ii)(G) provides that if the Solicitation Auction price when trading against non-solicited interest (except if it is a Complex Solicitation Auction) would be the same as or cross the limit of an order (excluding an all-or-none order) on the limit order book on the same side of the market as the Agency Order, the Agency Order may only be executed at a price that is at least $0.01 better than the resting order's limit price[68] provided such execution price improves the stop price. If such execution price would not improve the stop price, the Agency Order will be executed at a price which is $0.01 better for the Agency Order than the stop price provided the price does not equal or cross a public customer order and is equal to or improves upon the PBBO on the opposite side of the Agency Order.[69] If such price is not possible, the Agency Order and Solicited Order will be cancelled with no trade occurring. For example, assume the NBBO is $1.03–$1.10 when an order is submitted into the Solicitation Auction, that the Agency Order is buying and that the order is stopped at $1.05. The $1.03 bid is an order on Phlx. During the Solicitation Auction a Response arrives to sell at $1.03. At the end of the Solicitation Auction, if the Response to sell at $1.03 can fully satisfy the Agency Order, the auction price would theoretically be $1.03 but, since that price is the same as the price of a resting order on the book, the Agency Order will trade against the Response at $1.04 (an improvement of $0.01 over the resting order's limit). By contrast, assume a case where the NBBO is $1.03–$1.10 and where during the Auction an unrelated *non-customer* order to pay $1.04 is received. This order rests on the book and the NBBO becomes $1.04–$1.10. Assume the same stop price of $1.05 for an Agency Order to buy, and the receipt of a Response to sell at $1.04 which can fully satisfy the Agency order. At the end of the Solicitation Auction, the auction price would be $1.04 which equals the resting order on the book. In this case, if the trade were executed with $0.01 improvement over the resting order limit (that is, if the trade were theoretically executed at $1.05 due to the $1.04 order on the book) the execution would be at the stop price. However, the system only permits the Solicited Order and no other interest to trade against the Agency Order at the stop price since the Solicited Order stopped the entire size Agency Order at a price which was required upon receipt to be equal to or improve the NBBO and to be at least $0.01 improvement over any public customer orders resting on the Phlx limit order book, thereby establishing priority at the stop price. Therefore the execution price in this example will be $1.04, which is the same price as the $1.04 resting non-customer order on the book, in order to execute at a price which is $0.01 better than the stop price. This system logic ensures that the Agency Order receives a better priced execution than the stop price when trading against interest other than the Solicited Order.

Rule 1081(ii)(I) provides that any unexecuted Responses or Solicited Orders will be cancelled at the end of the Solicitation Auction. This behavior is consistent with the handling of unexecuted PAN Responses and Initiating Orders in PIXL.[70] Both Responses and Solicited Orders are specifically entered into the Solicitation Auction to trade against the Agency Order. The Exchange believes that cancelling the unexecuted portion of Responses and Solicited Orders is consistent with the expected behavior of such interest by the submitting participants.

Complex Agency Orders With Stock/ETF Components

Rule 1081(ii)(J) deals with Complex Agency Orders with stock or ETF components and generally tracks Rule 1080(n)(ii)(J) applicable to PIXL . Rule 1081(ii)(J)(1) states that member organizations may only submit Complex Agency Orders, Complex Solicited Orders, Complex Orders and/or Responses with a stock/ETF component if such orders/Responses comply with the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS pursuant to the Act. Member organizations submitting such orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. Members of FINRA or the NASDAQ Stock Market (''NASDAQ'') are required to have a Uniform Service Bureau/Executing Broker Agreement (''AGU'') with Nasdaq Execution Services LLC (''NES'') in order to trade orders containing a stock/ETF component; firms that are not members of FINRA or NASDAQ are required to have a Qualified Special Representative (''QSR'') arrangement with NES in order to trade orders containing a stock/ETF component.

New Rule 1081(ii)(J)(2) provides that where one component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response is the underlying stock or ETF share, the Exchange shall electronically communicate the underlying security component of the Complex Agency Order (together with the Complex Solicited Order or Response, as applicable) to NES, its designated broker-dealer, for immediate execution. Such execution and reporting will occur otherwise than on the Exchange and will be handled by NES pursuant to applicable rules regarding equity trading.

Finally, new Rule 1081(ii)(J)(3) states that when the short sale price test in Rule 201 of Regulation SHO[71] is triggered for a covered security, NES will not execute a short sale order in the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response if the price is equal to or below the current national best bid.[72] However, NES will execute a short sale

[68] The system does not consider the origin of the resting order but seeks to ensure the priority of all resting orders on the book by requiring that any execution occur at a price which improves upon the limit of a resting order by at least $0.01 if possible. If an execution cannot occur at least $0.01 better than the limit of a resting order on the book, the system will permit the Solicited Order to trade against the Agency Order at the resting limit order price provided the resting order is not for a public customer.

[69] *See also* PIXL Rule 1080(n)(ii)(H). Proposed Rule 1081(ii)(G) does not apply to Complex Solicitation Auctions. Rather, a parallel provision, Rule 1081(ii)(H), provides that if the Complex Solicitation Auction price when trading against non-solicited interest would be the same as or cross the limit of that of a Complex Order (excluding all-or-none) on the Complex Order Book on the same side of the market as the Complex Agency Order, the Complex Agency Order may only be executed at a price that improves the resting order's limit price by at least $0.01, provided such execution price improves the stop price. If such execution price would be equal to or would not improve the stop price, the Agency Order will be executed $0.01 better than the stop price provided the price does not equal or cross a non-all-or-none public customer Complex Order or a non-all-or-none public customer order present in the cPBBO on the same side as the Complex Agency Order in a component of the Complex Order Strategy and is equal to or better than the cPBBO on the opposite side of the Complex Agency Order. If such price is not possible, the Agency Order and Solicited Order will be cancelled with no trade occurring. This functionality is consistent with that of Complex PIXL auctions.

[70] *See* Exchange Rule 1080(n)(ii)(I).

[71] 17 CFR 242.201. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, January 20, 2011 (''SHO FAQs'') at *www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm.*

[72] The term ''national best bid'' is defined in SEC Rule 201(a)(4). 17 CFR 242.201(a)(4).

order in the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response if such order is marked ''short exempt,'' regardless of whether it is at a price that is equal to or below the current national best bid.[73] If NES cannot execute the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Agency Order, Complex Solicited Order, Complex Order or Response to the entering member organization. For purposes of this paragraph, the term ''covered security'' has the same meaning as in Rule 201(a)(1) of Regulation SHO.[74]

The Exchange believes that this approach is consistent with Rule 201. Under this proposal, the Exchange and NES, as trading centers, will prevent the execution or display of a short sale of the stock/ETF component of a complex order priced at or below the current national best bid when the short sale price test restriction is triggered. Specifically, while the Exchange and NES are determining, respectively, the prices of the options component and of the stock or ETF component of the complex order, as described above, NES will check the current national best bid of the stock or ETF component at the time of execution. The execution of one component is contingent upon the execution of all other components and once a complex order is accepted and validated by the Phlx trading System, the entire package is processed as a single transaction and both the option leg and stock/ETF components are simultaneously processed.

Regulatory Issues

The proposed rule change contains two paragraphs describing prohibited practices when participants use the solicitation mechanism. These new provisions track similar provisions in the PIXL rule.[75]

Proposed Rule 1081(iii) states that the Solicitation Auction may be used only where there is a genuine intention to execute a bona fide transaction. It will be considered a violation of Rule 1081 and will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 707 if an Initiating Member submits an Agency Order (thereby initiating a Solicitation Auction) and also submits its own Response in the same Solicitation Auction. The purpose of this provision is to prevent Solicited Members from submitting an inaccurate or misleading stop price or trying to improve their allocation entitlement by participating with multiple expressions of interest.

Proposed Rule 1081(iv) states that a pattern or practice of submitting unrelated orders or quotes that cross the stop price causing a Solicitation Auction to conclude before the end of the Solicitation Auction period will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 707.

Definition of Professional in Rule 1000(b)(14)

In addition to adopting Rule 1081, the Exchange is amending Rule 1000(b)(14). In 2010 the Exchange amended its priority rules to give certain non-broker-dealer orders the same priority as broker-dealer orders. In so doing, the Exchange adopted a new defined term, the ''professional,'' for certain persons or entities.[76] Rule 1000(b)(14) defines professional as a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A professional account is treated in the same manner as an off-floor broker-dealer for purposes of Phlx Rule 1014(g), to which the trade allocation algorithm described in proposed Rule 1081(ii)(E)(1) refers. However, Rule 1000(b)(14) also currently states that all-or-none professional orders will be treated like customer orders. The Exchange proposes to amend Rule 1000(b)(14) by (i) specifying that orders submitted pursuant to Rule 1081 for the accounts of professionals will be treated in the same manner as off-floor broker-dealer orders for purposes of Rule 1014(g), and (ii) adding proposed Rule 1081 to the list of rules for the purpose of which a professional will be treated in the same manner as an off-floor broker-dealer. The effect of these changes to Rule 1000(b)(14) is that professionals will not receive the same execution priority afforded to public customers in a Solicitation Auction under new Rule 1081, and instead will be treated as broker-dealers in this regard. Therefore, Agency Orders or Solicited Orders submitted for professionals are not public customer orders and will not be paired with a public customer order or another professional order and automatically executed without a Solicitation Auction pursuant to Rule 1081(v) discussed above. Additionally, unrelated professional orders, excluding all-or-none orders, or responses for the account of a professional will be treated as broker-dealers for purposes of execution priority. Unrelated professional all-or-none orders will continue to receive customer priority as stipulated in rule 1000(b)(14).

Deployment

The Exchange anticipates that it will deploy the solicitation mechanism within 30 days of the Commission's approval of this proposed rule change. Members will be notified of the deployment date by an Options Trader Alert posted on the Exchange's Web site.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[77] in general, and furthers the objectives of Section 6(b)(5) of the Act[78] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by providing new functionality that offers the potential for price improvement. Specifically, the new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer an electronic solicitation mechanism, while providing an opportunity for price improvement for Agency Orders.

As discussed below, the proposed solicitation mechanism on Phlx is similar in relevant respects to solicitation mechanisms on other exchanges. The Commission previously has found such mechanisms consistent with the Act, stating that they should allow for greater flexibility in pricing large-sized orders and may provide a greater opportunity for price

[73] The Exchange notes that a broker or dealer may mark a sell order ''short exempt'' only if the provisions of SEC Rule 201(c) or (d) are met. 17 CFR 242.200(g)(2). Since NES and the Exchange do not display the stock or ETF portion of a Complex Order, however, a broker-dealer should not mark the short sale order ''short exempt'' under Rule 201(c). *See* SHO FAQs Question and Answer Nos. 4.2, 5.4, and 5.5. *See also* Securities Exchange Act Release No. 63967 (February 25, 2011), 76 FR 12206 (March 4, 2011) (SR–Phlx–2011–27) (discussing, among other things, Complex Orders marked ''short exempt'') and the Complex PIXL Filing. The system will handle short sales of the orders and Responses described herein the same way it handles the short sales discussed in the Complex PIXL Filing.

[74] 17 CFR 242.201(a)(4).

[75] *See* Rules 1080(n)(iii) and (iv).

[76] *See* Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (approving SR–Phlx–2010–05).

[77] 15 U.S.C. 78f(b).

[78] 15 U.S.C. 78f(b)(5).

improvement.[79] The Exchange believes that its proposal will allow the Exchange to better compete for solicited transactions, while providing an opportunity for price improvement for Agency Orders and assuring that public customers on the book are protected. The new solicitation mechanism should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants, investors, and traders.

Section 11(a)(1) of the Act[80] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, ''covered accounts'') unless an exception applies. Rule 11a2–2(T) under the Act,[81] known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[82] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. The Exchange believes that this proposed rule change is consistent with Section 11(a)(1) of the Act and the Commission's regulations thereunder.

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[83] Only specialists and on-floor SQTs[84] have the ability to submit orders into the solicitation mechanism from on the floor of the Exchange. These members, however, would be subject to the ''market maker'' exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.[85] RSQTs may only submit orders into the solicitation mechanism from off the floor of the Exchange.[86] While Floor Brokers have the ability to submit orders they represent as agent to the electronic limit order book through the Exchange's Options Floor Broker Management System (''FBMS''), there is no mechanism by which such Floor Brokers can directly submit orders to the solicitation mechanism or send orders to off-floor broker-dealers through FBMS for indirect submission into the solicitation mechanism.[87] Because no Exchange members, other than specialists and SQTs, may submit orders into the solicitation mechanism from on the floor of the Exchange, the Exchange believes that the solicitation mechanism satisfies the off-floor transmission requirement.

Second, the Rule requires that the member not participate in the execution of its order. At no time following the submission of an order is a member organization able to acquire control or influence over the result or timing of an order's execution. The execution of a member's order is determined by what other orders are present in the solicitation mechanism and the priority of those orders.[88] Accordingly, the Exchange believes that a member does not participate in the execution of an order submitted to the solicitation mechanism.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated systems, such as the solicitation mechanism, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[89] The design of the solicitation mechanism ensures that no member organization has any special or unique trading advantage in the handling of its

[79] *See* Securities Exchange Act Release Nos. 49141 (January 28, 2004), 69 FR 5625 (February 5, 2004) (SR–ISE–2001–22) (approval of ISE Solicited Order Mechanism); and 57610 (April 3, 2008), 73 FR 19535 (April 10, 2008) (SR–CBOE–2008–14) (approval of CBOE Solicitation Auction Mechanism).

[80] 15 U.S.C. 78k(a)(1).

[81] 17 CFR 240.11a2–2(T).

[82] The member may, however, participate in clearing and settling the transaction.

[83] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release'').

[84] As discussed above, an SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[85] *See* 15 U.S.C. Section 78k(a)(1)(A); 17 CFR 240.11a2–2(T)(a)(1). There are no other on-floor members, other than Exchange specialists and SQTs, who have the ability to submit orders into the Solicitation Auction.

[86] As discussed above, an RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member affiliated with a Remote Streaming Quote Trader Organization (''RSQTO'') with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may not submit option quotations in eligible options to which such RSQT is assigned to the extent that the RSQT is also approved as a Remote Specialist in the same options. An RSQT may only trade in a market making capacity in classes of options in which he is assigned or approved as a Remote Specialist. An RSQTO is a member organization in good standing that satisfies the SQTO readiness requirements in Rule 507(a). While RSQTs may only submit orders into the Auction from off the Exchange floor, RSQTs also would be subject to the ''market maker'' exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.

[87] Because FBMS does not have the coding required to enter orders into the Solicitation Auction, it is impossible for such Floor Brokers to submit orders into the Solicitation Auction.

[88] A member may cancel or modify the order, or modify the instruction for executing the order, but only from off the floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557 (May 1, 1978) (''1978 Release'') (stating that the ''non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[89] In considering the operation of automated execution systems operated by an exchange, the Commission has noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T).

orders after transmitting its orders to the solicitation mechanism. The Exchange therefore believes the solicitation mechanism satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the Initiating Member or an associated person thereof exercises investment discretion, neither the Initiating Member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[90] Member organizations relying on Rule 11a2–2(T) for transactions effected through the solicitation mechanism must comply with this condition of the Rule.

For all of the foregoing reasons and as discussed in the proposal, the Exchange believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal is pro-competitive. The proposal would diminish the potential for foregone market opportunities on the Exchange by allowing Agency Orders to be entered into the solicitation mechanism by all members. The solicitation mechanism is similar to electronic solicitation mechanism functionality that is allowed on two other options exchanges. The Exchange believes that the new solicitation mechanism functionality should help it compete with these other exchanges.

With respect to intra-market competition, the solicitation mechanism will be available to all Phlx members for the execution of Agency Orders. Moreover, as explained above, the proposal should encourage Phlx participants to compete amongst each other by responding with their best price and size for a particular Solicitation Auction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments prior to filing the proposed rule change. Written comments on the proposed rule change were solicited by the Commission in response to the institution of proceedings for SR–Phlx–2014–66. The Commission received one comment letter and one letter from the Exchange in response.[91]

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 180 days after the date of publication of the initial notice in the **Federal Register** (*i.e.,* October 31, 2014) or within such longer period up to an additional 60 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 issue an order approving or disapproving such proposed rule change, as amended. As discussed in Item VI below, the Commission is designating an additional 60 days within which to issue an order approving or disapproving the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2014–66 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–Phlx–2014–66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–66, and should be submitted on or before May 7, 2015.

VI. Designation of Longer Period for Commission Action

Section 19(b)(2) of the Act[92] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on October 31, 2014. April 29, 2015 is 180 days from

[90] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See* also 1978 Release (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[91] *See supra* notes 11 and 12. The letters are available on the Commission's Web site at *http://www.sec.gov/comments/sr-phlx-2014-66/phlx201466.shtml.*

[92] 15 U.S.C. 78s(b)(2).

that date, and June 28, 2015 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letter that has been submitted in connection with the proposal and the response from the Exchange and any comments that may be submitted on the proposed rule change, as modified by Amendment No. 2. As the Commission noted in the Order Instituting Proceedings, the proposal raises questions as to whether the Exchange's proposed rule change is consistent with the requirements of Sections 6(b)(5) [93] of the Act.[94] Extending the time within which to approve or disapprove the proposed rule change, as modified by Amendment No. 2, will enable the Commission to more fully consider the issues raised by the proposed rule change, the comment letter received to date and the Exchange's response and any comments that may be submitted on the proposed rule change, as modified by Amendment No. 2.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[95] designates June 28, 2015, as the date by which the Commission should either approve or disapprove the proposed rule change, as modified by Amendment No. 2 (File No. SR–Phlx–2014–66).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[96]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09265 Filed 4–21–15; 8:45 am]

BILLING CODE 8011–01–P

[93] 15 U.S.C. 78f(b)(5).

[94] *See supra* note 10.

[95] 15 U.S.C. 78s(b)(2).

[96] 17 CFR 200.30–3(a)(12) and (a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74743; File No. SR–BATS–2015–30]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 3.5 (Advertising Practices) and Repeal Exchange Rule 3.20 (Initial or Partial Payments)

April 16, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2015, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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: (i) Amend Exchange Rule 3.5 (Advertising Practices); and (ii) repeal Exchange Rule 3.20 (Initial or Partial Payments) to conform with the rules of the Financial Industry Regulatory Authority, Inc. (''FINRA'') for purposes of an agreement between the Exchange and FINRA pursuant to Rule 17d–2 under the Act.[5] The proposed rule change is identical to proposed rule changes submitted by the EDGX Exchange, Inc. (''EDGX'') and the EDGA Exchange, Inc. (''EDGA'') that were published by the Commission.[6]

The text of the proposed rule change is available at the Exchange's Web site at *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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 17d–2 under the Act,[7] the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (''17d–2 Agreement''). The 17d–2 Agreement covers common members of the Exchange and FINRA (''Common Members'') and allocates to FINRA regulatory responsibility, with respect to Common Members, for the following: (i) Examination of Common Members for compliance with federal securities laws, rules, and regulations, and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of Common Members for violations of federal securities laws, rules, and regulations, and Exchange rules that the Exchange has certified as identical or substantially identical to FINRA rules; and (iii) enforcement of compliance by Common Members with the federal securities laws, rules, and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.[8]

The 17d–2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. To conform with comparable FINRA rules for purposes of the 17d–2 Agreement, the Exchange proposes to: (i) Amend Exchange Rule 3.5 (Advertising Practices); and (ii) repeal Exchange Rule 3.20 (Initial or Partial Payments).

Rule 3.5 (Advertising Practices)

The Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require Exchange members [9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.17d–2.

[6] *See* Securities Exchange Act Release Nos. 70837 (Nov. 8, 2013), 78 FR 68889 (Nov. 15, 2013) (SR–EDGA–2013–32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGA Rule 3.5 (Advertising Practices) and to Repeal Rule 3.20 (Initial or Partial Payments) to Conform with the Rules of the Financial Industry Regulatory Authority); and 70836 (Nov. 8, 2013), 78 FR 68897 (Nov. 15, 2013) (SR–EDGX–2013–40) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 3.5 (Advertising Practices) and to Repeal Rule 3.20 (Initial or Partial Payments) to Conform with the Rules of the Financial Industry Regulatory Authority).

[7] 17 CFR 240.17d–2.

[8] *See* Securities and Exchange Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010) (approving File No. 10–196).

[9] ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a 'member' of the Exchange as that

(''Members'') to comply with FINRA Rule 2210 as if this Rule was part of the Exchange's rules and to rename Rule 3.5 ''Communications with the Public.'' [10] The proposed rule text is substantially the same as Rule 2210(a) of the Nasdaq Stock Market LLC (''Nasdaq''), which has been approved by the Commission.[11]

Currently, Exchange Rule 3.5(d) and (f) are excluded from the 17d–2 Agreement because they are not are identical to, or substantially similar to, certain FINRA rules. First, Exchange Rule 3.5(d) requires that advertising and sales literature be pre-approved and signed or initialed by a supervisor while FINRA Rule 2210(b) only requires supervisory pre-approval for retail communication, and different supervisory review standards for institutional communication, and correspondence. Second, Rule 3.5(f) and FINRA Rule 2210(d)(6) also contain different content requirements for testimonials. Exchange Rule 3.5(d) and (f) were, therefore, excluded from the 17d–2 Agreement because their requirements were not identical or substantially similar to those required under FINRA Rule 2210(b) and (d)(6) respectively. To harmonize its rules with FINRA, the Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require Members to comply with FINRA Rule 2210 as if such Rule were part of the Exchange's rules so that Rule 3.5 may be incorporated into the 17d–2 Agreement in its entirety.

The Exchange believes that these changes would help to avoid confusion among Common Members by further aligning Exchange Rule 3.5 with FINRA Rule 2210. The proposed changes to Rule 3.5 are designed to enable the Exchange to incorporate Rule 3.5 into the 17d–2 Agreement, further reducing duplicative regulation of Common Members.

Summary of FINRA Rule 2210

FINRA Rule 2210 generally sets forth the content, filing, supervisory review, and record retention requirements for FINRA member's communications with the public. A summary of FINRA Rule 2210 is below. A more complete description of FINRA Rule 2210 is provided in FINRA's Regulatory Notice 12–29 [12] and Regulatory Notice 14–30.[13]

FINRA Rule 2210 divides a Member's communications with the public into the following three categories:

- *Institutional communication.* FINRA Rule 2210(a)(3) defines ''institutional communication'' as ''any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications.''
- *Retail communication.* FINRA Rule 2210(a)(5) defines ''retail communication'' as ''any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30-day calendar period.'' FINRA Rule 2210(a)(6) defines ''Retail investor'' as ''any person other than an institutional investor, regardless of whether the person has an account with the member.'' Communications that are considered advertisements and sales literature fall under the definition of ''retail communication.''
- *Correspondence.* FINRA Rule 2210(a)(2) defines ''correspondence'' as ''any written (including electronic) communication that is distributed or made available to fewer than 25 retail investors within any 30-day calendar period.''

Supervisory Review. To comply with the supervisory requirements of FINRA Rule 2210(b), Common Members must obtain supervisory pre-approval of all retail communications, while institutional communications and correspondence would be subject to supervisory review, but not pre-approval.

Under FINRA Rule 2210(b)(1), all retail communications must be approved by a supervisor prior to their first use or filing with FINRA under FINRA Rule 2210(c). FINRA's Rule 2210(b)(1)'s supervisory requirements do not apply to a retail communication if, at the time that a member intends to publish or distribute it: (i) Another member has filed it with FINRA and has received a letter from FINRA stating that it appears to be consistent with applicable standards; and (ii) the member has not materially altered it and will not use it in a manner that is inconsistent with the conditions of FINRA's letter. The rule's supervisory review requirements also do not apply to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to FINRA Rule 3110(b) and Supplemental Material 3110.06 through .09: (i) Any retail communication that is excepted from the definition of ''research report'' pursuant to NASD Rule 2711(a)(9)(A), unless the communication makes any financial or investment recommendation; (ii) any retail communication that is posted on an online interactive electronic forum; and (iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

For institutional communications, FINRA Rule 2210(b)(3) requires that members establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. These procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When these procedures do not require review of all institutional communications prior to first use or distribution, they must include provisions for: (i) The education and training of associated persons as to the firm's procedures governing institutional communications; (ii) the documentation of their education and training; and (iii) surveillance and follow-up to ensure that these procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

FINRA Rule 2210(b)(2) states that correspondence is subject to the supervision and review requirements of FINRA Rule 3110(b) and Supplemental Material 3110.06 through .09. Under FINRA Rule 3110(b)(4), each member shall develop written procedures that are appropriate to its business, size, structure, and customers for reviewing incoming and outgoing written (including electronic) correspondence

term is defined in Section 3(a)(3) of the Act.'' Exchange Rule 1.5(n).

[10] The Exchange does not propose to require that Members comply with FINRA Rule 2210(c). FINRA Rule 2210(c) generally requires that FINRA members file certain communications with FINRA. The Exchange believes that it is inappropriate for its rules to require Members to file certain communications with FINRA as such filing requirements under FINRA rules are between FINRA and its members.

[11] *See* Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (order approving Nasdaq's application for registration as a national securities exchange); *see also* Securities Exchange Act Release No. 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR–Nasdaq–2008–054) (Notice of Filing and Immediate Effectiveness).

[12] *See* FINRA Regulatory Notice 12–29 (June 2012) available at *http://finra.complinet.com/net_file_store/new_rulebooks/f/i/FINRANotice12_29.pdf.*

[13] *See* FINRA Regulatory Notice 14–30 (July 2014) available at *http://finra.complinet.com/net_file_store/new_rulebooks/f/i/FINRANotice_14_30.pdf.*

with the public relating to its investment banking or securities business, including procedures for reviewing incoming written correspondence directed to registered representatives, and related to the member's investment banking or securities business, to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. Where these procedures for the review of correspondence do not require review of all correspondence prior to use or distribution, they must include provisions for: (i) The education and training of associated persons as to the firm's procedures governing correspondence; (ii) the documentation of their education and training; and (iii) surveillance and follow-up to ensure that these procedures are implemented and adhered to.

Record Retention. Under FINRA Rule 2210(b)(4)(A), members must maintain all retail communications and institutional communications for the retention period required by Rule 17a–4(b) under the Act and in a format and media that comply with Rule 17a–4 under the Act. The records must include:

- A copy of the communication and the dates of first and (if applicable) last use of such communication;
- the name of any registered principal who approved the communication and the date that approval was given;
- in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;
- information concerning the source of any statistical table, chart, graph, or other illustration used in the communication; and
- for any retail communication for which principal approval is not required pursuant to FINRA Rule 2210(b)(1)(C), the name of the member that filed the retail communication with the FINRA Advertising Regulation Department, and a copy of the corresponding review letter from the Department.

Filing Requirements. Like Nasdaq Rule 2210(a), Exchange Rule 3.5 would expressly state that Members would not be required to comply with FINRA Rule 2210(c). FINRA Rule 2210(c) generally requires FINRA members to file certain retail communications with FINRA prior to first use. Exchange members who are also FINRA members would continue to be subject to FINRA Rule 2210(c).

Content Standards. FINRA Rule 2210(d) sets forth general content standards for all communications. All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading. No member may make any false, exaggerated, unwarranted, promissory, or misleading statement or claim in any communication. No member may publish, circulate, or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading. Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return, and yield inherent to investments. Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

Communications may also not predict or project performance, imply that past performance will recur, or make any exaggerated or unwarranted claim, opinion, or forecast; provided, however, communications may include: (i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy; (ii) an investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of FINRA Rule 2214; and (iii) a price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

Testimonials. To comply with FINRA Rule 2210(d)(6): (i) If a testimonial includes a technical aspect of investing, the person making the testimonial must have the knowledge and expertise to form a valid opinion; and (ii) retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose that the testimonial: (a) May not be representative of the experience of other customers; (b) is no guarantee of future performance or success; and (c) is a paid testimonial, if more than $100 in value has been paid.

Recommendations. FINRA Rule 2210(d)(7)(A) requires that retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following: (i) That at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis; (ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and (iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months. Members must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

Retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade, or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list: (i) States the name of each security recommended, the date and nature of each recommendation (*e.g.,*

whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each security as of the most recent practicable date; and (ii) contains the following cautionary legend, which must appear prominently within the communication or list: ''it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list.''

Rule 3.20 (Initial or Partial Payments)

The Exchange also proposes to delete Exchange Rule 3.20 (Initial or Partial Payments). In January 2010, FINRA repealed NASD Rule 2450 (Initial or Partial Payments) and does not currently include a comparable rule in its rulebook.[14] Like NASD Rule 2450, Exchange Rule 3.20 prohibits any arrangement whereby the customer of a Member submits partial or installment payments for the purchase of a security with the following exceptions: (i) If a Member is acting as agent or broker in the transaction, then the Member must immediately make an actual purchase of the security for the account of the customer, and immediately take possession or control of the security and maintain possession or control of the security as long as the Member is under the obligation to deliver the security to the customer; (ii) if a Member is acting as principal in the transaction, the Member must, at the time of the transaction, own the security and maintain possession or control of the security as long as the Member is under the obligation to deliver the security to the customer; and (iii) if applicable to a Member, the provisions of Regulation T of the Federal Reserve Board [15] are satisfied. The rule also prohibits a Member, whether acting as principal or agent, in connection with any installment or partial sales transaction, from making any agreement with the customer whereby the Member would be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to the Member.

Section 220.8 of Regulation T permits the purchase of a security in a cash account predicated on either: (i) There being sufficient funds in the account; or (ii) the Member accepts in good faith the customer's agreement that full cash payment will be made.[16] The rule further stipulates that payment must be made within a specified payment period.[17] Regulation T also allows the purchase of a security in a margin account, whereby a customer must deposit an initial requirement, based upon the amount of the transaction, within the specified payment period.

The Exchange proposes to repeal Exchange Rule 3.20 in light of the explicit provisions in Regulation T requiring the deposit of sufficient funds within the specified payment period. The Exchange also believes that the hypothecation prohibition in Exchange Rule 3.20 would no longer be relevant because it is predicated on a partial or installment payment under the rule. The Exchange notes that, notwithstanding the repeal of Exchange Rule 3.20, Members are required to comply with all applicable federal securities laws, including Regulation T.

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change would further these requirements by eliminating duplicative and unnecessary rules and advancing the development of a more efficient and effective Exchange Rulebook. The Exchange believes that the proposed rule change would provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. Accordingly, the Exchange believes that the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization among Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Common Members and facilitating FINRA's performance of its regulatory functions under the 17d–2 Agreement.

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 proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as non-controversial under Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) [20] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend the proposed rule change if it appears to the Commission that this action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes this action, it shall institute proceedings

[14] *See* Securities Exchange Act Release No. 61542 (Feb. 18, 2010), 75 FR 8768 (Feb. 25, 2010) (SR–FINRA–2009–093) (order approving proposal to repeal NASD Rule 2450).

[15] Federal Reserve Board, Regulation T (Credit by Brokers and Dealers), 12 CFR 220 *et seq.*

[16] *See* Section 220.8(a)(1) of Regulation T.

[17] According to Section 220.2 of Regulation T, ''payment period'' means the number of business days in the standard securities settlement cycle in the United States, as defined in Rule 15c6–1(a) under the Act (17 CFR 240.15c6–1(a)), plus two business days.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4.

[21] Rule 19b–4(f)(6) also requires that the Exchange give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

under Section 19(b)(2)(B) of the Act[22] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BATS–2015–30 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 No. SR–BATS–2015–30. 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 principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2015–30 and should be submitted on or before May 13, 2015.

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09272 Filed 4–21–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74742; File No. SR–NASDAQ–2015–011]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To List and Trade the Shares of the First Trust Strategic Floating Rate ETF of First Trust Exchange-Traded Fund IV

April 16, 2015.

I. Introduction

On February 12, 2015, The NASDAQ Stock Market LLC (the ''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to list and trade shares (''Shares'') of the First Trust Strategic Floating Rate ETF (the ''Fund'') of First Trust Exchange-Traded Fund IV (the ''Trust'') under NASDAQ Rule 5735. The proposed rule change was published for comment in the **Federal Register** on March 3, 2015.[4] On April 6, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.[5] On April 15, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.[6] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendments No. 1 and No. 2.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 74378 (February 25, 2015), 80 FR 11509 (''Notice'').

[5] In Amendment No. 1, the Exchange clarified that the quotation and last-sale information will be available via the Options Price Reporting Authority only for U.S. exchange-listed options that the Fund holds. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

[6] In Amendment No. 2, the Exchange removed exchange-listed options on U.S. Treasury securities from the types of derivative instruments in which the Fund may invest. Amendment No. 2 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust.[7] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[8] The Fund will be a series of the Trust.

First Trust Advisors L.P. will be the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation will act as the administrator, accounting agent, custodian and transfer agent to the Fund. The Exchange states that the Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer.[9] In addition, the Exchange states that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and that personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.[10] In the event (a) the Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such

[7] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) (the ''Exemptive Relief''). In addition, the Commission has issued no-action relief that the Fund believes affects its ability to invest in derivatives notwithstanding certain representations in the application for the Exemptive Relief. *See* Commission No-Action Letter (December 6, 2012).

[8] *See* Post-Effective Amendment No. 104 to Registration Statement on Form N–1A for the Trust, dated January 29, 2015 (File Nos. 333–174332 and 811–22559).

[9] *See* Notice, *supra* note 4, 80 FR at 11510.

[10] *See id.*

portfolio.[11] The Fund does not currently intend to use a sub-adviser.

The Exchange has made the following representations and statements regarding the Fund.[12]

Principal Investments for the Fund

The investment objective of the Fund will be to seek current income. To achieve its objective, the Fund will invest, under normal market conditions,[13] at least 80% of its net assets in a portfolio of the following types of floating-rate debt instruments issued by U.S. and non-U.S. public- and private-sector entities: Floating-rate corporate [14] and government bonds and notes; floating-rate agency securities; floating-rate instruments of non-U.S. issuers; floating-rate privately-issued securities; [15] floating-rate asset-backed securities; floating-rate mortgage-backed securities; floating-rate loans; and investment companies that invest primarily in the foregoing types of debt instruments (collectively, ''Floating Rate Debt Instruments'').

According to the Exchange, at least 65% of the Fund's net assets will be invested in Floating Rate Debt Instruments that are, at the time of purchase, investment grade. The Exchange represents that to be considered ''investment grade,'' under normal market conditions, rated Floating Rate Debt Instruments will carry, at the time of purchase, a rating in the highest four rating categories of at least one nationally recognized statistical ratings organization (''NRSRO'') (*e.g.,* BBB- or higher by Standard & Poor's Ratings Services, and/or Fitch Ratings, or Baa3 or higher by Moody's Investors Service, Inc).[16] For unrated securities to be considered ''investment grade,'' under normal market conditions, such securities will be determined, at the time of purchase, to be of comparable quality [17] by the Adviser. The Exchange states that the Fund may invest up to 35% of its net assets in securities that are, at the time of investment, rated below investment grade by each NRSRO rating such securities (or securities that are unrated and determined by the Adviser to be of comparable quality), commonly referred to as ''high yield'' or ''junk'' bonds. If, subsequent to purchase by the Fund, a security held by the Fund experiences a decline in credit quality and falls below investment grade, the Fund may continue to hold the security, and it will not cause the Fund to violate the 35% investment limitation; however, the security will be taken into account for purposes of determining whether purchases of additional securities will cause the Fund to violate such limitation.[18]

The Exchange states that the Fund will limit its investments in asset-backed securities (excluding agency mortgage-backed securities) and non-agency mortgage-backed securities (in the aggregate) to 20% of its net assets. In addition, the Fund will limit its investments in junior loans to 20% of its net assets.[19]

The Fund will hold debt securities (including, in the aggregate, Floating Rate Debt Instruments and the fixed-rate debt securities described below) of at least 13 non-affiliated issuers.

Other Investments

Under normal market conditions, the Fund will invest primarily in the Floating Rate Debt Instruments described above to meet its investment objective. In addition, the Fund may invest up to 20% of its net assets in the following types of fixed-rate debt securities: Corporate and government bonds and notes; agency securities; instruments of non-U.S. issuers in developed markets; privately-issued securities; asset-backed securities; mortgage-backed securities; municipal bonds; money market securities; and investment companies (including investment companies advised by the Adviser) that invest primarily in the foregoing types of debt securities.

Further, to pursue its investment objective, the Fund may invest up to 20% of the value of its net assets in exchange-listed options on U.S. Treasury futures contracts and exchange-listed U.S. Treasury futures contracts.[20] The use of these derivative transactions may allow the Fund to obtain net long or short exposures to selected interest rates. These derivatives may also be used to hedge risks, including interest rate risks and credit risks, associated with the Fund's portfolio investments. According to the Exchange, the Fund's investments in derivative instruments will be consistent with the Fund's investment objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index.

Investment Restrictions

The Fund will not invest 25% or more of the value of its total assets in securities of issuers in any one industry. This restriction does not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities or (b) securities of other investment companies.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets,

[11] *See id.*

[12] Additional information regarding, among other things, the Fund, the Shares, the Fund's investment objectives, the Fund's strategies, methodology and restrictions, risks; fees and expenses associated with the Shares, creations and redemptions of Shares, availability of price information, trading rules and halts, and surveillance procedures can be found in the Notice and the Registration Statement. *See* Notice, *supra* note 4, and Registration Statement, *supra* note 7, respectively.

[13] The term ''under normal market conditions'' includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[14] The Adviser expects that, generally, under normal market conditions, for a corporate bond to be considered as an eligible investment, after taking into account such an investment, at least 75% of the Fund's net assets that are invested in floating-rate corporate bonds and, as described below, fixed-rate corporate bonds (in the aggregate), will be comprised of corporate bonds that have, at the time of original issuance, $100 million or more par amount outstanding. *See* Notice, *supra* note 4, 80 FR at 11511, n.10.

[15] Under normal market conditions, the privately-issued securities in which the Fund will invest will have, at the time of original issuance, $100 million or more principal amount outstanding to be considered eligible investments. *See id.* at 11511, n.12.

[16] The Exchange states that if a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the highest rating category received from an NRSRO. *See id.* at 11511, n.18.

[17] Comparable quality of unrated securities will be determined by the Adviser based on fundamental credit analysis of the unrated security and comparable NRSRO-rated securities. On a best efforts basis, the Adviser will attempt to make a rating determination based on publicly available data. In making a ''comparable quality'' determination, the Adviser may consider, for example, whether the issuer of the security has issued other rated securities, the nature and provisions of the relevant security, whether the obligations under the relevant security are guaranteed by another entity and the rating of such guarantor (if any), relevant cash flows, macroeconomic analysis, and/or sector or industry analysis. *See id.* at 11511, n.19.

[18] *See id.* at 11511.

[19] *See id.*

[20] At least 90% of the Fund's net assets that are invested in exchange-traded derivative instruments will be invested in instruments that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange. *See id.* at 11512, n.28.

or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund will not invest in non-U.S. equity securities.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[22] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[23] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association (''CTA'') plans for the Shares. Quotation and last-sale information for the other ETFs in which the Fund will invest will be available via the quote and trade services of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the CTA plans, as applicable. Quotation and last-sale information for U.S. exchange-listed options will be available via the Options Price Reporting Authority.[24]

Intraday executable price quotations on Floating Rate Debt Instruments and other assets not traded on an exchange will be available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.[25] Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for corporate bonds, privately-issued securities, mortgage-backed securities and asset-backed securities to the extent transactions in such securities are reported to TRACE.[26] For exchange-traded assets, intraday pricing information will be available directly from the applicable listing exchange. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. On each business day, before commencement of trading in Shares in the Regular Market Session (9:30 a.m. to 4:00 p.m. or 4:15 p.m., Eastern Time) on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[27] The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. The Web site information will be publicly available at no charge. The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m., Eastern Time. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[28] The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[29] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.[30] The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.[31]

The Exchange represents that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[32] Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[33] The Exchange states that the Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer. In addition, the Exchange states that the Adviser has implemented a fire wall

[21] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[24] *See* Amendment No. 1, *supra* note 5.

[25] *See* Notice, *supra* note 4, 80 FR at 11514.

[26] *See id.*

[27] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[28] *See id.*

[29] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service. The Exchange represents that GIDS offers real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs, and that GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[30] *See id.*

[31] *See id.* at 11516.

[32] These may include: (1) The extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. *See id.* at 11514.

[33] *See id.* at 11515.

with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and that personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.[34] In the event (a) the Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of ISG,[35] and FINRA may obtain trading information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain Floating Rate Debt Instruments and other debt securities held by the Fund reported to FINRA's TRACE.

The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange. Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. In support of this proposal, the Exchange represented that:

(1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) Trading in the Shares will be subject to the existing trading surveillances administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and applicable federal securities laws.

(3) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 [36] under the Act.

(6) Under normal market conditions, privately-issued securities will have, at the time of original issuance, $100 million or more principal amount outstanding to be considered eligible investments.

(7) Not more than 35% of the Fund's net assets will be invested in securities that are, at the time of investment, rated below investment grade by each NRSRO rating such securities (or securities that are unrated and determined by the Adviser to be of comparable quality).

(8) Not more than 20% of the Fund's net assets will be invested in asset-backed securities (excluding agency mortgage-backed securities) and non-agency mortgage-backed securities (in the aggregate) to 20% of its net assets.

(9) Not more than 20% of the Fund's net assets will be invested in in junior loans.

(10) At least 90% of the Fund's net assets that are invested in exchange-traded derivative instruments will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(11) The Fund will not invest 25% or more of the value of its total assets in securities of issuers in any one industry. This restriction does not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities or (b) securities of other investment companies.

(12) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities.

(13) The Fund will not invest in non-U.S. equity securities.

(14) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act [37] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[38] that the proposed rule change (SR–NASDAQ–2015–011), as modified by Amendments No. 1 and No. 2, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09271 Filed 4–21–15; 8:45 am]

BILLING CODE 8011–01–P

[34] *See id.* at 11510.

[35] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[36] *See* 17 CFR 240.10A–3.

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74745; File No. SR–NASDAQ–2015–035]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Distributor and Managed Data Solution Distributor Fees for an Optional Hardware-Based Version of NASDAQ ITCH to Trade Options

April 16, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2015, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to amend Chapter XV, entitled ''Options Pricing,'' at Section 4 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, the Exchange proposes to establish Distributor and Managed Data Solution (''MDS'') Distributor fees for an optional hardware-based version of NASDAQ ITCH to Trade Options (''ITTO'') data and is not offering a new market data product.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Chapter XV, entitled ''Options Pricing,'' at Section 4 governing pricing for NASDAQ members using NOM. Specifically, the Exchange proposes to establish Distributor and MDS Distributor fees for an optional hardware-based version of ITTO. This is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. ITTO is the options equivalent of the NASDAQ TotalView/ITCH data feed that NASDAQ offers under NASDAQ Rule 7023 with respect to equities traded on NASDAQ. As with TotalView, Distributors use ITTO to ''build'' their view of the NOM book by adding individual orders that appear on the data feed, and subtracting individual orders that are executed, cancelled or removed.

This hardware-delivery mechanism option of ITTO uses field-programmable gate array (''FPGA'') technology. In offering an FPGA hardware-delivery mechanism, NASDAQ is serving those customers requiring a predictable latency profile throughout the trading day. By taking advantage of hardware parallelism, FPGA technology is capable of processing more data packets during peak market conditions without the introduction of variable queuing latency.

The proposed Distributor fee for utilizing the optional FPGA hardware-based delivery of NASDAQ ITTO data is $10,000 for internal only distribution, $1,000 for external only distribution and $11,000 for internal and external distribution. The FPGA fee is in addition to any other fees for NASDAQ ITTO. There will be no change in NASDAQ ITTO Subscriber fees as a result of the new product implementation.

The proposed MDS Distributor fees for Distributors utilizing the optional FPGA hardware-based delivery of NASDAQ ITTO data are tiered based upon the number of MDS Subscribers, with fees starting at $1,000 for one MDS Subscriber, $1,250 for two MDS Subscribers, $1,500 for three MDS Subscribers, and $250 for each additional MDS Subscriber. The MDS Distributor fee is in addition to any other MDS fees.

This new pricing option is available to all firms, regardless of how they choose to access the FPGA hardware-based version of NASDAQ ITTO, and is in response to industry demand, as well as due to changes in the technology to distribute and consume market data. Distributors opting to pay for the FPGA hardware-based delivery of NASDAQ ITTO data would still be fee liable for the applicable market data fees, as described in this rule.

Competition for depth data is considerable and the Exchange believes that this proposal clearly evidences such competition. The Exchange is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change. The FPGA hardware-based version of NASDAQ ITTO is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The proposed fees are based on pricing conventions and distinctions that exist in NOM's current fee schedule, and the fee schedules of other exchanges. These distinctions (*e.g.,* internal versus external distribution, as well as for MDS) for the proposed optional Distributor and MDS Distributor fees for FPGA hardware-based delivery of NASDAQ ITTO are based on a careful analysis of empirical data and the application of time-tested pricing principles already accepted by the Commission and discussed in greater depth in the Statutory Basis section below. Also, the costs associated with the FPGA hardware-based delivery system for NASDAQ ITTO data are higher than a software-based solution since it involves the expense of creating and maintaining the product, as well as creating, shipping, installing and maintaining the new equipment and codebase. Because it uses a distinct technology, the overall costs of creation and maintenance of the hardware-based version of ITTO are higher than the software-based version. From a messaging perspective, the data content and sequencing will be identical on both the FPGA hardware- and software-based versions of the ITTO product.

The proposed FPGA hardware-based delivery of NASDAQ ITTO data is completely optional. NASDAQ is offering this FPGA hardware-based delivery mechanism for the NASDAQ ITTO product that is designed to deliver NASDAQ direct data content in a predictable manner throughout the trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and recipients of NASDAQ data and is not designed to permit unfair discrimination between them. NASDAQ believes that its proposal to establish Distributor and MDS Distributor fees for an optional FPGA hardware-based version of NASDAQ ITTO reflects an equitable allocation of reasonable fees.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SRO'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[5]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) (''*NetCoalition I*''), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoalition I,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

For the reasons stated above, NASDAQ believes that the allocation of the proposed fee is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described above, the proposed fee is based on pricing conventions and distinctions that exist in NASDAQ's current fee schedule. These distinctions are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

As described in greater detail below, if NASDAQ has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can discontinue the use of their data because the proposed product is entirely optional to all parties. Firms are not required to purchase data and NASDAQ is not required to make data available or to offer specific pricing alternatives for potential purchases. NASDAQ can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. NASDAQ continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers. This also reflects that the market for this Depth-of-Book information is highly competitive and continually evolves as products develop and change.

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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. NASDAQ believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a by-product of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects both the revenues it receives from products and

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4) and (5).

[5] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, an increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including thirteen SRO markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC, NYSE Arca LLC (''ARCA''), and BATS Exchange, Inc. (''BATS'').

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end Subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end Subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these

vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN and BATS Trading. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The vigor of competition for information is significant. NASDAQ has made a determination to adjust the fees associated with these products in order to reflect more accurately the value of its products and the investments made to enhance them, as well as to keep pace with changes in the industry and evolving customer needs. These products are entirely optional and are geared towards attracting new customers, as well as retaining existing customers.

In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with NASDAQ or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. For example, NOM offers one distributor fee which allows firms to access both the BONO and ITTO data feeds. The market for this information is highly competitive and continually evolves as products develop and change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–NASDAQ–2015–035 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–NASDAQ–2015–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. 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–NASDAQ–2015–035 and should be submitted on or before May 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09264 Filed 4–21–15; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74747; File No. SR–OCC–2015–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning the Execution of an Agreement for Clearing and Settlement Services Between OCC and NASDAQ Futures, Inc.

April 16, 2015.

On February 20, 2015, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change OCC–2015–03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on March 10, 2015.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 74432 (March 4, 2015), 80 FR 12652 (March 10, 2015) (SR–OCC–2015–03).

I. Description

OCC proposes to execute an Agreement for Clearing and Settlement Services (''Clearing Agreement'') between OCC and NASDAQ Futures, Inc. (''NFX'') in connection with NFX's operation as a designated contract market (''DCM'') [4] regulated by the Commodity Futures Trading Commission (''CFTC''). OCC will provide clearance and settlement services to NFX pursuant to the terms set forth in the Clearing Agreement. The rule change, as proposed, permits OCC to begin providing clearing and settlement services for NFX in the second quarter of 2015.

NFX previously operated as a DCM and cleared its futures contracts through OCC. As such, OCC and NFX had previously entered into a Second Amended and Restated Agreement for Clearing and Settlement Services (''Previous Agreement'') dated January 13, 2012.[5] As of January 31, 2014, NFX ceased operations as a contract market and became a dormant contract market under CFTC Regulations.[6] As a result, the Previous Agreement was terminated pursuant to its terms [7] and the clearing relationship between OCC and NFX terminated.

On November 21, 2014, NFX was approved by the CFTC as a DCM.[8] In connection with that approval, OCC proposes to provide the clearance and settlement services as described in the Clearing Agreement, which is substantially similar to the Previous Agreement with several differences discussed in more detail below. The Clearing Agreement has been amended to allow OCC more flexibility in determining which products it will clear based upon its conclusion that it is able to appropriately risk manage such products using commercially reasonable standards.[9] More specifically, the following changes have been made:

- Section 3(a) of the Clearing Agreement, ''General Criteria for Underlying Interests,'' has been amended to permit NFX to select the underlying interests that are the subject of currency futures, commodity futures, and/or futures options to be traded on NFX only if OCC is satisfied that it is able to appropriately risk manage the contract with the proposed underlying interest using commercially reasonable efforts.
- Section 9 of the Clearing Agreement, ''Limitations of Authority and Responsibility,'' has been amended to specify that OCC shall have no responsibility to enforce standards relating to the conduct of trading on NFX unless OCC finds it reasonably necessary in order to appropriately risk manage the products that are being traded on NFX.

In addition, the Clearing Agreement will also make several changes to the Previous Agreement, which include:

- Section 3(c), ''Procedures for Selection of Underlying Interests,'' has been amended to state that NFX must submit a certificate for a new class of contracts not already listed or traded on NFX as soon as practicable (rather than ten days prior to the commencement of trading). It has also been amended to state that OCC will be obligated to use commercially reasonable efforts to authorize the clearance and settlement of such contracts as soon as practicable. In addition, the Clearing Agreement expressly obligates NFX to provide OCC with any additional information as requested by OCC from time to time that will assist OCC in identifying a new product proposed for clearing by NFX. OCC believes that these amendments to Section 3(c), related to the procedures for the selection of underlying interests, will ensure that OCC not only has the correct information needed to evaluate a proposed new product but that the information will be produced to OCC in a timely manner which will provide OCC sufficient time to evaluate the proposed new product.
- Section 3(d), ''Notice of Additional Maturity or Expiration Dates,'' has been amended to state that, for a class of products previously certified, NFX may introduce a new maturity or expiration date that is in the cycle set forth in the certificate by providing notice to OCC through electronic means specified by OCC. The Previous Agreement required such notice to be sent to OCC only by email or facsimile.
- A universal conforming change has been made to various sections in the Clearing Agreement to replace the term ''matched'' trades with ''confirmed'' trades to better describe trades that are processed for clearance and settlement.[10]
- Section 5(a), ''Confirmed Trade Reports,'' has been amended to remove language discussing the possibility that NFX will provide OCC with a confirmed trade report on a real time basis as this capability is already captured in the language ''as the Corporation may reasonably prescribe.''
- Section 5(c)(i) has been amended to include language that will allow OCC to determine the final settlement price for a futures contract in which the underlying interest is a cash-settled foreign currency if the organized market in which that foreign currency future is traded on, or the foreign currency itself, did not open or remain open for trading at or before the time in which the settlement price for such futures contract would ordinarily be determined. In addition, Section 5(c)(i) has been amended to include a reference to ''variance'' when listing factors that will allow OCC to determine a final reasonable settlement price, if not reported at the ordinary time of final settlement. OCC believes that these additions to the Clearing Agreement clarify the potential underlying interests in which NFX may introduce futures contracts and make the Clearing Agreement more precise.
- Section 7, ''Acceptance and Rejection of Transactions in Cleared Contracts,'' has been amended to include a provision that will allow OCC, in accordance with its By-Laws, to reject transactions due to validation errors which will allow OCC to better manage its clearance and settlement obligations by expressly allowing it to reject transactions that do not contain complete terms. These validation errors include, for example, an incorrect Clearing Member, account, product or format.
- Section 8, ''Non-Discrimination,'' has been amended to delete a provision restricting OCC from changing its By-Laws or Rules in any manner that may limit its obligations to clear and settle for NFX. In addition, a provision has been deleted requiring OCC to amend the Clearing Agreement in the event that OCC has made changes to its standard form agreement for clearing and settlement services. Section 8 has also been amended to delete a provision stating OCC is required to consult with NFX and modify OCC's By-Laws or Rules to incorporate product design features specified by NFX for new products. OCC believes that these

[4] *See http://www.cftc.gov/ucm/groups/public/@otherif/documents/ifdocs/nasdaqorderofreinstatement.pdf.*

[5] *See* Securities Exchange Act Release No. 66340 (February 7, 2012), 77 FR 7621 (February 13, 2012) (SR–OCC–2012–02).

[6] *See* 17 CFR 40.1.

[7] More specifically, the Previous Agreement, in relevant part, stated that it would terminate if NFX terminates trading of all Cleared Contracts. *See* Section 19(b) of the Previous Agreement. *See also* note 5 *supra.*

[8] *See* note 4 *supra.*

[9] *See* Sections 3(a) and 9 of the Clearing Agreement in which language has been added allowing such flexibility.

[10] *See* Article I, Section 1(C)(28) of OCC's By-Laws. *See also* Sections 3(g), 6(a), 7, 19, and Schedule A, Section 1 of the Clearing Agreement.

provisions are no longer necessary as they limit OCC's ability to modify its By-Laws, Rules and agreements which may be necessary for OCC to fulfill its obligations as a clearing organization. OCC will, however, continue to be obligated to fulfill both the provisions of the Clearing Agreement and OCC's regulatory responsibilities. Section 8 has additionally been amended to delete an obligation for each party to provide the other with proposed rule changes. The elimination of this contractual obligation reflects the parties' determination that their respective obligations to post filed regulatory submissions on their public Web sites provides sufficient notice of such changes.

• Section 11, ''Financial Requirements for Clearing Members,'' has been amended to delete a provision stating the specific financial responsibility standards OCC has with respect to its Clearing Members. This change was made to further streamline the Clearing Agreement given OCC's general obligation to remain consistent with OCC By-Laws and Rules.

• Section 14, ''Programs and Projects,'' has been amended to eliminate a provision expressly requiring OCC to offer futures contract clearing terms to NFX that are no less favorable to the terms offered to other exchanges.

• Sections 15 and 24 in the Previous Agreement, ''Information Sharing'' and ''Quality Standards'' respectively, have been deleted in their entirety in an attempt to simplify the Clearing Agreement as the sections create unnecessary obligations on the parties and are duplicative of general regulatory responsibilities of both parties.

• Section 18(b), ''Other Grounds for Termination,'' has been amended to include a provision that OCC may terminate the Clearing Agreement at any time so long as NFX is given 120 days prior written notice. The addition of this provision better balances the rights of both parties to terminate the Clearing Agreement at their discretion provided that proper notice is given as required by the Clearing Agreement.

• Various administrative changes have been made throughout the document including, but not limited to, an amended legal name and description of NFX, updated references to sections within the document, and clean-up changes of duplicative terms.

Finally, pursuant to the rule change, as approved, Schedule A of the Clearing Agreement, ''Description of Clearing and Settlement Services'' and Schedule B of the Clearing Agreement, ''Information Sharing,'' are being amended as follows:

• Section (1) of Schedule A of the Clearing Agreement, ''Trade Acceptance,'' has been updated to reflect current OCC operational requirements with respect to submission of confirmed trades.

• Section (4) of Schedule A, ''Information for Clearing Members,'' has been amended to delete specific information sharing obligations of OCC to its Clearing Members and to state that the information provided to Clearing Members will be in accordance with OCC's By-Laws and Rules.

• Section (I)(A) of Schedule B has been amended to delete specific references to information that OCC will provide to Clearing Members on a daily basis and instead adds a provision that OCC will provide NFX with its ''Data Distribution Service'' information for regulatory and financial purposes.

• Section (I)(B) of Schedule B has been amended to delete certain information sharing provisions and to state that the information sharing obligations OCC continues to have may be satisfied by posting the required information on OCC's public Web site which streamlines the information sharing process.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [11] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[12] which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, and, in general, to protect investors and the public interest. As approved, the Clearing Agreement will allow derivative contract trades executed on NFX to be cleared and settled at OCC, thereby ensuring that these trades will be subject to the comprehensive operational and risk management framework at OCC. In so doing, the Clearing Agreement, should reduce the costs and risks associated with clearing and settling NFX trades, which should in turn promote the prompt and accurate clearance and settlement of the NFX derivative contract transactions, better assure the safeguarding of related securities and funds in the custody and control of OCC, and better protect investors and the public interest.

[11] 15 U.S.C. 78s(b)(2)(C).

[12] 15 U.S.C. 78q–1(b)(3)(F).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [13] and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–OCC–2015–03) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09266 Filed 4–21–15; 8:45 am]

BILLING CODE 8011–01–P

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74741; File No. SR–ICEEU–2015–005]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to CDS Procedures for CDX North America Index CDS Contracts

April 16, 2015.

On February 12, 2015, ICE Clear Europe Limited (''ICEEU'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise ICEEU's CDS Procedures, CDS Risk Model Description and CDS End-of-Day Price Discovery Policy to provide the basis for ICEEU to clear CDX North America Index CDS Contracts (''CDX.NA Contracts''). The proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

was published for comment in the **Federal Register** on March 2, 2015.[3] To date, the Commission has not received comments on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is April 16, 2015. The Commission is extending this 45-day time period.

ICEEU's proposed rule change would revise ICEEU's CDS Procedures, CDS Risk Model Description and CDS End-of-Day Price Discovery Policy to enable ICEEU to clear CDX.NA Contracts, as well as make changes to ICEEU's CDS Procedures relating to iTraxx Contracts and single name CDS Contracts. In order to provide the Commission with sufficient time to consider the proposed rule change, the Commission finds it is appropriate to designate a longer period within which to take action on the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates May 31, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ICEEU–2015–005).

Brent J. Fields,

Secretary.

[FR Doc. 2015–09270 Filed 4–21–15; 8:45 am]

BILLING CODE 8011–01–P

[3] Securities Exchange Act Release No. 34–74362 (Feb. 24, 2015), 80 FR 11246 (Mar. 2, 2015).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74740; File No. SR–BYX–2015–23]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 3.5 (Advertising Practices) and Repeal Exchange Rule 3.20 (Initial or Partial Payments)

April 16, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2015, BATS Y-Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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: (i) Amend Exchange Rule 3.5 (Advertising Practices); and (ii) repeal Exchange Rule 3.20 (Initial or Partial Payments) to conform with the rules of the Financial Industry Regulatory Authority, Inc. (''FINRA'') for purposes of an agreement between the Exchange and FINRA pursuant to Rule 17d–2 under the Act.[5] The proposed rule change is identical to proposed rule changes submitted by the EDGX Exchange, Inc. (''EDGX'') and the EDGA Exchange, Inc. (''EDGA'') that were published by the Commission.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.17d–2.

[6] *See* Securities Exchange Act Release Nos. 70837 (Nov. 8, 2013), 78 FR 68889 (Nov. 15, 2013) (SR–EDGA–2013–32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGA Rule 3.5 (Advertising Practices) and to Repeal Rule 3.20 (Initial or Partial Payments) to Conform with the Rules of the Financial Industry Regulatory Authority); and 70836 (Nov. 8, 2013), 78 FR 68897 (Nov. 15, 2013) (SR–EDGX–2013–40) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 3.5 (Advertising Practices) and to Repeal Rule 3.20 (Initial or Partial Payments) to Conform with the Rules of the Financial Industry Regulatory Authority).

The text of the proposed rule change is available at the Exchange's Web site at *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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 17d–2 under the Act,[7] the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (''17d–2 Agreement''). The 17d–2 Agreement covers common members of the Exchange and FINRA (''Common Members'') and allocates to FINRA regulatory responsibility, with respect to Common Members, for the following: (i) Examination of Common Members for compliance with federal securities laws, rules, and regulations, and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of Common Members for violations of federal securities laws, rules, and regulations, and Exchange rules that the Exchange has certified as identical or substantially identical to FINRA rules; and (iii) enforcement of compliance by Common Members with the federal securities laws, rules, and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.[8]

The 17d–2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain

[7] 17 CFR 240.17d–2.

[8] *See* Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File No. 10–196).

FINRA rules that have been identified as comparable. To conform with comparable FINRA rules for purposes of the 17d–2 Agreement, the Exchange proposes to: (i) Amend Exchange Rule 3.5 (Advertising Practices); and (ii) repeal Exchange Rule 3.20 (Initial or Partial Payments).

Rule 3.5 (Advertising Practices)

The Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require Exchange members [9] (''Members'') to comply with FINRA Rule 2210 as if this Rule was part of the Exchange's rules and to rename Rule 3.5 ''Communications with the Public.'' [10] The proposed rule text is substantially the same as Rule 2210(a) of the Nasdaq Stock Market LLC (''Nasdaq''), which has been approved by the Commission.[11]

Currently, Exchange Rule 3.5(d) and (f) are excluded from the 17d–2 Agreement because they are not are identical to, or substantially similar to, certain FINRA rules. First, Exchange Rule 3.5(d) requires that advertising and sales literature be pre-approved and signed or initialed by a supervisor while FINRA Rule 2210(b) only requires supervisory pre-approval for retail communication, and different supervisory review standards for institutional communication, and correspondence. Second, Rule 3.5(f) and FINRA Rule 2210(d)(6) also contain different content requirements for testimonials. Exchange Rule 3.5(d) and (f) were, therefore, excluded from the 17d–2 Agreement because their requirements were not identical or substantially similar to those required under FINRA Rule 2210(b) and (d)(6) respectively. To harmonize its rules with FINRA, the Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require Members to comply with FINRA Rule 2210 as if such Rule were part of the Exchange's rules so that Rule 3.5 may be incorporated into the 17d–2 Agreement in its entirety.

The Exchange believes that these changes would help to avoid confusion among Common Members by further aligning Exchange Rules 3.5 with FINRA Rule 2210. The proposed changes to Rule 3.5 are designed to enable the Exchange to incorporate Rule 3.5 into the 17d–2 Agreement, further reducing duplicative regulation of Common Members.

Summary of FINRA Rule 2210

FINRA Rule 2210 generally sets forth the content, filing, supervisory review, and record retention requirements for FINRA member's communications with the public. A summary of FINRA Rule 2210 is below. A more complete description of FINRA Rule 2210 is provided in FINRA's Regulatory Notice 12–29 [12] and Regulatory Notice 14–30.[13]

FINRA Rule 2210 divides a Member's communications with the public into the following three categories:

- *Institutional communication.* FINRA Rule 2210(a)(3) defines ''institutional communication'' as ''any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications.''
- *Retail communication.* FINRA Rule 2210(a)(5) defines ''retail communication'' as ''any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30-day calendar period.'' FINRA Rule 2210(a)(6) defines ''Retail investor'' as ''any person other than an institutional investor, regardless of whether the person has an account with the member.'' Communications that are considered advertisements and sales literature fall under the definition of ''retail communication.''
- *Correspondence.* FINRA Rule 2210(a)(2) defines ''correspondence'' as ''any written (including electronic) communication that is distributed or made available to fewer than 25 retail investors within any 30-day calendar period.''

Supervisory Review. To comply with the supervisory requirements of FINRA Rule 2210(b), Common Members must obtain supervisory pre-approval of all retail communications, while institutional communications and correspondence would be subject to supervisory review, but not pre-approval.

Under FINRA Rule 2210(b)(1), all retail communications must be approved by a supervisor prior to their first use or filing with FINRA under FINRA Rule 2210(c). FINRA's Rule 2210(b)(1)'s supervisory requirements do not apply to a retail communication if, at the time that a member intends to publish or distribute it: (i) Another member has filed it with FINRA and has received a letter from FINRA stating that it appears to be consistent with applicable standards; and (ii) the member has not materially altered it and will not use it in a manner that is inconsistent with the conditions of FINRA's letter. The rule's supervisory review requirements also do not apply to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to FINRA Rule 3110(b) and Supplemental Material 3110.06 through .09: (i) Any retail communication that is excepted from the definition of ''research report'' pursuant to NASD Rule 2711(a)(9)(A), unless the communication makes any financial or investment recommendation; (ii) any retail communication that is posted on an online interactive electronic forum; and (iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

For institutional communications, FINRA Rule 2210(b)(3) requires that members establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. These procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When these procedures do not require review of all institutional communications prior to first use or distribution, they must include provisions for: (i) The education and training of associated persons as to the firm's procedures governing institutional communications; (ii) the documentation of their education and training; and (iii) surveillance and follow-up to ensure that these procedures are implemented and adhered to. Evidence that these supervisory procedures have been

[9] ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a 'member' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' Exchange Rule 1.5(n).

[10] The Exchange does not propose to require that Members comply with FINRA Rule 2210(c). FINRA Rule 2210(c) generally requires that FINRA members file certain communications with FINRA. The Exchange believes that it is inappropriate for its rules to require Members to file certain communications with FINRA as such filing requirements under FINRA rules are between FINRA and its members.

[11] *See* Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (order approving Nasdaq's application for registration as a national securities exchange); *see also* Securities Exchange Act Release No. 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR–Nasdaq–2008–054) (Notice of Filing and Immediate Effectiveness).

[12] *See* FINRA Regulatory Notice 12–29 (June 2012) available at *http://finra.complinet.com/net_file_store/new_rulebooks/f/i/FINRANotice12_29.pdf.*

[13] *See* FINRA Regulatory Notice 14–30 (July 2014) available at *http://finra.complinet.com/net_file_store/new_rulebooks/f/i/FINRANotice_14_30.pdf.*

implemented and carried out must be maintained and made available to FINRA upon request.

FINRA Rule 2210(b)(2) states that correspondence is subject to the supervision and review requirements of FINRA Rule 3110(b) and Supplemental Material 3110.06 through .09. Under FINRA Rule 3110(b)(4), each member shall develop written procedures that are appropriate to its business, size, structure, and customers for reviewing incoming and outgoing written (including electronic) correspondence with the public relating to its investment banking or securities business, including procedures for reviewing incoming written correspondence directed to registered representatives, and related to the member's investment banking or securities business, to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. Where these procedures for the review of correspondence do not require review of all correspondence prior to use or distribution, they must include provisions for: (i) The education and training of associated persons as to the firm's procedures governing correspondence; (ii) the documentation of their education and training; and (iii) surveillance and follow-up to ensure that these procedures are implemented and adhered to.

Record Retention. Under FINRA Rule 2210(b)(4)(A), members must maintain all retail communications and institutional communications for the retention period required by Rule 17a–4(b) under the Act and in a format and media that comply with Rule 17a–4 under the Act. The records must include:

- A copy of the communication and the dates of first and (if applicable) last use of such communication;
- the name of any registered principal who approved the communication and the date that approval was given;
- in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;
- information concerning the source of any statistical table, chart, graph, or other illustration used in the communication; and
- for any retail communication for which principal approval is not required pursuant to FINRA Rule (b)(1)(C), the name of the member that filed the retail communication with the FINRA Advertising Regulation Department, and a copy of the corresponding review letter from the Department.

Filing Requirements. Like Nasdaq Rule 2210(a), Exchange Rule 3.5 would expressly state that Members would not be required to comply with FINRA Rule 2210(c). FINRA Rule 2210(c) generally requires FINRA members to file certain retail communications with FINRA prior to first use. Exchange members who are also FINRA members would continue to be subject to FINRA Rule 2210(c).

Content Standards. FINRA Rule 2210(d) sets forth general content standards for all communications. All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading. No member may make any false, exaggerated, unwarranted, promissory, or misleading statement or claim in any communication. No member may publish, circulate, or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading. Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return, and yield inherent to investments. Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

Communications may also not predict or project performance, imply that past performance will recur, or make any exaggerated or unwarranted claim, opinion, or forecast; provided, however, communications may include: (i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy; (ii) an investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of FINRA Rule 2214; and (iii) a price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

Testimonials. To comply with FINRA Rule 2210(d)(6): (i) If a testimonial includes a technical aspect of investing, the person making the testimonial must have the knowledge and expertise to form a valid opinion; and (ii) retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose that the testimonial: (a) May not be representative of the experience of other customers; (b) is no guarantee of future performance or success; and (c) is a paid testimonial, if more than $100 in value has been paid.

Recommendations. FINRA Rule 2210(d)(7)(A) requires that retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following: (i) That at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis; (ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and (iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months. Members must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

Retail communication or correspondence may not refer, directly or indirectly, to past specific

recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade, or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list: (i) States the name of each security recommended, the date and nature of each recommendation (*e.g.,* whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each security as of the most recent practicable date; and (ii) contains the following cautionary legend, which must appear prominently within the communication or list: ''It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list.''

Rule 3.20 (Initial or Partial Payments)

The Exchange also proposes to delete Exchange Rule 3.20 (Initial or Partial Payments). In January 2010, FINRA repealed NASD Rule 2450 (Initial or Partial Payments) and does not currently include a comparable rule in its rule book.[14] Like NASD Rule 2450, Exchange Rule 3.20 prohibits any arrangement whereby the customer of a Member submits partial or installment payments for the purchase of a security with the following exceptions: (i) If a Member is acting as agent or broker in the transaction, then the Member must immediately make an actual purchase of the security for the account of the customer, and immediately take possession or control of the security and maintain possession or control of the security as long as the Member is under the obligation to deliver the security to the customer; (ii) if a Member is acting as principal in the transaction, the Member must, at the time of the transaction, own the security and maintain possession or control of the security as long as the Member is under the obligation to deliver the security to the customer; and (iii) if applicable to a Member, the provisions of Regulation T of the Federal Reserve Board[15] are satisfied. The rule also prohibits a Member, whether acting as principal or agent, in connection with any installment or partial sales transaction, from making any agreement with the customer whereby the Member would be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to the Member.

Section 220.8 of Regulation T permits the purchase of a security in a cash account predicated on either: (i) There being sufficient funds in the account; or (ii) the Member accepts in good faith the customer's agreement that full cash payment will be made.[16] The rule further stipulates that payment must be made within a specified payment period.[17] Regulation T also allows the purchase of a security in a margin account, whereby a customer must deposit an initial requirement, based upon the amount of the transaction, within the specified payment period.

The Exchange proposes to repeal Exchange Rule 3.20 in light of the explicit provisions in Regulation T requiring the deposit of sufficient funds within the specified payment period. The Exchange also believes that the hypothecation prohibition in Exchange Rule 3.20 would no longer be relevant because it is predicated on a partial or installment payment under the rule. The Exchange notes that, notwithstanding the repeal of Exchange Rule 3.20, Members are required to comply with all applicable federal securities laws, including Regulation T.

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change would further these requirements by eliminating duplicative and unnecessary rules and advancing the development of a more efficient and effective Exchange Rulebook. The Exchange believes that the proposed rule change would provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. Accordingly, the Exchange believes that the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization among Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Common Members and facilitating FINRA's performance of its regulatory functions under the 17d–2 Agreement.

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 proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as non-controversial under Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6)[20] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[21]

[14] *See* Securities Exchange Act Release No. 61542 (Feb. 18, 2010), 75 FR 8768 (Feb. 25, 2010) (SR–FINRA–2009–093) (order approving proposal to repeal NASD Rule 2450).

[15] Federal Reserve Board, Regulation T (Credit by Brokers and Dealers), 12 CFR 220 *et seq.*

[16] *See* Section 220.8(a)(1) of Regulation T.

[17] According to Section 220.2 of Regulation T, ''payment period'' means the number of business days in the standard securities settlement cycle in the United States, as defined in Rule 15c6–1(a) under the Act (17 CFR 240.15c6–1(a)), plus two business days.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4.

[21] Rule 19b–4(f)(6) also requires that the Exchange give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time

Continued

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend the proposed rule change if it appears to the Commission that this action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes this action, it shall institute proceedings under Section 19(b)(2)(B) of the Act [22] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BYX–2015–23 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 No. SR–BYX–2015–23. 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 principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2015–23 and should be submitted on or before May 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09269 Filed 4–21–15; 8:45 am]

BILLING CODE 8011–01–P

as designated by the Commission. The Exchange satisfied this requirement.

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74744; File No. SR–MIAX–2015–29]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 500

April 16, 2015.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 500. The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 500, Access to and Conduct on the Exchange, to authorize the Exchange to share any Member-designated risk settings in the MIAX System [3] with the Clearing Member [4] that clears Exchange Transactions [5] on behalf of the Member [6] (or on behalf of any Sponsored User [7] for which the Member is a Sponsoring Member [8]). Current Rule 500(a) states that ''[U]nless otherwise provided in the Rules, no one but a Member or a person associated with a Member shall effect any Exchange Transactions.'' The Exchange proposes to amend current Rule 500(a) to state that the Exchange may share any Member-designated risk settings in the MIAX System with the Clearing Member

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] The term ''Clearing Member'' means a Member that has been admitted to membership in the Options Clearing Corporation (''Clearing Corporation'') pursuant to the provisions of the rules of the Clearing Corporation. *See* Exchange Rule 100.

[5] The term ''Exchange Transaction'' means a transaction involving a security that is effected on the Exchange. *See* Exchange Rule 100.

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] A Sponsored User may obtain and maintain authorized access to the System, only if such access is authorized in advance by one or more Sponsoring Members. *See* Exchange Rule 210(b).

[8] Sponsored Users must enter into a sponsorship arrangement with a ''Sponsoring Member,'' which is defined as a Member that agrees to sponsor the Sponsored User's access to the System. *See* Exchange Rule 210(b)(1). The Sponsoring Member is responsible for any and all actions taken by such Sponsored User and any person acting on behalf of or in the name of such Sponsored User. *See* Exchange Rule 210(b)(1)(ii)(B)(2).

that clears Exchange Transactions on behalf of the Member.

All Exchange Transactions must be submitted for clearance to the Options Clearing Corporation (the ''Clearing Corporation'') and are subject to the Rules of the Clearing Corporation. For each Exchange Transaction in which it participates, a Member must immediately give up the name of the Clearing Member through whom the Exchange Transaction will be cleared.[9] Every Clearing Member is responsible for the clearance of the Exchange Transactions of such Clearing Member and of each Member who gives up such Clearing Member's name pursuant to a letter of authorization, letter of guarantee or other authorization given by such Clearing Member to such Member, which authorization must be submitted to the Exchange.[10]

Thus, while not all Members are Clearing Members, all Exchange Members require a Clearing Member's consent to clear Exchange Transactions on their behalf in order to conduct business on the Exchange. The letter of authorization or guarantee, or other authorization, describes the relationship between the Member and Clearing Member and provides the Exchange with notice of which Clearing Members have relationships with which Exchange Members. The Clearing Member that guarantees the Member's Exchange Transactions has a financial interest in understanding the risk tolerance of the Member. The instant proposal would provide the Exchange with authority to provide Clearing Members directly with information that may otherwise be available to such Clearing Members by virtue of their relationship with the respective Members.

Specifically, the proposal would permit the Exchange to share any Member-designated risk settings in the MIAX System with the Clearing Member that clears Exchange Transactions on behalf of the Member. The risk settings currently covered by this proposal relate to limitations on executions and are set forth in Exchange Rule 519,[11] Rule 519A,[12] and Rule 612.[13] The Exchange may adopt additional rules providing for Member-designated risk settings other than those provided in Exchange Rules 519, 519A, and 612 that could be shared with a Member's Clearing Member under the proposal, and the Exchange would announce these additional risk settings by issuing a Regulatory Circular.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5) of the Act[15] in particular, in that 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 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.

The proposed rule change will allow the Exchange to provide a Member's designated risk settings directly to the Clearing Member that clears Exchange Transactions on behalf of the Member. Because a Clearing Member that executes a clearing letter of guarantee or authorization on behalf of a Member guarantees all Exchange Transactions of that Member, and therefore bears the risk associated with those Exchange Transactions, it is appropriate for the Clearing Member to have knowledge of what risk settings the Member may apply within the MIAX System. The proposal will permit Clearing Members who have a financial interest in the risk settings of Members with whom they have entered into a clearing letter of guarantee or agreement to better monitor and manage the potential risks assumed by Clearing Members, thereby providing Clearing Members with greater control and flexibility in managing their own risk tolerance and exposure and aiding Clearing Members in complying with the Act.

Additionally, to the extent a Clearing Member might reasonably require a Member to provide access to its risk settings as a prerequisite to continuing to clear trades on such Member's behalf, the Exchange's proposal to share those risk settings directly with the Clearing Member reduces the administrative burden on the Member and ensures that Clearing Members are receiving information that is up to date and conforms to the settings active in the MIAX System.

Moreover, the proposed rule change is consistent with rules that are currently operative on other exchanges.[16]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues and does not pose an undue burden on non-Clearing Members because, unlike Clearing Members, non-Clearing Members do not guarantee the execution of a Member's Exchange Transactions. The proposal is structured to offer the same enhancement to all Clearing Members, regardless of size, and would not impose a competitive burden on any participant. Any Member that does not wish to share its designated risk settings with its Clearing Member could avoid sharing such settings by becoming a clearing member of OCC.

The Exchange notes that the rule change is being proposed as a response to rules that are already operative on other exchanges.[17]

For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[9] *See* Exchange Rule 507.

[10] *See* Exchange Rule 513(b).

[11] Exchange Rule 519, Order Size Protections, states that the System will prevent certain orders from executing or being placed on the Book if the size of the order exceeds the order size protection designated by the Member.

[12] Pursuant to Exchange Rule 519A, Risk Protection Monitor (''RPM''), the MIAX System will count the number of orders entered and the number of contracts traded via an order entered by a Member on the Exchange within a specified time period that has been established by the Member and, when triggered, the RPM will (i) prevent the System from receiving any new orders in all series in all classes from the Member; or (ii) prevent the System from receiving any new orders in all series in all classes from the Member and cancel all existing Day orders in all series in all classes from the Member; or (iii) send a notification that the RPM has been triggered without any further preventative or cancellation action by the System.

[13] Pursuant to Exchange Rule 612, Aggregate Risk Manager (''ARM''), the MIAX System will count the number of contracts traded by a Market Maker in an assigned option class within a specified time period that has been established by the Market Maker. When the counting program has determined that a Market Maker has traded during the specified time period a number of contracts equal to or above an ''Allowable Engagement Percentage'' specified by the Market Maker, the ARM will automatically remove the Market Maker's quotations from the Exchange's disseminated quotation in all series of that particular option class until the Market Maker submits a new revised quotation.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* NYSE Arca, Inc. Rule 6.2A(a); NYSE MKT LLC Rule 902.1NY.(a); NASDAQ OMX PHLX LLC Rule 1016; and BATS Exchange, Inc. Rule 21.17.

[17] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[18] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6)[21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to respond to current demand for the expeditious sharing of risk settings between Clearing Members and Members on whose behalf they clear Exchange Transactions. The proposal does not raise any novel or unique issues, and is substantially similar to rules that are currently operative on other options exchanges. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2015–29 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–MIAX–2015–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–MIAX–2015–29 and should be submitted on or before May 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09263 Filed 4–21–15; 8:45 am]

BILLING CODE 8011–01–P

[18] The Exchange has satisfied this requirement.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] *Id.*

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74738; File No. SR–BATS–2015–09]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To Amend Rules 11.9, 11.12, and 11.13 of BATS Exchange, Inc.

April 16, 2015.

I. Introduction

On January 30, 2015, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rules 11.9, 11.12, and 11.13. The proposed rule change was published for comment in the **Federal Register** on February 18, 2015.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange conducted a comprehensive review of its system functionality.[4] The proposal adds additional clarity and specificity regarding the current functionality of the Exchange's System,[5] including the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74247 (February 11, 2015), 80 FR 8720 (''Notice''). *See also* Securities Exchange Act Release No. 74247A (February 26, 2015), 80 FR 11695 (March 4, 2015) (correcting file number in Notice heading to be ''SR–BATS–2015–09'').

[4] On June 5, 2014, Chair Mary Jo White asked all national securities exchanges to conduct a comprehensive review of each order type offered to members and how it operates in practice. *See* Mary Jo White, Chair, Commission, Speech at the Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference, (June 5, 2014) (*available at http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VD2HW610w6Y*).

[5] Exchange Rule 1.5(aa) defines ''System'' as ''the electronic communications and trading facility designated by the Board through which securities

operation of its order types and order instructions. The Exchange proposes no substantive modifications to the System.

The changes include: (i) Making clear that orders with a Time-in-Force (''TIF'') of Immediate-or-Cancel (''IOC'') can be routed away from the Exchange; (ii) specifying the methodology used by the Exchange to determine whether BATS Post Only Orders [6] will remove liquidity from the BATS Book; [7] (iii) adding additional detail to and re-structuring the description of Pegged Orders; (iv) adding additional detail to the description of Mid-Point Peg Orders; (v) adding additional detail to the description of Discretionary Orders; (vi) amending Rule 11.12, Priority of Orders, and Rule 11.13, Order Execution, to provide additional specificity and enhance the structure of Exchange rules describing the process for ranking, executing and routing orders; (vii) adding additional detail to the description of orders subject to Re-Route functionality; and (viii) making a series of conforming changes to Rules 11.9, 11.12 and 11.13 to update cross-references.

Rule 11.9. The Exchange proposes revisions to Rule 11.9 to provide greater detail as to the existing functionality of certain order types and modifiers.[8] Among other things, the Exchange proposes to make clear that orders with an IOC TIF are routable but do not post to the Exchange's book,[9] whereas orders with a Fill-or-Kill (''FOK'') TIF are not routable.[10] The Exchange also proposes to clarify the Exchange's methodology for determining whether BATS Post Only orders will remove liquidity from the Exchange's order book upon entry.[11] In addition, the Exchange proposes to reformat the rule describing the Primary Pegged and Market Pegged orders,[12] and to make clear that Mid-Point Peg Orders are not eligible to execute when the NBBO is crossed but Users may elect whether such orders will be eligible to execute when the NBBO is locked.[13] Further, the Exchange proposes to add additional detail to the rule describing Discretionary Orders so that it specifies: (i) That Discretionary Orders may be fully non-displayed, with a non-displayed ranked price (and discretionary price); (ii) how resting Discretionary Orders interact with incoming contra-side orders, including how the order type, TIF and price of the incoming order affects whether the resting Discretionary Order removes liquidity against the incoming order or the incoming order removes liquidity against the resting Discretionary Order; and (iii) that Discretionary Orders are routed away from the Exchange at their full discretionary price.[14]

Rule 11.12. The Exchange proposes several modifications to Rule 11.12 that are intended to clarify existing functionality relating to order priority. Some of these modifications would revise the structure of Rule 11.12 or add cross references to other rules.[15] In addition, the Exchange proposes to revise Rule 11.12(a)(2) to refer to ranking, rather than executing, equally-priced trading interest because, according to the Exchange, the rule is intended to describe the manner in which resting orders are ranked and maintained.[16] The Exchange also proposes to revise the reference to Pegged Orders in the priority hierarchy set forth in Rule 11.12(a)(2) to make clear that the reference is specifically to non-displayed Pegged Orders.[17] The Exchange notes that the purpose of this revision is to distinguish non-displayed Pegged Orders from Primary Pegged Orders that, if displayed, are ranked with other displayed orders.[18] Further, the Exchange proposes to adopt new Rule 11.12(a)(3), which would codify existing match trade prevention rules that optionally prevent the execution of orders from the same User.[19] Lastly, the Exchange proposes to renumber current Rules 11.12(a)(3) and (a)(4) as Rules 11.12(a)(4) and (a)(5), respectively, and to revise them to clarify that time priority in particular can be retained or lost in certain circumstances, as opposed to both price and time priority.[20]

Rule 11.13. The Exchange proposes several revisions to Rule 11.13, which currently governs the execution and routing logic on the Exchange. The Exchange proposes to restructure and reformat the rule in certain ways, including by more clearly delineating between execution (to be contained in new paragraph (a)) [21] and routing (to be contained in new paragraph (b)), adding sub-headings and descriptive titles, adding a cross reference to the Exchange's rules related to the Limit Up-Limit Down Plan, and revising existing cross references in the rule.[22] In addition, the Exchange proposes to add Rules 11.13(a)(4)(C) and (D), which would replace and amend existing text set forth in Rule 11.13(a)(1) and are intended to provide further clarity regarding how incoming orders are handled in certain situations when there is undisplayed locking interest on the Exchange.[23]

The Exchange also proposes revisions to Rule 11.13 as it relates to the Exchange's routing process, including its re-route functionality. In particular, the Exchange proposes to add language to the rule's description of the Aggressive Re-Route instruction (to be renumbered as Rule 11.13(b)(4)(A)) that states that any routable non-displayed limit order posted to the BATS Book that is crossed by another accessible Trading Center will be automatically routed to that Trading Center.[24] The Exchange also proposes to adopt new Rule 11.13(b)(4)(C), which would specify when an order with a Super Aggressive Re-Route instruction will remove liquidity against an incoming

orders of Users are consolidated for ranking, execution and, when applicable, routing away.''

[6] *See* Rule 11.9(c)(6).

[7] As defined in Rule 1.5(e).

[8] For additional detail regarding the specific proposed revisions for each order type and modifier, *see* Notice, *supra* note 3 at 8721–23, and proposed Rule 11.9.

[9] *See* proposed Rule 11.9(b)(1). In connection with this proposed change the Exchange also proposes to specify that the cancellation of an unfilled balance of an order is one possible outcome after an order has been routed away. *See* proposed Rule 11.13(b)(2). This is what would occur with the unfilled balance of a routed IOC order. *See* Notice, *supra* note 3 at 8721.

[10] *See* proposed Rule 11.9(b)(6).

[11] *See* proposed Rule 11.9(c)(6).

[12] *See* proposed Rule 11.9(c)(8).

[13] *See* proposed Rule 11.9(c)(9).

[14] *See* proposed Rule 11.9(c)(10). In addition, the Exchange proposes to update cross references to rules that would be re-numbered as a result of the proposal. *See* proposed Rules 11.9(c), 11.9(d) and 11.9(g).

[15] *See* Notice, *supra* note 3 at 8723. *See also* proposed Rule 11.12(a).

[16] *See* Notice, *supra* note 3 at 8723. *See also* proposed Rule 11.12(a)(2).

[17] *See* Notice, *supra* note 3 at 8723. *See also* proposed Rule 11.12(a)(2)(C).

[18] *See* Notice, *supra* note 3 at 8723.

[19] *See* Notice, *supra* note 3 at 8723. *See also* proposed Rule 11.12(a)(3). The Exchange notes that proposed Rule 11.12(a)(3) is based on EDGX Rule 11.9(a)(3). *See* Notice, *supra* note 3 at 8723.

[20] *See* Notice, *supra* note 3 at 8723. *See also* proposed Rules 11.12(a)(4) and (a)(5). In addition, the Exchange proposes to renumber current Rules 11.12(a)(5) and (a)(6) as Rules 11.12(a)(6) and (a)(7), respectively.

[21] The Exchange proposes to move language contained within Rule 11.13 to the beginning of new paragraph (a) such that the language is more generally applicable to the rules governing execution. Specifically, the Exchange proposes to relocate language stating that any order falling within the parameters of the paragraph shall be referred to as ''executable'' and that an order will be cancelled back to the User if, based on market conditions, User instructions, applicable Exchange Rules and/or the Act and the rules and regulations thereunder, such order is not executable, cannot be routed to another Trading Center pursuant to Rule 11.13(b) (as proposed to be re-numbered), or cannot be posted to the BATS Book. *See* Notice, *supra* note 3 at 8723–24. *See also* proposed Rule 11.13(a).

[22] *See* Notice, *supra* note 3 at 8724. *See also* proposed Rule 11.13.

[23] *See* Notice, *supra* note 3 at 8724. *See also* proposed Rules 11.13(a)(4)(C) and (D).

[24] *See* Notice, *supra* note 3 at 8725. *See also* proposed Rule 11.13(b)(4)(A).

order.[25] Further, the Exchange proposes to revise Rule 11.13(b) (to be renumbered as Rule 11.13(b)(5)) to make clear that orders that have been routed pursuant to Rule 11.12(a) are not ranked and maintained by the BATS Book, and therefore are not available to execute against incoming orders pursuant to new Rule 11.13(a).[26]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[28] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change will provide additional clarity and specificity regarding the functionality of the System, thus promoting just and equitable principals of trade and promoting a fair and open market. In addition, the Exchange believes the proposed rule change will contribute to the protection of investors and the public interest by making the Exchange's rules easier to understand.

The Exchange states that the proposed rule changes add clarity and transparency to the Exchange's rulebook regarding existing Exchange functionality.[29] For example, among other things, the Exchange's proposal would amend Rule 11.9 to clarify that IOC orders are routable and FOK orders are not routable, specify the methodology used by the Exchange to determine whether BATS Post Only Orders will remove liquidity from the BATS Book, and add additional detail describing the operation of Mid-Point Peg Orders and Discretionary Orders. The Exchange also has proposed to amend Rules 11.12 and 11.13 to provide additional transparency as to, but not substantively modify, the Exchange's process for ranking, executing and routing orders, including orders subject to the Exchange's re-route functionality.

The Commission believes that these proposed changes should provide greater specificity, clarity and transparency with respect to certain order type and modifier functionality available on the Exchange, as well as the Exchange's methodologies for ranking, executing and routing orders. Therefore, the proposal should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–BATS–2015–09) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09267 Filed 4–21–15; 8:45 am]

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[25] *See* Notice, *supra* note 3 at 8725–26. *See also* proposed Rule 11.13(b)(4)(C).

[26] *See* Notice, *supra* note 3 at 8725. *See also* proposed Rule 11.13(b)(5). For additional detail regarding the Exchange's proposed rule changes, including examples of the operation of functionality addressed by this rule filing, *see* Notice, *supra* note 3 at 8721–26.

[27] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b)(5)

[29] *See* Notice, *supra* note 3 at 8726.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Regulatory Fairness Hearing; U.S. Small Business Administration; Region X—Spokane, Washington

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open hearing of Region X Small Business Owners in Spokane, WA.

SUMMARY: The SBA, Office of the National Ombudsman is issuing this notice to announce the location, date and time of the Spokane, WA Regulatory Fairness Hearing. This hearing is open to the public.

DATES: The hearing will be held on Thursday, May 7, 2015, from 1:00 p.m. to 4:30 p.m. (PDT).

ADDRESSES: The hearing will be at The Historic Davenport Hotel, 10 South Post Street, Elizabethan Room, Spokane, WA 99201.

SUPPLEMENTARY INFORMATION: Pursuant to the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), Sec. 222, SBA announces the hearing for Small Business Owners, Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

FOR FURTHER INFORMATION CONTACT: The hearing is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation at the Spokane, WA hearing must contact José Méndez by May 1, 2015 in writing, or by fax or email in order to be placed on the agenda. For further information, please contact José Méndez, Case Management Specialist, Office of the National Ombudsman, 409 3rd Street SW., Suite 7125, Washington, DC 20416, by phone (202) 205–6178 and fax (202) 481–5719. Additionally, if you need accommodations because of a disability, translation services, or require additional information, please contact José Méndez as well.

For more information on the Office of the National Ombudsman, see our Web site at *www.sba.gov/ombudsm*an.

Dated: April 14, 2015.

Miguel J. L'Heureux,

SBA Committee Management Officer.

[FR Doc. 2015–09295 Filed 4–21–15; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2015–0020]

Agency Information Collection Activities: 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 a revision and an extension of OMB-approved information collections.

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–2015–0020].

SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections 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 May 22, 2015. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

1. Claim for Amounts Due in the Case of a Deceased Beneficiary—20 CFR 404.503(b)—0960–0101. When a Social Security payment was due to a deceased beneficiary at the time of death and there is insufficient information in the file to identify the persons(s) entitled to the payment or the person's address, SSA asks the surviving spouse, next of kin, or legal representative of the estate to complete Form SSA–1724, Claim for Amounts Due in the Case of a Deceased Social Security Recipient. SSA collects the information when a surviving widow(er) is not already entitled to a monthly benefit on the same earnings record, or is not filing for a lump-sum death payment as a former spouse. SSA uses the information from Form SSA–1724 to ensure proper payment of an underpayment due a deceased beneficiary. The respondents are applicants for underpayments owed to deceased beneficiaries.

This is a correction notice. SSA published this information collection as a revision on February 10, 2015 at 80 FR 2521. Since we are no longer revising the information collection, this is now an extension of an OMB-approved information collection.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1724	250,000	1	10	41,667

2. Certificate of Election for Reduced Spouse's Benefits—20 CFR 404.421—0960–0398. SSA cannot pay reduced Social Security benefits to an already entitled spouse unless the spouse elects to receive reduced benefits and is (1) at least age 62, but under full retirement age; and (2) no longer is caring for a child. In this situation, spouses who decide to elect reduced benefits must file Form SSA–25, Certificate of Election for Reduced Spouse's Benefits. SSA uses the information to pay qualified spouses who elect to receive reduced benefits. Respondents are entitled spouses seeking reduced 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)	Estimated total annual burden (hours)
SSA–25	30,000	1	2	1,000

Dated: April 17, 2015.

Faye I. Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2015–09296 Filed 4–21–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 9106]

Issuance of a Presidential Permit To Replace, Expand, Operate and Maintain the Existing Columbus Land Port of Entry

SUMMARY: The Department of State issued a Presidential Permit to the General Services Administration (GSA) on April 14, 2015, allowing the GSA to replace, expand, operate and maintain the existing Columbus Land Port of Entry in Columbus, New Mexico. In making this determination, the Department provided public notice of the proposed permit (79 FR 68345, November 14, 2014), offered the opportunity for comment, and consulted with other federal agencies, as required by Executive Order 11423, as amended.

FOR FURTHER INFORMATION CONTACT: The Mexico Border Affairs Unit, via email at *WHA-BorderAffairs@state.gov,* by phone at 202 647–9894 or by mail at Office of Mexican Affairs—Room 3924, Department of State, 2201 C St. NW., Washington, DC 20520. Information about Presidential permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit/.*

SUPPLEMENTARY INFORMATION: The following is the text of the issued permit:

Presidential Permit

Authorizing the General Services Administration To Replace, Expand, Operate, and Maintain the Existing Port of Entry Facilities for the Columbus, NM, Land Port of Entry

By virtue of the authority vested in me as Under Secretary of State for Economic Growth, Energy, and the Environment, including those authorities under Executive Order 11423, 33 FR 11741, as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511, Executive Order 13284 of January 23, 2003, 68 FR 4075, and Executive Order 13337 of April 30, 2004, 69 FR 25299; and Department of

State Delegation of Authority 118–2 of January 26, 2006; having considered the environmental effects of the proposed action in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 *et seq.*) and other statutes relating to environmental concerns; having considered the proposed action in accordance with the National Historic Preservation Act (80 Stat. 917, 16 U.S.C. 470f *et seq.*); and having requested and received the views of various of the federal departments and other interested persons; I hereby grant permission, subject to the conditions herein set forth, to the General Services Administration (hereinafter referred to as ''permittee'') to replace, expand, operate, and maintain the existing port of entry facilities for the Columbus, New Mexico, Land Port of Entry.

The term ''facilities'' as used in this permit means buildings and ancillary structures; commercial, non-commercial, and pedestrian processing and inspection facilities; export facilities, hazardous materials containment facilities; drainage structures, grading and landscaping, roads, vehicle parking, and three crossing points for commercial and non-commercial vehicular traffic and pedestrian crossings.

This permit is subject to the following conditions:

Article 1. (1) The facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any amendment thereof. This permit may be terminated at the will of the Secretary of State or the Secretary's delegate or may be amended by the Secretary of State or the Secretary's delegate at will or upon proper application therefor. The permittee shall make no substantial change in the location of the facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate.

(2) The construction, operation, and maintenance of the facilities shall be in all material respects as described in the permittee's September 24, 2014, application for a Presidential Permit (the ''Application'').

Article 2. The standards for, and the manner of, the construction, operation, and maintenance of the facilities shall be subject to inspection and approval by the representatives of appropriate federal, state and local agencies. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 3. The permittee shall comply with all applicable federal, state, and local laws and regulations regarding the construction, operation, and maintenance of the facilities and with all applicable industrial codes. The permittee shall obtain all requisite permits from state and local government entities and relevant federal agencies.

Article 4. This permit and the operation of the facilities hereunder shall be subject to the limitations, terms, and conditions issued by any competent agency of the United States government, including but not limited to the Department of Homeland Security (DHS). This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in exact accordance with such limitations, terms, and conditions.

Article 5. Any transfer of ownership or control of the facilities or any part thereof shall be immediately notified in writing to the U.S. Department of State, including the submission of information identifying the transferee. This permit shall remain in force subject to all the conditions, permissions, and requirements of this permit and any amendments thereto unless subsequently terminated or amended by the Secretary of State or the Secretary's delegate.

Article 6. (1) The permittee shall acquire such right-of-way grants or easements, permits, and other authorizations as may become necessary and appropriate.

(2) The permittee shall maintain the facilities and every part thereof in a condition of good repair for their safe operation, and in compliance with prevailing environmental standards and regulations.

Article 7. (1) The permittee shall reach agreement with U. S. Customs and Border Protection (CBP) on the provision of suitable facilities for CBP officers to perform their duties. Such facilities shall meet the latest CBP design standards and operational requirements including as necessary, but not limited to, inspection and office space, CBP personnel parking and restrooms, an access road, kennels, and other operationally required components.

Article 8. (1) The permittee shall take all appropriate measures to prevent or mitigate adverse impacts on, or disruption of, the human environment in connection with the construction, operation, and maintenance of the facilities.

Article 9. The permittee shall provide written notice to the Department of State at such time as the construction authorized by this permit is begun, and again at such time as construction is completed, interrupted, or discontinued.

Article 10. This permit shall expire ten years from the date of issuance in the event that the permittee has not commenced construction of the new facilities by that deadline.

In witness whereof, I, Catherine A. Novelli, Under Secretary of State for Economic Growth, Energy, and the Environment, have hereunto set my hand this 14th day of April, 2015 in the City of Washington District of Columbia.

Catherine A. Novelli,

Under Secretary of State for Economic Growth, Energy, and the Environment.

Dated: April 16, 2015.

Rachel M. Poynter,

Acting Director, Office of Mexican Affairs, Bureau of Western Hemisphere Affairs, U.S. Department of State.

[FR Doc. 2015–09375 Filed 4–21–15; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 9107]

60-Day Notice of Proposed Information Collection: Statement of Claim Related to Deportation During the Holocaust

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to June 22, 2015.

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

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2015–0018 in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: kottmyeram@state.gov.*
- *By mail:* Office of the Assistant Legal Adviser for Management, ATTN:

Deportation Claim Form, Room 4325, 2201 C Street NW., Washington, DC 20520.

You must include the DS form number, information collection title, and the OMB control number (if applicable) in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Alice Kottmyer, Office of the Legal Adviser for Management, who may be reached on 202–647–2318 or *kottmyeram@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Claim Related to Deportation During the Holocaust.
- *OMB Control Number:* None.
- *Type of Request:* New collection.
- *Originating Office:* Office of the Legal Adviser, Department of State.
- *Form Number:* DS–7713, Statement of Claim.
- *Respondents:* Individuals who were harmed as a result of deportation from France during the Holocaust by SNCF, the French national rail carrier.
- *Estimated Number of Respondents:* 2,000.
- *Estimated Number of Responses:* 2,000.
- *Average Time per Response:* 3 hours per response.
- *Total Estimated Burden Time:* 6,000 hours.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to obtain a benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: This collection will implement the *Agreement Between the Government of the United States of America and the Government of France to Address Claims Related to Deportation During the Holocaust,* signed on December 8, 2014. Upon final approval by the French government, the agreement will provide for the transfer of $60 million from France to the United States, to compensate eligible claimants for harms suffered as the result of deportation from France during the Holocaust by SNCF, the French national rail carrier. In exchange for a lump sum, which the United States would use to compensate eligible claimants, the United States would undertake a commitment to prevent the prosecution of deportation-related claims in U.S. courts by recognizing and protecting France's and SNCF's sovereign immunity for such claims.

Methodology: The information will be collected on a form, the DS–7713, Statement of Claim, which can be submitted by mail or fax.

Dated: April 16, 2015.

Alicia A. Frechette,

Executive Director, Office of the Legal Adviser, Department of State.

[FR Doc. 2015–09377 Filed 4–21–15; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 9103]

In the Matter of the Designation of Mahad ''Karate''; Also Known as Mahad Mohamed Ali ''Karate''; Also Known as Mahad Warsame Qalley Karate; Also Known as Abdirahim Mohamed Warsame as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Mahad ''Karate,'' also known as Mahad Mohamed Ali ''Karate,'' also known as Mahad Warsame Qalley Karate, also known as Abdirahim Mohamed Warsame, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: April 10, 2015.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–09378 Filed 4–21–15; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 9104]

In the Matter of the Designation of Ahmed Diriye, Also Known as Ahmad Umar Abu Ubaidah, Also Known as Mahad Diriye, Also Known as Abu Ubaidah, Also Known as Ahmad Umar, Also Known as Ahmed Omar Abu Ubaidah, Also Known as Sheikh Ahmad Umar Abu Ubaidah, Also Known as Sheikh Ahmed Umar Abu Ubaidah, Also Known as Sheikh Omar Abu Ubaidaha, Also Known as Sheikh Ahmed Umar, Also Known as Sheikh Mahad Omar Abdikarim, Also Known as Abu Diriye, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Ahmed Diriye, also known as Ahmad Umar Abu Ubaidah, also known as Mahad Diriye, also known as Abu Ubaidah, also known as Ahmad Umar, also known as Ahmed Omar Abu Ubaidah, also known as Sheikh Ahmad Umar Abu Ubaidah, also known as Sheikh Ahmed Umar Abu Ubaidah, also known as Sheikh Omar Abu Ubaidaha, also known as Sheikh Ahmed Umar, also known as Sheikh Mahad Omar Abdikarim, also known as Abu Diriye, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that

''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: April 10, 2015.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–09379 Filed 4–21–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 9105]

Department of State FY 2014 Service Contract Inventory

AGENCY: Department of State.

ACTION: Notice of Release of the Department of State's FY 2014 Service Contract Inventory.

SUMMARY: Acting in compliance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Department of State is publishing this notice to advise the public of the availability of the FY 2014 Service Contract Inventory. The FY 2014 Service Contract Inventory includes the Summary Report, Detailed Report, Supplement Report, and Planned Analysis. Additionally, the FY 2013 Meaningful Analysis is available.

The inventory was developed in accordance with guidance issued on November 5, 2010, December 19, 2011, and November 25, 2014 by the Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP). The Department of State has posted its FY 2014 Service Contract Inventory and FY 2013 Meaningful Analysis at the following link: *http://csm.state.gov/content.asp?content_id=135&menu_id=71*.

DATES: The inventory is available on the Department's Web site as of April 9, 2015.

FOR FURTHER INFORMATION CONTACT: Marlon Henry, Management and Program Analyst, A/EX/CSM, 202–485–7210, *HenryMD@state.gov*.

Dated: April 15, 2015.

Marlon Henry,

Management and Program Analyst, A/EX/CSM., Department of State.

[FR Doc. 2015–09374 Filed 4–21–15; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

DEPARTMENT OF THE INTERIOR

National Park Service

[Docket No. FAA–2014–0782]

Grand Canyon National Park Quiet Aircraft Technology Incentive: Seasonal Relief From Allocations in the Dragon and Zuni Point Corridors

AGENCY: Federal Aviation Administration, Transportation; National Park Service, Interior.

ACTION: Final notice to announce implementation and disposition of public comments.

SUMMARY: On November 10, 2014, the Federal Aviation Administration (FAA) and the National Park Service (NPS) published in the **Federal Register** [79 FR 66763–66765] a notice of the agencies' proposal to provide a quiet aircraft technology incentive for commercial air tour operators at Grand Canyon National Park and a request for public comments. Specifically, the agencies proposed to provide seasonal relief from allocations in the Dragon and Zuni Point corridors for commercial air tour operators that convert or have converted to quiet aircraft technology. The FAA and the NPS have reviewed and considered all comments, and have decided to proceed with implementation of the incentive as proposed. This notice describes that decision and responds to the substantive comments received.

DATES: This incentive is effective as of January 1, 2015.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Program Manager, Federal Aviation Administration, P.O. Box 92007, Los Angeles, California 90009–2007; telephone (310) 725–3808; email *keith.lusk@faa.gov* Robin Martin, Chief, Office of Planning and Compliance, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023–0129; telephone (928) 638–7684; email *Robin_Martin@nps.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority

Authority: Moving Ahead for Progress in the 21st Century Act, Sec. 35001, Pub. L. 112–141, 126 Stat. 843; National Parks Air Tour Management Act, Sec. 804, Pub. L. 106–181, 114 Stat. 192.

1. The National Park Overflights Act of 1987, Pub. L. 100–91, directed the Secretary of the Interior and the Administrator of the FAA to take actions to provide for the substantial restoration of the natural quiet and experience of Grand Canyon National Park and the protection of public health and safety from adverse effects associated with aircraft overflight. As part of these actions, operational limits for commercial air tour operations at Grand Canyon National Park (the park) were imposed by FAA regulations at 14 CFR part 93 issued on April 4, 2000. With some exceptions not relevant to this notice, these regulations establish an allocation scheme for the park, require commercial air tour operators to use one allocation for each flight that is a commercial air tour, and prohibit operators from conducting more commercial air tours in any calendar year than the number of allocations specified on the certificate holder's operations specifications issued by the FAA. 14 CFR 93.319.

2. The National Parks Air Tour Management Act (NPATMA), Pub. L. 106–181, was signed into law on April 5, 2000. Section 804(a) required the FAA to designate reasonably achievable requirements for fixed-wing and helicopter aircraft to be considered quiet aircraft technology (QT) for purposes of the statute's provisions. In 2005, the FAA issued a final rule classifying aircraft operating in Grand Canyon National Park and designating aircraft that meet the noise criteria as QT. 70 FR 16084–16093. These regulations were codified at 14 CFR 93.303 and Appendix A to Subpart U of Part 93. Under NPATMA section 804(c), commercial air tour operations by fixed-wing or helicopter aircraft that employ QT and that replace existing aircraft are not subject to the operational flight allocations that apply to other commercial air tour operations at the park, provided that the cumulative impact of such operations does not increase noise at the Grand Canyon. Section 804(d) provides that a commercial air tour operation by an aircraft in a commercial air tour operator's fleet on the date of enactment of NPATMA that meets QT requirements or is subsequently modified to meet QT requirements may be used for commercial air tour operations under the same terms and

conditions as section 804(c) without regard to whether it replaces an existing aircraft. In addition, NPATMA expressly states that it does not relieve or diminish the statutory mandate to achieve substantial restoration of natural quiet and experience at the park.

3. Section 35001 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, July 6, 2012, directs the Secretary of the Interior and the Administrator of the Federal Aviation Administration to provide incentives for commercial air tour operators that convert to QT, determined in accordance with the regulations then in effect. MAP–21 gives as an example of an incentive increasing the flight allocations for operators of QT on a net basis consistent with section 804(c) of NPATMA, provided that the cumulative impact of such operations does not increase noise at the Grand Canyon. MAP–21 also provides that all commercial air tour operators must convert to QT by 2027.

II. Background

Congress has encouraged the use of quiet aircraft technology (QT) as one means of addressing noise from commercial air tours at Grand Canyon National Park. The FAA was required by NPATMA to designate reasonably achievable requirements for fixed-wing and helicopter aircraft to be considered QT, and issued a final rule to accomplish this in 2005. This rule did not include QT incentives and did not relieve commercial air tour operators of their operational limitations. NPATMA's provision that allocations do not apply to QT operations only takes effect if the cumulative impact of such operations does not increase noise at the Grand Canyon. Although the FAA concluded that aircraft that meet the QT designation are consistently quieter than aircraft that do not, 70 FR 16088, neither the FAA nor the NPS had sufficient data at that time to determine whether noise would increase if limits on the number of QT operations were removed. In addition, NPATMA expressly states that it does not relieve or diminish the statutory mandate to achieve substantial restoration of natural quiet and experience at the park. Substantial restoration of natural quiet had not been determined to be achieved at that time. Various QT incentives were considered by the agencies following the 2005 final rule, but were not finalized.

MAP–21, enacted in July 2012, provided additional direction to the FAA and the NPS on QT incentives. In response to MAP–21, the NPS, in consultation with the FAA, reduced the fees applicable to commercial air tour operations at the Grand Canyon by 20 percent (from $25 to $20 per flight) for an air tour using QT effective January 1, 2014. On February 3, 2014, the FAA, in consultation with the NPS, announced its intention to distribute FAA-held allocations to commercial tour operators in proportion to the number of QT operations flown in the first six months of 2014. 79 FR 6267–6268. These allocations were subsequently distributed for use for QT flights during the 2014 air tour season and beyond.

III. Seasonal Relief From Allocations for QT in the Dragon and Zuni Point Corridors

Following notice and public comment, the FAA and the NPS have decided to provide an additional QT incentive in the Dragon and Zuni Point corridors where QT can have the greatest positive effect on park resources and where the need for relief from allocations has been demonstrated. Under this incentive, commercial air tour operators flying QT aircraft in the Dragon and Zuni Point corridors initially will be relieved from having such operations count against their annual allocations in the first quarter (January 1–March 31) of 2015. The FAA and the NPS will use the quarterly reports that are currently required to be submitted by the operators to determine the number of QT flights flown during the first quarter that will not count against their annual allocations. During this first quarter, QT flights will not use an allocation, while non-QT flights must still use an allocation. All commercial air tour flights, QT and non-QT, must use an allocation for the remainder of the year (April 1–December 31). However, operators will continue to benefit from the seasonal relief throughout the remainder of the year since they may use allocations in April through December that they would otherwise have used for QT flights conducted in January through March.

The first quarter of the calendar year, when park visitation and demand for air tours are seasonally low, has historically had the lowest level of commercial air tour operations. Providing this incentive initially in the first quarter of 2015 is a prudent action that gives the FAA and the NPS an opportunity to evaluate the impact of the incentive, including the extent to which commercial air tour operators continue to use QT in the remainder of the year which will produce additional noise benefits for the park. The FAA and the NPS want to incentivize commercial air tour operators to maximize the use of QT throughout the year. To that end, the seasonal relief from allocations may be extended to part or all of the fourth quarter (October 1–December 31) in 2016 and following years, in addition to the first quarter, based on an evaluation of the preceding year. In 2015, the more that increased QT use reduces the noise level below the noise baseline described in the following paragraph, the greater the prospect for operators to have additional seasonal relief from allocations in 2016.

To meet the statutory conditions in NPATMA and MAP–21, the FAA and the NPS must ensure that the cumulative impact of QT operations relieved from allocations does not increase noise at the park. Neither NPATMA nor MAP–21 specifies a methodology for calculating whether the cumulative impact of relieving QT operations from allocations would increase noise. After extensive consideration of the statutory language and the associated technical issues, the FAA and the NPS have determined that, for this seasonal relief incentive, the annual noise from both QT and non-QT commercial air tour flights conducted in the Dragon and Zuni Point corridors must not exceed the annual noise level of commercial air tour flights under the current Dragon and Zuni Point corridors allocation system.

The agencies have agreed that the cumulative noise impact [1] will be evaluated in terms of the total amount of commercial air tour noise energy occurring inside park boundaries averaged over an entire year. The agencies further agreed that the most suitable way to ensure that the seasonal relief from allocations incentive for QT operations in the Dragon and Zuni Point corridors does not increase noise in the park is to compute noise at a large number of grid points throughout the park, instead of only using grid points in the Dragon and Zuni Point corridors. Accordingly, the NPS and the FAA used a grid of 1224 points with 2 km spacing across the park. Technical experts from both agencies also determined that a single number provides the most straightforward means of determining whether there is an increase in noise. This number is calculated by taking the total noise energy calculated for a year's air tour data at each of the individual grid points and averaging it over the entire park—resulting in a single LEQ_{12} value.[2]

[1] Cumulative noise impact is not the same criterion as the substantial restoration of natural quiet (SRNQ). SRNQ is calculated and determined on the peak day of air tour operations using the percent time audible metric.

[2] LEQ_{12} stands for Equivalent Sound Level for 12 hours, which is a cumulative measure of the noise

Continued

Using this methodology, the FAA and the NPS have modeled the annual noise of commercial air tour allocations in the Dragon and Zuni Point corridors as flown with the 2012 commercial air tour fleet mix and route structure—resulting in a noise baseline of LEQ_{12} 58.1 decibels (dB). This single number serves as a reference criterion for measuring changes to the noise environment based on the cumulative impact of operations. It is the average noise level across the entire park as if a year's worth of flight allocations in the Dragon and Zuni Point corridors took place in twelve hours on a single day. It is not intended to represent a value which may be experienced by visitors to the park on any particular day.[3]

A more detailed technical description of the methodology and calculations that resulted in the LEQ_{12} 58.1 dB reference criterion has been placed in the docket. In order to accurately and reliably ensure compliance with the statutory mandate that the cumulative impact of operations under this QT incentive not increase noise at the park, the same calculation described above will be applied to each year's air tour data. The FAA and the NPS will model the annual noise from all commercial air tour operations conducted in the Dragon and Zuni Point corridors and compare the annual noise with the seasonal relief incentive in place with the noise baseline of all commercial air tour allocations in these corridors. Noise will be determined to increase if the annual modeled LEQ_{12} noise of commercial air tour operations conducted in the Dragon and Zuni Point corridors exceeds LEQ_{12} 58.1 dB in the park. If noise in any year exceeds the noise baseline, the seasonal relief incentive will be modified or discontinued as determined necessary to comply with the statutory condition.

To ensure that this incentive will not diminish the achievement of substantial restoration of natural quiet and experience at the park, all commercial air tour aircraft including QT must adhere to the existing route structure throughout the park, including the Dragon and Zuni Point corridors. Substantial restoration of natural quiet in the park will continue to be calculated based on the peak day of air tour operations using the percent time audible metric. The NPS will continue to monitor noise to evaluate substantial restoration of natural quiet.

This incentive applies only to commercial air tour operators that have allocations in the Dragon and Zuni Point corridors; *i.e.,* operators must have allocations in these corridors in order to be relieved from allocations. It does not apply elsewhere in the Grand Canyon Special Flight Rules Area (SFRA). There is an ample unused surplus of commercial air tour allocations in the SFRA outside of the Dragon and Zuni Point corridors; therefore, operators conducting air tours in these other SFRA areas do not need relief from allocations and would not be incentivized to convert to QT by a seasonal relief incentive.

Seasonal relief from allocations is intended to provide an incentive for operators with non-QT aircraft to convert to QT in advance of the statutory requirement for full QT conversion, and to maximize use of QT already in the fleet. It rewards those operators who have already fully converted to QT by allowing them to take full advantage of the incentive. The number of air tours conducted by operators using QT can increase beyond the level permitted under the existing allocation system as long as the cumulative impact of the additional number of quieter aircraft operating in the park does not increase noise at the park.

Seasonal relief from allocations will not automatically increase the number of flights. Any increase in air tour flights will depend on the demand for air tours, which is influenced by factors such as general economic conditions and the amount of tourism. Seasonal relief allows air tour operators to save allocations that would have been used in the first quarter of the year and to use them during times of year when air tour demand is higher. The most immediate effect of the incentive is likely to be to provide a cushion of allocations to any qualifying operator in the Dragon and Zuni Point corridors that is at risk of running out of allocations before the end of the calendar year.

If the seasonal relief in the Dragon and Zuni Point corridors is a successful QT incentive, it is proposed to remain in effect unless it violates the statutory condition that the cumulative effect of such operations must not increase noise at the Grand Canyon, or diminishes the achievement of substantial restoration of natural quiet, in which case it will be either modified or discontinued; or until a longer term approach for managing air tour noise in the park is in place.

The FAA and the NPS commit to developing a long term approach for managing noise in the park in an expeditious manner. Any long term approach will continue to incentivize conversion to QT and will not penalize earlier conversion to QT realized through the seasonal relief incentive.

IV. Discussion of Comments

The public comment period was open until December 10, 2014. The FAA and the NPS received 147 comments on the November 10, 2014 notice describing the proposal to provide seasonal relief from allocations in the Dragon and Zuni Point corridors, including 60 comments which were posted after the close of the comment period. Commenters included individuals identifying themselves as hikers, backpackers, river rafters and back-country visitors to the Grand Canyon; groups representing those types of park users; environmental and conservation organizations (collectively referred to as ''recreational and environmental interests''). Joint comments were filed by a helicopter trade association and a coalition of Grand Canyon air tour operators (collectively referred to as ''air tour interests''). Most of the comments expressed appreciation for the unique qualities of the Grand Canyon, including natural quiet, and the desire that these qualities be protected. The agencies reviewed and considered all comments, and have responded below to comments of substance on the QT seasonal relief incentive. Comments and responses are organized under subject matter headings.

Statutory Basis for Incentives

Comment: Several commenters representing recreational and environmental interests questioned the authority for QT incentives and expressed concern about the consistency of this seasonal relief incentive with other laws protecting national parks. The air tour interests offered their view of Congressional intent and criticized the agencies for delay in implementing the legislative directive.

FAA and NPS Response: This QT incentive is offered pursuant to MAP–21 and to implement Section 804(c) of NPATMA, as described in this notice. MAP–21 and NPATMA include protections to Grand Canyon National Park, namely that the cumulative impact of QT operations relieved from allocations must not increase noise at the park and that the achievement of substantial restoration of natural quiet

exposure of A-weighted sound levels over a 12-hour period. LEQ_{12} is one of several metrics used to evaluate air tour noise in Grand Canyon and other national parks. The metric takes into account aircraft noise levels, the number of aircraft operations, and the duration of noise. A 12-hour LEQ is used since air tour operations occur during the day, rather than over a 24-hour period.

[3] This LEQ_{12} value is not an average day noise level. To produce a noise level representing an average day at an average location in the park, further calculations of the 2012 LEQ_{12} 58.1 dB value would need to be made and would produce an LEQ_{12} average day noise level of 32.5 dB.

and experience at the park shall not be relieved or diminished. This latter provision in NPATMA ensures that this QT incentive is consistent with the mandate in the 1987 Overflights Act to achieve substantial restoration of natural quiet. Further, the NPS has an affirmative responsibility to protect the resources and values of national park units, including park soundscapes. To that end, since this measure provides incentive for air tour operators and owners to improve their fleets commensurate with industry advancements in quiet aircraft technology, this incentive holds promise for the continual reduction of noise in Grand Canyon National Park. The FAA and the NPS describe the history of events that affected the time line of QT incentives in the Background section of this notice.

Quiet Technology Incentives

Comment: Commenters questioned whether the proposed incentive is necessary in light of other incentives and the fact that operators are already converting to QT. Some commenters representing recreational and environmental interests objected to what they view as subsidizing a private industry and suggested that operators should pay the cost of converting to QT. The air tour interests noted that over $200 million has been invested in QT aircraft by the air tour industry.

FAA and NPS Response: Both NPATMA and MAP–21 contemplate allowing increased flights, *i.e.,* relief from allocations or operational caps, by QT. This incentive addresses those provisions, *i.e.,* it creates an incentive for air tour operators to maximize use of QT aircraft by allowing them to fly additional air tours beyond their current allocations. Operators are financially responsible for the aircraft they use for air tours and have already acquired a significant number of QT aircraft at their own cost. MAP–21 requires all commercial air tour aircraft operating in Grand Canyon National Park to fully convert to QT not later than 2027.

Comment: Some commenters representing recreational and environmental interests suggested the proposal actually gives an incentive to retain and operate noisier helicopters. The air tour interests commented that operators already need to maximize use of QT to recoup costs.

FAA and NPS Response: Air tour operators that have already converted to QT aircraft will have an additional incentive to maximize use of those aircraft; other operators will have an incentive to convert to QT. Because the cumulative impact of the incentive will be evaluated based on the annual commercial air tour operations conducted in the Dragon and Zuni Point corridors, the use of QT aircraft at any time of the year will contribute to a determination that noise has not increased and will increase the potential for the incentive to be continued and extended to the fourth quarter in subsequent years.

Comment: Commenters questioned the basis for classifying aircraft as QT and asked who would validate aircraft in an air tour operator's fleet as QT.

FAA and NPS Response: Appendix A to Subpart U of 14 CFR part 93 contains the procedures for determining the QT designation status for each aircraft. Additional guidance can be found in the FAA's Advisory Circular 93–2, *Noise Levels for Aircraft used for Commercial Operations in Grand Canyon National Park Special Flight Rules Area.* The FAA is responsible for designating aircraft as QT and for determining which aircraft comply with that designation.

Comment: Some commenters suggested that air tour operators should be required by regulations to use QT aircraft all of the time or convert over a period of time, while others called for a transition as soon as possible to QT.

FAA and NPS Response: MAP–21 requires all commercial air tour aircraft operating in the Grand Canyon National Park Special Flight Rules Area to fully convert to QT not later than 2027. In the meantime, MAP–21 directs the FAA and the NPS to provide QT incentives to encourage earlier conversion and use of QT.

Comment: Some commenters representing recreational and environmental interests suggested that flights using ''saved'' allocations should use QT. Other commenters suggested that each QT flight should use a fraction of an allocation.

FAA and NPS Response: The agencies structured this incentive to be consistent with the NPATMA Sec. 804(c) provision relieving commercial air tour operations by QT from operational flight allocations, subject to protections with respect to noise and substantial restoration of natural quiet in the park, and with the MAP–21 provision that references increasing flight allocations consistent with NPATMA Sec. 804(c). Neither NPATMA nor MAP–21 requires additional conditions to be placed on flights using allocations, as suggested by commenters. As a practical matter, the FAA expects an air tour operator's fleet to include the same proportion of QT for an entire year that it uses in the first quarter of the year, which means that QT would be used for allocations. Furthermore, the overall air tour activity in the Dragon and Zuni Point corridors, whether using QT or non-QT, cannot increase noise at the park.

Comment: Some commenters representing recreational and environmental interests advocated a 1–2 year trial period for the incentive that expires on date certain. The air tour interests suggested that the incentive include the fourth quarter at the outset.

FAA and NPS Response: The agencies have determined that providing this incentive initially in the first quarter of the year is a prudent action that gives the FAA and the NPS an opportunity to evaluate the noise impact of the incentive, which will depend not only on the first quarter QT use but also on the extent to which commercial air tour operators continue to use QT in the remainder of the year. The incentive may be modified or discontinued as determined necessary to comply with the statutory condition at the end of the first year or any subsequent year.

Noise Calculation and Impact

Comment: Some commenters were uncertain as to what the LEQ_{12} 58.1 dB metric represents and asked how the baseline was developed.

FAA and NPS Response: The LEQ_{12} 58.1 decibels (dB) reference criterion is a basis for judging changes to the noise environment, and is not intended to represent a value which may be experienced by visitors to the park on any particular day. Additional information has been provided in this final notice, and a more detailed technical description of the LEQ_{12} 58.1 dB reference criterion, including how it was calculated, has been placed in the docket.

Comment: Some commenters representing recreational and environmental interests disagreed with using a cumulative metric or annual average and said that noise increases should be measured based on peak day or each and every day. Commenters also suggested that supplemental noise metrics be considered.

FAA and NPS Response: The statutory language ''cumulative impact of such flights'' calls for a metric that calculates noise cumulatively over a period of time. LEQ_{12} is one of several metrics that is used to evaluate air tour noise in Grand Canyon and other national parks and was selected by technical experts in the FAA and the NPS as the most appropriate to use to determine cumulative impact. A daily noise calculation is not appropriate for this purpose. Substantial restoration of natural quiet, another required criterion,

will continue to be calculated based on the peak day of air tour operations using the percent time audible metric.

Comment: One commenter suggested that the annual evaluation of the incentive's impact should reflect conversion to any QT aircraft that produces more noise than an aircraft in the baseline.

FAA and NPS Response: The annual evaluation will calculate the noise of all QT and all non-QT aircraft and will account for any additional noise, whether from a noisier aircraft or from more aircraft operations.

Comment: Commenters questioned the baseline against which the cumulative impact of QT operations will be compared (*i.e.,* the annual noise of commercial air tour allocations in the Dragon and Zuni Point corridors as flown with the 2012 commercial air tour fleet mix and route structure). Commenters representing recreational and environmental interests suggested there should be an improvement in the noise level over the status quo measured by actual operations rather than allocations. The air tour interests questioned use of a 2012 fleet mix rather than a fleet mix representative of either the year 2000 or 2005 and suggested that the comparison should be to sound levels that would have been present if all aircraft were non-QT. The air tour interests also suggested that the baseline should be substantial restoration of natural quiet.

FAA and NPS Response: Both NPATMA and MAP–21 include the QT limiting provision: ''. . . provided that the cumulative impact of such operations does not increase noise . . .'' at the park. Neither statute provides for further reductions in noise with respect to QT incentives. The prohibition on increasing noise is not defined or elaborated on in either statute. The FAA and the NPS considered various possible baselines and determined that the baseline should reflect the amount of noise that can be generated by the number of commercial air tour operations that are permitted under the current allocation system. If noise exceeds a level that is currently permitted under the allocation system, the agencies will consider it to be an increase in noise. The alternative selection of a noise baseline using the actual level of air tour operations in 2012, as recreational and environmental interests suggested, would constitute a reduction from what is currently allowed since the actual 2012 level of air tour operations was lower than what is authorized. It would not be a QT incentive to set a baseline that is lower than what air tour operators would be allowed to do under the current allocation system. In addition, the agencies chose 2012 as the year to model baseline noise. MAP–21 provided renewed direction for QT incentives in July 2012 and directed the agencies to provide such incentives not later than 60 days after the date of enactment of MAP–21. While the agencies could not meet the 60-day time frame, it was clear that the Congress gave meaning to 2012 with respect to QT incentives. An additional consideration by the agencies was the availability and currency of air tour fleet and operational data in 2012, as opposed to looking back to previous years. The alternative of selecting either the year 2000 or 2005, as the air tour interests suggested, was considered by the agencies, but was not adopted because of concerns about re-creating earlier data for modeling input to obtain a noise baseline and whether the selection of a past year would adequately ensure no increase in noise and no diminishment of the achievement of substantial restoration of natural quiet. This latter consideration was involved in deciding not to model the noise baseline with an all non-QT fleet, which would not reflect the noise environment in the Dragon and Zuni Point corridors in 2012. The agencies are also cognizant that an incentive must be based on a stable baseline that can be relied on by air tour operators as they make QT conversion decisions; therefore, the 2012 noise baseline will continue to be used for this seasonal relief incentive in future years. With respect to using a baseline of substantial restoration of natural quiet, this is a separate applicable standard in NPATMA; not a substitute for the no cumulative noise increase requirement. Both requirements must be met. To ensure that this incentive will not diminish the achievement of substantial restoration of natural quiet by exposing new areas of the park to air tour noise, all commercial air tour aircraft, including QT, must adhere to the existing route structure in the park.

Comment: The air tour interests suggested that any noise increase should be substantial or perceptible in order to justify discontinuing the incentive. Commenters representing recreational and environmental interests called for transparency and accountability, continued modeling and/or monitoring to ensure noise does not increase, and suggested that noise data should be made public.

FAA and NPS Response: The FAA and the NPS are responsible and accountable for ensuring that this QT incentive does not increase noise at the park or diminish the achievement of substantial restoration of natural quiet. The LEQ_{12} 58.1 dB baseline is a fixed baseline against which noise increases will be judged. Noise above the baseline level will be considered to be an increase, regardless of whether it is considered to be either ''substantial'' or ''perceptible''. The agencies will monitor the air tour operators' use of QT for air tours as required to be reported in the operators' quarterly reports submitted to the FAA, and will annually model noise as described in this notice. Annual noise results will be publicly available. In addition, the NPS will use periodic on site monitoring consistent with industry standards. The NPS routinely uses monitoring to supplement modeling results. Monitoring data would enable the NPS to check the number of flights flown on each route segment, providing cross-validation for the numbers reported by air tour operators. Monitoring data also would provide the single event level (SEL) and maximum sound level (Lmax) for each flight, enabling the NPS to confirm the benefits of QT aircraft.

Comment: Some commenters noted that ambient noise levels at the Grand Canyon are very low and even QT aircraft can be heard. Commenters representing recreational and environmental interests expressed concern that overall noise will increase even if QT operations result in a reduction in noise per flight and that park visitors will be in worse position if the result is more constant noise from more frequent flights.

FAA and NPS Response: The overall noise cannot increase under the statutory mandate that provides for the QT incentive to be allowed subject to the cumulative impact not increasing noise at the park. The LEQ_{12} metric used to evaluate cumulative impact takes into account aircraft noise levels, the number of aircraft operations, and the duration of noise. In addition, the incentive cannot, by statute, diminish the achievement of substantial restoration of natural quiet at the park.

Comment: Commenters representing recreational and environmental interests expressed concern that noise would increase in backcountry or elsewhere in the Grand Canyon; that noise would increase in off-season when backpacking and hiking is most comfortable and visitors enjoy a respite from noise; or that the incentive would result in increased flights of loud aircraft in summer.

FAA and NPS Response: There are statutory protections to preclude an overall, *i.e.,* cumulative, increase in noise and to prevent diminishing the achievement of substantial restoration of

natural quiet, as described in this notice and in the response to the previous comment. QT aircraft must adhere to the current route structure defined for air tour operations; no new areas of the Grand Canyon will be opened to air tours under this incentive. The agencies do not anticipate a significant increase in the number of air tours operated in the winter months when tour demand is low. The incentive should increase the proportion of QT aircraft used for air tours in the Dragon and Zuni Point corridors and decrease the number of louder non-QT aircraft. Air tour operators that convert or have converted to QT for the seasonal relief are anticipated to continue to operate those quieter fleets during the summer season. Seasonal relief allows air tour operators to save allocations that would have been used in the first quarter of the year and to use them during times of year when air tour demand is higher; therefore, there may be increases in the number of air tour flights at other times of year above the number that has been allowed under the allocation system. If an increase in the number of flights rises to the level that results in a cumulative increase in noise, the seasonal relief incentive will be modified to reduce noise or will be discontinued.

Comment: Commenters suggest agencies mandate one ''quiet day'' per month.

FAA and NPS Response: This suggestion would presumably involve a prohibition on air tours for one day each month, which is outside the scope of approved measures currently in place at the park and is not a QT incentive.

Comment: One commenter called for assurance that incentives will not degrade substantial restoration of natural quiet.

FAA and NPS Response: The agencies will ensure that this incentive does not diminish substantial restoration of natural quiet as required by NPATMA.

Impact on air tour operations

Comment: Commenters representing recreational and environmental interests suggest this is an attempt to increase number of operations by labeling them as quieter. The air tour interests express concern that operators who have already converted to QT may not see a permanent increase in their allocations. Commenters representing recreational and environmental interests noted that they expected to see flights shift from peak to off-peak as part of a QT incentive. One commenter expressed the view that the seasonal relief incentive will result in vigorous marketing of air tours in January through March.

FAA and NPS Response: Currently, air tour operators can use allocations at any time throughout the year based on the demand for air tours and individual business decisions. This incentive does not change that situation. The demand for air tours is expected to remain highest in the peak season.

Comment: Commenters representing recreational and environmental interests advocated a cap on operations.

FAA and NPS Response: Rather than imposing a numerical cap, the statutory noise conditions effectively provide a limit.

Comment: Commenters asserted that more frequent flights will produce more air emissions.

FAA and NPS Response: FAA and NPS air quality specialists do not expect air tours to significantly affect air quality in national parks.

V. Implementation Steps

The FAA and the NPS will use the quarterly reports that are currently required to be submitted by the operators to determine the number of QT flights flown during the first quarter that will not count against their annual allocations. The FAA will implement the incentive by amending the operations specifications of commercial air tour operators holding allocations in the Dragon and Zuni Point corridors to allow them to conduct air tours with QT aircraft without using an allocation for such tours in the specified seasonal time periods. The FAA and the NPS will cooperatively ensure that the statutory conditions protecting the park are met.

VI. Environmental Considerations

This action involving the FAA's amendment of operations specifications is categorically excluded from more detailed environmental review because it would not have a significant effect on the environment. The FAA and the NPS have designed this incentive to ensure compliance with the statutory conditions that the cumulative impact of QT operating without allocations does not increase noise and that the incentive does not diminish the statutory mandate to achieve the substantial restoration of natural quiet at the park.

Issued in Hawthorne, CA, on March 19, 2015.

Glen A. Martin,

Regional Administrator, Western-Pacific Region, Federal Aviation Administration.

Issued in Lakewood, CO, on March 23, 2015.

Sue E. Masica,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 2015–09380 Filed 4–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting.

TIME AND DATE: The meeting will be held on May 7, 2015, from 12:00 Noon to 3:00 p.m., Eastern Daylight Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–877–422–1931, passcode 2855443940, to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: April 17, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–09462 Filed 4–20–15; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2015–0049]

Application of Cargo Preference Requirements to the Federal Ship Financing Program

AGENCY: Maritime Administration, MARAD, Department of Transportation.

ACTION: Notice of Proposed Policy Clarification.

SUMMARY: The Maritime Administration (MARAD) is seeking comments on a proposed policy clarification for the application of the Cargo Preference Act of 1954 (CPA 1954), 46 U.S.C. 55305, to applications, commitments and guarantees under MARAD's Federal Ship Financing Program (Title XI), 46 U.S.C. Chapter 537.

DATES: Comments may be submitted on or before May 22, 2015.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2015–0049 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search MARAD–2015–0049 and follow the instructions for submitting comments.
- *Email: Rulemakings.MARAD@dot.gov.* Include MARAD–2015–0049 in the subject line of the message.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590. To confirm that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope.
- *Hand Delivery/Courier:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

Note: If you fax, mail or hand deliver your input, you should include your name and a mailing address, an email address, or a telephone number in the body of your document so that you can be contacted if there are questions regarding your submission. If submitting inputs by mail or hand delivery, submit them in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing.

FOR FURTHER INFORMATION CONTACT: Owen J. Doherty, Associate Administrator for Business and Finance Development, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9595, *owen.doherty@dot.gov.*

SUPPLEMENTARY INFORMATION: After review of policies and practices regarding the application of the CPA 1954 to applications, commitments and guarantees under MARAD's Title XI program, it was determined that applicants often lack a full understanding of those policies and practices, despite the issuance of an earlier policy clarification document (76 FR 37402) in 2011. In response to applicant questions and input from program participants, this proposed policy clarification seeks to explain MARAD practices to better inform those seeking to benefit from Title XI.

Section 1: What is Cargo Preference?

The CPA 1954 mandates that shippers use U.S.-flag vessels to transport a portion of government-impelled, ocean borne cargoes. Through statutory amendments in 2008 to 46 U.S.C. 55305(b), the CPA 1954 was clarified to state that the statute applies whenever the U.S. Government provides financing in any way with Federal funds for the account of any person. MARAD, as the agency charged with implementing and overseeing compliance administration of the CPA 1954, previously determined that ''financing in any way'' includes Federal loan guarantee programs, such as Title XI.

Section 2: What are the Cargo Preference requirements?

There are both transportation and administrative requirements associated with the CPA 1954:

Transportation: At least 50 percent of the gross tons of the equipment or materials which are transported by ocean under a given Title XI application, letter commitment and guarantee of obligations must be transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates. MARAD defines ''gross ton'' to mean a metric ton or cubic meter of cargo, by whichever measure the number is greater; that number is the standard by which compliance with the CPA 1954 will be evaluated.

Administrative: For each covered shipment, consistent with 46 CFR 381.3, within thirty (30) days of the foreign export loading, the shipper (Title XI applicant or its representative) must submit a legible copy of a rated on-board ocean master bill of lading to MARAD. This requirement exists whether the particular shipment was transported aboard a U.S.-flag or a foreign-flag vessel. The bills of lading must be submitted to the Office of Cargo and Commercial Sealift, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 or via email to *cargo.marad@dot.gov.* The bills of lading or the transmittal cover must clearly state the Title XI application or loan guarantee to which they apply and must contain the following information: (1) The name of the vessel carrying the cargo(s); (2) The carrying vessel's International Maritime Organization (IMO) number; (3) The carrying vessel's flag of registry; (4) The date of cargo loading; (5) The port of loading; (6) The port(s) of trans-shipment (if any); (7) The port of final destination; (8) A description of the cargo(s); (9) The gross weight of the cargo(s) in kilograms and the volume of the cargo(s) in cubic meters; and (10) The total ocean freight revenue in U.S. dollars.

Section 3: When do the Cargo Preference requirements begin?

The cargo preference requirements apply as soon as an application is submitted for Title XI financing. The requirements are therefore in place well before a decision is made on a Title XI application, a letter commitment is issued or a guarantee closing takes place. The CPA 1954 will generally apply, particularly for construction-period financing, to all foreign components that are transported by ocean and included in the ''Actual Cost'' of the project in accordance with 46 CFR 298.13(b). At the outset, all applicants will be required to submit a ''transportation plan'' for review by MARAD to ensure that sufficient planning has occurred to meet the cargo preference requirements. This requirement will be discussed with each applicant and potential applicant at the earliest possible time. Additionally, applicants and prospective applicants should discuss their plans to pursue a Title XI guarantee with shipyard constructing the vessel at the earliest possible time to ensure that the shipyard is aware and will comply with the associated cargo preference requirements.

This programmatic administration is necessary to ensure compliance with the CPA 1954. Once MARAD issues a guarantee under Title XI, the ''financed'' cargoes included in that guarantee are within the meaning of the CPA 1954. However, this can be far too late to ensure compliance with the CPA 1954 requirements. This programmatic administration is similar to the manner in which Federal grants or contracts generally work; that is, if a party seeks reimbursement for an item obtained prior to the execution of a Federal grant or contract, that item still must be compliant with applicable Federal laws, such as the Buy American Act, regardless of the fact that the item had been procured before Federal financing was approved or confirmed.

In the event that a Title XI application is not approved, there are no reimbursements for transportation costs associated with CPA 1954 compliance.

Rather it will be a cost associated with pursuing a Title XI loan guarantee.

Section 4: What if an available U.S.-flag vessel cannot be found or the total ocean freight rate appears too expensive?

Only MARAD can issue a determination that no qualified U.S.-flag vessels are available at fair and reasonable rates. If a Title XI applicant, through diligent efforts, is unable to find a U.S.-flag carrier, without prior consultation with MARAD and a determination of non-availability of qualified U.S.-flag carriage, the applicant's due diligence alone will not excuse that applicant from cargo preference requirements. Title XI applicants and prospective applicants are encouraged to communicate with U.S.-flag carriers at the earliest possible time to ensure the greatest degree of coordination and to obtain the best rates. In the event that a Title XI applicant or prospective applicant experiences difficulty obtaining U.S.-flag service, or if it can only find partial U.S.-flag service, the applicant is encouraged to contact MARAD as soon as possible at *cargo.marad@dot.gov* or (202) 366–4610. With proper planning, U.S.-flag service can generally be obtained at fair and reasonable rates. Early planning and coordination are the keys to meeting cargo preference requirements in Title XI as in all other Federal programs.

Section 5: What if non-compliance with Cargo Preference requirements occurs?

At MARAD's option, as the administrator of the Title XI program, non-compliant parties may be denied a letter commitment or, consistent with 46 U.S.C. 55305(d)(2)(B), may required to provide make-up cargoes for carriage aboard U.S.-flag vessels to offset the lost cargo carriage supporting work under the Title XI financing application. In extreme cases where knowing and willful violations occur, consistent with 46 U.S.C. 55305(d)(2)(C), MARAD can issue a civil penalty of not more than $25,000 for each violation, with each day of a continuing violation following the date of shipment counting as a separate violation. Additionally, cargo preference requirements are incorporated into Title XI letter commitments; therefore, failure to properly adhere to cargo preference requirements could impact MARAD's ability to close on a Title XI guarantee because the recipient has not met its obligations under the letter commitment. However, with early planning and coordination with MARAD, no cargo preference violations need occur under any Title XI application, letter commitment or guarantee.

Section 6: What is the purpose of Cargo Preference?

The CPA 1954 provides a revenue base that helps to retain and encourages a privately owned and operated U.S.-flag merchant fleet. The U.S.-flag fleet is a vital resource, providing essential sealift capability to globally project and sustain the U.S. Armed Forces or support other national emergencies, maintaining a cadre of skilled seafarers available in time of national emergencies, and helping to protect U.S. economic interests. The U.S. maritime industry also supports thousands of sea-going, shore-based, and secondary, associated jobs, supporting the Nation's economic growth. It is imperative that Federal programs, such as Title XI, and Title XI applicants and beneficiary shipyards, as members of the U.S. maritime industry, support this national priority through proper adherence to cargo preference requirements. Therefore, while the use of U.S.-flag vessels to carry 50 percent of the gross tons of ocean borne cargoes is the statutory minimum, MARAD, as the agency charged with administering both Title XI and the CPA 1954, encourages the use of U.S.-flag vessels more than the minimum whenever possible.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 46 U.S.C. 55305; 46 U.S.C. Ch. 537)

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By Order of the Maritime Administrator.

Dated: April 17, 2015.

Thomas M. Hudson, Jr.,

Acting Secretary, Maritime Administration.

[FR Doc. 2015–09371 Filed 4–21–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. MCF 21062]

Ace Express Coaches, LLC, et al.; Acquisition and Control; Certain Properties of Evergreen Trails, Inc. d/b/a Horizon Coach Lines

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: Ace Express Coaches, LLC (Buyer), and its affiliated parties (All Aboard America! Holdings, Inc. (AHI), Celerity AHI Holdings SPV, LLC (Celerity Holdings), Celerity Partners IV, LLC (Celerity Partners), and Industrial Bus Lines, Inc. (IBL)) (collectively, Applicants) have filed an application under 49 U.S.C. 14303 for the Buyer to acquire certain assets of Evergreen Trails, Inc. d/b/a Horizon Coach Lines (Seller), and for the continuance in control of the Buyer by AHI, Celerity Holdings, and Celerity Partners once the Buyer becomes a federally regulated motor carrier of passengers. The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8.

DATES: Comments must be filed by June 8, 2015. Applicants may file a reply by June 22, 2015. If no comments are filed by June 8, 2015, this notice shall be effective on June 9, 2015.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21062 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of comments to Applicants' representative: Mark J. Andrews, Strasburger & Price, LLP, Suite 717, 1025 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Matthew Bornstein: (202) 245–0385. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Buyer is a newly established limited liability company under the laws of Delaware.[1]

[1] Concurrently with their application, the parties also filed a request for interim approval under 49 U.S.C. 14303(i). In a decision served on April 8, 2015, in related Docket No. MCF 21062 TA, interim approval was granted, effective on the service date of that decision.

Applicants state that the Buyer applied to the Federal Motor Carrier Safety Administration (FMCSA) for nationwide charter and special operations authority, as a motor passenger carrier operating over irregular routes, in Docket No. MC–908184. IBL, a motor carrier of passengers (MC–133171), is a corporation established under the laws of New Mexico. IBL provides charter and contract services in Arizona, New Mexico, and Texas utilizing 101 motor coaches and minibuses. The Buyer and IBL are under the control of AHI, Celerity Holdings, and Celerity Partners, each a noncarrier organized under the laws of Delaware. AHI also owns 100 percent of the stock of two other federally regulated motor carriers of passengers: Hotard Coaches, Inc. (Hotard) (MC–148331) and Sureride Charter Inc. d/b/a Sundiego Charter Co. (Sundiego) (MC–324772).[2] Hotard operates local and regional charter and contract services within Louisiana and southern Mississippi. Sundiego conducts charter, sightseeing, and various shuttle operations to, from, and within California and adjoining states.

The Seller, a motor carrier of passengers (MC–107638), is a corporation established under the laws of the State of Washington. The Seller is under the control of Francis W. Sherman, a noncarrier individual. Mr. Sherman exercises control of the Seller through intermediate holding companies FSCS Corporation and TMS West Coast, Inc. Applicants state that the Seller currently provides both government and corporate shuttle services, scheduled shuttle services between Denver and two mountain resort towns in Colorado (carrying both patrons and employees of the casinos located there), and leisure travel services to, from, and within Colorado. The government shuttle services include services provided under a contract between the Seller and the U.S. Department of Defense (DOD). Applicants state that the Seller utilized approximately eight vans and minibuses for the corporate shuttles, 11 motor coaches for the casino operations, and 33 coaches plus two minibuses for all other work. Applicants indicate that the revenue mix generated by these assets in 2014 for the government/corporate shuttles, casino operations, and charters was approximately 9, 48, and 43 percent, respectively. In addition, the Applicants state that the Seller has been awarded an intercity passenger service contract with the Colorado Department of Transportation (CDOT) under which 13 additional CDOT-owned coaches will commence operations within the next few months.

Applicants explain that the proposed transaction would close in three phases. The first phase, as discussed in MCF 21062 TA, contemplates that the Buyer and IBL would acquire control of the assets currently operated by the Seller in Colorado.[3] All of the non-DOD assets, including vehicles, would be operated by IBL (under its existing FMCSA authority) pursuant to an interim management agreement between IBL and the Buyer. Vehicles owned by the Seller would be leased to the Buyer, and vehicle leases to the Seller by third parties would be assigned to the Buyer. The DOD contract would be assigned to and performed by IBL under a management agreement with the Buyer, as required by DOD regulations, which preclude contracts with passenger carriers in existence less than a year.

The second phase of the proposed transaction would entail the Buyer becoming permanent owner and operator of all the non-DOD assets, including vehicles, upon the effective date of the Board's approval of the transaction and once the Buyer has obtained FMCSA operating authority. Any interim role of IBL managing such assets would therefore end. Lastly, the third phase of the proposed transaction would occur as soon as practicable after the first anniversary of the phase two closing. The Buyer would replace IBL as the direct operator of the DOD contract and the proposed acquisition would then be complete.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Applicants have submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), and a statement that Applicants' aggregate gross operating revenues of the Buyer, IBL, Hotard, Sundiego, and the Colorado assets of the Seller exceeded $2 million for the preceding 12-month period, *see* 49 U.S.C. 14303(g).

Applicants submit that the proposed transaction would have a positive net impact on the adequacy of transportation to the public because Applicants do not intend to change the operations of Seller's assets, but intend to modernize the bus fleet used in those operations. They anticipate that the proposed transaction would enhance services to the public by implementing vehicle sharing arrangements, coordinated driver training and safety management services, and by centralizing certain management support functions. With respect to fixed charges, Applicants state that the combined scale of operations of the Buyer, IBL, Hotard, and Sundiego would allow the Buyer to enhance its volume purchasing power, thereby reducing insurance premiums and achieving deeper volume discounts for tires, equipment, and fuel. Applicants claim that the proposed transaction also would have a positive impact on employees. The Buyer intends to retain Seller's existing management and hourly employees who are involved in the operation of the assets being acquired. Applicants assert that this would result in continued job security and opportunities for growth in the combined business of the Buyer and its affiliated carriers.

Applicants further claim that the acquisition would not likely affect competition because the markets in which the Seller's Colorado assets and the previously approved combination of Sundiego, IBL, and Hotard operate are adjacent, but do not significantly overlap. Applicants note that numerous carriers compete with the Seller's operations in Colorado and that the Seller operates fewer than 50 percent of all coaches in the Denver and Colorado Springs markets. These local and regional carriers include Seller's largest competitor, Busco, Inc. d/b/a Arrow Stage Lines (Busco), which operates 33 motor coaches from its Denver facility and has 216 coaches in its total fleet. Ramblin Express, Inc. (Ramblin) also operates 45 units and has facilities in Denver and Colorado Springs, and Colorado Tour Line LLC, which operates under the GrayLine brand, operates motor coaches in both markets. In addition, Applicants state that Colorado Charter Line, Inc. (CCL) and Premier Charter (Premier) are two

[2] The Board authorized control of Hotard and IBL by AHI and the Celerity entities in *Celerity Partners IV—Control—Calco Travel,* MCF 21044 (STB served May 11, 2012). The Board also authorized control of Sundiego by AHI and the Celerity entities in *Celerity Partners IV—Control— Sureride Charter,* MCF 21055 (STB served Oct. 29, 2013).

[3] These assets include: (i) The Seller's operations center in Golden, Colorado, plus six other leased terminals and parking facilities; (ii) approximately 44 motor coaches and 23 other vehicles; (iii) all maintenance facilities and supplies for these vehicles; (iv) certain licenses and permits necessary to operate the assets; (v) furniture, fixtures, office equipment, software, and intellectual property in use for such operations; and (vi) existing and prospective charter and shuttle contracts based in Colorado.

smaller charter companies that operate in the Denver area.

According to Applicants, in the casino shuttle market, the Seller and Ramblin are the current operators (regulated by the Colorado Public Utility Commission), and the Buyer merely would replace the Seller in this market. Applicants argue that services provided under contract involve a competitive bidding process where the competing local and regional carriers mentioned above could bid for shuttle services, along with any interested nationwide operators and that thus, the market would remain competitive if the proposed transaction were approved. Applicants state that services provided on a ''spot basis'' are the norm for much of Seller's charter business involving leisure travel and that these charter operations face competition from nationwide operators in addition to the local and regional carriers mentioned above (Busco, Ramblin, CCL, and Premier). They also note that motor passenger carriers face intense market competition from other transportation modes, such as private automobiles, airlines, and trains.

On the basis of the application, the Board finds that the proposed acquisition is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*''.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective June 9, 2015, unless opposing comments are filed by June 8, 2015.

4. A copy of this decision will be served on: (1) U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590.

Decided: April 16, 2015.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–09360 Filed 4–21–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the Department of the Treasury's Federal Advisory Committee on Insurance (''Committee'') will convene a meeting on Thursday, May 7, 2015, in the Cash Room, 1500 Pennsylvania Avenue NW., Washington, DC 20220, from 1:00–5:00 p.m. Eastern Time. The meeting is open to the public, and the site is accessible to individuals with disabilities.

DATES: The meeting will be held on Thursday, May 7, 2015, from 1:00–5:00 p.m. Eastern Time.

ADDRESSES: The Federal Advisory Committee on Insurance meeting will be held in the Cash Room, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must either:

1. Register online. Attendees may visit *http://www.cvent.com/d/frqz2l?ct=6128d144-9ad5-45f5-910c-c7b44560aae0&RefID=FACI+General+Registration* and fill out a secure online registration form. A valid email address will be required to complete online registration. (Note: Online registration will close at 5:00 p.m. Eastern Time on Friday, May 1, 2015.)

2. Contact the Federal Insurance Office (FIO), at (202) 622–5892, by 5:00 p.m. Eastern Time on Friday, May 1, 2015, and provide registration information.

Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Marcia Wilson, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622–8177, or *marcia.wilson@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Brett D. Hewitt, Policy Advisor, FIO, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622–5892 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the Federal Advisory Committee on Insurance are invited to submit written statements by any of the following methods:

Electronic Statements

• Send electronic comments to *faci@treasury.gov.*

Paper Statements

• Send paper statements in triplicate to the Federal Advisory Committee on Insurance, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

In general, the Department of the Treasury will post all statements on its Web site *http://www.treasury.gov/about/organizational-structure/offices/Pages/Federal-Insurance.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This is a periodic meeting of the Federal Advisory Committee on Insurance. In this meeting, the Committee will discuss a number of issues, including cybersecurity related to the insurance industry, including

regulatory developments, and natural catastrophes and the role of mitigation, including President Obama's Executive Order 13690, Establishing a Federal Flood Risk Management Standard.[1] The Committee will also receive updates from its subcommittees.

[1] Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, 80 FR 6,425 (Feb. 4, 2015).

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2015–09346 Filed 4–21–15; 8:45 am]

BILLING CODE 4810–25–P

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